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THE
WORKS
OF
JOHN SELDEN, Esq;

V O L. III.

Containing His ENGLISH TRACTS;

V I Z.

England's EPINOMIS.

Original of DUELS.

Titles of HONOUR.

History of TYTHES, with the ANSWERS to *Sempill*, *Tilseley*, and a Letter to the Marquis of *Buckingham*. MSS.

Of the Passage touching the Number 666. MS.

Of *Calvin's* Judgment on the REVELATIONS. MS.

Of the BIRTH-DAY of our *Saviour*.

Of his PURPOSE and END in writing *the History of Tythes*. MS.

Of the JEWS sometimes living in *England*.

Discourse of the Office of Lord CHANCELLOR.

Privilege of the *Baronage of England*.

JUDICATURE in Parliament.

Of the Original of Ecclesiastical Jurisdiction of TESTAMENTS.

LETTER to Mr. *August. Vincent, Rouge-Croix*, concerning his *Discovery of Errors*.

Arguments concerning the BARONIES of *Grey* and *Ruthen*. MS.

NOTES upon *Drayton's Polyolbion, Fortescue de Laudibus*, &c. and *Hengham's Summa*, &c.

SPEECHES in the House of Lords and Commons. MS.

TABLE TALK.



L O N D O N :

Printed by *T. Wood*, for *J. WALTHOE*, *G. CONYERS*, *J. KNAPTON*, *R. KNAPLOCK*, *J.* and *B. SPRINT*, *D. MIDWINTER*, *A. BETTESWORTH*, *B. LINTOT*, *J. TONSON*, *W.* and *J. INNYS*, *R. GOSLING*, *J. OSBORN* and *T. LONGMAN*, *R. ROBINSON*, *T. WOODWARD*, *P. CLAY*, *B. MOTTE*, *A. WARD*, *T. WOTTON*, and the Executors of *RICHARD SARE*.

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T O T H E R E A D E R.

I H A V E so few Remarks to make upon Mr. Selden's *English Tracts*, besides what I have already observed, in His Life, that This might rather serve for a Summary of Contents of this Volume, than for a Preface. All, except His History of Tythes, have met with a favourable reception in the Learned World, especially in these Kingdoms, for the Improvement of which, they were chiefly calculated: And, as almost none of his English Works, besides that History and the Titles of Honour have crossed the Sea, and are but rarely to be found in any Library abroad, so none have experienced (or perhaps have not deserved) the Animadversions from thence, which some of His Latin Tracts have done. I shall however collect at present the Remainder of my Observations upon them, and offer them, such as they are, to the Perusal of the Courteous Reader.

The *EPINOMIS* seems to be a Plan of the Latin Tract entituled, *Janus Anglorum*, commented upon, and published by Dr. Adam Littleton, under the Name of Mr. Redman Westcot, this being the Ancient Name of the Doctor's Family. See *Athen. Oxon. Vol. II. Col. 915. Edit. 2.* In this Tract, the two last Chapters, containing the Laws of Rich. I. and King John, are not inserted into the *Janus Anglorum*.

The *DUELLO* was first printed in quarto, 1610, and afterwards in octavo 1712. The occasion of reprinting this Book is given in *Biblioth. Angloise Tom. 6. par. 1. pag. 198.* in these Words: "La malheureuse affaire, ou le Duc d'Hamilton & My Lord Mohun perdirent la vie fournit à quelcun l'occasion de faire reimprimer ce petit Ouvrage de Selden, dont la premiere Edition ne se trouvoit plus aisement. Le grand bruit que ce combat fit alors dans le Royaume, & le Projet d'Acte, que l'on porta dans le Parlement pour prevenir de semblables malheurs, estoient deux choses plus que suffisantes pour faire debiter cette Piece, quand même le nom de l'auteur n'en auroit pas faite l'Eloge. Il y soutient toute la Reputacion de savoir qu'il s'est aquisée par tant d'autres Ecrits, quoique celui ci soit un des premieres Essais de sa Plume." Among the *Dissertations of Ericus Mauritius*, printed at Strasburgh, pag. 791. of the second Edition, there is one *De Duellis Tractatus*, in which He discusses all Questions relating to Duels, and treats also of their Antiquity, whether Judicial or Extrajudicial, as Mr. Selden does. The same also is done by the learned *Marquess Scipio Maffei* in his Book entituled, *Della Scienza chiamata Cavalleresca. Romæ. 1710.*

The *TITLES OF HONOUR* were first printed in quarto 1614. and with large Additions reprinted 1631 in folio. The Title page of the third Edition 1672. promises Additions and Amendments, but it contains nothing more but rather less than the second, for the whole Quotation pag. 631 out of the Monk of Gisburn is there omitted, and the Addenda out of the second Edition, are put into their proper Places in the Third. The Numbers of the pages of this New Edition refer to the Additions taken out of the first quarto

To the R E A D E R.

Edition. This Book was translated into Latin from the third Edition of 1672. by Simon John Arnold, Inspector of the Churches of the Bailiwick of Sonenburg, and printed at Francfurt 1696. in quarto. Monsieur Briot (to whom the World is obliged, for the French Translation of the Turkish History of Sir Paul Ricault) had a design to translate Mr. Selden's Titles of Honour into French for the use of the French Nobility, in like manner as Monsieur Andrew Favin's Theatre d'Honneur was translated into English for the use of the English Nobility in 1623. But death prevented Monsieur Briot from executing His Design. This Book of Mr. Selden's has given Dr. John Christopher Becman an Opportunity of writing a Latin Treatise upon the same Subject. And Gerard Feltman, Professor of Law in the University of Duysburg, has written two Books of the Titles of Honour in octavo; and says lib. 2. cap. 34. §. 7 & 8. that He had not seen Selden's Book upon this Subject till He had almost finished His; and that his Design was different from Mr. Selden's, who had only writ a History of the Titles of Honour, but that He had busied himself with Juribus Titulorum, id est, Titulis cuique mortalium generi tribuendis, ut Dignitatum ordo servetur. The above mentioned Ericus Mauritius has in his Dissertations pag. 237. one De Nobilitate in primis Germanica, in which the Subject, that several of Selden's Chapters in this Book are upon, is handled in the same manner. Our Author's Opinion in this Learned Tract col. 727. that the Bishopricks and other principal Governments of the Church were subjected under William the Conqueror to a military Tenure by Act of Parliament, may be confirmed by a Passage in W. Malmesbury in Vita S. Wulfstani, c. 16. apud Angliam Sacram, Vol. II. fol. 264. The very Learned Bishop Kennet in His Third Letter of Bishop Merks, p. 85. cites a remarkable Mistake of Mr. Selden, relating to the Peers of England, which he thus corrects. "Mr. Selden, citing a Passage out of Froissart, knows not what to make of the Cinque Pers d'Angleterre, who sate at the Table next the King: For the Cinque Pers, says He, spoken of in the History of Froissart, though I cannot judge of it by any written Copy of Him (for I have none by me) yet I am forward to think it mispublished in Him for Cinquant Pers, which denoted not an established, but an accidental Number only of the Time. A strange remote Conjecture to make a Plain Thing seem intricate; for most certainly Froissart's placing the King at the Head Table in the Coronation Dinner with the Cinque Pers at a second Table, and the Commonalty of London at a third, must needs make the Cinque Barons or the Barons of the Cinque Ports, who then had, and still have, that Precedency of dining at every Coronation." This same Learned Prelate in His Parochial Antiquities, p. 418. speaking of the Revenues, which were formerly given out of the Profits of the County, for the better Support of the Dignity of an Earl, convinces Mr. Selden (in His Titles of Honour) of a Mistake, that Hugh de Aldithley Earl of Glocester was not the first Earl, who by His Creation Charter has this Revenue granted Him, in lieu of the third Penny of the Pleas of the County.

Next follows THE HISTORY OF TYTHES. To prove that Tythes are due Jure Divino, I find the following Books written before Mr. Selden's History. The Anatomy of Ananias's and Sapphira's Sacrilege, by Roger Gostwyke, B. D. Cambridge 1616 in quarto. The Revenue of the Gospel is Tythes, Due to the Ministry of the Word, by that Word, by Foulke Robertes, B. D. Cambridge 1613. in quarto. Tythes examined and proved to be due to the Clergy by a divine Right, by George Carleton, London, 1611. quarto. Bishop Andrews also has written to prove the same in his Tract de Decimis among his Works. The Reasons which induced Mr. Selden to write
this

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this History you will find in His Defence. NB. Some think, He wrote this History to revenge the Lawyers on the Clergy, for the Play Ignoramus. See Fuller's Church History, lib. 10. fol. 70. Sir James Sempil (*Appendix* p. 30.) is pretty fair in His Account of this Work. "By His Title (says He) and by His Preface He disclaimeth it to be written to prove that Tythes are not due by the Law of God, &c. I have no Reason to suspect, much less to account Him as an Adversary of my Position, the most is, He may doubt (and so do many of great Note) but He, who ingenuously doubtieth, may (when God pleaseth) find Resolution." And pag. 34. He saith, "Tho' Mr. Selden hath given us veram historiam, as He found it recorded, yet hæc ipsa historia non est vera, but leaveth dangerous Insinuations and prejudicial Impressions in Jus Divinum." This Work is by the Lord Bishop of Peterborough in His Paroch. Antiq. p. 106. said to be a Tract which least deserves Mr. Selden's Name. This History was printed at different Presses, as appears by comparing the Copies, in which We find some Variations, though for the most part not very material. It was reprinted in 1680. in quarto with the old date put to it, at which time the Press and fanatical Party were too much at Liberty, occasioned by the Popish Plot. (Athen. Oxon. Vol. 2. col. 181.) yet notwithstanding these two Editions are easily discernible by the Difference of the Paper and the Types. What the Fate of this Book was, I have at large mentioned, in Mr. Selden's Life; how He was called before the High Commission about the 22d of Dec. 1618, and made His Submission on the 28th of Jan. 1618. See what He says about this Submission, pag. 1370, and what Mr. Tillesley replies to it, pag. 28. in His Answer. When Mr. Selden had first composed This Treatise of Tythes, and had communicated it to some Friend or other; He was dissuaded from publishing of it, or at least some Passages in it were marked, that were better left out. But He followed in this, as well as in most of His Writings, His own genius. Dr. Mountagu (*Diatrib.* p. 227) says "Good Counsel was given you (Mr. Selden) before you meddled with the History of Tythes, not to begin, by a Friend of yours and mine in Somersetshire, whom you would not follow." And pag. 24. He says thus. "I do but ask you the Question? Who did mark out with black lead in His MSS. all Places concerning Tythes with one Mark, as other Passages with another." He says it was Sir Robert Cotton, and Mr. Selden does gratefully acknowledge His Direction in His Dedication to Him. The first three Chapters of this History of Tythes are translated into Latin, and illustrated with some few Notes by the Learned Monsieur le Clerc, and by Way of Dissertation added to His Commentary on the Pentateuch. He very justly observes that pag. 1091 lin. 28. in our Edition of this Book instead of Prayers, it should be Players, Plays, or some such Word. See Dr. Fabricius's Thefaurus Antiquit. Hebraic. The Learned Orientalist Mr. Will. Guise, pag. 34. in his Notes upon the Version of that part of the Mishna called Zeraim, favours Mr. Selden's opinion about the second Tenths given amongst the Jews. For the Right of Tythes amongst them, see Hottinger de Decimis Judæorum. See also the ninth Dissertation in the Additamentum ad Observationum selectarum ad rem Literariam spectantium Tomos decem 1710. or the Supplement to the Observationes Hallenses, in which the great Dr. Thomafius calls Mr. Selden an Incomparable Man, and says He is the first who in this (about Tythes, the Title of the Dissertation is de Decimis) qui hic desipere desuit. Mr. Collier in His Ecclesiastical History, par. 2. Book 8. has given an Abstract of Mr. Selden's History and Dr. Mountagu's Answer to it.

Mr. Tillesley calls (in His Answer to Mr. Selden's unprinted Pamphlet pag. 42) Sir James Sempil's Sacrilege sacredly handled, "a most absolute Dis-
course of that incomparable learned Knight; and says, whose Reasons
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"when combined Sacrilege can answer (which they never can) it would seem necessary for Divines to interpose their Defences." The Admonition is printed, from a very correct Copy of it now in the Hands of Joseph Moyle of Abridge in Hampshire Esq; Brother to the late Ingenious Walter Moyle Esq; There is a Copy of it in the Musæum Ashmoleanum at Oxford, but very imperfect.

The Copy of Mr. Selden's Answer to Mr. Tilletley is in the same Musæum, num. 343 in quarto.

The LETTER TO THE DUKE OF BUCKINGHAM is in MS. in Lambeth Library num. 595. or MS. Wharton Z. fol. 77.

The three following Tracts; OF THE REVELATION; OF THE BIRTH-DAY OF OUR SAVIOUR; and OF HIS PURPOSE AND END OF WRITING THE HISTORY OF TYTHES, were sent me in MS. by my much Honoured and Worthy Friend Joseph Alston of Newhouse in Suffolk Esq; who had borrowed them for my use out of a Friend's Library in Essex; they were the very Original Copy which Mr. Selden presented to King James the first, as appears by the Binding and the King's own Hand-writing in two Places. Mr. Gregory (Pref. to Notes and Observations on some Passages of Scripture) approved of Calvin's Judgment upon the Revelations, and that Cajetan was in the right when He said, exponat qui potest. Since Mr. Selden's Opinion about the Number 666. was written, Mr. Francis Potter published an Interpretation of it at Oxford 1642. in quarto.

The Book Θεωρηματα; or OF THE BIRTH-DAY OF OUR SAVIOUR was very uncorrectly publish'd London 1661. as will appear by comparing it with the present Edition. It is said that Mr. Selden compos'd it to pacify King James, who was displeased, that in the Review of the History of Tythes He had asserted, that the Birth-day of our Saviour was not on the 25th of December. Mr. Butler has not answer'd Mr. Selden's Reasons on this Point, as Anthony a Wood seems to insinuate Athen. Oxon. Vol. 2. c. 182.) as may be seen by looking into the first Postscript of His Christology. This Opinion of Mr. Selden's was not pleasing to Dr. Allix, wherefore to express His dislike of it in Will. Langius, lib. 2. c. 1. de annis Christi. p. 357. He speaks thus in His Diatribe de anno & mense natali. J. C. p. 7. "Omnino nihil intel-
"ligit, qui non videt, hanc sententiam oriam esse ex absurdissima suppo-
"sitione Zachariam Johannis Patrem fuisse in Sanctuario, cum Johannem
"Baptistam sibi ex Elisabetha nasciturum ab Angelo audivit." The differ-
ent Authors who have written on the Birth-day of Christ may be seen in the Catalogue of them, done by the Great Dr. Fabricius Biblioth. Antiq. p. 342, 343, 344. to which may be added a Tract entituled, Christ's Birth mistimed, Phenix. Vol. 1. p. 114. Wandalini Diatribe Historico-Theol. p. 252, 253. & seq. apud Grævii Syntagma; and Mons. des Vignoles His Dissertation touchant le jour de Noel, in the Biblioth. Germanique Tom. 2. p. 29.

THE TRACT OF THE JEWS was inserted in Purchas's Pilgrimage. I have already mentioned some Account of it in Mr. Selden's Life, and shall only now add, that the Marginal Notes to Purchas in 1614 are cited by Gataker in His Dissertatio de nomine Tetragrammato among His Opusc. Philolog. printed in his Opera Critica, col. 35. as made by Mr. Selden.

THE DISCOURSE OF THE OFFICE OF THE LORD CHANCELLOR Mr. Selden wrote upon Occasion of the Promotion of Sir Francis Bacon to the Chancellorship, which happened 7. Mar. 1616. (Dugd. Chron. Series. f. 104.) This Great and Learned Man had so great a Regard for Mr. Selden, that by his Will He desired that the Advice of Mr. Selden might be taken, concerning the publishing or suppressing of his MSS. Treatises. Baconiana p. 204.

By

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By order of the House of Lords He drew up and finished (as appears by the Receipt of the Lords Sub-committees, Col. 1474.) Dec. 6. 1621. THE PRIVILEGE OF THE BARONAGE. This Year the Parliament sat, and Impeachments were carried on against several, as may be seen in Rushworth. Wherefore, I suppose, it was thought necessary to lay before the Lords all the *Precedents of Impeachments*, as is done in this Book. It was not printed, 'till the Year 1642. Lond. 12°. and then the Records were translated, but most wretchedly, as will appear by comparing them with those now published in their Original Language from the MSS. Copies of Mr. Petyt and the Lambeth Library. This Book was again published with the same Negligence at London, 1689. not 1681. as Athen. Oxon. Vol. 2. c. 182. has it. It is to be hoped, that this Publication will wipe off the Imputation cast on it by Bishop Stillingfleet, in His grand Question concerning the Bishop's Right to vote in Parliament, viz. "That it is a confused Rhapsody." It seems to have been published in 1642. for the sake of the 5th Chapter of the first part; where it is proved, that Acts have passed, without the Assent of Bishops, and the whole Bench was then, or some time after, excluded from Parliament. See Bishop Kennet's Third Letter of Bishop Merks, p. 84.

At the same Time, or a little after, Mr. Selden drew up, THE JUDICATURE IN PARLIAMENT, which was not published, 'till 1681. as the Athen. Oxon. Vol. 2. c. 183. has it, though the Title page has no date. It is a very maimed Piece, and as such does little deserve to be placed among the Works of so Great a Man, as Selden was. The Original MS. was lodged in the Library of the Cathedral of Lincoln, (in which City this Book was first printed) but is now lost and could not be found to correct this imperfect Treatise by.

The Tracts of ORIGINAL JURISDICTION, &c. And DISPOSITION OF INTESTATE GOODS, &c. were, I believe, written about the Year 1628. when the Question was agitated, in the House of Commons, about the King's Right to have the Goods of Intestate Bastards. See his Life fol. 22. and pag. 1681. Vol. 3. opp. Seld.

The Letter to Mr. Vincent was written on Account of his Book called A Discovery of Errors, and prefixed to it, printed at London 1622. The above mentioned Bishop Kennet in his *Parochial Antiquities*, p. 85. corrects a Passage in it relating to the Earl of Wallingford. "In reference to this same Person, I ought not to omit a great Mistake of Mr. Selden, who writes thus of Him. Werethere not also Earls of Wallingford anciently?" Malmsbury says, that Robert Earl of Gloucester went from Arundel to Bristol, *occurrente fibi medio itineris Briano filio Comititis de Walingford*. The same Person is afterward mentioned, and called Brientius filius Comititis Marchio de Walingford. I conceive this Brian to be the same Man, which is called Brientius, in that Office cited by Mr. Camden. Where Mr. Selden did not consider, that Malmsbury's Expression is not to be rendred Brian Son of the Earl of Walingford, but Brian Fitz Count of Walingford, Lord of that Honour and Castle, and this only in Right of his Wife. His other Title of Marchio de Walingford, was in respect to His being Warden or Constable of Walingford Castle, which He so stoutly defended for the Empress Maud against King Stephen."

The Argument for the Baronies of Grey and Ruthen was taken from a MS. in the Musæum Ashmoleanum, which my Worthy and Learned Friend Edward Burton Esq; has corrected; for which and for His other very ready and kind Assistance throughout this whole Work, I here return him publicly my Hearty Thanks. It seems to have been Mr. Selden's Argument
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made before the House of Lords. Hill. 16. Carol. I. on the Dispute in that Case. The Case is mentioned in 3. Crooke, 601. and Judgment was given against him.

Among Mr. Selden's Speeches that pag. 1938 (which should be 3 Carol. not 5 Carol.) is the Substance of an Argument made in His own Case, and which was pronounced by Mr. Littleton. See the Appendix to Rushworth, Vol. I. f. 28. The MS. from which it is printed, was sent me by my Honoured Friend Mr. Harbin, and was written with Mr. Selden's own Hand. The Character which these two Great Men bore, is justly expressed by the Lord Clarendon (in his History of Rebellion, Vol. I. fol. 443. fol. Edit.) when He says, "Mr. Littleton was not only very ready and expert in the Books, but exceedingly versed in the Records, in studying and examining where- of, He had kept Mr. Selden Company, with whom he had great Friendship, and who had much assisted Him."

The Table Talk was designed some Time since to be translated into French by Monsieur Galle, a Man of Letters at Rouen, as Monsieur de Vigneul-Marville writes in his Melanges Historiques, p. 46. The Account which is given of this Treatise in the Acta Eruditorum Supplem. Vol. I. Tom. xvij. p. 426. is so just and true, that I think it necessary to add here- in the Author's own Words, before I conclude this short Preface. "Apoph- thegmata tanti Viri, ejus per quatuor lustra commensalis, Richardus Milwardus ab interitu vindicanda autumavit. Studiose ergo ea excepit auribus primo & dein calamo, ac in locos tandem communes alphabeticos; post Seldeni fata digessit. Quin autem dudum obierit, neq; adeo ipsemet Editionem hanc accurarit, vix est, quod dubitemus. Sunt effata illa stylo concepta familiari, perquam jucundo ac plus simplici vice jocosso, quam- vis de rebus Ecclesiæ & Status Anglicani maxime seriis agant. Ple- rumque simili aliquo constant, eoq; a re vilissima vel historiola admodum ludicra quandoque petito. Non raro sibi invicem aliquo modo contraria deprehendas jussu questurus, non ordine temporis consignata esse, ut lique- ret qua ratione sensim a Regiis in Parlamentarias partes Auctor per- tractus fuerit. Crebro invenias dicta, quæ nec Episcopalibus nec Presby- terianis approbatura se putes. Admiscentur quedam minoris momenti, aut a communis moralis doctrinæ præceptis aliquantum aliena; qualia pro- palari vix passus fuisset superstes Seldenus."



ENGLAND'S
EPINOMIS.

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A

ENGLAND

PLANT

ENGLAND'S EPINOMIS.

CHAP. I.

From the first supposed inhabitants and Britains until Julius Caesar.

IF all published authority were a legitimate brother to truth's certainty, then could I affirm, that their common father, old Time, once saw a *Samotbean* race in this isle of *Britany*. The *Italian-bred-Chaldee, Berosus*,^a mentions one *Samothēs*, brother to *Gomer* and *Tubal*, of *Japhet's* line, to be author of the *Celtes*, which inhabited (with other parts of *Europe*) that of *Gaul*, which we now call *la France*: and his commentator^b *Annius de Viterbo* thus addeth, *Samothēs fuit frater Gomeri atque Tubalis ex Japete patre, a quo primum Britones, inde Galli, Samothēi dicti fuerunt: & praecipue philosophi & theologi sectatores ejus*. These *Samothēans*, by the testimony of^c *Aristotle* and *Scieron*, *divini atque humani juris peritissimi*, & ob id religioni deditissimi, & propterea *Samothēi* (rather *Semnothēi*) appellati, under the providence of these and their race was the law-government of the state, until that *Trojan* celebrated branch, *Brute*, entered the isle; who composed a book intituled, *Leges Britonum*, collected out of the *Trojan* laws. But to ruminate a little upon that *Saturnian* age^d, and omit all shadow-fights touching controverted *Brute* (his supposed existence and fortunes) it may be not without good reason doubted, whether any such Laws of *Troy* were, out of which others might be extracted. Nor will they peradventure upon examination (excepted only some customs of religious rites) appear more certain in particular, or more true in general, than those of *Aristophanes* his *Nephelococcygia*. Times so near the golden age (when as

Nec cuiquam (as^e *Seneca* hath it) *aut animus aut injuria aut causa*) have left few notes of expressly binding laws, the main government consisting in the arbitrary disposition of those, in whom being chosen as princes for their eminency in justice, and consequently in all other virtues (as^f *Deioces* was of the *Medes*) it was rather *an office than a title of dignity, to undergo the style of monarch. And although it be reported in^h *Plato*, that *Talus* (betwixt whom and *Rhadamanth*, the *Cretick* justice was by *Minos*, *Jupiter's* own son, then king of *Crete*, divided) thrice every year did make his circuit, for maintenance of such laws as were established, and in brazen tables registered; one of which (somewhat to particularize) was an edict against drunkenness in merry meetings; so that constitutions in written tables may thus derive their pedigree from the most ancient remembrance of *Grecian* discoveries (*Ceres* and her *Thestynophoria*, with all such like, omitted) yet upon that common epithet of *Agamemnon* in *Homer*, which saluteth him Ποιμένα Λαών, i. e. *Shepherd of the people*, where the phrase of *Jove's* free gift to princes and judges of

i ----- Σκῆπτρον τ' ἦδ' ἀέμματα.

is very frequent, the word *Νέμω*, *lex*, being long since^k observed not only to be not found in any of his works; but also to have been of later birth than his age permitted, (unless the contingency, which *Εὐνομία*, coming from the same theme, both by^l him and *Hesiod* remembered, hath with it, perswade the contrary, and upon the ordinary phrases in^m *Virgil* of *Jura vocatis dare populis*, and such like, applied to *Trojan* princes) we may with probability enough

^e *Nec signare quidem, aut partiri limite campum*-----

^a Sir W. Raleigh, fol. 118.

lib. 1. & vide Basingstoke hist. lib. 1.

^b Beros. antiq. Chald. lib. 5. & ad eum Annii de Viterbo.

^d Flor. hist. aetat. 3. hist. p. 18.

^c Herodot. l. 1.

^e Officium erat Imperare, non regnum. Seneca.

^h Plat. in Minoe.

ⁱ Iliad. 2. & saepius alibi.

^k Joseph.

^l Aeneid. 5. & 7.

^m Diog. Laert. in vita Philof.

ⁿ Senec. Epist. 91.

conjecture that their laws, being, as the *Platonists* term it, *secundae Veneris*, were always closely folded, rather within the treasury of his breast,* which was only therefore greater than other, because he seemed best of them all, than published in enduring tables, to be observed as dumb magistrates; *Et quidem initio civitatis* (saith ^a *Pomponius*) *populus sine certa lege, sine certo jure agere instituit, omniaque manu regis gubernabantur.* But from this digression into the way again.

One of this succession, *Dunvallo Molmutius*, instituted (as they ^o write) *Ut aratra, templa viaeque ad civitates ducentes immunitate confugii gauderent. Verum quia succedente tempore de viis (cum non essent certis limitibus distinctae) orta esset dissensio, Belinus rex filius praedicti Molmutii, ad subducendum omne ambiguum, quatuor regales vias, omni privilegionum, per Insulam sterni fecit: Fossam scilicet, Watling-streete, Erming-streete & Ikenild-streete; which rather (by ^p *Camden's* judgment) were the Roman's works, as out of *Tacitus*, *Beda*, and other testimony he collecteth. *Hic leges* (meaning *Dunvallo*) saith *Jeoffrey of Monmouth*) *quae Molmutinae dicebantur, inter Britones statuit, quae usque ad hoc tempus inter Anglos celebrantur. Statuit siquidem inter caetera, quae multo post tempore beatus Gildas ^q scripsit, ut templa deorum & civitates talem dignitatem haberent, ut quicumque fugitivus sive reus, ad ea confugeret, veniam coram inimico suo haberet. Statuit etiam ut viae, quae ad praedicta templa & civitates ducebant, necnon & aratra colonorum, eadem lege confirmarentur.* Of the gynaeocracy of *Martia*, wife to king *Guinthein*, a woman very learned, thus speaks the same ^r author; *Inter multa & inaudita, quae proprio ingenio invenerat, invenit legem, quam Britones Martianam vocaverunt. Hanc etiam rex Aluredus inter caeteras transulit, quam Saxonica lingua Marchenlage vocavit; which name by our great *English* ^t antiquary, is rather deduced from the *Mercii*, whose limits (*Wæpc* in *Saxon* signifying a limit) adjoined in some part to all the other kingdoms of the Germans here established; and they thence so denominated. I could wish for a sight of *Jupiter's Diphtere*, or an oracle from *Apollo*, that so, resolution might be had touching the certainty of these reports, whether fabulous, or sealed with the stamp of a true history. The main authors are that *Chaldee* priest and the *Arthurian Jeoffrey*; both exceedingly suspected, but especially the first, by the penetrating judgments of most learned men. But admitting them, as your mercurial spirit shall move you, you have a fair passage from these mythick reports, selected out of bardish hymns, unto most allowed truths of authentic historians.**

CHAP. II.

Out of Roman histories from Julius Caesar to the period of Rome's empire in this land.

JULIUS CAESAR (who first of the Romans set foot in this little world divided from the greater) discovered among the *Gauls* their order of government, and form of deciding controversies by law; which was wholly the office of the *Druides*, then being (as it seems) the *Togata Militia* of the state. Their discipline, he affirms, was first found in this isle, and hence transferred to the old *Gauls*: they hither always sent their youth, as to a seminary of that learning.

I. *Illis rebus divinis* (Caesar's ^t words) *inter sunt, sacrificia publica ac privata procurant, religiones interpretantur.*

II. *De omnibus controversiis publicis privatisque constituunt*, (the pontifical ^u college of old *Rome*, after the twelve tables received, did as much) *& si quod est admissum facinus, si caedes facta, si de haereditate, de finibus controversia est, iidem decernunt, praemia poenaeque constituunt.*

III. *Si quis privatus, aut publicus, eorum decreto non stetit, sacrificiis interdicunt: Haec poena* (yet it was but like the minor excommunication used in the christian church) *apud eos est gravissima.*

IV. *Quibus ita est interdictum, ii numero impiorum ac sceleratorum habentur; ab iis omnes decedunt, aditum eorum sermonemque defugiunt*, (these consequents make it as the greater excommunication ^x) *ne quid ex contagione incommodi accipiant: neque iis potentibus jus redditur*, (the self-same in proportion remains yet with us in practice) *neque bonos ullus communicatur.*

V. *Druidibus praest unus, qui summam inter eos habet auctoritatem.*

VI. *Hoc mortuo, si quis ex reliquis excellit dignitate, succedit; at si sint plures pares, suffragio adlegitur.*

VII. *Druides à bello abesse consueverunt, neque tributa una cum reliquis pendunt*: (our Clergy in effect hath retained as much) *militiae vacationem, omniumque rerum habent immunitatem.*

VIII. Such large privileges occasioned increase of their scholars, *Qui magnum* (saith he) *numerus versum ediscere dicuntur. Itaque nonnulli annos vixenos in disciplina permanent, neque fas esse existimant ea literis mandare, cum in reliquis fere rebus publicis privatisque rationibus, Graecis literis utantur.* Hence some infer that the tongue of the old *Gauls* was Greek, but clearly that the *Druides* wrote in it: I am not persuaded to either. *Graecae li-*

* Summa foelicitas erat gentium in quibus non poterat potentior esse nisi melior. Senec. Epist. 91.
^a Ranulph. Cessren. in polychronico. Galfred. Monumeth. lib. 1. cap. 16. & Marth. Westmonast. fo. 52.
^b Vid. Spelman's Gloss. del ley Molmutii, tit. Lex. 44.1. ^c Galfred. Monumeth. lib. 1. cap. 20. & Flor. histor. p. 56.
^d in append. ad Cornavios. ^e Caf. de bello Gall. lib. 6. & Strabo, lib. 4. Geograph. ^f L. 2. ff. de Orig. juris. ^g Juxta item lex civilis & Canonica. Extra de except. c. except. (de sacrosanct. eccles.) li. placet.

terae is not always *Latin* for the Greek tongue; so might we say, that the *Syriack* testament were perfect *Hebrew*, because *litteris Hebraicis exaratur*. As for instruments of commerce written at *Marſile*, ἐλάνισι (as *Strabo* reporteth) it proves only that a *Greek* colony (for it was from the *Phocians*) used *Greek*. But *Caesar*² also speaks of tables found in the *Helvetians* tents, *Graecis litteris exaratas*. We may interpret both for the character only, which perhaps even the *Graecians* thence borrowed. Of this place of the *Druides* it is the censure of a great doctor, the learned³ *Hotoman*, that *Graecis* hath crept in through fault of transcribers; *Humers* did in another place in the same *Caesar* so thrust itself into *dextris*, as *Lipsius* makes apparent; who is clear of opinion that the whole context of his commentaries hath suffered much alteration and spoil by *Julius Celsus* his interpolation; nay some think they were never, since the first copy, his own. But to prove with a forcible argument. Think you that *Greek* was so familiar with the *Druides*? Why then did *Caesar*^b write in *Greek* to *Cicero*, to this end, that neither the carrier, being a *Gaul*, nor other of the state, if they were intercepted, might understand them? to whose hands in time of war should they have come sooner, than to the council's, where the *Druides* were chief? so much not amiss, because it touches the tongue of the lawyers, used in those times.

To the former *Druidian* orders and constitutions are added in *Pliny*, *Strabo*, *Marcellinus*, *Lucan*, *Tacitus*, and others, divers rites of religion and philosophy, which taste much of *Pythagorean* doctrine, worthy of observation, and applicable as well to this isle, as any part of *Gaul*. Forasmuch as not only the infancy of that sect had here its nurture; but also an identity of commonwealth, order, language, and religion, between the old *Gauls*, and our *Britains*, is by learned *Camden*^c with sufficient reasons of strong proof, in his excellent chorography of this country, declared. Fit enough therefore is it to conjoin also the municipals of the *Gauls*, which by the same authority were scarce different from the *British*.

IX. *Suos liberos nisi cum adoleverint, ut munus militiae sustinere possunt, palam ad se adire non patiuntur.*

X. *Viri quantas pecunias ab uxoribus dotis nomine acceperunt, tantas ex suis bonis, aestimatione facta, cum dotibus communicant; hujus omnis pecuniae conjunctim ratio habetur, fructusque servantur; uter eorum vita superaverit, ad eum pars utriusque cum fructibus superiorum temporum pervenit.*

XI. *Viri in uxores, scuti in liberos, vitae necisque habent potestatem; here*^d *John Bodin* blames *Justinian* for confining this power only to the *Romans*.

XII. *Cum paterfamilias illustriore loco natus decessit, ejus propinqui conveniunt, & de morte, si res in suspensionem venit, de uxore in servilem modum quaestionem habent; & si compertum est, igni* (for a woman to kill her husband is now petit-treason; and she suffers pains of death by fire) *atque omnibus tormentis excruciatas interficiunt.*

XIII. *Servi & clientes quos ab iis dilectos esse constabat, justis funeribus confectis, una cremabantur.*

XIV. *Sancitum si quis quid de republica a finitimis rumore aut fama acceperit, uti ad magistratum deferat, neve cum quo alio communicet.*

XV. *Magistratus, quae visa sunt, occultant, quaeque esse ex usu judicaverint, multitudini produnt.*

XVI. *Derepub. nisi per concilium loqui non conceditur.*

XVII. *Plerique cum aut aere alieno, aut magnitudine tributorum, aut injuria potentiorum premuntur, sese in servitutem dicant nobilibus: in hos eadem sunt jura, quae dominis in servos.*

XVIII. ** Armati, ita mos gentis erat, saith*^e *Livy*, *in concilium venerunt.*

XIX. In respect of quiet composition of seditious tumults among themselves, made by intercession of their weaker sex, a custom grew among them (*Plutarch*^f is my author) that women also had prerogative in deliberative sessions, touching either peace government or martial affairs, and *Sexum* (saith *Tacitus*^g of the *Britains*) *in imperiis non discernunt.*

But *Caesar* is not without something, which expressly is attributed to our ancient *Britains*.

XX. *Utuntur nummo aut aereo, aut annulis (some read laminis) ferreis, ad certum pondus examinatis.*

XXI. *Leporem & gallinam, & anserem gustare, fas non putant; haec tamen alunt animi voluptatisque causa.*

XXII. *Uxores habent deni* (no more disparagement be it to them, than the indistinct and open carnal congress reported of the *Thubcans*, the best part of the old *Italians*, or that of the *Athenians*^h before the *Cecropian* alteration) *duodenique inter se communes, & maxime fratres cum fratribus, & parentes cum liberis; sed si qui sunt ex his nati, eorum habentur liberi, a quibus primum virgines quaeque ductae sunt.*

Howsoever *Julius* his imposed tributes did in some degree diminish their publick liberty; yet that under him, *Octavius*, *Tiberius*, and *Caligula*, they were, in respect of any State-innovation, *ATTONOMOI*, i. e. *using their own Laws*, is collected out of *Dio's Roman history*. He speaking of *Plautius* (Lieutenant here to the Emperor *Claudius*) his victorious success against *Togodumnus* and *Caratacus*, affirms their ancient aristocracy, with-

^y Strabo, lib. 4. Geograph. ² Caesar de Bell. Gall. lib. 1.

Aldus Manutius ad lib. 6. Caesaris, Hotomannus in Francogallia, Paulus Merula in Cosmog. part. 2. lib. 3. cap. 15. & de caeteris, quae hic ad Caesarem, Justus Lipsius in Comm. ad Tacit. Hist. lib. 1. §. 100. & in quaest. Epistolic. lib. 2. cap. Elect. lib. 2. cap. 7.

^b Caesar de Bell. Gall. lib. 5. ^c In Prim. Incol. ^d Bodin. lib. 1. de rep. c. 4. Just. instit. tit. de patria potestate. ^e Inde Wapentach. ^f Liv. lib. 31. ^g Plutarch. lib. de virtut. mulier. ^h Tacit. in vita Jul. Agricolae, & vid. Aristot.

Polit. lib. 2. cap. 7. ⁱ Camden. 29, ^k Timon, apud Athen. lib. 12. & 13.

Deipnosophist.

out subjection to strangers, as yet continuing :
 1 ^{Ἡμεῖς} (saith he) ^{ἐκ ἀποβουμῶν ἀν' ἄλλοις βασι-}
^{λεῦσι} ^{παραγεύοις}. i. e. They were not free to live
 at pleasure of the multitude (not free from su-
 perior government) but subject to divers kings,
 so that until that time continuing their plurality
 of narrow territoried princes, they were truly
 free from all foreign imposition of laws; which
 is expressly affirmed in that of Seneca the tra-
 gedian, speaking thus of Claudius, in the person
 of Octavia his daughter.

^m *Cuique Britanni terga dedere
 Ducibus nostris ante ignoti
 Jurisque sui.*

But in his time their times changed, a good
 part of the isle conquered, and into a presidial
 province reduced. Colonia (so speaks ⁿ Tacitus)
 Camalodunum (which was Cunobelinus's
 palace or town-royal, now Malden in Essex)
*valida veteranorum manu deducitur, in agros
 captivos subsidium adversus rebelles, & imbu-*
endis sociis ad officia legum; the Verulamian
 municipi, celebrated by our noble Spenfer ^o,
 and remembered by ^p Tacitus, the chief seat of
 Cassibellian, near S. Albans in Hertfordshire;
 the Roman colonies at York, at Chester, (as
 by an inscription of an old coin Camden ^q tes-
 tifieth) at Gloucester (proved out of an old
 stone in Bath-walls by the north-gate there
 thus charged, DEC. COLONIAE GLEV. VIXIT
 LXXXVI) compared with Claudius
 his former recited, are great testimonies of a
 great alteration. For although *Municipes* (as
 Agellius ^r hath it) *sunt cives Romani ex muni-*
cipiis, suo jure & legibus utentes, muneris tan-
tum cum pop. Rom. honorarii participes; yet
Coloniarum alia, saith he, necessitudo est: ex
civitate quasi propagatae sunt, & jura institu-
taque omnia pop. Rom. non sui arbitrii habent.
 Both, as well *Municipes* as Colonies, had their
Decuriones, Duumvires, Aediles, Equites,
 and such like orders, and offices different from
 all places where the Romans as yet had not
 seated their empire. Under some of the suc-
 ceeding Emperors, *Vespasian, Titus, and Do-*
mitian, was *Julius Agricola*, father-in-law to
 Tacitus, here Roman lieutenant: through whose
 persuasion to civility, *Habitus* (writeth the
 same Tacitus among the Britains) *nostri honor,*
 & *frequens toga.* The somewhat younger
 times also saw *Papinian*, that oracle of the Ro-
 man laws discussing at York, as, out of *Forca-*
tulus, Camden ^t hath noted.

^u When Commodus had the empire, then
 was Britain's king *Lucius*, (of kings the first
 Christian) who after the receipt of that holy to-
 ken of regeneration, from *Eleutherius* bishop
 of Rome, made a second demand, which by the
 Pope's returned answer you shall the better un-
 derstand; *Petistis* (so was his rescript, and

^v *Juraque ab hac terra caetera terra petet,*

was Ovid's prophecy) *a nobis leges Romanas
 & Caesaris, vobis transmitti, quibus in regno
 Britanniae uti voluistis. Leges Romanas &
 Caesaris enim nuper miseratione divina in reg-*
no Britanniae, & fidem Christi habetis penes
vos in regno, utramque paginam: Ex illis Dei
gratia, per concilium regni vestri sume legem,
 & *per illam Dei patientia vestrum reges Bri-*
tanniae regnum; vicarius vero Dei estis in reg-
no. What the sequel hereof was, thus only ap-
 pears; that after he had in lieu of the ^x archbishops
 at London, York, and Caerleon, constituted
 three archbishops, with twenty-eight bishops in
 other places, making large gifts of possessions to
 their churches, *Ecclesias* (Matthew the monk
 of Westminster speaks it) *cum suis coemeteriis*
 (if we may believe that then there were with us
 church-yards for burials) *ita constituit esse li-*
beras, ut quicumque malefactor ad illa confu-
geret, illaesus ab omnibus remaneret, with
 which the British constitutions and customs
 have here their last limit.

CHAP. III.

The Saxon customs and laws (except what is
 in Lambard's *Archaeonomy*) during their
 government, until the Normans.

ITALY had at length so much to do in de-
 fence of herself, that she could hardly afford
 help to others. Gothick incursions grew so vio-
 lent and dangerous, the *Picts* and *Scots* were
 as troublesome to the Britains, who desiring
 aid of the Romans, were in their expectations
 frustrate: to provide therefore some other way
 (*Vortigern* being then king) martial succour
 against the neighbour-violence of the northern
 people of this island was requested, and obtained
 from Germany. Thence hither issued Saxons,
Jutes (some will have the old name *Vites*) and
Angles: which differed more in name than na-
 tion, and are in good authors but synonymies
 of the same country-people. These in process
 of time, contrary than the Britains first hoped,
 established to themselves in divers parts of that
 we now call England, several kingdoms, ex-
 tending *Vortigern's* posterity, and their subjects,
 into the western parts, where to this day they
 remain. And how can we but conjecture that
 of particular customs of law-government in their
 own country, they made requisite use in this
 their part of the island? what those were, until
 Christianity made some abolition, may best be
 observed out of Tacitus *De moribus Germano-*
rum, who relates divers of their customs and
 rites religious &c. But at inquisition of their su-
 perstition we aim not; their profane laws be-
 ing chiefly proposed for collection.

1. *Rex vel princeps* (saith ^z Tacitus, speak-
 ing of some of them, whose antique reliques
 seem yet to continue in our municipals) *prout*

¹ Dio Cass. hist. Rom. lib. 60.

^m Senec. in Octav. act. 1. ⁿ Tacit. annal. lib. 12. Dio Cass. lib. 60. Colonia haec Vindri-

centis dicta in antiqua inscript. apud Lip. & Camdenum.

^o Spenf. in ruinis temporum. ^p Tacit. annal. lib. 14. ^q Camd.

in Cornaviis, Dobunis, Brigantibus.

^r Agell. Noct. Attic. lib. 16. cap. 13. ^s Camden in Brigantibus.

^t Lambard. in

Archaeonom. ^u Ovid. 1. Fast.

^v Galfred. Monumeth. lib. 2. cap. 2. ^w De Germanis vid. plura apud Caesarem, lib. 6. de

Bell. Gall. quae vero huc non proxime spectant.

^x Tacit. lib. de morib. Germ.

aetas cuique, prout nobilitas, prout decus bel-
lorum, prout facundia est, audiuntur authori-
tate suadendi magis quam iubendi potestate: si
displeuit sententia, fremitu aspernantur; sin
placuit, frameas (of necessity you must here
remember our ^a *Wapentakes*) concutiunt. Ho-
noratissimum assensus genus est armis laudare.

II. Licet apud Concilium accusare quoque;
& discrimen capitis intendere. *Distinctio poe-
narum ex delicto; proditores & transfugas
arboribus suspendunt, ignavos & imbelles &
corpore* (^b *Lipsius* will have it torpore, and
shews great reason for it, in love towards his
own country) *infames coeno ac palude, in-
jecta insuper crate mergunt. Diversitas sup-
plicij illuc respicit, tanquam scelera ostendi
oporteat dum puniuntur, flagitia abscondi.*

III. Levioribus delictis pro modo poenarum,
equorum, pecorumque numero convicti mul-
tantur. *Pars multae regi vel civitati, pars
ipsi qui vindicatur, vel propinquis ejus exsol-
vitur.*

IV. Eliguntur in ijs concilijs & Principes,
qui jura per pagos vicosque reddunt. Centeni
singulis ex plebe comites, (which observe to
symbolize with our hundreds) *consilium simul
& auctoritas, adsunt.*

V. Nihil neque publicae neque privatae rei
nisi armati agunt, sed arma sumere non ante
cuiquam moris, quam civitas suffecturum pro-
baverit. Tum in ipso concilio vel principum
aliquis, vel pater, vel propinquus, scuto fra-
maeque juvenem ornant. Haec apud illos to-
ga, hic primus (here have you resemblance of
our knighting) *juventae bonos: ante hoc domus
pars videntur, mox reipublicae.*

VI. Insignis nobilitas aut magna patrum
merita, principis dignationem etiam adole-
scentulis assignant. Note there the propaga-
tion of gentry through true honour deserving
virtue, to whose memory is dedicated that
worship, which is oft-times bestowed on un-
worthy posterity.

VII. *Dotem non uxor marito, sed uxori
maritus* (I might compare this to our most
ancient and then common *Dower al huis
desglise*) *offert.*

VIII. To their religious rites in marriage-
knots he adjoins the punishment of her which
violates her chosen bed. *Accisis crinibus
nudatam coram propinquis expellit domo ma-
ritus, ac per omnem vicum verberare agit.*

IX. *Publicatae pudicitiae* (understand it of
unmarried wenches) *nulla venia, non forma,
non aetate, non opibus maritum invenerit.*

X. *Sororum filijs idem apud avunculum,
qui apud patrem honor.*

XI. *Haeredes, successoresque sui cuique
liberi, & nullum testamentum: si liberi non
sunt, proximus gradus in possessione, fratres,
patru, avunculi;* neither until 32 *H. VIII.*
had we any lands devifable, except by special
custom binding the common-law.

XII. *Suscipere tam inimicitias seu patris
seu propinqui* (our Northern deadly-feud of-
fers itself here to be thought on) *quam amicitias
necesse est; nec implacabiles durant. Lu-
itur enim etiam homicidium certo armentorum
ac pecorum numero* (this interprets the *were*
in the Saxon laws of *William Lambard*) *re-
cipitque satisfactionem universa domus.*

XIII. *Suam quisque servus sedem, suos pe-
nateis regit. Frumenti modum dominus aut
pecoris aut vestis ut colono injungit; & ser-
vus haecenus paret.*

Divers others of their manners and customs
hath the same author; but not any, which, ex-
cept these recited, I think may be fitly stiled
law, or constituted order of that nation. But
to be more particular, *Adam of Brema* will tell
us out of ^c *Einhard* of the Saxons (which
gave chief denomination to such Germans as
floated hither) thus;

XIV. *Quatuor differentijs gens illa con-
sistit, nobilium scilicet & liberorum, libertor-
umque atque servorum.*

XV. *Legibus firmatum ut nulla pars copu-
landis conjugijs propriae sortis terminos trans-
ferat; sed nobilis nobilem ducat uxorem, &
liber liberam, libertus jungatur libertae,
& servus ancillae. Si vero quispiam horum
sibi non congruentem, & genere praestantiorē
duxerit uxorem, cum vitae suae damno com-
ponat.*

XVI. *Ejus gentis cum qua bellandum fuit*
(this is by *Tacitus* in the same words repeated
of the Germans) *quoquo modo interceptum,
cum electo popularium suorum patrijs quem-
que armis committunt, & victoria hujus vel
illius pro praejudicio accipitur.*

XVII. Unto the times before christianity
among them was received, this is to be refer-
red; The first christian king *Ethelbert of
Kent, Inter caetera* (as venerable ^e *Bede* re-
porteth) *bona, quae genti suae consulendo con-
ferebat, etiam decreta illi judiciorum juxta
exempla Romanorum, cum consilio sapientum
constituit. Quae conscripta Anglorum sermone,
haecenus, saith he, habentur & observantur
ab ea.*

And very many constitutions yet extant,
written in the Saxon tongue, are attributed to
*Ina, Alfred, Edward, Athelstan, Edmund,
Edgar, Ethelred, and Canutus* or *Knute*,
translated into *Latin*, and published long since
by *William Lambard*, a learned gentleman,
with the laws of *Edw. the Confessor*, so cal-
led, & *non quod ille statuerit*, saith one, *sed
quod observaverit*; whereunto are joined di-
vers, with title of *William the Conqueror*,
which being so there already, according to se-
veral times in one volume for that only pur-
pose compiled, they only shall here be insert-
ed, which as yet lie dispersed in the old monu-
ments of our historians.

^a Vide leges Ed. Confess. ap. Lamb.

^b Lips. in not. ad Tacit. de morib. Germ.

^c Haec debemus virtutibus, ut non praesentes solum illas, sed etiam ablatas a conspectu colamus. Senec. lib. 4. de benefic. cap. 30.

ad Aethelbald.

^e Einhard ap. Adam. Bremen. in histo. Eccles. cap. 5. & 6.

^f Bed. Eccl. hist. lib. 2. cap. 5.

^g Malmesb. de gest. reg. lib. 2. cap. 11.

XVIII. *Totius Angliae* (of king *Alured* so writeth *Ingulphus* abbot of *Croyland*) *pagos* & *provincias* in *comitatus* *primus omnium commutavit, comitatus in centurias*, i. e. hundredas, & *in decimas* (as if he imitated ^h *Jeſthro* *Moses* father-in-law) *id est, in trithingas, diviſit, ut omnis indigena legalis in aliqua centuria & decima existeret, & si quis suspectus de aliquo latrocinio, per suam centuriam vel decuriam, vel condemnatus, vel in-vadiatus, poenam demeritam vel incurreret, vel vitaret. Praefectus vero provinciarum (qui antea Vicedomini) in duo officia diviſit, i. e. in iudices, quos nunc justiciarios vocamus, & in vicecomites, qui adhuc idem nomen retinent.*

XIX. Of king *Edgar*, the monk of ^k *Malmesbury* writeth thus; *Quia compatriotae in tabernis convenientes, jamque temulentii pro modo bibendi contenderent, ipse clavos argenteos vasis affigi jussit, & dum metam suam quisque cognosceret, non plus subserviente verecundia, vel ipse appeteret, vel alium appetere cogeret.* Constraint of such as were too indulgent to the desires of their sensual appetite by ingurgitation of brain-smoking liquors, was by the Greek ^l *Zaleucus* (and so received among the *Locrians*) no less than capital. But which hath been always so far from this state, that until the third ^m session of the present parliament, not so much as any pecuniary mulct endeavoured to restrain that temporary and altogether voluntary madness.

XX. *Nulla* (saith ⁿ *Ingulphus*) *electio Praelaterum erat mere libera & canonica, sed omnes dignitates, tam episcoporum quam abbatum, per anulum & baculum regis curia pro sua complacentia conferebat.*

XXI. *Chirographa*, until the Confessor's time, *scidelum praesentium subscriptionibus, cum crucibus aureis, aliisque sacris signaculis firma fuerunt.*

XXII. *Conferebantur primo* (saith he, but I understand it of the infancy of the Norman state) *multa praedia nudo verbo absque scripto, vel charta; tantum cum domini gladio, vel galea, vel cornu, vel cratere, & plurima tementa cum calcari, cum strigili, cum arcu, & nonnulla cum sagitta.* This somewhat favours of ^o *Obertus Orto's* form of investiture in his Feudals, or his of this, and differs much from our strict livery of seisin, which regularly ought to be made with part of, and upon, the land, by gift transferred. Not unworthy (in this place) of observation is that charter of *Cedwalla* king of *Sussex* (as among old monuments of evidence belonging to the ^p archbishop of *Canterbury* I have seen) in the year DCLXXXVII. made to *Theodore* then archbishop of certain lands, with this subscription; *Ad cumulum autem confirmationis, ego Cedwalla celsipitem terrae praedictae super sanctum altare salvatoris posui, & propria manu, pro*

ignorantia literarum, signum sanctae crucis expressi, & subscripsi. The like hath *Camden* out of a patent made by *Withered* king of *Kent*, to a nunnery in the isle of *Thanet*. But to that form of conveyance which *Ingulphus* speaks of, is thus added; *Sed haec initio regni sui: posterioribus annis immutatus est iste modus.*

The antiquity of deeming the Queen, both as covert, and also a sole person, with such respective admittance, as is commonly agreed upon, and the custom of land-forfeiture upon felony committed, are both referred to these times. The first proved by that learned chief justice ^q Sir *Edw. Coke*, out of a gift made by *Aethelwulf*, wife to king *Burghred*, to one *Cuthwulfe* her servant DCCCLXVIII. The other from an example by him published of one *Ethelſig*, whose lands were forfeited to king *Ethelred*, for feloniously stealing one *Ethelwine's* swine.

CHAP. IV.

William the First: But none of that which under title of his laws is in Lambard.

NO sooner was the Norman *William* circled with the crown of his victory, but

I. *Decrevit subjectum sibi populum* (my author is ^r *Gervase of Tilbury*) *juri scripto legibusque subjicere. Propositis igitur legibus Anglicanis secundum tripartitam earundem distinctionem, hoc est Merchenlage* (this governed the ^t shires of *Glocester*, *Worcester*, *Hereford*, *Warwick*, *Oxford*, *Chester*, *Shropshire*, and *Stafford*) *Westsaxenlage* (hereby were ordered *Kent*, *Sussex*, *Surry*, *Barkshire*, *Hampshire*, *Wiltshire*, *Somerset*, *Dorset*, and *Devonshire*) & *Danelage* (by it *Tork*, *Darby*, *Nottingham*, *Leicester*, *Lincoln*, *Northampton*, *Bedford*, *Buckingham*, *Hartford*, *Essex*, *Middlesex*, *Norfolk*, *Suffolk*, *Cambridge*, and *Huntingdon*) *quasdam reprobat, quasdam autem approbans illis transmarinas Neustriae* (that is *Normandy* corruptly for *Westriae*, the opposite to that other part of the division of *France*, *Eustrasia*) *leges, quae ad regni pacem tuendam efficacissime videbantur, adjecit: which was not performed without earnest and most humble request of the English.* ^t For, as honouring with respect the northern stock, whence his blood was derived, the *Danelage* he preferred, as worthier and better for government than the mere *English*. But seeming at first inexorable, the persuasive remembrance of his soul, which bequeathed him the kingdom, and whose laws they desired, being, as the best supposed motive, inserted in the petitions of the conquered, he granted so much, that from that time *veneratae per universam Angliam, corroboratae & observatae*

^b Gen. cap. 31.

ⁱ Al. absolutus.

^k Malmesb. lib. 2. de gest. reg. cap. 8.

^l Athen. lib. 10. Deipnosoph.

^m Stat. 4. Jac. cap. 5.

ⁿ Ingulph. hist. pag. 512. & 508.

^o Feud. lib. 2. tit. 2.

^p Chart. Archiep. Cant. vide etiam

Camden, in *Cantio*, pag. 240. & *Chartam Aethelulphi* super altare

oblatam apud *Ingulph*, pag. 491.

^q In *Praefat.* ad lib. 6.

Reip. ^r *Gervas. Tilb.* de *Scac.* cap. 32. confertas quae e *Guil.*

Camden, in *Divis. Brit.* ^s *Hoveden*, pag. 343.

Rouille Alenconensis, in *Tract. de Duello* transcript. cap. 6.

sunt, prae cacteris patriae legibus, leges Edwardi regis, quae prius inventae (it is "Roger of Hoveden's report) & constitutae erant in tempore Edgari avi sui.

II. Fecit describi omnem Angliam, (the substance hereof is in most of the monkish histories, but Florence of Worcester is the author I now use) quantum terrae quisque baronum suorum possidebat, quot feudatos milites, quot carucas, quot villanos, quot animalia; imo, quantum vivae pecuniae quisque possidebat in omni regno suo, a maximo usque ad minimum, & quantum redditus quaeque possessio reddere poterat.

This inquisition was returned into his Exchequer, and is a book at this day there remaining, *Pro sua generalitate omnia tenementa totius terrae integre continente*: it is called *Domesday*, i. e. the day of judgment, as the abbot of Crowland, and Gervase of Tilbury have left written, *Ob hoc* (saith " Gervase) *nos eundem librum judicarium nominamus, non quod in eo de propositis aliquibus dubiis feratur sententia, sed quod a praedicto iudicio non liceat ulla ratione discedere.* A description of it in an old English historical poet, is thus clad in rhythmes:

* The R. William boz to wite the woeth of his lond
Let enqueri streitliche thoze al Engelonde,
Thou moni plou lond, and hou moni hiden also
Were in euerich fire, and wat hii were wurth yereto:
And the rents of each toun, and of the waters echone,
That wurth, and of woods eke, that there ne bilieued none,
But that he wist wat hii were wurth of al Engelonde,
And wite al elene that wurth thereof ich underfond
And let it bozte clene inou, and that scit dude ibois
In the Trefologie at Westmynster there it put is.
So that ure kings luth, when hii ranfome toke
And cedy wat folc might giue, hii fond there in poz boke.

Nor a much unlike description in later times under Hen. VIII. (as a preparatory to the levying of that intolerable demanded Subsidy of DCCCL) was either finished or attempted: as by a warrant from the commissioners directed to a constable of a hundred, with charge of information, reported by J. Stow, is more largely declared.

III. Of church-livings and ecclesiastical fees y Matthew Paris hath thus recorded; *Episcopatus & abbatias omnes, quae baronias tenebant, & eatenus ab omni seculari libertatem habuerant, sub servitute statuti militare, inrotulans singulos episcopatus & abbatias, pro voluntate sua, quot milites sibi & successoribus suis, hostilitatis tempore, voluit a singulis exhiberi.*

IV. *Exclusis haereditate avita Anglis, agros* (learned * Camden hath delivered it) *& praedia militibus suis assignavit, ita tamen ut dominium directum sibi reservaret, obsequiumque clientelari jure sibi & successoribus devinciret: id est ut omnes in feodo, sive fide teneret, & nulli praeter regem essent veri do-*

mini, sed potius fiduciarij domini, & possessores.

V. ^a Gervase of Tilbury, in a discourse of the trial of the purity of silver paid in ancient time into the exchequer by weight, affirmeth that by tradition it was received for truth, that in *primitivo regni statu, post conquestionem*, no rents were paid to the crown in money: *Sed sola* (saith he) *viſtualia ſolvebantur, ex quibus in usus quotidianos domus regiae necessaria ministrabantur*: and somewhat after, *Toto igitur Willielmi primi tempore perseveravit haec institutio usque ad tempora regis Henrici filij ejus* (which was Henry the first) *adeo ut viderim ego ipſe* (he lived under Henry the second) *quosdam, qui viſtualia, statutis temporibus, de fundis regiis, ad curiam deferabant.* *Certum quoque habebant officiales domus regiae, a quibus comitatibus triticum, a quibus diversae species carnum, & equorum pabula debebantur.* *His vero solutis secundum constitutum modum cujusque rei, regij officiales computabant vicecomitibus, redigentes in summam denariorum, pro mensura videlicet tritici ad panem centum hominum, solidum unum, pro corpore bovis pascualis solidum unum, pro ariete vel ove IV. denarios, pro prebenda XX. equorum similiter IV. denarios*; but through the grievous complaints of country husbandmen, *oblatis vomeribus in signum deficientis agriculturae*, respective calculation was made under Henry Beauchere, and every particular tenant's services reduced to a certainty of silver, *De summa vero summarum quae ex omnibus fundis surgebat in unoquoque comitatu, constituerunt vicecomitem illius comitatus ad staccarium teneri, addentes, ut ad scalam solveret.* More special form whereof the same author hath largely reported.

VI. ^b *Chirographa chartas vocabant, & chartarum firmitatem cum cerea impressione per uniuscujusque speciale sigillum sub instillatione trium vel IV. asantium, conficere constituebant.*

VII. *Anglicum idioma tantum abhorrebant, quod leges terrae, statutaque Anglicorum regum lingua Gallica tractarentur* (pleadings until reformation in time of ^c E. III. remaining in the same tongue) *& pueris etiam in scholis principia literarum grammatica Gallice, ac non Anglice traderentur.* *Modus etiam scribendi Anglicus ommitteretur, & modus Gallicus in chartis, & in libris omnibus admitteretur*: Thus to be Frenchified grew so common, and before all English titles so respectfully alone honoured, that Ulfan prelate of Worcester in the red king's time, was for his ignorance in that tongue chiefly deposed from his bishoprick.

VIII. ^d *Cervum vel capreolum capienti oculi eruebantur.*

IX. The law of Coverfeu (the name yet remaineth) ^e that by ringing a bell at night, all lights and fire in every house should retire from

^a Roger Hoveden, in vit. H. II. fol. 347.

^w Gervaf. Tilb. cap. 32.

^{*} Rob. Glocest. in hist. poet.

^f Math. Paris in Guil. I.

p. 8. ^z Camden, in Norm. assipulatur Math. West. Flor. hist. lib. 2.

^a Gervaf. Tilb. de Scac. cap. 23.

^b Ingulph. hist.

fol. 512.

^c Stat. 36 E. III. cap. 15.

^d Math. Paris.

^e Polydor. Virg. hist. lib. 9.

our appearance, acknowledgeth him as first In-
stitutor.

X. *Si aliquis quempiam* (it is in ^d Henry of Huntingdon) *quacunque de causa percussisset, capitali subiacebat sententiae.*

XI. *Si aliquem* (I would read it *aliquam*, persuaded by what I find in ^e *Bracton's* treatise of rape) *vi oppressisset, genitalibus privabatur armis.*

XII. If we durst believe the *Italian* ^f *Polydore*, here should succeed an institution of the-
riffs, and trial by jury of XII. Touching the
last, ^g *Camden* and *Lambard* out of the Saxon
laws of *Etheldred*, have convinced him of an
error too fairly flourished with braving terms.
For the first, and both since them the right ho-
nourable the lord ^h *Coke*. But what else he hath
of any probability you thus receive.

XIII. *Constituit ut quater quotannis in mul-
tos dies conventus celebrarentur eo loci quo ip-
se fieri juberet, quibus in conventibus iudices
sedibus discreti forum agerent, jusque populo
dicerent.*

XIV. *Alios instituit iudices, qui sine provo-
catione jurisdictionem ac judicia exercerent, a
quibus, uti a sinu principis, cuncti litigatores
eo confluentes jura peterent, & ad eos suas
controversias referrent.*

XV. *Praefectos alios constituit, qui maleficia vindicanda curarent. Hos justiciarios pacis nuncupavit.* Yet I cannot so soon think that
name to be literally so ancient under his favour,
with whom too curious in a strange state, the
kind laws of religious hospitality may without
injustice dispense.

CHAP. V.

What was received under William le Rous.

VAIN it were to expect any good constitu-
tions of *William* the second, *Omnis le-
gum siluit justitia, causisque* (saith *Florence of
Worcester*) *sub justitio positis sola in princi-
piibus imperabat pecunia.*

I. ⁱ *Polydore* attributeth to him the original
of that custom, whereby his successors claim
profits or first-fruits of vacant bishopricks and
monasteries of the patronage of the crown. ^k In-
deed, it is true and apparent, that he had a spe-
cial gift of delaying new elections for proro-
gation of his gains. And at his death were in his
hands the temporalities of *Canterbury*, *Winche-
ster* and *Salisbury*, and of abbies that number
quadrupled.

II. *Publico* (writeth he) *edicto vetuit unum-
quemque sine commeatu suo ex Anglia egredi.*
That archbishop *Anselm* was enjoined under no
small pain, that he should not pass the seas, to
visit pope *Urban* under this prince, is true and
plain enough; but for any such general edict,
I know no better authority, his being in this,
as in other things, suspicious: as yet my belief

is, that the constitution of *non aler ouster le
mere*, is of some later birth.

III. *Venationes quas rex primo* (the words are
^l *Malmesbury's*, but read *primus*) *adeo prohibu-
it, ut capitale esset supplicium prendisse cervum.*

CHAP. VI.

Henry Beauclerc restored and invented com-
mon liberties.

REFORMATION was needful by the
succeeding *Beauclerc*, of the common in-
justice practised throughout the kingdom, espe-
cially by a delegation of exacting authority
made to one *Ranulph*, afterwards bishop of
Durham, by *le Rous*: and was thus endeavour-
ed. Immediately after his coronation, charters
of state-amendment were by public authority
sent into every county with particular customs
expressed, allowed, abrogated or altered in them.
That which was directed to *Hugh* of *Bockland*,
sheriff of *Hereford*, reported by ^m *Matthew
Paris*, after church-liberty confirmed, *Ita quod
nec eam vendam, nec ad firmam ponam, nec
mortuo archiepiscopo, vel episcopo, vel abbate,
aliquid accipiam de dominio ecclesiae, vel de
hominibus, donec successor in eam ingrediat,ur,*
thus provides for the subject;

*Omnes malas consuetudines, quibus regnum
Angliae injuste opprimebatur, inde aufero:
Quas malas consuetudines in parte hic pono.*

I. *Si quis baronum meorum, comitum, vel
aliorum, qui de me tenent, mortuus fuerit, haer-
es suus non redimet terram suam, sicut facere
consueverat tempore patris mei, sed iusta &
legitima relevatione relevabit eam.*

II. *Homines baronum meorum, legitima & iusta
relevatione relevabunt terras de dominis suis.*

III. *Si quis baronum, vel aliorum hominum
meorum, filiam suam tradere voluerit, si ve-
rorem, siue neptem, siue cognatam, mecum inde
loquatur; sed neque ego aliquid de suo pro hac
licentia accipiam, neque defendam ei, quin eam
det, excepto si eam dare voluerit inimico meo.*

IV. *Si mortuo barone vel alio homine meo,
filia haeres remanserit, dabo illam cum consilio
baronum meorum cum terra sua.*

V. *Si mortuo marito, uxor ejus remanserit,
& sine liberis fuerit, dotem suam & matrima-
gium habebit, & eam non dabo marito, nisi se-
cundum velle suum. Si vero uxor cum liberis
remanserit, dotem suam & matrimonium habebit,
dum corpus suum legitime servabit, & eam non
dabo marito, nisi secundum velle suum, & terrae
liberorum custos erit siue uxor, siue alius pro-
pinquior, qui iustus esse debet.*

VI. *Praecipio ut homines mei similiter se
contineant erga filios & filias, & uxores homi-
num suorum.*

VII. *Monetarium commune, quod capiebatur
per civitates vel comitatus, quod non fuit tem-
pore Ed. R. hoc ne amodo fiat, omnino defendo.*

^d Hen. Hunting. lib. 6. hist. fol. 212.

^e Bract. lib. 3. tract. de coron. cap. 28.

^f Polydor. hist. lib. 9.

^g Lamb. explicat.

verb. Camden. in Norman.

^h D. Ed. Coke in Praefat. ad lib. 3.

ⁱ Polydor. lib. 10. hist.

^k Matth. Paris.

^l Malmesb.

lib. 4. de gest. reg.

^m Matth. Paris, pag. 74.

VIII. *Si quis captus fuerit, sive monetarius fure, hadius, cum falsa moneta, iustitia recta inde fiat.*

IX. *Si quis baronum vel hominum meorum infirmabitur, sicut ipse dabit, vel dare disposuerit pecuniam suam, ita datam esse concedo; quod si ipse, praeventus vel armis vel infirmitate, pecuniam suam nec dederit, nec dare disposuerit, uxor sua sive liberi, aut parentes, & legitimi homines sui pro anima ejus dividant, sicut eis melius visum fuerit.* ^a Somewhat later times admitted the disposition of intestates goods, and probate of testaments, to be in episcopal jurisdiction. ^o *John Stratford* in one of his provincial constitutions of church-liberty, and *Fairefax*, a common-lawyer under *Richard the Third*, affirm that power in ecclesiastick courts to have been in ancient time (for the civil law itself in expresse text refers it to the lay magistrate) by act of parliament ordained.

X. *Si quis baronum, vel hominum meorum, forisfecerit, non dabit vadium in misericordia pecuniae suae, sicut faciebat tempore patris vel fratris mei* (they were the two precedent *Williams*) *sed secundum forisfacturae modum, nec ita emendabit sicut emendasset retro tempore patris mei vel fratris.*

XI. *Si perfidia vel sceleris convictus fuerit, sicut culpa, sic emendet.*

XII. *Forestas communi consilio baronum meorum in manu mea ita retinui, sicut pater meus eas habuit.*

XIII. *Militibus, qui per loricas terras suas defendunt, (i. e. which hold their lands per fee de Hauberke, to be ready in a coat of mail for martial service) terras dominicarum carucarum suarum quietas ab omnibus geldis & omni proprio dono meo concedo, ut, sicut tam magno gravamine alleviati sunt, ita equis & armis bene se instruant, ut apti & parati sint ad servitium meum, & ad defensionem regni mei.*

XIV. *Lagam regis Edwardi vobis reddo, cum illis emendationibus quibus pater meus eam emendavit* (you have them in *Lambard*) *consilio baronum suorum.* Thus far out of that transcribed charter.

XV. *Rapinas curialium, furta, supra, edicto compescuit, deprehensis oculis cum testibus evelli praecipiens.* ^a *William of Malmesbury* is hereof author; but *Florence of Worcester*, and *Roger of Hoveden*, that for theft his punishment was, as now by hanging, death; but for maintenance of *Malmesbury's* report, I remember a miracle reported out of a manuscript in ^u *Fox* his Ecclesiastical history, of one *Eilward of Kings-Weston* in *Bedfordshire*, attainted in time of *Henry Fitz l'Empres*, for stealing a pair of hedging-gloves, and a whetstone,

and having by execution lost his eyes and genitals, had through devout prayer at *Tho. Becket's* shrine in *Canterbury*, restitution (I fear the monk that wrote it might have had a whetstone without stealing) of whatsoever members and faculties were by that inflicted punishment taken from him.

XVI. ^x *Contra Trapezitas* (quos vulgo monetarios vocant) praecipiam sui diligentiam exhibuit; nullum falsarium quin pugnum perderet impune abire permittens, qui fuit intellectus falsitatis suae commercio fatuus irrisisse: This falsifying of money by *Hoveden*, was loss of our eyes and genitals: ^y *Gemiticensis* and the monk which made the continuance to *Florence of Worcester*, agreeing to *Malmesbury* in this, that the offenders lost their right hands; but further adding that, which the first God of the Gentiles was compelled to endure, deprivation of his external parts of humane propagation.

XVII. *Statuit ut nullus obolus* (the author is ^z *Roger of Hoveden*) *quos & rotundos esse jussit, aut etiam quadrans, si integer esset, respueretur.*

XVIII. *Mercatorum falsam ulnam* (*Malmesbury* ^a speaks) *castigavit brachii sui mensura adhibita, omnibusque per Angliam proposita.*

XIX. *Curialibus suis ubicunque villarum esset, quantum a Rusticis gratis accipere, quantum & quoto pretio emere debuissent, edixit, transgressores vel gravi pecuniarum multa, vel vitae dispendio afficiens.*

XX. Much stir both at *Rome* and in *England* was touching investiture of bishops and abbots by lay-hands: *Anselm*, archprelate of *Canterbury*, mainly opposing himself against it; whose persuasion so at length wrought with the king, that it was permitted *ut ab eo tempore in reliquum* (*Matthew* ^b of *Westminster* after others reports it) *nunquam per donationem baculi pastoralis vel annuli quisquam de episcopatu vel abbatia, per regem, vel quamlibet laicam personam, investiretur in Anglia; retento tamen electionis & regali privilegio;* notwithstanding this in the year CIO. C.VII. *per annulum & baculum* (as ^c *Matthew Paris* tells us) was by the same *Henry one Rodolph* made archbishop of *Canterbury*.

XXI. He restored (*John Stow* ^d now speaks to you) to his subjects the use of lights in the night, which lights, and also fire, had been forbidden by his father to be used, after the ringing of a bell at eight of the clock at night.

XXII. *Fecit omnes milites Angliae crines suos ad justum modum abscindere, qui prius longitudine capillorum* (out of *Flores* ^e *Historiarum*) *cum foeminis certabant.*

XXIII. A tribute of 3 s. of every hide was exacted for augmentation of a dowry for the

^a V. *Glanvil*, lib. 7. cap. 8. ^o *Lind. provinc. constit.* de immunit. *Eccles.* lib. 12. & de testament. Statutum § *Ecclesiast.* ^p 2 R. III. Testam. 4. ^q C. tit. de testament. l. consilium ducalia. ^r *Vid. inf.* in *Steph.* 1. & in *Johan.* art. 15. ^v *V. Hotoman.* verb. feudal. *Haubericum* feudum. ^c *Malmesb.* lib. 5. de gest. reg. *Arque* alibi antiquitus quod docent *Iocrates* in oratione contra *Lochit.* *Sen.* *Epist.* 7. *Lamprid.* in *Alex. Severo* & alij, caeterum an in bonos mores, remque publicam conducant, disputant: quin & ausi sunt negasse, *Frissius* in lib. de *Rep. Tho. Morus*, in *Utopia*, &c. ^u *Ex lib.* *Monach. Cant.* de *Mirac. B. Tho.* apud *Foxum*, in *hist. Eccles.* lib. 4. fol. 228. ^x *Malmesb.* ^y *Guil. Gemiticens.* de ducibus *Norm.* lib. 7. cap. 23. & contin. ad *Florent.* *Wigorn.* pag. 498. ^z *Roger de Hoved.* annal. 2. fol. 270. ^a *Malmesb.* lib. 5. ^b *Matth. Westm.* lib. 2. *Flor. hist.* *Malmesb.* l. 5. de gest. reg. ^c *Mat. Paris*, pag. 87. ^d *Stovaeus* annal. p. 190. ^e *Flor. hist.* lib. 2.

king's daughter *Maud*, to be married to the emperor *Henry* the fourth: whereupon, faith ^f *Polydore*, *secuti sunt istud institutum quaerendum dotum ad collationem filiarum, caeteri deinde reges, adeo posteritas suorum commodorum tenax semper fuit*; referring that known service of *ayde a file marrier*, to this as the first example thereof; though the antiquity of that custom can reckon as many years as since ^g *Romulus* his first institution of patrons and clients (whence feuds and courts-baron, as *Vealricus Zasius* ^h conjectureth, by way of imitation, proceeded in following times) and no less the whole title thereof. And the other a *faire fitz chevalier*, & *de rançome*, are in the old *Graund Customier* of Normandy.

XXIV. Imminent peril was then, lest French conspiracies should get violent possession of the Dutchy of Normandy; to prevent it with a finewy army, *primum omnium populo imponit* (take it upon ⁱ *Polydore's* credit) *grave tributum causa novi belli gerendi, id quod apud posteriores reges in consuetudinem venit*. Of the Norman masculine line he was the last; and this the last I make of his laws.

CHAP. VII.

Stephen of Blois.

CLashing of armour and pronouncing of laws, have such antipathy, that his injurious successor, *Stephen of Blois*, will put us to the charge of small room. At his inauguration, by oath he confirmed divers generalities for liberties, from ancient time used, of the church, but so religiously, that, as one faith of him, he seemed to have therefore, only sworn that he might be forsworn. But of them one was especially thus:

I. ^k *Si quis episcopus vel abbas, vel alia ecclesiastica persona, ante mortem suam rationabiliter sua distribuerit, vel distribuenda statuerit, firmiter manere concedo: si vero morte praecipue occupatus fuerit, pro salute animae ejus ecclesiae consilio* (see before in the ninth of *Henry Beauclerc*) *eadem fiat distributio*.

II. *Castella per singulas provincias* (faith *William* ^l of *Newborough*) *studio partium crebro surrexerant; erantque in Anglia quodammodo tot reges, vel potius tyranni, quot domini castellorum, habentes singuli percussuram proprii numismatis, & potestatem subditis regio more dicendi juris*.

III. *Danegeldum* (which how it was first rated and imposed, you may find in the Confessor's laws) *quod antecessores sui accipere solebant singulis annis, in aeternum condonabat*. ^m *Henry* of *Huntingdon* and *Roger* of *Hoveden* affirm it.

IV. An ecclesiastical synod was held at London under *Theobald* of *Canterbury*, the king and noblemen being also present, *totumque illud concilium novis appellationibus infrenduit*. ⁿ *In Anglia namque appellationes in usu non erant,*

donec eas Henricus Wintoniensis episcopus, dum legatus esset (which was about this time) *malo crudeliter intrusit*.

V. *Tempore regis Stephani* (as I read in *John* ^o of *Salisbury's Polycraticon*) *a regno jussae sunt leges Romanae, quas in Britanniam domus venerabilis patris Theobaldi, Britanniarum primatis asciverat; ne quis libro etiam retineret edito regio prohibitum est*. What the Roman laws (if you understand the imperials) had ever to do with this state as a rule for squaring our judgments, is not only by this relation made manifest, but by an express assertion of the high court of parliament (which wrought wonders) under *Richard* of *Bourdeaux*; whenas *Thomas* of *Woodstock* duke of *Glocester*, *Richard* earl of *Arundel*, *Thomas Beauchamp* earl of *Derby*, and *Thomas* earl of *Nottingham*, appealed *Alexander Nevill* archbishop of *York*, *Robert de Vere* duke of *Ireland*, *Michael de la Poole* earl of *Suffolk*, with others, of seducing the king's facile humour to their own desires, the particulars whereof appear in the thirty eight articles comprehended in the parliament ^p rolls of the eleventh of his reign; advice being demanded touching the formality of the appeal both of common lawyers and civilians, they all agreed,-----That it was insufficient in both laws; but answer was given by the Baronage, that they would adjudge it by *parliamentary authority*; neither would they be directed by the civil law, *pur ceque la royaume d'Angleterre n'estoit devant ces heures, ny a l'entent de nostre dit seigneur roy, & seigneurs du parlement unq ne serra rules ne gouvernes per la ley civil*: and by judgment of exile with effect they proceeded: but this is somewhat out of the lists.

CHAP. VIII.

Henry Fitz-l'Empres, and his *Clarendon* constitutions restored to themselves, and purged from the faults wherewith they have been published.

A Doption and right of blood gave, after *Stephen's* death, the crown to *Henry Plantagenet Fitz-l'Empres*; his first care tending wholly to the good of the state, was to have the numerous increase of castles and forts (which in his ^q predecessor's time through multitude of province-tyrants, whom they nourished, were swollen to the number of CIO.C.XV.) abated; so was it by express command performed, and the laws of his grandfather *Beauclerc* likewise confirmed. A recognition also was made at *Clarendon*, ^r *Praesidente Johanne de Oxonia, de mandato ipsius regis, presentibus etiam archiepiscopis, episcopis, abbatibus, prioribus, comitibus, baronibus, & proceribus regni*, of divers customs and rites of government for decision of no small controversies between the king, guarded with

^f Polyd. hist. lib. 11. ^g Halicarnass. 2 antiq. Rom. & v. Sueton. in Caligula, cap. 42. ^h Zas. in comm. ad lib. 2. F. de orig. Tur. ⁱ Polyd. lib. 11. hist. Ang. ^k Malmesb. l. 1. hist. novell. ^l Guil. Neubrigenf. lib. 1. rer. Anglic. cap. 22. ^m Huntingd. l. 8. hist. Hoveden. part 1. f. 276. ⁿ Ibid. ^o Jo. Salisburiens. Polycrat. lib. 8. cap. 22. v. disceptationem ^p 11 R. II. Rot. Parliam. ^q Guil. de novo burgo, lib. 1. ^r cr. Anglic. cap. 22. ^s Matth. Paris fol. 134.

flout maintainers of his crown, and the prelates, who in their ambitious aims laboured for exemption of their persons, habits, and possessions, from secular jurisdiction.

I. *De advocacione & praesentatione ecclesiarum*, si controversia emerferit inter laicos, vel inter laicos & clericos, vel inter clericos, in curia d. r. tractetur & terminetur.

II. *Ecclesiae de feudo d. regis non possunt imperpetuum dari, absque assensu & concessione ipsius.*

III. *Clerici reſtati & accusati de quacunque re, summoniti a justitia regis, venient in curiam ipsius responsuri ibidem de hoc, unde videbitur curiae regis quod ibi sit respondendum, & in curia ecclesiastica, unde videbitur quod ibi sit respondendum, ita quod justitia regis mittet in curiam s. e. ad videndum qua ratione res ibi tractabitur.*

IV. *Si clericus convictus vel confessus fuerit, non debet eum de caetero ecclesia tueri.*

V. *Archiepiscopis, episcopis & personis regni non licet exire regnum absque licentia d. regis: & si exierint (here is the true root of the old restraint from passing the seas without licence) si regi placuerit, assecrurabunt eum, quod nec in eundo nec in redeundo, vel moram faciendo, perquirent malum sive damnum d. regis.*

VI. *Excommunicati non debent dare vadium ad remanentiam, nec praestare juramentum, sed tantum vadium & plegium standi iudicio ecclesiae, ubi absolvuntur.*

VII. *Laici non debent accusari, nisi per certos & legales accusatores & testes in praesentia archiepiscopi, vel episcopi; ita quod archidiaconus non perdat jus suum, nec quicquam quod inde habere debeat.*

VIII. *Si tales fuerint qui culpantur, quod non velit, vel non audeat aliquis eos accusare, vicecomes requisitus ab eo faciat jurare xii. legales homines de vicineto, seu de villa coram episcopo, quod inde veritatem secundum conscientiam suam manifestabit.*

IX. *Nullus qui de rege tenet in capite, nec aliquis dominicorum ministrorum, sub interdicto (that is a censure ecclesiastical, whereby the administration of sacraments is prohibited in some particular place, or among some certain persons) ponatur; nisi prius dominus rex, si in terra fuerit, conveniatur, vel justitia ejus, si fuerit extra regnum: & rectum de ipso faciat, & ita, ut quod pertinebit ad regiam curiam, ibidem terminetur, & de eo quod spectabit ad ecclesiasticam curiam, ad eandem mittatur, ut ibidem tractetur.*

X. *De appellationibus, sicuti emerferint, ab archidiacono debent ad episcopum, & ab episcopo ad archiepiscopum, & si archiepiscopus defuerit in justitia exhibenda, ad d. regem perveniendum est postremo, ut praecepto ipsius in curia archiepiscopi controversia terminetur: ita quod non debet ulterius procedere absque assensu d. regis.*

XI. *Si calumnia emerferit inter clericum & laicum, vel inter laicum & clericum, de ullo*

tenemento quod clericus velit ad eleemosynam trahere, laicus vero ad laicum feudum, recognitione xii legalium hominum, per capitalis justitiae regis considerationem terminabitur, utrum tenementum sit pertinens ad eleemosynam sive ad laicum feudum, coram ipsa justitia regis; & si recognitum fuerit ad eleemosynam pertinere, placitum erit in curia ecclesiastica; si vero ad laicum feudum, nisi ambo tenementum de eodem episcopo vel barone advocaverint, erit placitum in curia regia; sed si uterque advocaverit de feudo illo eundem episcopum vel baronem, erit placitum in curia ipsius, ita quod propter factam recognitionem seisinam non amittat, qui prius seisinus fuerat, donec per placitum districtionatum sit.

XII. *Qui de civitate vel castello, vel burgo, vel dominico manerio d. regis fuerit, si ab archidiacono, vel episcopo super aliquo delicto citatus fuerit, unde debeat eis respondere, & ad citationes eorum satisfacere noluerit, bene liceat eum sub interdicto ponere; sed non debet excommunicari, priusquam capitalis justitia d. regis villae illius conveniatur, ut justiciet eum ad satisfactionem venire; & si justitia r. inde defecerit, erit in misericordia d. r. & inde poterit episcopus eum accusatum ecclesiastica justitia coercere.*

XIII. *Archiepiscopi, episcopi, & univrsae personae regni, qui de rege tenent in capite, & habent possessiones suas de d. rege, sicut baroniam, & inde respondent justitiis & ministris regis, & faciunt omnes rectitudines & consuetudines regias, sicut caeteri barones, debent interesse iudicii curiae d. regis cum baronibus suis, usque perveniatur ad diminutionem membrorum vel ad mortem.*

XIV. *Cum vacaverit archiepiscopatus, vel episcopatus, vel abbatia, vel prioratus de dominio regis, debet esse in manu ipsius, & inde percipiet omnes redditus & exitus, sicut dominicos; & cum ventum fuerit ad consulendum ecclesiae, debet d. rex mandare potiores personas ecclesiae, & in capella ipsius regis debet fieri electio, assensu d. regis, & consilio personarum regni, quas ad hoc faciendum vocaverit, & ibidem faciet electus homagium & fidelitatem d. regi, sicut ligio domino, de vita sua, & membris, & de honore terreno, salvo ordine suo, priusquam sit consecratus.*

XV. *Si quisquam de proceribus deforciaverit archiepiscopum, episcopum vel archidiaconum, de se, vel de suis, justitiam exhibere, rex debet justitiare.*

XVI. *Si forte aliquis deforciaverit d. regi rectitudinem suam, archiepiscopus, episcopus, & archidiaconus debent eum justitiare, ut regi satisfaciatur.*

XVII. *Catalla eorum, qui sunt in regis forisfacto, non detineat ecclesia, vel coemeterium contra justitiam regis, quia ipsius regis sunt, sive in ecclesiis, sive extra fuerint inventa.*

XVIII. *Placita, de debitis quae fide interposita debentur, vel absque interpositione fidei, sint in curia regis.*

^c V. in Johan. art. 16.

^c Vide vero Rogerum Hovedenum, pag. 303.

XIX. *Filii rusticorum non debent ordinari absque assensu domini, de cujus terra nati dig-noscuntur.*

Different in particulars of no slight moment are the reported *Clarendon* constitutions in the greater history of *Matthew Paris*, first published (as I think) by that reverend Father *Matthew Parker*, archbishop of *Canterbury*, whose archetype, as it was transcribed by a country vicar, and delivered to the printer's hands (I have part of that transcript to witness it, in mine own hands) is but equal in every *iota* to the published copy : but as they are here written I have seen them added, without discrepancy of a syllable, at the end of the life and death of *St. Thomas of Canterbury*, drawn in ancient hand, and out of a quaternity of former authors, *Herbert of Doseham*, *William* a monk of *Canterbury*, *John of Salisbury*, and *Alan* abbot of *Tewkesbury*, into a just volume collected : *Hinc libello nostro* (saith the author, that you may know what work they make here) *inserere suduimus funesum illud & famosum decreti chirographum, consuetudines (viz.) illas regias apud Clarendonam promulgatas, quas ideo hic interseruimus, ut legant secula post futura, & hinc cognoscant quam justa, quam perspicua fuerit gloriosi post Neomartyris Thomae, primo exilij & post martyrij causa.* What contention (after confirmation by oath of the whole baronage) grew hereupon betwixt the king and that canonized archbishop, is in every chronologer of those times enough declared. But it cannot be ungratefully received, if both for respect to an old *English* endeavouring wit, and also for matter, form and phrase of relation, out of *Robert of Glocester*, be made this super-addition.

No man ne might thenche the love that there was
Betwene the *W. Henry* and the gode man *S. Thomas* ;
The duel had enui therto, and set bitwen them fey,
Alas, alas thulke stond, boz all to well it greu.
Foz there had ere ibe kings of *Luther* dede
As *Al.* bastard, and his son *Al.* the rede.
That *Luther* lawes made inou, and held in al the lond
The king wold not beleue the lawes that he fond,
Fe that his elderne hulde, ne the godeman *S. Thomas*
Thought that thing age right neuer law was.
He sothnes and custum mid strength up ihold,
And he wist that bre dere *Lourd* in the gospel told
That he himselfe was sothnes, and custum nought,
Theruoze *Luther* custumes he wold graent nought.
He the king wold bileue that is elderne ad ihold,
So that conteke spzung bitwene them manifold.
The king dzou to right law mani *Luther* custume,
S. Thomas thom withsed, and granted some.
He lawes that icholle now tell he granted hawe,
Zuf a yuman hath a sone to clergi idzaw
He ne sall without is lourdes ierouned nought be,
Boz yuman ne mai nought be made agen is lourdes will
(free.

In the eighteenth of *Clarendon* customs is the substance of this particular ; where *rusticorum* interpreted *yumen* in this poet, is mentioned : To both, as a synonymy, is *homines* used as well in the law-annals of later times, and in writs ^u of *Ven. fac. xij tam milites quam alios*

liberos & legales homines de vicineto, &c. as in older constitutions before expressed. *Gemen* is the common allowed *Saxon* root, whence our now usual name of *Yeoman* had its beginning : but my conceit with a painted imposture deceives me, if the ancient *Latin* be not father of both, but in a dialect different. Nor let it be a fault *ad appios & coruncas redire* ; some taste in *yeomen* is of *homines*, but more of *hemones*, which in ^w *Ennius* and *Festus*, is not otherwise significant, than *themen* in *English*, altered only in character in *gemen* the *Saxon* word. But to my law-rhythms again ;

Another thing he granted eke as ye mow nouise,
But a man of holi church hath eni lay fee,
Parson, other what he be, he shal do thereboze
Kings service that there ualsh, that is right ne be bozloze,
In plaiding and in assize be and in judgement also.
Bote war man shal be bilemed, other to deth ido.
He granted eke puf eni man the kings traitoz were,
And eni man is chateur to holi church bere
That holi church ne solde nought the chateur there fet
That the king there other is as is owne is ne wette.
Boz all that the felon hath the kings it is,
And eche man mai in holi church is owne take itois.
He granted eke that a chirche of the kings fe
In none stede ene and ever ne stold igiue be
As to hous of religion, without the kings lebe,
And that he other the patron the gift first gabe.
S. Thomas granted well these and other mo,
And these other he withsede that did him well woze.

I. But bitwene tweileud men were eni striving,
Whether bitwene a leud and a clerc, foz holi church thing,
As boz boufon of church whether shold the church gide,
The king wold that in his court the ple stold be dzibe ;
Boz as much as a leud man that the o part was
Chanliche was under the king & under no bishop nas.

What he styles *lewedmen*, is by our common phrase, lay-men ; *leudes* in the old *Teutonic* and *Saxon* (as *Λαῖοι* in *Greek* from *Λαῶς*, i. e. a *stone*, referred, as ^{*} *Pindar* hath it, to that mythick insaturation of hard mankind by *Deucalion* and *Pyrrha*) is equivalent to the *multitude* or *common people*, in the present *English*.

^y Foz yef a pziest be foule, on whome we trust,
No wonder is a leude man to rust.

But then the ignorant are by it noted, rather than who are not clerks ; for the same *Jeoffrey* in another place saith,

This every leud vicar and parson can say.

Robert of Glocester speaks again :

II. Another was no bishop, ne clerc nathe mo,
He stode without kings leue out of this lond go.
And than hii stode suere upe the boke pwis.
That hii ne sold purchas no uel the king ne none of is.

III. The thizd was puf eni man in maufing were ibzought,
And suth come to amendumt, ne age were nought,
That he ne suoze up the dor, ac bozowes find solde
To stand to that holi church there of him toky wold.

IV. The berth was that no man that of the king huld ought
In chiefe oz in eni service in maufing were ibzought,
Bote the wardeins of holi church that bzought him therto ;
The king sede oz is bailifes wat he ad misdo,
And loked berst were thei to amendumt it bzing,
And bote hii wolde by their leue do the maufing.

^u Reg. Judic. fol. 7.

^w Fest. in verb. hemones. Paul Merul. ad lib. 1. annal. Ennij.

^y Chauc. in prolog. and in the Somner's tale.

^{*} Pind. Olymp. 9. Lipsius. lib. 5. Poli-

V. The first was, that bishoprikes and abbies also
That vacans were of pzelas in the kings hand were ido,
And that the king sold all the land as is owne take,
Wozt at last that him lust eni pzelat there make.
And than thulke pzelat fould in is chapel ichese be.
Of is clarks towhich he wuld to such pzelate bife.
And than wou he were ichese in is chapel right there,
Homage he solde him do ar he confirmed were.

VI. The first was yuf eni play to chapitle were idzaw,
And eni man made is appele, yuf me dude him unlaw.
That to the bishop from ercedeken is appele sold make,
And from bishop to archebischop and suth none other take.
And but the ercebischops court to right him wuld bring.
That he sold from him be cluthe biwoze the king.
And from the king non other mo so that attan end
Plaining of holi chิร์ch to the king shold wend.
And the king amend solde the ercebischops dede,
And be as in the popes fide, and S. Thomas it withfede.

VII. The seuenthe was that plaiding that of det were
To yeld wel thoẏu truth iplight, and nought ihold nere
Althei thoẏu truth it were, that ple sold be ibrought
Biwoze the king and is baities and to holi chิร์ch nought.

VIII. The eighth was that in the lond citation none nere
Thoẏu bull of the pope of Rome, and clene biseued were.

IX. The nithe was that Peters pence that me gadereth
(manion
The pope nere nought on isend, ac the king echone.

X. The tethe was yuf eni clark as felon were itake,
And boẏ felon iprobed and ne might it not forlake.
That me sold him verst disordein and suth thoẏu there lab,
And thoẏu judgement of the land hong him other to dzaw.
Woz these and boẏ other mo the godeman S. Thomas
Fleu verst out of Englon and eke imartred was,
Woz he sei there was bote o way, other he must stiffe be,
Oter holi chิร์ch was isent, that of right was to fre.

Abolution of the prelates oath, which a-
mong others confirmed what he soon made re-
traction of, was obtained from *Alexander* the
third, bishop of *Rome*; who gave an insolent
repulse to the king's ambassador, sent for his ra-
tification of that which the baronage had thus
concluded. The king herewith exceedingly pro-
voked, made present dispatch of letters to every
sheriff in the kingdom, thus pronouncing;

XIX. *Præcipio tibi, quod si aliquis cler-
icus, vel laicus in balliva tua, Romanam cu-
riam appellaverit, eum capias & firmiter te-
neas, donec voluntatem meam præcipiam; &
omnes redditus clericorum archiepiscopi, & pos-
sessiones seifas in manum meam, & omnium cle-
ricorum qui cum archiepiscopo sunt, patres,
matres, fratres, & sorores, nepotes, & neptes,
pones per salvos plegios, & catalla eorum, do-
nec voluntatem meam inde præcipiam. Et hoc
breve tecum afferas cum summonitus fueris.*

XX. *Si quis inventus fuerit ferens literas
d. papæ (this is spoken of before in my poet)
vel mandatum, aut Thomæ archiepiscopi, con-
tinens interdictum christianitatis in Anglia,
capiatur & retineatur, donec inde voluntatem
meam præcipiam.* But in the annals of ^a *Roger*
of *Hoveden*, De eo sicut de regis traditore &
regni, sine dilatione iustitia fiat.

XXI. Promulgation also, by way of prohi-
bition, was made of most of the former dimi-

nutions of papal or episcopal authority: The
clergy-men, that were beyond sea, under for-
feiture of their livings, were charged, by sum-
mons in their places of *due residence*, to re-
turn.

XXII. *b Londoniensis & Norwicensis episco-
pi summonentur, quod sint coram iustitiariis
regis ad rectum faciendum, quod contra statu-
ta regni interdixerunt terram comitis Hugonis,
& in ipsum sententiam anathematis intulerunt.*

XXIII. *Denarij S. Petri colligantur & cu-
stodiantur.*

XXIV. In the 22d of his reign at *Notting-
ham*, celebravit (saith ^c *Hoveden*) magnum con-
cilium de statutis regni sui, & coram rege filio
suo, & coram archiepiscopis, episcopis, comiti-
bus & baronibus regni sui communi omnium con-
silio divisit regnum suum in vi. partes; ^d per
quarum singulas tres iustitarios itinerantes
constituit: here was the infancy of that form of
circuits 'by justices in eyre, whose names and
described limits my author in a sextapartite divi-
sion hath remembered. Et postea (you hear
him again) fecit d. rex omnes prædictos iusti-
ciarios jurare super sacrosancta evangelia, quod
ipsi bona fide & sine malo ingenio, has subscri-
ptas assisas custodirent, & inviolabiliter ab ho-
minibus regni facerent custodiri; the subscribed
articles with this title thus he hath recorded:

*Assisæ Henrici regis factæ apud Clarendon, &
renovatæ apud Northamtone.*

XXV. *SI quis reatus fuerit coram iusticiis
d. regis de murdro, vel latrocinio, vel
roberia, vel receptione hominum tale facien-
tium, vel de falsoneria, vel iniqua combustione,
per sacramentum xij. militum de hundredo, &
si milites non adfuerint (I here understand by
milites no other than such as were ^e feudatorii,
or held of some superior by knight's service,
thereby distinguished from milites solidarii or
servientes, i. e. hired soldiers, and both from
the name of dignity used in ceremonious chival-
ry far separated) per sacramentum xij. libero-
rum & legalium hominum, & per sacramen-
tum ^f iv. hominum de unaquaque villa hundre-
di, eat ad iudicium aquæ (i. e. to the watry
ordeal, described with the fiery in *Lambard's*
exposition of words before his *Saxon laws*; and
in the antiquities of the church of *Britany*, pub-
lished, as I suppose, by *Matthæw Parker* arch-
bishop of *Canterbury*) & si perierit, alterum
pedem amittat: and apud NORTHAM-
TONE additum est pro rigore iustitiæ, quod
dexterum similiter pugnum cum pede amittat,
& regnum abjuret & infra xl. dies a regno ex-
let; & si ad aquam mundus fuerit, inveniat
plegios, & remaneat in regno, nisi reatus fu-
rit de murdro vel aliqua turpi feloniam per com-
mune comitatus & legalium militum patriæ:
de quo, si prædicto modo reatus fuerit, quam-
vis ad aquam mundus fuerit, nihilominus infra
xl. dies a regno exeat, & catalla sua secum*

^a *Math. Paris*, pag. 137.

^b *Roger de Hoved. annal.* 2. fol. 284.

^c *Math. Paris*, ibid.

^d *Hoveden. part. 2. pag. 313.*

^e *Quadrupartitum etiam regni ad hunc modum sub eodem principe habes divisionem apud eundem.* fol. 337. ^f *V. Camden. in Ord.*

Angl. pag. 123. quicum conferas feud. lib. 2. tit. 10. & 21. quin & Malmesb. hist. Nov. lib. 2. fol. 103. l. 25. solidatus, &c.

brev. judic. fol. 1. in Hab. fac. vii.

apportet, salvo jure dominorum suorum, & regnum abjuret in misericordia d. regis.

XXVI. Nulli liceat, neque in burgo, neque in villa, hospitari aliquem extraneum ultra unam noctem in domo sua, quem ad rectum habere noluerit, nisi hospitatus ille essonum rationabile habuerit, quod hospes domus monstret vicinis suis, & cum recefferit, coram vicinis recedat & per diem.

XXVII. Si quis seiscitus fuerit de murthero, vel de latrocinio, vel roberia, vel falsoneria, & inde sit cognoscens, vel de aliqua alia feloniam, quam fecerit, coram praeposito hundredi, vel burgo, & coram legalibus hominibus, id postea coram iustitiis negare non poterit. Et si idem sine seiscina coram eis aliquid hujusmodi recognoverit, hoc simul coram iustitiis negare non poterit.

XXVIII. Si quis obierit francus tenens, haeredes ipsius remaneant in tali seiscina, qualem pater suus habuit die qua fuit virus & mortuus, de feodo suo, & catalla sua habeant unde faciant divisam defuncti, & dominum suum postea requirant, & ei faciant de relevio & aliis, quae eis facere debent de feodo suo.

XXIX. Si haeres fuerit infra aetatem, dominus feodi recipiat Homagium suum, & habeat in custodia illum quamdiu debuerit; alii domini, si plures fuerint, homagium ejus recipiant, & ipse faciat eis quod facere debuerit.

XXX. Uxor defuncti habeat dotem suam, & partem de catallis ejus quae eam contingit, which by the law of those days was a third part, if the dead had left issue, but a moiety, if he were *unais*.

XXXI. Si dominus feodi negat haeredibus defuncti seiscinam ejusdem feodi quam exigunt, iustitiiarii d. regis faciant inde fieri recognitionem per xii. legales homines, qualem seiscinam defunctus inde habuit die qua fuit virus & mortuus; this is the very Mortdaucester; & sicut recognitus fuerit, ita haeredibus ejus restituant; & si quis contra hoc fecerit & inde attaintus fuerit, remaneat in misericordia regis.

XXXII. Iustitiae domini regis faciant fieri recognitionem de disseisinis factis super assisam, a tempore quo d. rex venit in Angliam proximo post pacem factam inter ipsum & regem filium suum.

XXXIII. Iustitiae capiant fidelitates d. regis infra claus. pasch. & ad ultimum infra claus. pentecost. ab omnibus videlicet comitibus, baronibus, militibus & libere tenentibus, & etiam rusticis qui in regno manere voluerint; & qui facere noluerit fidelitatem, tanquam inimicus d. regis capiatur.

XXXIV. Habent etiam iustitiae praecipere quod omnes illi qui nondum fecerunt homagium & ligeantiam d. regi, quod ad diem, quem eis nominabunt, veniant & faciant regi homagium, & ligeantiam, sicut ligeo domino.

XXXV. Iustitiae faciant omnes iustitias & rectitudines spectantes ad d. regem, & ad coronam suam, per breve domini regis, vel illorum qui in loco ejus erunt, de feodo dimidij milit. & infra (If the account of a knight's fee be by

the annual value, then confidently according to the quadruple proportion of the known relict, you may affirm it, by xx l. lands; and so likewise by comparison with socage payment upon the stat. of West. 1. for aid, *A faire fitz chivalier*, or *a file marrier*; but by a calculation prefixed to the red book in the exchequer, DCLXXX. acres make exactly the sum ^h) nisi tam grandis sit querela, quod non possit deduci sine d. rege, vel talis quam iustitiae ei reponent pro dubitatione sua, vel ad illos qui in loco ejus erunt; intendant tamen pro posse suo ad commodum d. regis faciendum.

XXXVI. Faciant assisam de latronibus iniquis, & malefactoribus terrae quae assisa est, per concilium regis, filij sui, & hominum suorum; per quos ituri sunt comitatus.

XXXVII. Iustitiae provideant quod castella diruta prorsus diruantur, & diruenda bene prosteruantur; & nisi hoc fecerint, d. rex iudicium curiae suae de eis habere voluerit, sicut de contemptoribus praecepti sui.

XXXVIII. Iustitiae inquirent de escaetis, de ecclesiis, de terris, de foeminis quae sunt de donatione d. regis.

XXXIX. Ballivi d. regis respondeant ad scaccarium, tam de assiso redditu, quam de omnibus perquisitionibus suis, quas faciunt in balliviis suis, exceptis illis quae pertinent ad vicecomitatum.

XL. Iustitiae inquirent de custodiis castellorum, & qui, & quantum, & ubi eas debeant, & postea mandent d. regi.

XLI. Latro, ex quo capitur, vicecomiti tradatur ad custodiendum, & si vicecomes absens fuerit, ducatur ad proximum castellanum, & ipse illum custodiat donec illum liberet vicecomiti.

XLII. Iustitiae faciant quaerere per consuetudinem terrae, illos qui a regno receperunt, & nisi redire voluerint infra terminum nominatum, & stare ad rectum in curia regis, postea ulgentur, & nomina utlagorum afferantur ad Pascha, & ad fest. S. Mich. ad scaccarium, & exinde mittantur d. regi.

While thus the king made provident order for lay-business, Hugo a Petra Leonis, the pope's legate in England, laboured for dilatation of church; to whom was granted by the king:

XLIII. Quod de caetero clericus (ⁱ Matthew Paris his report) non trabatur ante iudicem secularum personaliter, pro aliquo crimine vel transgressione, nisi pro foresta & laico feodo, unde regi vel alij d. seculari laicum debetur servitium.

XLIV. Ut archiepiscopus, episcopus, vel abbatia, non teneantur in manu regis ultra annum, nisi pro causa evidente, vel necessitate urgente.

XLV. Ut interfectores clericorum convicti vel confessi, coram iusticiario regni, praesente episcopo puniantur.

XLVI. Quod clerici duellum facere non cogantur.

XLVII. ^k Statuit apud WOODSTOCK, quod quicumque forisfecerit ei de foresta sua,

^a Ranulph de Glanv. lib. 7. cap. 5. Bract. lib. 2. de acq. rer. dom. cap. 26. sect. 2. ^b V. Camden in ordin. Angl. casum item Nevil in libr. 7. Rclan. D. E. Coke huc refer.

ⁱ Matth. Paris. pag. 177.

^k Roger de Hoved. part. 2. fol. 446.

semel de venatione sua, de ipso salvi plegij capiantur; & si iterum forisfecerit, similiter capiantur de ipso salvi plegij; si autem tertio idem forisfecerit, nulli plegij capiantur, sed proprium corpus forisfactoris: which concludes what of his laws common histories afford.

CHAP. IX.

Richard Coeur de Lion.

THIS Henry's successor was the stout Richard Coeur de Lion, himself in person attending the eastern wars, division by his commission was made for maintaining the laws and customs of the kingdom, of the whole government, betwixt Hugh of Pasa, bishop of Durham, and William bishop of Ely, lord chancellor. The stream of all (howsoever there was an association of Hugh Bardulph and William Briwere,) was carried as the prelates pleased, until their ambitious insolency made a period to their too great authority. After his return justices in eyre were sent into every county, & secundum subscriptorum formam capitulorum (saith¹ Hoveden) processerunt in iusticiis exequendis.

Forma procedendi in placitis coronae regis.

I. **I**n primis eligendi sunt iv. milites de toto comitatu; qui per sacramentum suum eligant ij. legales milites de quolibet hundredo, vel wapentacco. Et illi ij. eligant super sacramentum suum x. milites de singulis hundredis, vel wapentaccis; vel si milites defuerint, legales & liberos homines, ita quod illi xij. insimul respondeant de omnibus capitulis de toto hundredo vel wapentacco.

Capitula placitorum coronae regis.

II. **D**E placitis coronae novis & veteribus, & omnibus quae nondum sint finita, coram iusticiariis d. regis:

III. Item de omnibus recognitionibus & omnibus placitis, quae summonita sunt coram iusticiariis per breve regis, vel capitalis iustitiae, vel a capitali curia regis coram eis missa.

IV. Item de escaetis, quae sunt & quae fuerunt postquam rex arripuit iter versus terram Jerusalem, & quae fuerunt tunc in manu regis, & sunt modo in manu ejus, vel non; & de omnibus escaetis domini regis, si a manu sua sint remotae, quomodo, & per quem, & in cujus manus devenerunt, & qualiter & qui exitus inde habuerit, & quos, & quid valuerint, & quid modo valeant, & si aliqua eschaeta sit, quae ad d. r. pertineat, quae in manu ejus non sit.

V. Item de ecclesiis quae sunt de donatione d. regis.

VI. Item de custodiis puerorum quae ad d. regem pertinent.

VII. Item de malefactoribus & eorum receptoribus & eis consentientibus.

VIII. Item de maritagiis puellarum vel viduarum, quae ad d. regem pertinent.

IX. Item de falsonariis.

X. Item de intersectoribus Judaeorum, qui sunt, & qui vadii Judaeorum intersectorum, & catallis, & terris, & debitis, & chartis, & quis ea habuerit, & quantum eis debuerit, & quae vadia habuerint, & quis ea teneat, & quantum valeant, & quis exitus inde habuerit, & quos: & omnia vadia & debita Judaeorum intersectorum capiantur in manu reg. & qui ad occisionem Judaeorum fuerunt, & non fecerunt finem cum d. r. vel iustitiariis suis, capiantur, & non deliberentur nisi per d. r. vel iustitiarios suos.

XI. Item de omnibus auxiliis datis ad redemptionem domini regis (which were for his ransom out of the hands of the emperor Henry to whom Limpold duke of Austria, who took him prisoner, had fold him and amounted to cxi. marks of silver) quis quantum promiserit, & quantum reddiderit, & quantum a retro sit.

XII. Item de fautoribus comitis Johannis (it was his brother who affected the English diadem, in the time of Richard's captivity) qui finem fecerunt cum d. rege & qui non.

XIII. Item de catallis comitis Johannis, vel fautorum ejus, quae ad usum d. regis non sunt conversa, & quantum vicecomites receperunt, vel ballivi sui, & quis aliquid contra antiquas consuetudines regni dederit.

XIV. Item de omnibus terris comitis Johannis, de dominicis & wardis, & escaetis, & de donis suis; & qua de causa data sunt ei illa dona, & omnia dona comitis Johannis capiantur in manu regis, praeterquam illa quae per regem confirmata sunt.

XV. Item de debitis & finibus quae debentur comiti Johanni & qua de causa, & omnia exigantur ad opus d. regis.

XVI. Item de foeneratoribus & eorum catallis, qui mortui sunt. For by an old law of the Confessor, usury under pain of loss of the offender's substance, is forbidden.

XVII. Item, de vinis venditis contra assisam, & de falsis mensuris, tam vini quam aliarum rerum.

XVIII. ⁿ Item de cruciatis mortuis ante iter suum arreptum versus Jerusalem, & quis eorum catalla habuerit, & quae, & quanta.

XIX. Item de magnis assis, quae sunt de centum solidatis terrae, & infra.

XX. Item de defaultis.

XXI. Praeterea in quolibet comitatu eligantur 4 milites, & unus clericus, custodes placitorum coronae, & nullus vicecomes sit iustitarius in vicecomitatu suo, nec in comitatu, quem tenuerit post primam coronationem d. regis.

Annexed is to all these an intricate kind of inquisition, appropriated to that time, of the king's profits in wards, and escheats, with farms, and other country-commodities, which would receive larger place here, than the inconvenience demands.

XXII. Omnia debita & vadia Judaeorum imbreventur, terrae, domus, redditus & possessiones. Judaeus vero, qui aliquid horum celaverit, sit in forisfactura d. regis de corpore suo, & concelamento, & de omnibus possessioni-

¹ Roger. de Hoveden, par. 2. fo. 423.

^m Leg. Ed. Confess. cap. 7.

ⁿ Vide Guil. de novo burgo rer. Angl. lib. 3. cap. 22.

bus suis, & omnibus catallis suis, nec unquam concealamentum Judaeo recuperare licebit : with particular form of place and persons, where, and before whom this imposition might be performed.

XXIII. For especial exercise in chivalry, that practice might breed skill, and both alacrity to arms, he instituted by grant, torneaments, but not without certain restraints; as by his charter thereof made to Hubert archbishop of Canterbury, and reported in the red book of the exchequer, is thus apparent; *Sciatis nos concessisse, quod torneamenta sint in Anglia, in quinque plateis inter Sarum & Wilton, inter Warwick & Kelingworth, inter Stamford & Walingford, inter Brakely & Mixeber, inter Bly & Tikehill: Ita quod pax terrae meae non infringatur, nec de forestis nostris damnum inferatur. Et comes, qui ibi torniare voluerit, dabit nobis xx. marcas (understand it of silver) & baro x. marcas; & miles, qui terram habuerit, iv. marcas, & qui non habuerit, ij. marcas. Nullus autem extraneus ibi torniabit; unde vobis mandamus quod ad diem torneamenti habeatis ibi ij. clericos, & ij. milites vestros, ad capiendum sacramentum de comite & barone, quod vobis de praedicta pecunia ante torneamentum satisfaciunt; & quod nullum torniare permittant, antequam super hoc satisfecerit; & x. marcas pro carta ad opus nostrum capiat, unde comes Sarum & comes de Clara & comes de Warrenna plegij sunt. Teste meipso apud villam episcopi, xxij. die Augusti.* First use of these torneaments was (as ° William of Newborough delivereth) in the time of Stephen, prohibited under Henry Fitz-l'Empres, and by this lion-hearted prince, to martial honour, restored.

XXIV. P Praecepit, quod omnes, qui chartas habebant, venirent ad novum sigillum suum (this new seal was, after the old lost, with one Roger, the king's vice-chancellor, drowned in the Cyprian sea) ad chartas suas renovandas.

XXV. Constitutum est, quod omnes mensurae totius Angliae sint ejusdem quantitatis, tam de bladis, quam de leguminibus & de rebus consimilibus; scilicet una bona summa aequi: & haec mensura sit rata, tam in civitatibus & burgis quam extra; mensura etiam vini & cerevisiae, & cunctorum liquorum, sit ejusdem quantitatis, secundum diversitatem liquorum; pondera etiam & librae, & caeterae pēsiae, sint ejusdem quantitatis in toto regno, secundum diversitatem mercaturarum.

XXVI. Mensuris bladorum & liquorum, vini & cerevisiae, inclaventur claves, ne per dolum possint falsari.

XXVII. Lanei panni, ubicunque sunt, fiant de eadem latitudine, scilicet de duabus ulnis infra lisuras, & ejusdem bonitatis in medio & in lateribus.

XXVIII. Eadem ulna sit in toto regno, & ejusdem quantitatis, & ulna sit ferrea.

XXIX. Ne quis mercator praetendat Seldae suae rubros pannos, vel nigros, vel scuta, vel

aliqua alia, per quae visus emptorum saepe decipiuntur, ad bonum pannum eligendum.

XXX. Nulla tinctura vendenda, nisi solummodo nigra, nec fiat (so I distinguish the words) alicubi in regno, nisi in capitulis civitatibus, aut burgis. *iv. aut vj. legales homines de ipsa villa secundum quantitatem villae; similiter, in vicecomitatu; aut cum praepositis civitatis aut burgi, si in manu vicecomitis non fuerint, assignentur ad assisam custodiendam; scilicet sub hac forma, ut ipsi videant & certi sint quod omnia vendantur, & emanent per eandem mensuram, & omnes mensurae sint ejusdem quantitatis, secundum diversitatem mercium.*

XXXI. The punishment of the offenders, was 9 corpora eorum capiantur, in carcerem detrudentur, & omnia quae ipsius sunt, ad fisci commodum, seisciantur.

XXXII. If the instituted comptrollers fail in that trust committed to them, de catallis suis in misericordia regis remaneant.

XXXIII. An aid of 5 s. the hide, was taken through the kingdom: for collection were commissions granted, and power of conventing the land-tenants, and charging them by oath to make true report of hides in every manor; ¹ Ad poenam vero juratorum, qui aliquid contra juramentum suum celaverint in hoc negotio, statutum erat, quod quicumque rusticus convictus fuisset de perjurio, daret domino meliorem bovem de caruca sua, & insuper responderet de proprio ad opus d. regis, tantum pecuniae, quantum fuisset declaratum per suam perjuriam fuisset celatum. Si vero liber homo (by the opposite of the title (rusticus) I conceive generally tenants in ancient demesne, which are not allowed the addition of ² freemen, and copyholders) convictus fuisset, esset in misericordia regis, & insuper refunderet de proprio, ad opus d. regis, quantum fuerit per eum celatum, sicut & rusticus.

XXXIV. Statutum fuit, quod quilibet baro cum vicecomite faceret distinctiones super homines suos, & si per defectum baronum, distinctiones factae non fuissent, caperetur de domino baronum quod super homines suos restaret reddendum, & ipsi barones ad homines suos inde caperent: & libera feoda ecclesiarum parochialium de hoc tallagio excipiebantur, & omnes excaet. Baronum quae fuerunt in manu domini regis, communicaverunt.

XXXV. Serjeanteriae d. regis, quae non erant de feodis militum, excipiebantur: Take it of grand or petit serjeanty, and it fully accords with some ³ term books, of later times allowed, and published.

Capitula placitorum coronae d. regis.

Whereof Hugh Bardulph, Roger Arundel, and Geoffrey Harset, justices in eyre through the northern parts, held plea.

XXXVI. ⁴ De omnibus assis, & de magnis assis, usque ad x. libratas terrae, & infra.

° Guil. Neubrig. lib. 5. cap. 4. Matth. Paris 237. post Hovedenum, pag. 424. Paris, pag. 257. ¹ Hoveden, part 2. f. 443. ² Tempore E. I. tit. Avowry 103. & Reg. orig. 9. a.

³ Roger de Hoveden, pag. 424, & 440.

⁴ Matth.

lib. 4. fo. 31. b.

⁵ Hoveden, part 2. fo. 445.

⁶ 10. li. 6. Avowry 267. 11.

XXXVII. De advocacionibus ecclesiarum, & capiantur coram eis electiones magnae assisae per mandatum d. regis, vel ejus capitalis justitiae.

XXXVIII. De ecclesiis vacantibus vel non vacantibus, quae fuerunt de donatione d. regis.

XXXIX. De exactis d. regis.

XL. De donationibus & de valetis, & puellis, quae sunt, vel esse debent, in donatione d. regis, & de valetis terrarum suarum, & si quis eorum vel earum sit maritatus, & inquiratur cui, & per quem, & a quo tempore.

XLI. Quae viduae non finierunt pro se maritandis, & finis capiatur ad opus d. regis.

XLII. De serjeanteriis d. regis, quis ea habet, & per quem, & quantum valent, & qui finem non fecerunt ad auxilium domini regis (look before in art. xxxv.) & qui fecerunt, & finis capiatur.

XLIII. De usuris christianorum, & eorum cattalis, qui sunt mortui.

XLIV. De illis, qui sunt in misericordia regis, & non amerciat.

XLV. De purpresturis d. regis.

XLVI. De viis d. regis estreiciatis.

XLVII. De thesauris inventis.

XLVIII. De malfactoribus & eorum receptoribus.

XLIX. De fugitivis retatis, reversis post ultimam assisam.

L. De omnibus ponderibus, & mensuris, & alnis renovatis, & si iv. homines (refer hither the xxx article) qui sunt attornati ad haec custodienda in unaquaque villa, fecerint quod inde statutum est, & si attachiaverint transgressores illius assisae, & si non attachiaverint, prout debent, puniantur sicut ipsi transgressores.

LI. Totum vinum illius qui vendidit contra assisam, capiatur ad opus d. regis, & praeterea dominus vini & venditores, sint in misericordia regis.

LII. Of defaults in the commissioners, appointed for levying the aids.

LIII. De custodibus portuum maris, si quid receperunt quod non reddiderunt, & si mercedem aliquam receperunt pro jure regis retinendo, & si quis aliquid receperit, qui non fuerit ad hoc attornatus.

The justices of the forest, Hugh of Nevil chief justice, Hugh Wac, and Ernise of Nevil made their circuits, authorized by the king's commission; that in every county, where they were to pass, they should call before them *ad placita forestae*, archbishops, bishops, earls, barons, all freeholders, the chief of every town, and iv. yeomen *ad audienda praecepta regis*.

Haec est assisa d. r. & haec sunt praecepta de forestis suis in Anglia, facta per assensum & consilium archiepiscop. & episcop. & abbat. comit. & bar. & militum totius regni.

LIV. **T**hat none should trust, in hope of easy composition for offences, touching venison, or other matters of the forest, but that justice should be done to the convict, *qualis facta*

fuit tempore Henr. avi patris d. regis (viz.) ut amittant oculos & testiculos.

LV. That none presume to keep bows, arrows, grey-hounds, or other dogs in the king's forest, *nisi habeant ipsum regem ad warrantum suum, vel aliquem alium, qui eum possit inde warrantizare.*

LVI. Quod nullus donet vel vendat aliquid ad destructionem bosci sui, vel ad vastum quae sit infra forestam regis, sed concedit bene quod capiant de boscis suis quod necesse eis fuerit, sine vasto, & hoc per visum forestarii sui & viridarium suorum.

LVII. Quod omnes illi, qui boscos habent infra metas forestae d. regis, ponant idoneos forestarios in boscis suis, de quibus forestarii ipsi, quorum bosci fuerint, sunt plegii, vel tales inveniant plegios idoneos, qui possunt emendare, si forestarii in aliquo forisfecerint, quod d. regi pertineat.

LVIII. That the king's foresters take special survey, lest other mens woods, intra metas forestae, be destroyed; & sciant bene illi, quorum bosci fuerint, quod de ipsismet, vel de eorum terris, capiatur emendatio, & non de alio.

LIX. Quod sui forestarii jurent, quod secundum omne posse suum, tenebunt ejus assisam, qualem eam fecit de forestis suis, & quod non vexabunt milites, neque probos homines, de hoc quod d. rex iis concessit de boscis eorum.

LX. That in every county, where he hath venison, there be placed xij. milites, ad custodiendum venationem suam & viride in forestis suis, & quod iv. milites ponantur ad agistandos boscos suos, & ad recipiendum pannagium suum, & custodiendum & defendendum.

LXI. Quod nullus agiset boscos suos infra metas forestae (I think you had need translate metas into regard oft-times among these orders) antequam bosci eorum agistentur; & est sciendum quod incipit agistamentum d. regis xv. dies ante festum s. Michaelis, & durat xv. dies post festum s. Michaelis.

LXII. Si forestarius ejus habet in custodia sua dominicos boscos regis, & bosci illi destructi fuerint, & non possit nec sciat justam causam monstrare, quare bosci destruantur, nihil aliud capiatur de forestario illo, nisi proprium corpus suum.

LXIII. If any clergyman offend in the forest, non dubitent forestarii in eos manus imponere, ad eos resistendos & capiendos, ipse enim eos inde warrantizabit.

LXIV. That every three years view be taken of all assarts, as well new as old, and of all purprestures, and of all wastes of the woods, and that they be feyally inrolled.

LXV. That archbishops, bishops, barons, knights, freeholders, and all yeomen of the land, appear at the summons *magistri forestarii sui*, ad placitanda placita de forestis suis.

LXVI. Ne aliqua caretta exeat chimum in foresta regis, neque porci sint in foresta regis tempore de foinesun, (it is now a foetatione, called the fence, or rather fawn's month) scilicet xv. diebus ante nativitatem s. Johannis Baptistae, & xv. diebus post idem festum.

LXVII.

LXVII. Whoſo ſhall offend in taking the king's veniſon, and be thereof attainted, ſhall have judgement of loſs of his eyes and genitals; qui autem forisfecerit in foreſta regis de viridi, ſive per culpaturam, ſive per esbrancaturam, ſive per foditionem turvarum, ſive per eſcoriationem morae, ſive per culpationem de ſubvmore, ſive per eſſartum, ſive per novam purpreſturam; per ſepem, vel foſſatam; vel per * remotionem molendini, vel curſus aquae, vel bercariae; vel aliarum domorum, vel per foenum falcandum extra ſepes vel extra foſſata; erit in miſericordia regis de pecunia ſua, niſi habeat viridarios, vel foreſtarios regis ad warrantum.

LXVIII. Similiter qui arcus vel ſagittas portaverint vel canes duxerint ſine copula per foreſtam regis, & inde attaintus fuerit, erit in miſericordia regis.

LXIX. Videnda ſunt in riguardo nova aſſarta & vètera inbladata poſt ultimum regardum, & quo blado vel legumine inbladata ſunt.

LXX. Nova aſſarta in manu regis, ſi vètera aſſarta inbladata ſunt de frumento vel ſiligine, unaquaeque acra dabit regi xij. denarios de illa veſitura, & ſi inbladata fuerint de avena, vel bordeo, vel fabis vel piſis, vel alio legumine, unaquaeque acra dabit regi vj. denarios de illa veſitura; & ſciendum eſt quod tempore Henrici regis f. Mat. imp. permiſſum erat intra metas foreſtae foſſata fieri loco ſepium.

LXXI. Exiit edictum a rege, ut quicumque in regno ſuo forisfecisset clericico, aut alii viro religioſo, non cogeretur ſatisfacere illi: ſed ſi clericus, aut alius vir religioſus, forisfecisset alicui laico, ſtatim compelleretur ad ſatisfaciendum illi: unde factum eſt quod viri religioſi ad redemptionem coacti ſunt: the main end of all was exchequer profit; which this Richard too much labouring for by publiſhed edicts at home, and contending for by arms abroad, at length loſt it, and together unluckily his life.

CHAP. X.

King John and his Grand Charter.

THE burden of the ſtate after Richard's death, was laid upon his brother John earl of Moreton. He in the immediate times after his inauguration, made divers laws, touching ſale and prices of French wines, reported in Roger of Hoveden's annals. But all conveniency of merchandize and they were ſo incompatible, that they were almoſt as ſoon abrogated, as enacted:

^w Conſuetudines ſcaccarij ſuper debitis d. r. inquirendis.

I. **S**tatutum eſt in Anglia, & per praeceptum r. Joannis confirmatum, quod nullus vicecomes recipiet aliquem ad praesentationem baronis in ſeneſchalum, qui non poſſit reſpondere de miſericordia pertinente ad transgreſſionem fidei, ſi forte in eam inciderit. Quod autem ſeneſcallus ad praesentationem baronis,

quod pacem faciat vicecomiti de debitis domini ſui ad ſcaccarium, intelligendum eſt quod ſuper computum vicecomitis mittatur in priſonam ſtatutam, ſecundum legem ſcaccarij, & debitum regis capiatur de catallis domini ſui, ſecundum legem ſcaccarij: Quod ſi fidem praestitam non ſervaverit, ita quod ad computum vicecomitis non venerit, vel ſi venerit & ſine licentia reſceſſerit, corpus ejus capiatur, & in priſonam ponatur ſtatutum, nec deliberetur niſi per ſpeciale mandatum d. regis. Item mittatur ad terram domini cujus ſeneſcallus deſecerit, & de catallis ſuis ſolvatur pecunia quae debetur, ſecundum legem ſcaccarij, & ſi pecunia illa debeatur pro fine terrae, & catalla non inveniantur, unde pecunia illa ſolvatur, ipſa terra, pro qua finis facta fuit, capiatur in manum d. regis, & teneatur donec illa pecunia ſolvatur, ſecundum legem ſcaccarij.

II. In poena laeſionis fidei, ſeneſcallus, qui finem transgreſſus fuerit, nunquam de hoc vel de alio debito per fidem ſuam credatur, vel recipiatur, nec dominus credatur, vel recipiatur de hoc debito, niſi de gratia & voluntate regis, ſecundum legem & conſuetudinem ſcaccarij.

III. ^x Fecit (not long after) generaliter acclamari, ut legalis aſſiſa panis inviolabiliter ſub poena colligſtrigiali obſervaretur: Quae probata fuit per piſtorem Gaufridi filij P. juſtitiarij Angliae, & piſtorem R. de Thurnam. Ita quod piſtores poterint ſic vendere & in quolibet quarterio lucrari iij. denarios, exceptis brennio & 2. panibus ad furn. & 4. ſervientibus iv. obolos, 2. garcionibus i. quadrantem, & in buſia iij. denarios, & in bultello obolum: with a proportionate price and weight betwixt corn and bread at large reckoned.

IV. Celebrating the Chriſtmas at Briſtow, & Capturam avium per totam Angliam interdixit.

V. Praecepit per foreſtas totius Angliae ſepes comburere, & foſſata complanare, datis frugibus circumquaque beſtiis ad devorandum.

VI. After tranſaction of that great controversy betwixt the king and Innocent III. biſhop of Rome, publick commandment was given for obſervation and maintenance of the laws of Henry his great grandfather.

VII. Denuntiaturum eſt praeterea vicecomitibus, foreſtariis aliisque miniſtris regis, ſicut vitam ſuam diligunt, ne a quopiam aliquid violenter extorqueant, vel alicui injuriam irrogare praesumant, aut ſcottalla alicubi in regno faciant, ſicut facere conſueverunt. ^z

But notwithstanding thoſe general forms of reformation, a more ſerious and recapitulated was deſired by the whole baronage. A grand council is appointed at Paul's in London, and there, by Stephen archbiſhop of Canterbury, is produced a copy of Henry Beauchlere's free charter, (which is before expreſſed) and the ſame delivered to the chief clerk there, to be openly read and pronounced. As ſoon as the barons heard it, was an uniform conſent, that maintenance and aſſertion of thoſe liberties ſhould reſt, as of more dear account, in their martial reſolutions, than

^a Al. renovationem.

^w Roger, de Hoveden. p. 463.

^x Matth. Paris, pag. 278.

^y Id. pag. 303 & 304.

^z Id. pag. 320.

blood or life. Nay in short space after, mutual combination by solemn oath taken upon the altar was made among them, that their band of fealty dissolved (for so they deemed *John's* government had occasioned) their swords should compel him to enfeal their demands. To that place, which now only is called the *Temple* (then the *new-Temple*) where the king lay in warlike order, they go to execute their designs; he binding himself with an interlocutory sentence, and giving caution of future satisfaction, takes day until *Easter* following; but all was no less delusory than dilatory: nor any thing done with a face of composition, until the appointed meeting of the king and barons (whose part hourly encreased) in *Renimed*, alias *Runingmede*, near *Stanes* in *Middlesex*; whereof in the marriage of *Tame* and *Isis*, thus sings no small a favourite of the muses;

(Renimed *Anglus*,

*Subluit hic (i. e. Thames) pratum quod dixit
Quo sedere duces armis annisque verendi:
Regis Joannis cuperent invertere sceptrum,
Edwardi sancti dum leges juraque vellent,
Principe contempto, tenebroso e carcere duci.*

where an instrument of publick liberties, through mediation of what is above all law, necessity, was, as you shall hear it speak, sealed and delivered to the baronage.

^b *JOHANNES Dei gratia Angliae, &c.*
Sciatis nos intuitu Dei, & pro salute animae nostrae, & antecessorum omnium, & haeredum meorum, & ad honorem Dei, & exaltationem f. e. & emendationem regni nostri, per consilium venerabilium patrum nostrorum Stephani Cant. archiep. totius Angliae primatis, & f. r. e. cardinalis, Henrici Dublinensis archiep. Will. Londoniens. episc. Petri Wintoniensis, Jocelini Bathoniens. & Glascon. Hugonis Lincoln. Walteri Wigorniens. Will. Coventrensis, Benedicti Roffensis episcoporum, & M. Pandulphi d. p. subdiaconi, & familiaris, fratris M. Militiae Templi in Anglia, & nobilium virorum Will. Marefcalli com. Penbroc, Will. com. Sarisburiensis, Will. com. Warrenae, Will. com. Arundel, Alani de Lewesia constabularij Scotiae, Warini f. Geroldi, Petri f. Herberti, & Huberti de Burgo senescalli Pictaviae, Hugonis de Nevilla, Matthaei f. Herberti, Thomae Basset, Alani Basset, Philippi de Albeni, Robert de Ropefle, Joannis Marefcalli & Johannis f. Hugonis, & aliorum fidelium nostrorum.

VIII. *Inprimis concessisse Deo, & hac praesenti charta nostra confirmasse, pro nobis & haeredibus nostris in perpetuum, quod Anglicana ecclesia libera sit, & habeat jura sua integra, & libertates suas illaesas, & ita volumus observari, quod apparet ex eo quod libertatem electionum, quae maxima & magis necessaria reputatur ecclesiae Anglicanae, mera & spontanea voluntate ante discordiam inter nos & barones nostros manifeste motam, concessimus &*

charta nostra confirmavimus, & eam obtinuimus a d. pp. Innocentio tertio confirmari, quam & nos observabimus, & ab haeredibus nostris in perpetuum bona fide volumus observari.

IX. *Concessimus etiam, & omnibus liberis hominibus nostris regni Angliae, pro nobis & haeredibus nostris in perpetuum, omnes libertates subscriptas, habendas & tenendas eis & haeredibus suis, de nobis & haeredibus nostris.* These premisses are in the grand charter of *Henry III.* commonly published in our printed statutes, nor in any word of moment is there a difference found betwixt this of *John* and that of *Henry*, until the prohibition of disparagement in marriage of young wards; which thus commandeth, *haeredes maritentur absque disparagatione*: to this is added in a continued sentence; *Ita tamen, quod antequam contrahatur matrimonium, ostendatur propinquis de consanguinitate ipsius haeredis.* The vij. and viij. chapters of widows and their quarrentines, with that of the king's debtors, are also in like words following: But this of *John* hath this further additament.

X. *Si quis mutuo acceperit aliquid a Judaeis, plus vel minus, & moriatur antequam debitum illud persolverit, debitum illud non uret quamdiu haeres est infra aetatem, de quocunque tenet; & si debitum istud incidat in manus nostras, nos non capiemus nisi catallum contentum in charta*: who elsewhere seeks the true understanding of the statute of ^d *Merton* under title of usury, must still remain in an extravagant search, until he return to that exposition which lies here open.

XI. *Si quis moriatur, & debitum debeat Judaeis, uxor ejus habeat dotem suam, & nil reddat de debito illo; & si liberi ipsius defuncti, qui fuerunt infra aetatem, remanserint, provideantur eis necessaria, secundum tenementum quod fuerit defuncti: & de residuo solvatur debitum, salvo tamen servitio dominorum: simili modo fiat de debitis quae debentur aliis quam Judaeis.*

XII. *Nullum scutagium vel auxilium ponam in regno nostro, nisi per commune consilium regni nostri* (according is a grant of *E. I.* in *Thomas of Walsingham's* history) *nisi ad corpus redimendum* (in the Norman customary it is aide de rançon, which in an ancient manuscript of 21 Ed. I. in the case of *Robert of Wentham*, I have seen released between common persons) *and ad primogenitum filium nostrum militem faciendum, & ad primogenitam filiam nostram semel maritandam; & ad hoc non fiet nisi rationabile auxilium: simili modo fiat de auxiliis de civitate Londoniensi.* Here is adjoined the general franchises of *London*, other cities, boroughs, towns and ports *verbatim* as in the ix. chapter, which concluded, ensues.

XIII. *Ad habendum commune consilium regni de auxiliis assidendis aliter quam in tribus casibus praedictis, & de scutagiis assidendis, submoneri faciemus archiepiscopos, episcopos, abbates, comites & majores barones regni, singillatim*

^a Camden. in agro Middlesex.

^b Matth. Paris. pag. 341. & seq.

^c V. stat. West. 1. cap. 5. art. cler. cap. 15. de electione.

^d Merton cap. 5. Confer 35. lib. 6. fol. 61. Plo. Com. fol. 236. Bract. lib. 2. cap. 26. sect. 2. & indicem ad Plo. Com. part. 1.

per literas nostras; & praeterea faciemus submoneri in generali per vicecomites & ballivos nostros, omnes alios qui in capite tenent de nobis, ad certum diem, scilicet ad terminum 40. dierum ad minus, & ad certum locum; & in omnibus literis submonitionis illius causam exponemus, & facta submonitione, negotium procedat ad diem assignatum, secundum consilium eorum qui praesentes fuerint, quamvis non omnes summoniti venerint.

XIV. Nos non concedimus de caetero alicui, quod capiat auxilium de liberis hominibus suis, nisi ad corpus suum redimendum, & ad faciendum primogenitum filium suum militem, & ad primogenitam filiam suam semel maritandam; & ad hoc non fiat nisi rationabile auxilium: Unto the xviii. chapter inclusively of Henry's charter from hence, are in both almost the same syllables; but whereas the printed close of the same chapter, is, *Salvis uxori ejus* (i. e. of one that is dead) & *pueris suis rationabilibus partibus suis*, here is further:

XV. *Si quis liber homo intestatus decesserit, catalla sua per manus propinquorum parentum & amicorum, per visum ecclesiae distribuuntur* (see art. ix. in Hen. I.) *salvis unicuique debitis, quae defunctus ei debebat*; and in divers old written copies of the common and usual *Magna Charta*, the self-same words continue that chapter; all is in both alike unto the end of the provision for safe conduct of merchants: But therefore in this historical report succeeds,

XVI. *Liceat unicuique de caetero exire de regno nostro, & redire salvo & secure per terram & per aquam, salva fide nostra, nisi in tempore guerrae per aliquod breve tempus propter communem utilitatem regni, exceptis imprisonatis & utlagatis, secundum legem regni, & gente contra nos guerrina, & mercatoribus, de quibus fiat sicut supradictum est.* What follows in either is the same as well in words as sense. And as we have now in every man's hands a charter of the forest also distinct from the other, so had the barons then to them granted; and very small or no difference is found between

their's and that, whose fore-front is since signed with king Henry's name.

I suppose it fit place and time here to give remembrance of an escaped, and in every, impression that I have seen, allowed, fault, in the vij. article of the forest-charter, which by little alteration, and thus pointing, is corrected; *Nullus forestarius vel alius ballivus de caetero faciat scottallum, vel colligat herbas*, (you may read *garbas*) *vel avenam, vel bladum aliud, vel agnos, vel porcellos, nec aliquam collectam faciat* (*nisi*, so is the print, but in king John's copy, and in divers manuscripts of our statutes, ^f one having the subscribed authority of *exam. per rot.* I have warrant to read, and distinguish with a full period at *faciat*, and turning *nisi* into & go thus forward) & *per visum & sacramentum xij. regardatorum, quando faciunt regardum* (taking away the point there) *tot forestarii ponantur ad forestas custodiendas, quot ad illas custodiendas rationabiliter viderint sufficere*: How much the sense differs, small observation soon discovers.

The concluding date of these granted franchises, and restored laws, ^g John Stow saith, was, *Given by our hand in Runingmede, betwixt Stanes and Windsor, the xvj of June, the xvij of our reign*: unto which all the whole realm was sworn. But the fluxile nature of this deceitful prince, aided by pope Innocent III. and his nuncio Pandulph, soon loosed that kind of royal faith and promise; as quick were the barons (they by oath had bound themselves to constrain him by arms, if their expectations in his future carriage were frustrate) and ready to, and did, revolt. Death of the king prevented their projects, which for this purpose in the ix year of the succeeding Henry Fitz-John (as the first page of our printed volumes of old acts of parliament give to every reader testimony) were with some ease attained, and by his posterity, as the main freedom of the *English* commonwealth, have been since more than thirty times, by the true authority of the state, in their high court confirmed.

^e V. in H. II. art. 5.

^f In bibliotheca d. Ro. Cotton de Connington, eq. aurati.

^g Annal. pag. 258.

Soli Deo Gloria.



CHRONOLOGIA huic nostrae inserviens EPINOMIDI.

Ante CHRISTUM.
CIC.C.VIII.

BRUTUS ille, quem Trojana aiunt, sed potissimum bardi, stirpe oriundum, a quo post Samotheos (magis Semnotheos) sumus auspicati, sed aliena nempe & dubia fide fertur adpulisse.

CCCCXII. Dunvallo Molmutius.

CCCLVI. Martia R. Guinthilin. uxor.

LV. Julius Caesar. Is primum Romanis ostendit Britanniam, & territa Britannis terga.

Ab Incarnato Deo
LII.

Claudio Caesare deducta Camalodunum colonia, insulaeque pars in praesidialem redacta provinciam.

CLXXX. Commodus imp. obsignatam recepit palingenesiam Lucius rex ab Eleutherio pp.

Ab Incarnato Deo
CDXLIX.
Sed Camdeno e fastis consularibus Beda & Ninnio rationibus subductis
CDXXVIII.

florueve

DLXI.

Britanniam Anglo-Saxones aduehuntur, Theodosio jun. Rom. imp. Nec multis inde curriculis annorum interceptis heptarchas, inter quos jam Anglia dispertita.

AEthelbertus rex Cantii, primus Anglo-Saxonum (foelicissimo ducta sibi in uxorem auspicio Bertha Francorum regis filia) princeps christianus.

DCCCLXXII. Alfredus seu Aluredus rex.

DCCCCLIX. Edgarus rex.

CIC.LXVI. Willielmus Normanniae dux Haroldum, conferta in planitie juxta Hastings in agro Suthsexienfi manu, atque Anglorum copias devicit. ij. nempe id. Octobr. & regio se insigniuit hic titulo.

CIC.LXXXVIII. Willielmus Rufus primi filius.

CIC.C. Henricus I. Rufi frater.

M.CXXXV. Stephanus Blefensis.

Ab Incarnato Christo
CIC.C.LIII.

Henricus filius Matildis imp. & Galfridi com. Andegavenfis.

M.C.LXXXIX. Richardus I. Henrici filius.

M.C.LXXXIX. Johannes r. Richardi frater.

THE

THE
DUELLO,
OR
SINGLE COMBAT:

From Antiquity derived into this Kingdom of ENGLAND.

With several Kinds and Ceremonious Forms thereof from
good Authority described.

VOL. III.

G

THE
DUEL
OR
SINGLES COMBAT

THE HISTORY OF THE
DUEL IN FRANCE, ITALY, SPAIN, AND
ENGLAND, FROM THE
MIDDLE AGES TO THE PRESENT
TIME

BY
J. H. M.

V.
CLARISSIMO
D.

EDUARDO CARRELL,

ab Harting,

EQUITI AURATO;

DICAT
MONUMENTUM
ET
PIGNUS AMORIS.

J. S.

T O T H E R E A D E R.

E Y Φ H M E I N.

READER,

I Open not a fence-school, nor shall you here learn the skill of an encounter, or advantageously in the lists to traverse your ground. Historical tradition of use, and succinct description of ceremony, are my ends; both deduced from the antients, but without pro-selenick affectation. My aims shall take him for an advocate, ^a which long since affirmed the full pleasing Syrens to be but allegories of antique records: indeed I think his speech was beyond his proof, but the god of poets could not without ^b *παλα π*, by *πολλὰ πείδω*, express the best of his Phaeaces. And I dare avow it, he which distasts true primordial deduction, falls often into that covert dotage of, ^c *Errabo potius, quam perductet quispiam*. Ancient writ is the leader in what passages I have drawn; all being but as an epocha, from whence the single and simple motions of our triplicity lord Mars are (omitting their effects and tempered influences) with their differences calculated. Censure as you please; but however, like old ^d Demipho's lawyers, so (at worst I doubt not) will my readers. With this comfort I regard all thumb-turning, and fear not the truly judicious. Best of the supreme aspects, bestow their rays on you.

From the I. Temple,
this xth of Decem.
C10DCIX.

^a *Heracles Ponticus.*

^b *Echeneus in Odysf. "*

^c *Plaut. in Mostell.*

^d *Terent. in Phor.*

T H E

THE DUELLO, OR, SINGLE COMBAT.

CHAP. I.

The name and notation of the Duello.

THE name (for the true notation of the subject is in no treatise to be neglected, but the very auspicy of letter-labour, by logick doctrine, is thence to be taken) of the *Duello* or *Duellum*, is after some, *quasi duorum bellum*, while others judge that this derivation stands rather conceited upon the affinity of similiary found in pronunciation than true criticism. Authentick writers of the *Latin* have *duellum* unlimited in number, and of equal large signification with *bellum*; *Graecia Barbariae lento collisa duello*, hath ^a *Horace*; and likewise in ^b *Livy*, *Puro, pioque duello quaerendas res censeo*, faith one of the senators upon his advice to *Ancus Martius*. *Perduellis* also in old *Ennius* keeps like rank with *hostis*, *perduellum*, *duellum* & *bellum*, being upon learned ^c *Varro's* testimony, and in ^d *Plautus* but synonymies, as *duellona* and *bellona*. To all these agreeth ^e *Festus*, deriving it, *Quod duabus partibus de victoria contendentibus dimicatur*, referring it to the contrary terms of a general quarrel, not to that single opposition which the *French* call combat *seul a seul*, the old *Saxons* camp-fight, our *English* single-fight, fully and significantly expressed in the *Greek* *μονομαχία*, under breath of one word.

But as many well-imposed names feel the divers effects of time, and custom's syllabick alteration from the first nature of their genuine root, insomuch that great ^f *Plato* durst only find fault with, not correct the crept-in errors of that nature in his time; so questionless whole applications of names to their now reputed subjects have been oftentimes very disorderly made, yet too currently admitted by the quiet approbation of posterity. And *Etymologists*, aiming at the conjoined nature of the word and thing signified,

as commonly mis, as hit their mark. ^g *Justinian's* rule (upon the mistaken name of a legatary) being but in one word altered, shall free me from farther inquisition of needless respect to bare names. *Nomina significantiarum rerum gratia, reperta sunt, quae si alio quolibet modo intelligantur, nihil interest*, faith the emperor. Truth and the application of this word *duellum* to single fight have had both one father (especially in this kingdom, where time both establisheth and abrogareth.) It were therefore injury in me to offer cause of breach to their sisterhood, or to bastard the one, time's hoary age being contrary to, and far from all just imputation of natural weakness.

The *Duello* then (you may use at your pleasure any of the other names) is the bodily opposition of two combatants, both aiming at victorious success. Other and divers are the definitions of it among civilians, which for the most part call it, not *pugna duorum*, but *duarum partium citra formam belli dimicantium*, as upon the example of the *Horatii* and *Curiatii* in the *Roman* history, which exceeded unity on both sides ⁱ *Dr. Beuther* concludes. His definition is the last (as I take it) yet not so perfect as new. It were audacious to examine it, much more to affirm any other in all numbers absolute. Only thus much, I see not why two or three on a side are not by power of a like continued addition, as nearly equal to *Xerxes's* myriads as a million, the least of numbers being as well contained under that ^k *μονάδων ἀλλήλων*, as the greatest. But in these legal matters, touched with such or other logick niceties, the law thus excuses, ^l *Omnis definitio in jure civili periculosa est: rarum est enim ut non subverti possit*. Those two parts, *genus* & *differentia specifica* cannot be always, and seldom are according to

^a Epist. lib. 1. ep. 2.

^b Lib. 1.

^c De ling. lat. lib. 6.

^d In Amphitryone.

^e In verb. Duellum. Du. apud antiquos saepius

in B. transit. quod vide apud P. Merulam ad lib. 1. annal. Ennii.

^f In Cratyllo.

^g Instit. tit. de legatis §. siquid in nomine.

^h *Hominum* in ipso textu.

ⁱ Disp. de duel. concl. 1.

^k Euclidis definitio numeri 7. Elem. def. 2.

^l ff. de reg. jur. l. 202.

Aristotelick learning in definitions of law-subjects. To conclude this, accept the name's notation, as your phantasy persuades, or true signification, as your judgment directs, although (I confess) you may possibly find me erring in one, which if you correct, you may chance as soon to err as another, but to your correction with respect I submit me.

CHAP. II.

Of extrajudicial duels: *That for contracting the adventure of a greater war into a less number, it hath been by the ancients used, and by the judicious without controversy allowed.*

TO diminish imminent danger of a greater blood-shed, antiquity oft-times made choice of the *Duello* most commonly as we describe it, betwixt two combatants, (although sometimes into a greater number, yet rarely hath this contraction been made.) In the *Trojan* war *Homer* testifies of ^m *Diomedes* and *Aeneas*, *Paris* and *Menelaus*, *Hector* and *Ajax*, as assaying by single combat to decide the bloody controversies of two the most famous people of the *Gentiles*. *Hillus* leader of the *Athenian*, and *Ecbenus* of the *Arcadian* forces, by personal conflict strive in ⁿ *Herodotus* to transact their controversies of priority in the army, as also to determine the right of the *Herculean* stock in their father's possessions. The *Romans* waging war with the *Albans* referred all to the success of the ^o *Curiatij* and *Horatij*, who determined it by victory atchieved by the *Horatij*. Of like nature (the hidden secret of God's particular providence exempted) was that of little *David* and great *Goliath* in ^p holy writ reported; as also of the *British* *Arthur* and *Flollo* tribune of the emperor *Leo* in *Gaul*, after ^q *Geffrey* of *Monmouth* his relation. Nor different was the offer of *Lewis* the first christian king of the *Franks* to *Alaricus* king of the *West-Goths*, *nobilissimo pari fortunam* (as ^r *AEmylius* writes) *utriusque gentis decretum iri*. And in the latter memory of our ancestors, a general sedition betwixt the *French* and *Italian* conjoined armies was epitomized into a select number (as ^s *Guicciardine* reports) of thirteen soldiers of each nation. *George Castriot*, alias *Scanderbeg*, overcame *Feribassa* in like ^t fight. Of these and like examples in foreign stories is frequent mention; nor in the *English* are they wanting. ^u *Danish* irruptions and the bad aspects of *Mars* having drenched the common mother earth with her sons blood-streams, under the reign of *Edmund* a *Saxon* monarch, *misso in compendium* (so worthy ^x *Camden* expresses it) *bello utriusque gentis fata Edmundo Anglorum & Canuto Dano-*

rum regibus commissa fuerunt, qui singulari certamine de summa imperij in hac insula (that is the *Eight* in *Glostershire*) *depugnarunt*. Agreeing hereunto was that one and last condition of the three, which the duke of *Normandy* before his conquest offered to king *Harold*, *ut scilicet spectante exercitu gladio rem ventilerent*. So was it offered between ^a *John* of *England*, and *Lewis* of *France*, that by a single champion on both parts their controverted right to certain forts should be brought to decision. Neither did ^a *Richard*, of that name the second, hence degenerate, in challenging the *French Charles* the sixth, upon that royal quarrel of best title to the *Fleurs de lis*. The justice of combats in this kind (so the whole wars be just) is approved by judicious writers, ^b *Frisius*, *Ayala*, *Gentilis*, *Bodin* and others. *Non interest enim* (saith *Bodin*) *quo numero adversus hostes decernatur*, learned ^c *Alciat* making no doubt, but that princes, of whose kingdom-controversies no earthly magistrate hath jurisdiction, may upon force of their private credit with *Bellona*, discuss whatsoever their publick wrongs. *Cum enim* (says he) *bellum non nisi maxima calamitate humani generis invehatur, quid justius excogitari potest, quam ut, tanta noxa de medio sublata, hi potissimum soli armis decernant, ad quos ea res pertinet, victoremque res sequatur?* where ^d he vouches the appointed lists at *Bordeaux*, betwixt *Charles* of *Anjou*, and *Peter* of *Arragon*, for trial of right to the crown of *Sicily*, which was allowed by pope *Martin* and the whole college of cardinals, whereunto he adds a second, of two brethren of *Hungary*. *Haec est necessitas quae bellum justificat* (saith ^e a great civilian) *cum ad bellum extremo loco confugitur*. Antiquity hath allowed it, reason confirmed it, therefore so I leave it.

CHAP. III.

For proof of manhood also in divers forms, and upon several occasions, use of it is found both in the monuments of inmost antiquity, as also in the later ages, and always for this purpose as dedicated to Honor, and by the prince's authority.

TO omit those servile *gladiatores* of *Rome*, (in whose saleable blood the amphitheater's sandy floor so oft washed itself as lady money requested, until ^f *Augustus* restrained this publick spectacle to twice only in a year; and ^g *Constantine* utterly abrogated the use of them;) the old *Graecians* had their *Olympian* games instituted by *Hercules*, celebrated every fourth year; their *Pythian* from *Apollo*, in which the Gods themselves are said to have judged it honour to have received the chaplet of bays; their *Neme-*

^m Iliad. 7. e. & n. ⁿ In Calliope. ^o Dionys. Halicar. lib. 3. Antiq. Rom. Liv. lib. 1. cap. 24, 25. ^p 1 Reg. cap. 17.
^q Lib. 7. cap. 3. ^r Lib. 1. in Clodoveo. ^s Lib. 5. Hist. Ital. ^t Hist. Scanderbeg. lib. 5. ^u Henric. Huntingd. lib. 6.
 Hist. edit. Germ. fol. 363. ^x In Dobunis. ^y Guil. Malmesb. lib. 3. de gestis reg. Angliae, fol. 56. ^z Annal. Hibern. nuperime edit. fol. 797. ^a Rot. Parlam. 8 Rich. II. n. 3. ^b Fris. de rep. lib. 1. cap. 26. ^c Ayala lib. 1. cap. 3. ^d Bodin. de rep. cap. 4.
 lib. 7. Alber. Gentil. de jure belli, lib. 1. cap. 3. ^e De sing. certam. lib. cap. 3. ^f Indictum istud de Siciliae regno duellum & plenius refert, & in eo notata dignissima, Paris de Puteo, lib. 3. cap. 2. ^g Bald. 5. consil. 495. ^h Dio. lib. 54. ⁱ C. de gladiat. toll. l. unica. Cruenta spectacula in otio civili & domestica quiete non placent, quapropter omnino gladiatores esse prohibemus, & vid. Othon. Frisingen. lib. 4. cap. 3.

an dedicated to *Archemorus*, their *Isthmian* established by *Theſeus*; ^h in all which although there were five ſorts of trial of activity (which they call'd *pentathlon*, in Latin *quingertium*) yet the chief and moſt reſpected was ἡ ἀγὼν ἡ παλαιὰ, i. e. either *band-fight* or *wreſtling*, both, for uſe and antiquity, to have pre-eminence of the other three, as upon that acroſtich of ⁱ *Homer*, and other ſuch paſſages of his, ^k *Plutarch* long ſince ſpecially obſerved. What regard to theſe two ſorts (which not amiſs may be ſtil'd ſingle combats) the ancients had, *Ulyſſes* his entertainment at *Alcinous* his palace deſcribed in the ^l *Odyſſes*, and his victory with others at *Patroclus* his funeral towards the end of the ^m *Iliads* give teſtimony ſufficient, although no more could be gotten. But as *Achilles* did there at his friend's exequies, ſo did *Aeneas* at that honoured day of the anniversary rites performed to his interred father, to this purpoſe making his edict ⁿ

----- qui viribus audeas,
Sen crudo fudit pugnam committere ceſtu,
Cuncti adſunt, meritaque expectent præmia
(palmae.

The learned poet doubtleſs alluding to the cuſtom uſed after *Graecian* victories in that quaternity of games; which was (as ^o *Pauſanias* witneſſeth) that beſides their deſerved garlands of *olive*, *bays*, *parſley*, *pine*, or ſuch like, the victors did continually carry a palm-branch in one of their hands; which being achieved by ſuperiority in all four, is by ^q *Cicero* affirmed, *apud Græcos prope majus & glorioſius, quam Romæ triumphaffe*. Which by *Statius* in his preface to the combat betwixt *Capaneus* and *Alcidamas* is thus proportionately affirmed.

^r Nunc opus eſt animis infeſtos tollere ceſtus
Comminus hæc bellis & ferro proxima virtus.

Thus is it moſt apparent that the chiefeſt honour among the ancient (both *Trojan* and *Greeks*) conſiſted in the deſerved crowns of thoſe duello-victories, nor found they better form of honouring the memory of the ſuppoſed airy ghoſts of their dead-ſleeping friends or anceſtors, than ſuch kind of parentation. The ^t *Punick* cuſtom agreed with it, as in the laſt honor of betrayed *Græchus* ordered by *Hannibal* is regiſtered. The *Romans* failed not in like duty and practice; a whole place of *Livy* tranſcribed ſhews it, and thus ſhews itſelf: ^u *Scipio Carthaginem ad vota ſolvenda diis munuſque gladiatorum, quod mortis cauſa patris patruſque paraverat edendum rediit*; gladiatorum ſpectaculum fuit, non ex eo genere hominum ex quo lanifiſis comparare mos eſt, ſervorum delectu ac liberorum qui venalem ſanguinem habent; voluntaria omnis & gratuita opera pugnantium fuit; nam alii miſi ab regulis ſunt ad ſpecimen inſitæ genti

virtutis offendendum, alii ipſi profeſſi ſe pugnatos in gratiam duciſ; alios æmulatione & certamen ut provocarent, provocatique band abnuerent, traxit. Add to this but *Ulpian's* judgment in law, and what the old ſtate of *Rome* allowed will be manifeſt; ^v *Si quis* (ſaith he) *in colluctatione, vel in pancratio, vel pugiles, dum inter ſe exercentur, alius alium occiderit, ſiquidem in publico certamine, ceſſat Aquilia: quia gloriæ cauſa & virtutis, non injuriæ gratia videtur damnum datum*. Thus much for the more antique ages. Middle times afford the like. ^x *Pancirollus*, after *Nicetas*, affirms that *Manuel Comnenus*, emperor of *Conſtantinople* (his government was about the time of our *Stephen* and *Henry II.*) inſtituted *tourneaments*, which the *Italians* call *Gioſtine*, and the *French* *Jouſtes*, that is, military exerciſes in ſingle oppoſition, for exploration of valour, and oſtentation of martial virtue; which ſo far oft-times proceeded,

----- Ut ultima divideret mors, (que
Non aliam ob cauſam, niſi quod virtus in utro-
Summa fuit -----

as of *Hector* and *Achilles*, ^y *Horace* ſpeaks. But long before *Manuel's* time, *Henry of Germany*, furnamed the *Fowler* (as my ^z authors tell me) was in his own territories author hereof, annexing certain laws, among which one was thus, that he, which was not of a generous ſtock, *deque ſua nobilitate quatuor avorum natalibus docere non poterit*, ſhould by no means be admitted as a party in theſe lance-controverſies. The common uſe of this kind is eaſily known by the *Lateran* inhibition in a council held under pope *Alexander III.* (in our *Henry II's* time) thus expreſſing itſelf; ^a *Felicitis memorie Innocentij & Eugenij prædeceſſorum noſtrorum veſtigiiſ inhaerentes, deteſtabiles illas nundinas, vel ſerias, quas vulgo torneamenta vocant, in quibus milites ex conducto convenire ſolent, & ad oſentationem virium ſuarum, & audaciæ, temere congregi, unde mortes hominum & animarum pericula ſæpe proveniunt, fieri prohibemus, &c.*

But this notwithstanding, when *Clement V.* underſtood that the Holy-Land-voyage ordained in the Council of *Vienna* was much hindered by the provoked juſts and tournaments of the croſs-knights; ^b *torneamenta ipſa & baſiludia ſive juxtas in regnis, Franciæ, Angliæ, & Almanniæ, & aliis nonnullis provinciis in quibus ea conſuevere frequentius exerceri ſpecialiter interdixit*, binding the offenders under anathematizing conſtraint; into which puniſhment, becauſe divers martial had nevertheleſs incurred, at the inſtance of *Philip*, king of *France* and *Navarre*, pope *John XXII.* alias (if you reckon pope *Joan*) *XXIII.* *Clement's* ſucceſſor,

^h De his ſiquidem plura velis, adi *Natalem Comitem*, lib. 5. ⁱ Mytholog. cap. 1. & ſeq. ^j Odyſſ. 9. ^k Sympoſ. lib. 2. cap. 4 & 5. ^l Odyſſ. 9. ^m Iliad. 6. ⁿ Aeneid. lib. 5. ^o In Arcadicis. ^p Viſtores in uno quovis certamine Hieronici, in omnibus perihodi appellabantur. Feſt. & Bernhart. ad lib. 6. Thebaid. ^q Orat. pro Flacco. ^r Theb. 6. ^s Dec. 3. lib. 5. ^t Dec. 3. lib. 8. aſtipulantur quæ apud Tacitum, lib. 2. annal. & Suetonium in Claud. cap. 1. Militaria iſta certamina funebres dicuntur decurſiones, Gallice *jouſtes*. ^u Hadrianus Junius in nomenclatura. ^v ff. ad leg. Aquil. lib. 7. qua actione. Huic perſillem apud *Atticos* habes legem in *Platone*, lib. 7. de legib. concors item, ff. de aleatoribus lib. 2. ſolent. ^w lib. 2. rer. non rep. tit. 20. ^x Lib. 1. ſat. 7. ^y Verſtegan. cap. 4. Munſter. in Coſmograph. lib. 3. Bocer. de bello, lib. 2. cap. 4. ^z Decret. lib. 5. tit. 13. & in *Rogeri Hoveden*, annalibus, in Hen. II. fol. 333. ^a Extrav. de torneamentis, c. unic. tempore Ed. I.

made (as his *Extravagants* testify) for this purpose general absolution.

Particularly for this kingdom, you may remember the *c round table* (as it is reputed) of the thrice famous *Arthur*, kept at *Winchester*; but withal remember, that thereof *nihil est* (saith judicious ^d *Camden*) *quod dicam, nisi recentioris esse ætatis, ut intuenti facile appareat, superioribus enim sæculis, cum virtutis bellicæ exercendæ gratia militares decursiones (torneamenta vocant) frequenter haberentur, hujusmodi mensis* (such tables also were used among the old knights of *Gaul*, as ^e *Athenæus* there cited, reporteth) *usq̃ erant, ne quod discrimen inter nobiles ex ambitione existeret*. These kind of honorary combats by *Richard Coeur de Lion* were confined within the lists of five places in the kingdom; you shall see his patent of it to *Hubert*, then archbishop of *Canterbury*: ^f *Scias nos concessisse quod torneamenta sint in Anglia in quinque placeis inter Sarum & Wilton, inter Warwick & Kelingworth, inter Stamford & Walingford, inter Brakely & Mixeber, inter Bly & Tikehill, ita quod pax terræ meæ non infringetur. Et comes qui ibi torneare voluerit, dabit nobis 20 marcas, & baro 10 marcas, & miles, qui terram habuerit, 4 marcas, & qui non habuerit, 2 marcas. Nullus autem extraneus ibi attorneabit. Unde vobis mandamus quod ad diem torneamenti habeatis ibi 2 clericos & 2 milites vestros, ad capiendum sacramentum de comite & barone quod nobis de prædicta pecunia ante torneamentum satisfaciat, & quod nullum torneare permittant antequam super hoc satisfecerit; & inbrevari faciant quantum & a quibus receperint. Et 10 marcas pro carta ad opus nostrum capiatis unde comes Sarum, & comes de Clara, & comes de Warrena plegii sunt. Teste meipso apud villam episcopi 22 die Augusti.* The earl of *Glocester* under *Henry III.* confidens (saith an ^g old monk) *de concessione a d. r. obtenta, & voce præconia ex parte ejus proclamata, die qua Gulielmum fratrem suum baltheo cinxit militari cepit unum torneamentum, apud Northampton feriendum, ut ibidem memoratus Willielmus cum suis contronibus militiæ peritiam & addisceret, & experiretur*. But of this licence, for fear of inconvenience that might ensue through the boiling choler of such hot bloods, repeal was made with intermination, ^h *Ne transgressorum hæredes de paternâ gauderent hæreditate*. The like to what was here first licenced, was in his time granted, and at *Rocheſter* performed betwixt *English* and strangers, in *quo contriti sunt turpiter alienigenæ*, saith *Matthew Paris* that writes it. *Roger of Mortimer* founded at *Kelingworth*, ⁱ *ludum* (the words of *Thomas of Walsingham*) *militarem, quem vocant rotundam tabulam*, of an hundred knights, and as many ladies, whither for martial exercise was very great confluent out of divers countries. Some difference was between common torneaments

and this ceremony of the round table, which was in use of ancient time before this of the lord *Mortimer*, and that among the princes of the *Norman* blood. The two chronologers, ^k *Matthew of Paris*, and of *Westminster*, remember that about the 35 of *Henry III.* divers knights appointed their justes at *Walden in Essex*, and they both call them by the name of the Round Table. But more especially one of them thus; *Constituerunt unanimiter, non ut in basiludio illo quod communiter & vulgari-ter torneamentum dicitur, sed potius in illo ludo militari qui mensa rotunda dicitur, vires suas attemptarent*, where he inserts the unfortunate combat of two worthy knights, *Hernald of Muntenny*, and *Roger of Lemburne*, who meeting at the full career, *Lemburne's lance (cujus mucro (saith he) prout deberet non erat hebetatus)* so pierced *Hernald's* beaver, that as soon death pierced his heart: These few examples, taken out of many more, shew the use of these honourable justes among the ancients of this kingdom, but so restrained, as the prince's power in licensing or prohibiting, (which is proved by divers records also, transcripts whereof I have seen in the hands of the right worshipful and learned knight *Sir Robert Cotton* of *Conington*;) with punishment adjoined *Sub forisfactura omnium quæ regi forisfacere poterit*, always as supreme judge of chivalry, claimed and kept prerogative.

CHAP. IV.

A light touch of single combat extrajudicial upon quarrels, according to some that authentickly treat of them, and especially of English and French custom.

UNTO these extrajudicial duels hitherto spoken of (the one being under the general name of publick good for the church or commonwealth, the other under that which is for exercise of virtue, which consists in action) may be added that of free provocation or challenge, without the prince's or magistrate's authority, proceeding from supposition of dishonour received from the party challenged. For *truth, honour, freedom, and courtesy*, being as incidents to perfect chivalry, upon the *bye* given, *fame* impeached, *body* wronged, or *courtesy* taxed, (^m *Qu'on a diffamé & dishonoré l'honneur des dames*, as one says) a custom hath been among the *French, English, Burguignons, Italians, Almans*, and the northern people (which, as *Ptolemy* notes, are always inclined to liberty) to seek revenge of their wrongs on the body of their accuser, and that by private combat, *seul a seul*, without judicial lists appointed them. ⁿ *St. Lewis* first prohibited it in *France*, and divers times divers of his successors in the same point of policy succeeded him; but both *St.*

^c Rotundæ tabulæ Arthurî meminit Monemuthensis, lib. 7. cap. 4. in ea magnificentiam & comitatum regium addidit ordinis etiam fed male Miræus, lib. 2. orig. equest. cap. 4.

^d In Belgis.

^e Lib. 4. deipnosoph. c. 13.

^f Ex libro rubro Scaccarii, Ric. I.

^g Hen. III. ex Math. Paris. pag. 681.

^h Hen. III. ex eodem pag. 1123.

ⁱ 7 Ed. I. Thom. de Wallingh. pag. 49.

^k Flor. hist. lib. 2. p. 250. Math. Parisiens. p. 1147.

^l Galfred. Chaucer. in equite suo.

^m Mauvoisin en le combat, &c.

ⁿ Bodin. de rep. lib. 4. cap. 7.

Lewis and the rest were constrained (for the most part) to yield to the rescissory petitions of their subjects, who complained that the restraint of open combats occasioned multitudes of hidden murders. Nay, *Francis*, of that name the first, is said to have openly denied at his council-table, *virum bonum esse qui mendacium oblatum armis non rejiceret*; striking with those words (indeed) at *Charles* the fifth, who had then lately pocketed up a wrong of that nature received from himself; which, if you may credit *Bodin*, became, as clear law, among the soldiers and gentlemen of his country. But upon a combat between *Jarnach* and *Chastegneray*, two French Gallants, wherein death was umpire by expiring the best spirit of the one, the quarrel being only for the lie given; *Henry* the second, by express edict, inhibited the *Duello* for future times. Such after edicts are testimony sufficient, how frequent need hath been of them; and accordingly *Henry* of *Navarre*, now king there, some five years since, published the like, and again very lately seconded himself by another constitution made in *June* last, whereby all such provocation (without special leave from the prince's person, his constable or marshal, or lords lieutenants of the provinces) is forbidden, under pain to the offender of being deprived from ever being able to make his part good by arms with any man, as likewise from obtaining any satisfaction or amends for whatsoever injury he shall pretend to have received.

For our own country, let this one example be observed. Sir *Nicholas de Segrave*, a baron in *Edward* the first's time, challenged one Sir *John de Crumwell*, and because the king's prohibition restrained the combat here in *England*, dared him into *France*, therein (as the record mentioneth) subjecting, as much as in him lay, the realm of *England* to the realm of *France*. *Segrave* was hereupon staid in his passage at *Dover*, committed to the castle, and afterward in the *King's-bench* confessed his fault, and submitted himself to the king, *de alto & basso*. Whereupon thus speaks the judgment, *& super hoc d. r. volens habere avifamentum comitum, baronum, magnatum, & aliorum de consilio suo, injunxit iisdem in homagio, & fidelitate, & ligeantia, quibus ei tenentur, quod ipsi fideliter considerent qualis poena pro tali facto fuerit infligenda; qui omnes habito super hoc consilio, dicunt, quod hujusmodi factum meretur poenam amissionis vitae*. What they thus adjudged upon his desert, was (if I mistake not) grounded more on their own exasperated conceit, than any *English* custom.

How this *extrajudicial* combat is lawful or contrary, I mean by the law of arms and the imperials, (although the divine law and christianity teach otherwise) thus I read, *Licite proceditur si injuria laceffit in ejusmodi sit territorio ubi decus & honorem suum ope judiciali non possit tueri (ut si copia judicis non fu-*

erit); Illicite, si judicis & injuriantis copiam habere possit. After divers glosses and commenters upon several laws of the pandects and code (sith honour is not less, nay more than life to be respected) my triumvirate of writers of this subject, *Alciat* and the very late *Bocer* and *Beuther*, all great lawyers, expressly affirm as much in constant conclusion, which shall conclude also these tripartite *extrajudicial* forms; the fourth for defence of possessions from injury and rapin, failing in sufficient solemnity for desert of bearing a part in this division.

CHAP. V.

First Authors of the judicial duel: where admitted. The church of Rome's inhibition against it.

NEXT follow the *judicial* sort, which are by some legal or ordinary proceeding managed, and are part of the number of the ancient trials, which were either *canonicae* or *vulgares*. The *canonicae* were such as relied upon church-doctrine and religion; as especially *oath*, and receiving the *eucharist*, both which in *England* among the *Saxons* were in use. The *vulgares* (called *exploratorie purgationes*, or *probae*) were the ancient *ordells* thus divided: *fiery*, *watry*, and of *camp-fight*, which is the *Duello*. The two first omitted, (as also the trial of witches, by casting them bound into the water, or valuing their weight never above a certain poize and such like) the last only is the present subject.

In those times, which the philologers call *mythick*, there is among poets somewhat not altogether unlike this kind of trial of doubtful right, if you will admit that there is any pre-eminent right among equally respected wooers. He that could shoot best in *Ulysses's* bow was for delay by *Penelope* herself judged as the worthiest of *Penelope*. *Oenomaus's* proclamation of his chariot-courses to make trial who should enjoy *Hippodamia* (which *Pelops* through perfidious *Myrtillus* at length won) favours something of respect to *Bellona's* judgment, for although in the swiftness of their coursers the victory consisted; yet seeing

^b *Bello armantur equi, bellumque armenta minantur.*

and great *Achilles* had his education under a centaur; this is a part as well of *Mars's* discipline, as close handy strokes.

In the time *historick*, when the great justing at *Carthage* in *Spain* was appointed by *Scipio*, in honour of his father and uncle, two noble *Spaniards*, *Corbis* and *Orsua*, (cousin-germans) striving for the title of superiority in a city there called *Ibis*, *Non alium deorum* (saith my author) *hominumve quam Martem se judicem habituros esse professi sunt*: Although *Scipio* laboured much for quiet transaction of the contro-

^o Bodin, *ibid.*
ⁿ *forem*, fol. 328.

^p Dern. troubles in Hen. II. ann. 1547.

^q Novissima vero jam Anglice nuperime edita, in cujus Artic. xii. ista poena.

^r Rot. Parliament. 33 Ed. I.

^s Lactant. lib. de ira dei.

^t Arg. lib. 9. ff. de manumiss. vindict.

^u Alciat. de sing. cert. cap. 3. Boccr. lib. 2. cap. 8.

^v Beuth. conclus. 76.

^w Leges Canuti, can. 5.

^x Odyll. φ.

^y Lucian. in Charidemo.

^z Virgil. AEneid. 3.

^a Liv. lib. 28.

verſe. Both having entered the liſts, Major (ſaith Livy) *uſu armorum & aſtu facile ſtolidas vires minoris ſuperavit*. But it were too Arcadian-like to fetch hence, or out of theſe times, the infancy or beginnings of the Duellotryal by courſe judicial.

The northern inhabitants (as before is noted) have eſpecially of old time made uſe of this form of ſearching out the hidden truth. The *Ruſſians, Hungarians, Almans, Normans, Engliſh*, and others. But the moſt common judgment of writers, and clearly the trueſt, derives the fountain thereof from the ancient *Lombards*, (called by reaſon of their long beards, *Lombardi*) a people that (out of thoſe northern parts of *Europe*, which under the general name of *Scandia*, contain *Norway, Swethland, Denmark*, and other regions by north *High-Germany*) over-ran ſome of the chief countries of this fourth part of the world, and indeed at the firſt, when they fought thoſe new habitations, tried their title of ſafe-paſſage through ſome parts of *Germany* by ſingle fight betwixt one of their own camp and (as ^d *Paul Warnfred* reports) another of their enemies. They were a nation like enough to be fathers of ſuch a child, which is alone teſtified in that of ^e *Tacitus*, writing of the largeneſs of ſome of their neighbour-ſtates: *Contra Longobardos paucitas nobilitat*: (So neat *Lipſius* reads it) *Quod plurimis ac valentiſſimis nationibus cuncti non per obſequium, ſed praeliis & periclitando tuti ſunt*: Nay, the ſame author hath in expreſs terms, that which directly taſtes of this trying monomachy among ſome of the adjoining people of that climate: *Ejus gentis* (ſaith ^f he) *cum qua bellum eſt, captivum quoquo modo interceptum, cum electo popularium ſuorum patriis quæque armis committunt, victoria bujus vel illius pro praejudicio accipitur*. But for the matter itſelf without longer circumſtances *Longobardorum* (ſo ſays my ^g *Italian* hiſtoriographer) *antiqua eſt conſuetudo, ut crimina vel maxima ſingulari praelio purgarentur, quæ, poſtea per leges translata per multa tempora obſervata eſt*. Inſomuch that, by ſpecial conſtitution of ^h *Fronto* (alias *Frotho*) King of the *Danes*, all controversies took this for their touchſtone, until ſuch time as king *Poppo* a chriſtian, (thinking wronged *Vulcan* to be a better judge than wronging *Mars*) by new induction of the *fiery ordell*, made thereof abrogation. After the *Gothick* irruptions into the empire, and the *Lombards* power and cuſtoms enlarged, the reſt (not without the allowance of one of the pope *Johns* of *Germany, France*, and *Spain*, not in criminal only, but alſo in civil cauſes have admittance of it; and howſoever ⁱ *Rhotaris*, a *Lombard* king, once prohibited it, yet he was conſtrained afterwards to reſtore it. But for the moſt part the church of *Rome* hath impugned it with her authority. Pope *Nicholas I.* forbade the emperor *Lothar* to try hiſ wife's ſuſpected chaſtity by the appoint-

ed combat of two elected champions, ^k *cum hoc* (ſo he wrote) *& hujusmodi ſectantes deum ſolummodo tentare videantur*, ſo did *Celeſtine* the third, and other biſhops of that ſee; laſt of all thus thunders the council of *Trent*: ^l *Imperator, reges, duces, principes, marchiones, comites, & quocunque alio nomine, domini temporales, qui locum ad monomachiam in terris ſuis inter chriſtianos conceſſerint, eo ipſo ſint excommunicati: ac jurisdictione & dominio civitatis, caſtri, aut loci in quo, vel apud quem duellum fieri permiſerint quod ab eccleſia obtinent, privati intelligantur, & ſi feudalia ſint, directis dominis ſtatim acquirantur. Qui vero pugnam commiſerint, & qui eorum patroni vocantur, excommunicationis & omnium bonorum ſuorum proſcriptionis & perpetuae infamiae poenam incurrant, & ut homicidae juxta ſacros canones puniri debent, & ſi in ipſo conflictu deceſſerint, perpetuo careant eccleſiaſtica ſepultura. Illi etiam, qui conſilium in cauſa duelli, tam in jure quam facto dederint, aut alia quacunque ratione, ad id quæquam ſuaſerint, nec non ſpectatores, excommunicationis ac perpetuo maledictionis vinculo teneantur. Non obſtante quocunque privilegio, ſive prava conſuetudine etiam immemorabili. To thoſe which were the obſervant ſons of the *Roman* church, this and the other decrees extend their inhibitions: but the *Engliſh* cuſtoms never permitted themſelves to be ſubjected to ſuch clergy-canonſ; ^m always (under parliament correction) retaining, as whatſoever they have by long uſe or allowance approved, ſo this of the *duel*; which how it firſt came into this kingdom, ſtands next to be inquired.*

CHAP. VI.

Whence England received it? if from the Normans?

I Think it not eaſy to prove this cuſtom in *England* before the *Norman* conqueſt; yet it appears, that the ancient *Germans* (who were the fathers of the *Engliſh*) made ſome uſe of it, and ⁿ *Verſegan* (in hiſ chapter of the old manner of living of the *Saxons*) out of good authority, numbers hiſ *camp-fight*, (whence comes our *Engliſh* names of *kemp* and *champion*, for a combat-fighter) among the four *Ordells*, which then purged or condemned as mute judges. Add hereunto the judgment of *William Rouille d'Alenſon*, in hiſ preface to the old *Gravund Cuſtumer de Normandie*; making the *Norman* cuſtoms (among which the *duel* is one) to owe their original to *England*, rather than the *Engliſh* to *Normandy*. Hiſ words, becauſe they touch the generality of our common laws, ſhall not be left without a room here; *At hujusce Normannicae conſuetudinis* (ſpeaking of the whole cuſtomary) *latorem ſive datorem ſ. Edwardum Angliae regem teſtatur vulgaris illa cronica, quæ cronica cronicorum intituſatur: ubi de Gulielmo Ba-*

^d De geſt. Longobard. lib. 1. cap. 12.

^e De morib. Germanorum.

^f Ibid.

^g Carol. Sigon. hiſt. de regno Italiae, lib. 2.

^h Saxo-Grammatic. hiſt. Daniae, lib. 5 & 10. & Martin. del. Rio, diſq. Magi. lib. 4. q. 4. §. 2.

ⁱ Bodin. de republ. lib. 4. cap. 7. ex

Legibus Longobard.

^k Cauſ. 2. quaest. 5. cap. 22. monomachiam. & decret. tit. de vulgari purgatione.

^l Conc. Trident. ſeſſ. 9.

can. 19. pars 2.

^m V. Smith, lib. 2. de rep. Anglorum, cap. 7.

ⁿ pag. 64 & 300.

stardo Normannorum duce, alias Anglorum rege, loquitur dicens, quod, cum praedictus s. Edwardus ex se liberos haeredes nullos haberet, Gulielmum regni haereditatem instituit, qui, de vieto & mortuo Haroldo regni usurpatore, hac conditione regno libere potitus est, ut scilicet leges prius a praefato Edwardo latas servaret; qui quidem Edwardus leges etiam Normannis dederat, etiam cum Normannia diu fuisset enutritus. ° But all this persuadeth not such antiquity of the English duel. The old Saxon laws of Alfred, Edward, Athelstane, Edmund, Edgar, or others of those times are silent of any such matter; nor, as I remember, have the monkish stories of that age any authority for proof of it. Only in *P. William of Malmesbury* relation is made of a combat fought, and a champion slain (upon proof of the by-infimulation wronged-chastity of Gunhilda daughter to *Hardknot* and wife of *Henry* the third of Germany) but this was out of the English territory; wherefore, although the one part was English, nothing to our purpose is hence gathered. But in the laws of *P. William* the first, it is decreed, that if a Frenchman appeal an Englishman of perjury, murder, theft, manslaughter or robbery, *Anglus se defendat per quod melius voluerit, aut judicio ferri, aut duello.* It rests therefore, that we admit that the Normans, alias Northmans (being by their first off-spring from the Northwegian coast, where this custom, as before is shewed, had his breeding) were the first authors of it in this their conquered kingdom.

CHAP. VII.

The division of the duel judicial, as of judgments; the form out of the common-law till the lists entered (with authority and examples) of criminal duel.

Generally it being thus from the ancients brought into England, what follows of it also shall be within England chiefly confined. As the division of judgments is bipartite, consisting either in punishment of misdeeds committed against the body of the state, or determination of controversies touching only particular persons, which in fewest words is expressed by *publick* and *private*, *criminal* and *civil*; so (if the trial be denominated from the judgment,) the same distinction may be admitted in the duel, to be either *criminal* or *civil*: *criminal* being waged for purgation of an imputed crime, *civil* when for deciding controversy touching private wrongs or interests.

Particularly for the first, the offences which are comprehended under the name of felony, (which is capital) of treason (when appeals of treason were admitted) murder, robbery, or

such like, have from ancient time in appeals been triable at the defendant's pleasure by the duel.

Accusato (saith *Ranulph* of *Glanvil*, chief justice under *Henry II.*) *per omnia in curia legitime negante, tunc per duellum solet placitum terminari;* & *Henry* of *Bracton*, *habebit electionem, utrum se ponere velit super patriam, vel non, vel defendendi se per corpus suum;* to which *Britton*, and the course of the common laws accord. When the defendant hath made choice of this purgation or trial, presently (according to those ancients) so that exception intercede not, surety is given on both parties; on the defendant's for performing his defence by his body, on the appellant's for deraigning the battel; whereupon day is given by the court for provision of their martial accoutrements, and arraying themselves in convenient arms (the defendant continually remaining in safe custody:) At the day prefixed, both parties prepared, and appearing in court, the appellant recites his appeal, and the defendant his former defence, *verbatim*, as at the first. Then the one takes the other by the hand, and the defendant with an oath, thus prepares his stomach to the field.

This hear you whom I hold by the hand, which say you are called by the christian name of John, that I Peter such a year, such a day and place, (as is expressed in the appeal) did not feloniously cause, nor compass the death (if the appeal be of murder) of Thomas your father (brother, or &c.) nor did to this felony assent, as you have before supposed, so God shall me help and the saints. To which the appellant replies.

This hear you whom I hold by the hand, which say you are called by the christian name of Peter that you are forsworn, and therefore forsworn, because such a year, such a day, and in such a place, you did feloniously, with malice premeditated, with such a kind of weapon give a deadly wound in such a place of the body of Thomas my father, whereby he died within one hour after, as I have before said against you, so help me GOD, and the saints.

These oaths are in effect composed of the somewhat different forms in *Bracton* and *Britton*; but as agreeing to both; only thus much is the diversity. *Bracton* adds, at the close of the first, *nec tu hoc vidisti*, and to answer it, the appellant thus encounters him, *& ego vidi*, which *Britton* hath not. The reason seems, because that after *Henry III.*'s time, (wherein *Bracton* wrote) the statute of *Westminster* the first, in taking away that particle of champion's oaths in trial of private rights, was (as I think) by equity extended unto appeals also, as ensuing presidents offer persuasion.

In this form (by my former authority) their mutual oaths taken, the defendant is committed

° Atqui, lector, adeas, si de his consulas, Rogerum de Hoveden in 2. part. annalium fol. 346. & seq. G. insuper Camdenum & Lambardum in explic. verb. & novissime quae sunt ab honoratissimo & J. consultiissimo v. d. Ed. Coke Eq. aurato & privatorum judiciorum Praetore summo ad tertium librum Responsorum edita, & maxime quae ab iisdem & Gervasio Tilburiensi transcribuntur. ^p De gest. reg. lib. 2. cap. 12. ^q Leg. Guil. Conq. c. 62. ^r Ferri nimirum igniti, cujus formam explicatissime habes in Antiq. Eccles. Brit. & in Lamb. explic. verb. ^s Cicero in Orat. pro Cecina. ^t Lib. 14. cap. 1. ^u Lib. 3. tract. de corona, cap. 18. ^x Cap. de appeales. ^y West. 1. cap. 41.

to the custody of two knights, or men of meaner fashion, *secundum quod appellatus nobilis fuerit persona vel ignobilis*, who must conduct him unto the lists, (appointed and ordered by the marshal at commandment of the judges) so likewise is the appellant ordered, and both restrained from speech with any, except their knights, and the justices, who before the battel receive several oaths of them in this form. *This hear you justices, that I Peter have neither eaten nor drank, nor any other thing done, or caused for me to be done, whence God's law might be depressed, and the Devil's advanced, so help me God. Et ainsi* (saith John Britton) *soit fait en toutes les batailles de felony*. Immediately follows the king's proclamation; *That no man be so hardy or bold, (other than the combatants) whatsoever he see or hear, as to move, or speak loud, whereby any disturbance may happen to the battel, under pain of a year and a day's imprisonment*.

Thus stand the combatants ready in the lists, as they are by those ancient writers marshalled. But before their battel (to avoid error in the proceeding, because some differences appear) an example or two of later times in our common-law annals is to be observed.

One ² Adam, under Edward III. brought an appeal for the death of his father against one John, who waged battel in this form. With his left hand he took Adam by the right, and laying his own right hand on a book, swore the oath before rehearsed, which *e converso* was seconded by the appellant; the first concluding, *and this I will defend against you by my body as this court shall award*. The other, *and this I shall deraigne upon you by my body according as this court shall award*. Two main-berns, body for body, were taken for the appellant's performance on the third day following; the defendant committed to the marshal with charge to have him ready armed on the same day also, the costs of all imposed on the parties. All this was at the first appearance and pleading, and differs from *Bracton*, especially in that point, as also the next following.

³ In Henry the fourth, in an appeal of *Robbery* the defendant pleads, *Not guilty*, and this he was ready to defend by his body; the appellant accepts it, and upon this he was commanded by the court to take the left hand of the defendant in his own right hand, and took the oath with conclusion of *As God me help, and his saints of paradise*; his adversary in like form swore the contrary. The appellant found two pledges for the battle, the time appointed and place in *Tutbill-Fields*, the defendant committed to the marshal's custody; charge given to the appellant, that the night before the battel-day he should repair to the marshal to be arraigned, so that he might be in the field by the sun-rising of the same day; to both, to be then ready to perform their *devoirs*.

Here is another difference in priority of taking

the oath by the appellant, but the substance of all agree, ^b and offer of reconciliation of such differences without diversities were loss of labour. Hitherto not passing the limits of common-law-writ touching the court's ordering the preamble to this criminal combat. The combatants are in the lists, we will now take view of their armour and weapons, while they resting prolong their own quiet, and anon observe somewhat their performance.

CHAP. VIII.

What weapons or armour is to be used (by like testimony only;) the success of the combat, and thereupon judgment.

IF you enquire what weapons and armour is fittest generally for combatants use, among others most especially the great lawyer ^c *Alciat* and a very late writer of France, ^d *Messiere Marc de la Beraudiere* disputing it, may resolve you. I search not, what indefinitely ought to be, but what was with us in England. They are to fight, saith ^e *Britton*, their heads uncovered, hands and feet naked, with two bastons tipped with horn of one length, and every of them a quadrangular shield without other weapon, *dont nul ne puisse auter greiver*. Of their bare hand-fight it might be doubted upon an old precedent under ^f *Edward* the second, where the defendant cast his glove into the court upon the challenge, and upon good cause of exception, the judge bids the appellant, *then refuse the glove*. Where he seems in that admittance to allow it as for a combatant's wearing: but, *Haec solvat Apollo*. ^g Of bastons and shields, that is, *sufes & scuta*, the old law of the Lombards gave first use, and the express words of the Norman customary ^h are, *Qu' ils ne peuvent avoir aultre instrument a greuer l'un l'autre fors l'escu & le baston*. Upon which words, in respect of their identity with the English usage, the ordinary gloss is worthy of observation: thus it speaks; *Ce text ne parle, ne s'entend (quant a la declaracion des armeures,) si non au regard des non nobles. Et si on demandoit pourquoy le text ne declare la maniere come les nobles doivent estre armés, l'on pourroit respondre que le text n'en parle point, pource qu' il est tout notoire quelles armeures il doivent avoir pour soy combattre*. My other English authors have no such difference, nor this neither which the Customary hath inserted, that both, *Doit avoir les cheveux rongnes par dessus les aureilles*, unless that where it is said in some years, ⁱ *Que le teste doit estre rasé*, there be so much signified. The judgment on their superiority is, that if the defendant make his part good until the stars appear in heaven, or (as the Norman customary hath it) until the time of their appearance known by the Sun's absence, the appellant shall be deemed as vanquished, as a

² Hill. 17 Ed. III. fol. 2. & 17. ass. pl. 1.

cap. 68. id ipsum quod superiores illi & antiquiores habent.

³ P. 15 Ed. II. Coron. 385. Vid. infra, cap. 13.

& cap. ultimum inferius.

⁴ M. 9. Hen. IV. fol. 3, 4. & Stamford, lib. 3. cap. 14.

^c De sing. certam, cap. 39.

^d Part 1. cap. 20, & 21.

^e Cap. 23.

^f Cap. 68.

^g Vide 1 Hen. VI. fol. 7. & 9 Hen. IV. fol. 4. a.

false accuser punished, and the defendant acquitted. But if this defendant yield, or be overcome, *Ultimo supplicio* (saith ^k *Bracton*) *cum poena gravi vel graviore, secundum criminis qualitatem, cum exhaeredatione haeredum suorum, & omnium bonorum amissione*; If slain, yet the formality of the common-law proceeding adjudges him to capital punishment, that thereby his posterity may suffer the grievous concomitancy of his deferred infamy, and the accuser *et de nous* (saith ^l one in person of the king) *grund guerdon*.

Rare are the examples of battels waged upon criminals in the annals of the *English* laws, and (if I forget not) the least plural number doubled, comprehends as many as are therein reported with ensuing ^m performance. What histories or other notes afford of that nature, is fittest by itself to be collected.

CHAP. IX.

A collection of divers examples out of the English histories of combats upon imposed crimes, with some particulars of their forms and events.

UNDER *William Rous*, one *William de Hou* or *Owe* accused of treason to the king, challenged his accuser to the battel, & *dum segniter se expurgat*, (saith ⁿ *Malmesbury*) *caecatus & extexticulatus est*.

^o *Edgar* son to *Malcolm* of *Scotland*, was accused by one *Orgar* an *Englishman*, that he privily boasted himself and his allies, to be the only true heirs of the crown; by champion on *Edgar's* part it was tried in the lists, and the false accuser foiled.

Henry of *Essex*, standard-bearer to *Henry* the second, in his *Welsh* expedition, was accused by *Robert de Monte-forti*, that he forsook his colours in the field. The combat was their chosen judge, the victory fell to *Mountfort*, *qua de causa* (saith ^p *Matthew Paris*) *Henricus notam infamiae simul & exheredationis jacturam incurrens indulgentia pij regis apud Radingum* (where the lists were) *habitu monachalem suscepit*.

That of ^q *John de Viscont*, and *Thomas de la March*, in respect it was by consent to try the truth of a case emergent out of the kingdom, neither of them being subjects here, cannot be material for this purpose.

John of *Ansley* knight, appealed *Thomas Cattrington* esquire, of treason, *viz.* that he for a great sum of money yielded up the castle of *S. Saviours* in the isle of *Constantine* in *France* to the *French*, when as he might well have defended it, having sufficient of all provision, *in qua causa cum eodem armigero armorum lege obtulit se pugnaturum*. The matter was upon divers doubts and obstacles delayed in *Edward*

the third's life-time, and proceeded as little until 3 *Richard II.* when, *Coactis juridicis* (so ^r *Thomas* of *Walsingham* tells me) & *senioribus militibus regionis, definitum est pro causa extrinseca, sicut pro praesenti causa quae non infra regni limites orta est, & pro possessione rerum transmarinarum bene licere quengum duello configere, si constabulario & marescallo regni perante causa fuisset notificata, & in eorum praesentia duellum acceptatum*. Day was appointed, and the place at *Westminster*. An exceeding conflux of people was from all parts of the kingdom. *Rege cum proceribus & regni communitate locum ingressis prout moris est* (saith my author) *miles intrat armatus, insidens dextrarius decentissime phaleratum. Nam appellator debet ingredi primo locum, defensoris praestolaturus adventum*. A little time after, the defendant is thus demanded. *Thomas of Cattrington defendant, appear to defend thy cause, for which Sir John of Ansley, knight and appellant hath publicly and in writing appealed thee, and thus thrice by an herald. At the third proclamation, the esquire appears mounted on a steed stratum regaliter stramentis praeferebant arma dicti Thomae, who, when he approached the lists, dismounted himself, ne juxta consuetudines praelij constabularius vendicaret equum si limites fuisset ingressus, sed nil sibi valet astutia sua, nam equus juxta listas discurrens aliquoties totum caput & pectus injectit ultra limites. Ob quam causam constabularius Thomas de Woodstock equum vendicavit, jurans se velle caput ejus habere, viz. Quantum inter listas de equo visum fuit, unde adjudicatus est ei equus*. The esquire entering the lists on foot, the constable and marshal produce a certain indenture made before them, by consent of the parties, containing the articles of the accusation, which were there publicly read. *Cattrington* began to offer exception at some of them, thereby thinking to have somewhat extenuated the blots laid on him: But the duke of *Lancaster* seeing him in delays, with an oath openly menaced him, that unless, according to the *Duello*-laws, he would admit all in the indenture, which was drawn by his assent, as free from being taxed for insufficiency of form, he should be presently drawn and hanged as a traitor. Whereupon the esquire ceased from his exceptions, and intended only the combat. *Sir John Ansley, Prout moris est* (saith *Walsingham*) and after him this *Cattrington* took oath of the truth of his cause, that he was free from all use of art magick; that he did not carry with him any herb, stone, or other kind of experiment of witchcraft, as hoping thereby for victory. The combat itself follows between them. First lances, then swords, afterwards fauchions are their weapons. The esquire had still the worst, even until *Ansley*, although with some hazard and doubt (as you may see in the author) got the adjudged victory.

^k Lib. 3. tr. de corona, cap. 21.

^l Brit. fol. 43. Victum non occidat victor, sed regium potius expectet judicium. Prifot. 37 Hen. VI.

fol. 20. b.

^m 8 Ed. III.

Itin. North. tit. judgment 225.

ⁿ 19 Hen. VI.

fol. 35.

^o 7 Ed. III.

fol. 12.

^p Lib. 4. de gest. reg. & Flor.

Wigornien pag. 647.

^q Geo. Buchanan. Rer. Scotie. lib. 7. reg. 87.

^r In Ric. II. pag. 237. edit. Germ.

^s In Hen. II. pag. 133.

^t Apud Strouacum in annal.

sub. Ed. III. fol. 392.

Some five years after, upon judgment of the parliament then holden, ^f a combat was fought between one *Mortileto de Vilenos* a Navarrais, appellant, and an English esquire, called *John Walsh*, defendant. The accusation was of treason, but the truth was, that the chief motive of *Mortileto's* quarrel (as himself afterwards overcome confessed) was a former discovered close combat between his wife and the esquire. But long since *Mars* himself was in that fault. *Ob quam causam* (saith [†] *Walsingham*) *idem Navarrus regali judicio (qui ad spectaculum duelli cum principibus regni sui confederat) tractus & suspensus est.* Although the queen and divers others very earnestly entreated his pardon.

The appointed lifts for the determination of that great quarrel betwixt ^u *Henry* duke of *Hereford*, and *Thomas Mowbray* of *Norfolk*, upon imputation of some reproachful terms used against the king by *Mowbray*, is (because of the great consequent of crown-conversion thence following) in every man's mouth famous. Yet in respect of the particulars thereof, well (as all things else) compiled by the ^w author of the life and reign of *Henry* the fourth, it deserves there the reading, whither I refer you.

John Upton under *Henry* the sixth, appealed *John Downe*, that he, with his complices, had imagined the king's death on the day of coronation; *Richard* duke of *York*, upon absence of *John* duke of *Bedford*, regent of *France*, for this purpose constituted high constable of *England*. The Battel betwixt them was fought in *Smithfield*, where, when they had long fought, the king (saith ^x *John Stow*) took up the matter, and forgave both parties.

^y *John David* falsely appealed his master *William Catur*, an armourer in *Fleetstreet*, of treason; the battel waged, the place appointed in *Smithfield*. *Catur* was so merry with his friends before the combat, that when he had most cause of circumspect observation, an *Icarian* shadow so darkened his eye-sight, and weakened his forces, that he was unluckily there by his most offending servant overcome and slain.

Out of these examples may be gathered some particulars of our *Duello*-ceremonies not to be neglected. But because a difference appears betwixt the jurisdiction here discovered, and that in the former examples collected from our law-annals and old writers, separate discussion shall endeavour reconciliation.

CHAP. X.

Who are the judges, and have the jurisdiction of the combat.

B *Raeton* and *Britton*, in their inserted treatises of the combat, spake only of the king's justices, which you must in criminal causes un-

derstand of the *Kings-Bench*: with them agrees *Glawvill*, in these words; ² *Ex quo fuerit duellum vadiatum, non alio modo nisi de licentia domini regis, vel ejus justiciariorum, de caetero possunt sibi ad invicem reconciliari,* speaking expressly of an appeal of treason. But in a term-book of *Henry* the Sixth, two ^a learned lawyers affirm, that the judges before whom the combat is determinable, are the constable and marshal of *England*, which are to order it by the law of arms; concurring are the historical precedents next before recited. Yet upon observation of all this seeming contrary testimony, the truth will be thus apparent. That when the appeal is upon matter disgraceful, or dishonourable to nobility, or the accusation in such form of terms and place, as cannot be sufficient ground of an appeal by common-law-courte, as when the matter (I speak especially of criminals or armoury) is not emergent within the realm, then if the combat be challenged, the natural judges are those two noble officers, the high-constable and marshal of *England*, to whom belong from antiquity, a court called *le court de chevalry*, *ad lites honorarias* (as a ^b late writer saith) *discutiendas, jusque suum cuique famae vel dignitatis tribuendum.* For this I have judge *Prisot's* words. ^c *For calling another false, &c. No appeal, (saith he) lies in our law, and by consequence no such defence, viz. by proof on body may be, for such matter belongs to the constable and marshal, and they shall determine this by the law civil:* whereunto *Nedham* replies, that it is *le ley del terre, & le ley nostre seignior le roy.* This is infallibly confirmed by the act of 13 *Richard* the second, touching the constable's power. ^d *Al constable appartient d'aver consufance des contrats touchants faits d'armes & du guerre hors de realme. Et ainsi des choses queux touchent armes ou guerre deins le royaume, queux ne poient estre terminees ne discusses per le common ley, ou auters usages & customes à ycelles matieres appartenants, queux auters constables devant ore ont duement & resonablement uses en leur temps, adjoustant à icel que chescun pleintife declara pleniment sa matter en son petition avant que soit envoy pur ascun home à responder à icell.*

Thus, upon due conference of the former examples with these opinions, and statute-laws, together with some later credit-deserving authority of *W. Lambard's Archeion* (yet unprinted) and other ^e tradition of proof, our old customs, and new, and both with historical relation, may be easily made to symbolize.

Touching the antiquity and name of the high constable and marshal (which in the proposed subject is to be inquired after, seeing that by some kind of good authority I find, that all trials in their court, except discussion *ex bono & aequo*, were by the duel; as in the ^f articles

^f Annal. Stouaei, fol. 477.

in vita Henrici quarti, pag. 45.

² M. 37 Hen. VI. fol. 3, & 20.

³ Ric. II. cap. 2. vide insuper Stat. 1 Hen. IV. cap. 14.

⁴ Vide vero Th. Walsingham, pag. 357. & J. Heyward. in vita Henrici IV. pag. 92.

Artic. 26. nec non Fernaeum, lib. de nobil. gloria pag. 315.

⁵ Ric. II. fest. Martini, fol. 337. Edit. Lond.

⁶ Annal. fol. 609. 8 Hen. VI.

⁷ Mill. de nobilit. politic. pag. 154.

⁸ 37 Hen. VI. fol. 21. 6 Hen. VIII. Kel. 171.

⁹ Fernaeus in lib. de nobilitatis gloria, pag. 312.

¹⁰ um 5 Mar. tit. Bartell. 15.

¹¹ Idem ann. 21 Ric. II. fol. 394.

¹² Idem, pag. 635. ann. 25 Hen. VI.

¹³ Stat. 1 Mar. tit. Bartell. 15.

¹⁴ Stat. 1 Mar. tit. Bartell. 15.

¹⁵ Stat. 1 Mar. tit. Bartell. 15.

¹⁶ Stat. 1 Mar. tit. Bartell. 15.

¹⁷ J. Heyward.

¹⁸ Lib. 14. cap. 1.

¹⁹ Stat. 1 Mar. tit. Bartell. 15.

²⁰ Stat. 1 Mar. tit. Bartell. 15.

²¹ Stat. 1 Mar. tit. Bartell. 15.

objected against *Richard II.* at his deposition is expressed) I confess I have not read any thing more ancient than the continuance of *Florence of Worcester* his chronicle, which in the reign of king *Stephen* thus reports. *Regii constabulatus honorem Miloni Glocestrensi* (who was earl of *Hereford*, created by *Maud* the empress) *suo hosti ablatum Guilielmo filio Walteri de Bello campo Wigorniensis vicecomiti dedit.* But, upon that credit which a good^h antiquary of right claims to himself, I am persuaded that some officer of the constable's nature, (in respect that battel entred with the *Normans*,) as anciently also administred this justice, as it may (saith my author) *well appear, not only by some records of history, but also by a special president that I have seen, concerning the whole order of proceeding in that behalf before him.*

Of his name (to leave the several forms of derivation by divers authors, which you have both collected and censured by *Julius Pacius* in his notes upon *Curpalata*,ⁱ) the judgment of *Johannes Goropius Becanus* and *Richard Verstegan*, having therein divers followers, is thus; ^k that *Cyning* being contracted in *king*, and *stable* and *staple* signifying a *prop* or *stay*, the whole word *constable* is as much as *Columen regis*, or one that he especially depends upon in the managing of his most weighty affairs. The name of *marshal* or *mareschal* is agreed to descend from two *Teutonic* words, (which was the same with the old *French*) *mare*, which signified as much as our general name of *horse*, and *scalck*, that in the old *German* and *Gothick* tongue signified a *servant*; as one out of *Simon's* song in the hands of that great linguist *Joseph Scaliger* hath, after others affirmation of as much, lately observed, *Fra leitais scalk theinana*, i. e. *Now lettest thou thy servant*, &c. (although *Pacius* turneth *schalk* *Σκῶλ*, or *peritus*.) So that *mareschal* with us and the *French* is in notation but *smith* in *Dutch* and *English*, *marphais*, among the old *Lumbards*, *protostrator* in the eastern empire, expressed (if you will in Latin) *Equorum Curator*, whereby (as ^l *Verstegan* noteth) we may perceive how names grown to high dignity have sometimes taken their original from inferior vocations.

CHAP. XI.

The form of obtaining, clear proceeding, and performing the combat, by the ancient law of arms in the English court of chivalry.

ALthough not with best-seeming method, yet with most compendious, (for narrowest order in comprehension,) thus far is discovered what in brief terms is thus connexed.

That, of judicial-combats criminal, some are for trial of a particular objected misdeed, against which the common-law by ordinary course proceeds; and of these the justices of the *King's Bench* have the disposition, as is declared; others for purgation of offence against military honour, and ^m transmarine treasons (remediless by the old custom of *England*,) which the high court of chivalry is to marshal by the law of arms. The manner of this, both in proceeding and execution, is much different from the other, therefore of it by itself briefly thus.

A chartel containing the accusation is exhibited to the judges of chivalry for demand of the combat, if the appellant make choice of a martial trial; the demand is comprehended in conclusion; *that he is ready to maintain the same by his body.* Truth of the chartel, and freedom of the appellant from all purpose of malicious wrong, is by his oath confirmed. The combat upon due consideration of circumstances granted, denunciation of challenge, containing the whole chartel, by officers of arms (which was wont to be by some private persons) is sent to the accused. If upon the process he be returned, *not found*, then the challenge is published in his territories by the person (as religiously to be observed) of an herald. ⁿ Hereof, at his peril, he takes notice, and upon default, after six months (which is the time of instance for the appellant's proceeding) is adjudged guilty. But if upon receipt of the chartel or challenge he appear not, the judge may brand him with a note of dishonour hereby purchased, of which (but only by undergoing a new challenge as actor) he can never be cleansed; or may, under pain of taking it for a confession, denounce a new time of defence, or further, upon loss of his coat-armour, compel him. If he appear, and make his defence, but on the duel-day (his adversary being there present till sun-set, and proclamations of demand made at noon and night, which is peremptory and final) without just cause hide his head, it is sufficient conviction, and without all hope of restitution, is his honour attainted; whereupon (saith ^o *Alciat*) some appellants carry the pictures of such dastards about them with exprobration, or their coat-armour reversed, or ignominiously fastened under their horse's tail, or with such like disgrace. If he stand to his defence at the appointed time and place, (which by an ^p old constitution of *Frederick* are at the defendant's election, but rather indeed at the court's appointment) to be prefixed within forty days, both parties ought to appear in the field within the lists; which are quadrangular, with gates at each end (chosen in some spacious plain,) adjoining whereunto is pitched a seemly pavilion (saith *Ferne*) of gules, as a judgment-seat of the constable and marshal; at their feet a competent number of

experienced

^g Pag. 532. an. 4. Steph.

^h Lambard. in *Aggelo*.

De familiis quae honoratissimo insignes fuerunt isto titulo seu officio consulas G. Camden. in comit. Essexiae & Herefordiae, ac etiam in provincia Monemuthensi, addas & 6 Hen. VIII. Kel. fol. 171. & Mill. de nob. pol. pag. 151.

ⁱ Ad pag. 62. ver. δ μέγας κοστωλάς.

^k Veriteg. pag. 324. Lippi. epist. cent. 3. epist. 43. & Paul. Merula in cosmog. part. 2. lib. 3. cap. 15. Vide Paulum Diaconum. lib. 2. cap. 9. de gest. Longobardorum, & ad eum annotationes novissimas anonymi. Curpalat. cum annot. J. Pacij, ad pag. 52. ver. ἀποστρέφω.

^l Pag. 324. ^m Caeterum actis parliamentariis de 35 Hen. VIII. de crimine laesae majestatis trans mare commissio cognoscunt judices a rege delegati, &c. ⁿ Beuther. concl. 56. Mutio Justinopolitano del duello, lib. 1. cap. 16. ^o Ex justa causa per campionem se tuetur reus. Alciat. cap. 36. Beuth. conc. 42. ^p Alciat. cap. 6. Beuther. concl. 56. atque haec vetus Anglorum consuetudo quam habes in lib. impressi. de honore & armis, lib. 4. cap. 8.

experienced knights, with a king of arms, and a doctor or two of the civil laws, all for assistance in advice to the court.

The appellant and his procurator first come to the gate on the right end of the lists, banded with his esquires clothed in his colours, and arrayed with his arms waiting on him. The constable and marshal demand by voice of herald *what he is, and how he comes so arrayed?* upon his answer, and discovery of his face by removing the vizor of his head-piece, he is admitted, and by a knight, with an herald of the province, conducted into the lists, and placed before the judgment-seat on the right-hand: in like sort and converted solemnity is the defendant placed, with his face opposite to his adversary, on the left side. The gloss upon the Norman customs say, *Que le cause est pour ce que le dextre partie est plus digne & le sinistre moins digne.* Search is made by the knights both of equality of their weapons (which are also at the defendant's election, so that he confine his choice within ancient, usual, and military, although *Omnium more receptum est* (saith ¹ Alciat) *nobili & generoso viro magis convenire, ut eques & quidem loricated congregiatur quam mercenariorum peditum more prodeat, cum equestris militia nostris moribus dignior sit & in nobilium usu frequentior.* Solent autem (si aliter conventum non sit) in campum omnia geminata arma provocati deferre, ut eorum quae ipsi in procinctu elegerint paria adversariis per magistros seu advocatos dari possint :) as also whether they have any enchantments, or magick assistance for the victory.

Upon sound of a trumpet, the appellant and defendant are severally demanded; who in person present, the register to their procurators, after-recital of the process; *vous parains saches rien dire en empeachment del combat?* the procurators affirming that they admit all, it is demanded of the appellant if he persist in his first purpose, and likewise of the defendant; both affirming, the appellant kneeling, layeth his right hand on the Evangelists, and with his left taketh the defendant by the right.

Then the register. *I. R. appellant, what sayest thou to S. T. defendant?*

Hereupon the appellant briefly rehearseth his chartel of defiance to the defendant with a concluding oath for the truth of his quarrel, to which the defendant *e converso* reciting his defence, with denial and oath respectively applied, gives answer, the beginning of both forms being thus.

¹ *Hear you this, my Lords, all true knights and gentlemen bearers of arms, and thou S. T. defendant, &c. The conclusion; and that my quarrel (or defence) is true, neither have I done any thing whereby the law of God and of knight-hood might be depressed, and the law of Satan enhaufed, so help me God.*

All this finished, the parties are set apart, and prepare themselves to the battel, an herald pronouncing *soiet la bataille grauntue & victo-*

rie a ceux que droit, with proclamation, that none be so hardy, as by motion, speech, or crying-out to discomfit the combatants, or disturb the combat; then immediately an officer at arms proclaims, *Approver gardes vostre challenge, & vous defendour, gardes vostre defence.* Upon the sound of the alarm the battle begins.

The time or instance, (as the *Justinianists* call it) of the combat is an artificial day, from sun-rising (when the lists are to be entred) unto sun-set, *& licet aliqui* (saith my ¹ author) *usque ad stellarum apparitionem permanendum existiment, tamen receptior est sententia ut simpliciter occasus expectetur.* If the appellant overcome not the defendant within that time, the defendant is deemed guiltless of the imputation. But, *ben potrebbe* (² *Mutio Justinopolitano* telleth me) *la patente del campo esser stata ispedita con tal forma, che par la parteresi del sole la battaglia non si dourebbe partire, o il seguente giorno si dourebbe renovare.*

He to whom either upon default, (which prejudices the approver also) or performed combat, the victory is adjudged, shall, after request of his procurator to the constable and marshal, be publicly declared victor.

But by the way observe, that it suffices not that a superiority appear only in their manhoods, *Duelli enim is est* (my ³ author so says) *finis ut alter vel pereat, vel dedititium se fateatur. Ante id factum, licet alter videatur superior, tamen propter bellorum casus, quibus quandoque superiores victi sunt victores, non dicitur alter superatus;* so that either death or disditch, as they call it, which is yielding or confession of his guilt, must be the final issue whereon perfect victory can be allowed. ⁴ Then shall the victor with an honourable attendance of knights and men of arms mounted, enter the field and thrice march round the lists, and shall take with him the whole process of the chartel, defence, issue, and judgment, sealed with the court-seal, in perpetual testimony of his performance and maintained honour. *Morte non secuta*, (saith ⁵ *Beuther*) *aut disditta non extorta, iudex pugnae contra provocantem pronuntiabit eum scilicet captivum esse provocati, eo modo quo provocans devictus fuisset aut confessus provocantis victoris captivus.* Of him that yields, ⁶ *permissum est victori* (I have good authority for it) *arma, vexilla, ephippia, equos, armillas, sibi habere.*

But howsoever time and the imperials have hereof judged, not only christianity now excludes the laws of captivity, but also reasons of chivalry which you have in ⁷ *Marc de la Beraudiere* lord of *Mauvoisin*, who agrees notwithstanding that the arms of the yielding combatant are due as yielded with his body, *& s'il est tue son enemy le peut despoiller & les doit emporter come estant les vrais marques de sa victoire & n'en doit estre empesche.* So much for the general form of the obtaining, clear proceeding, and performing of the combat, by the law of arms.

¹ Ad cap. 68. dist. 4.

de sing. certam. Smith. de repub. Anglor. lib. 3. cap. 3.

l. 2. de gl. nobil. pag. 334.

² Cap. 39. & 40. vide superius, cap. 8.

³ Lib. 2. cap. 12.

⁴ Concluf. 65.

⁵ Alciat. cap. 43.

⁶ Fern. lib. de gloria nobilit. pag. 327.

⁷ Lib. 2. cap. 12.

⁸ Beuther. concl. 65. Alciat. cap. 42.

⁹ Part. 1. cap. 24.

¹⁰ Fern.

CHAPTER XII.

Private wrongs determined by the duel, and they either touching arms and gentry, or right of land-inheritance.

OUR division hath his other part of trials of private rights and interests, which are either touching gentry and bearing of coat-armour, and such like, or concerning right of demesnes and inheritance.

The first of these are upon controversies of such nature as were between the ^b lord Grey of Rutben and Sir Edward Hastings, under Henry the third, for the coat of the family of the Hastings: between the lords Lovel and Morley, for the bearing of the Burnels: Richard Scroope and Robert Gravenor under Richard the second. Examples of such titles to ensigns of nobility tried by proof on body, are that of ^c Sir John Chandos, an English knight, and the Lord del Cleremount, a French man, for bearing the image of our lady, with her child standing in the sun, which by right of arms, after the battel of Poitiers, is reported to be won by the English manhood; and that of ^d Hugh Vaughan, gentleman-usher to Henry the seventh, and Sir James Parker, slain at the first encounter in their combat at Richmond before the king. As these causes and the like, which concern the differences arising betwixt gentlemen for their bearing, are determinable in the court of chivalry; so the duel on them waged is before the same judges, in such sort as is before shewed, (with respective sentence) to be managed and performed.

The respect, which antiquity in this kingdom gave to the trial of right of inheritance by bodily opposition, may be gathered from that old tenure, by which the manor of Scrivelby in Lincolnshire was long since (and for ought I know) is yet holden, viz. by grand serjeanty, that at the inauguration of England's kings, the lord of this manor for the time being, or some other in his name, if himself be unable, ^e *Veniet bene armatus pro guerra super uno bono dextrario in praesentia d. regis die coronationis suae & proclamari faciet si aliquis dicere voluerit, quod dictus d. r. non habet jus ad regnum suum & coronam suam, promptus erit & paratus ad defendendum jus regis & regni sui, & dignitatis coronae suae, per corpus suum versus ipsum & alios quoscunque*, which about Edward the third's time was a servant of the Frevils, but at ^f Richard the second's coronation, upon claim made to the high-steward, and title of descent by marriage shewed, was allowed to the Dimocks, which now hold it.

This institution offering (at least for fashion) to military judgment, the defence of the supreme right to the English diadem, hath been in more earnest observed in debates of private interests, the ancient custom of England always allowing that as well for possession of inheritance (in the

actions which the lawyers call *droit patent, droit d'avoufon, quo jure, rationabilibus divisis*, and such like, which aim at the meer right of the thing demanded) as for defence of life or honour, & *ἡ φημετα ἡ ψυχὴ τὴν δαίμονα ἐροῦν*, liberty should be given to the defendant of provocation from Jupiter and Mercury, (provided he omit the sharp) to the god of arms. The order whereof, and particular performance, we next enquire after.

CHAPTER XIII.

Combats upon right of inheritance in land-possessions, how granted, prepared and determined, with judgment on them.

THE ancientest combat offered in such civil causes, that I have read of, was in Richard Coeur de Lion's time, to one ^h William Basset, upon demand by one Emma de P. of a knight's fee in Corseton in Wiltshire, where *Willielmus dicit quod sunt de uno stipite & ideo non debet inde probari*. Where note, that the demandant in her count, after disclosing her right, kept that order which you have in ⁱ *Glanvil, & hoc prompta sum probare per hunc hominem meum liberum J. S. & si quid de e male contigerit per illum, vel per illum tertium, & quot voluerit (saith he) ita poterit nominare, sed unus tantum vadiabit duellum, qui hoc vidit, vel audivit*, (which was by ^k act of parliament afterwards altered,) *Vel per alia verba sic, & hoc paratus sum probare per hunc liberum hominem meum J. S. cui pater suus in-junxit in extremis agens, in fide qua filius tenetur patri, quod si aliquando loquelam de terra illa audiret, hoc diracionaret sicut id quod pater suus vidit & audivit*. Thus it seems in those days it was the course for the demandant to offer his proof in his count at the bar by the body of his freeman, but so that it rested always in election of the tenant (so the lawyers call the defendant in such case) to join issue upon the offer, or cast all upon the king's grand assize; as the same author more largely declares. But the form since those times (and that most frequent in the law-annals) hath been to omit the offer of the battel in the count, in lieu whereof a general clause of *tendering suit and proof*, is the common inserted conclusion; hereupon the tenant (with formal defence of his right premittid) answers; and this right he is ready to prove by the body, either by himself, or his freeman there present, with such ensuing words, as after Glanvill's description, the demandant concluded his count with. If exception hinder not, the demandant replies (with allowance of emparlance to prepare his champion) recounting his first declared right, that he is ready to prove the same by his own or the body of his freeman there present, with particular names, and formality of pleading pursued. Upon demand by the court, each of the champions deliver in their glove (which they before hold in their right

^b Mill. de pol. nob. pag. 152.

^c Boswell in lib. heraldic, fol. 79.

^d 8 Hen. VII. Strouaeus, pag. 795.

^e Inquis. 23 Edw. III.

Camden. in Coritanis, & in Cornaviis, pag. 406, & 438.

^f Anni

1 Ric. II. in rot. pat. edit. in Cromptono de jurisdictione cur. fol. 85.

^g Hesiod. in ἐργ. ἡ ἡμεῖς.

^h Mich. 6 Rich. I. rot. 5. ap. West.

ⁱ Lib. 2. cap. 5.

^k West. 1. cap. 42.

hands, as they are led by the party's serjeants) as tokens of mutual challenge (yet it is reported, that in *Paramour's case* under the late queen *Elizabeth*, the champion of the defendant only threw down his glove, which his adversary in acceptance of the challenge took up and brought before him into the lists.) The court further demands of the demandant's champion, *Will you upon this right adventure your body?* He affirming, his adversary's glove (so I understand it) is delivered to him, and respectively in like sort the other is ordered; with a commandment for re-delivery of the gloves. At the same time, or (if the court think fit, at some other day given) the champion of the tenant is commanded to come over the bar into the court, *bare-headed, ungirt, unclouted, and bare-footed*, and commanded to kneel down on the left side; the other champion likewise in every respect, and kneels on the right side; the court demands of the serjeants, *If they know any thing why these champions are not fit for the combat?* Which admitted, the gloves are redelivered to them, within *every finger a penny* (which they were commanded by justice *Thorpe*¹ to offer *en l'honneur des cinque plaies que Dieu suffre*.) Nothing being moved touching misjoining the issue, or mis-pleading, judgment is given with *cest court agard que la bataille soit*, such a day next coming, with place convenient appointed. The champions were wont to be sent to several churches, there to invoke the aid of some saints to the assistance of their victory, with charge also, that they be not suffered in the mean time, to have any speech together before the lists entered. The champions find pledges for their performances; the parties take charge to have them prepared fit for the combat against the day appointed. Lists are made in some spacious plain, some twenty paces square, with a tribunal for the judges adjoining; into which at the prefixed time, after the court set, and by proclamation first the demandant, and then his champion demanded, the champion enters the lists clothed at his discretion, *but bare-legged from the knee downward, bare-headed, and bare arms to the elbow*, led by a knight carrying a baston gules of an ell length, a yeoman carrying his target of double leather, and after three respectful and solemn congees to the justices, is placed on the right side of the court; in like manner his adversary, in all equality of form, placed on the left side. The self-same ceremonies of proclamation and oath, as in a criminal duel before the justices above recited, here used, nothing remains but the next succeeding hand-strokes. ^m I observeto you by the way, that in an old manuscript of *P. 6 Ed. II.* in a writ of right between *Thomas of Ailesthorpe* against the abbot of *Fountaignes*, the champion was brought to the bar in the before declared order, and also *Deschevilé avec un paire des gaunts plies en son maine dextre*. Touching his being *deschevilé* remember what the Norman cu-

stoms have before also discovered, to which, add the testimony of an ⁿ old deed made in the time of *Henry* the third, whereby one *Henry de Ferneberg, dictus marescallus*, did bind himself to the abbot of *Glastenbury*, to be his champion at all times for the mannors of *Puckleburch, Kranemer, Blackfort, and Winstcomb* and other possessions against the bishop, dean, and chapter of *Bath and Wells*, and against any chosen champions by them *pro triginta marcis sterlingorum*, whereof the abbot was to pay him ten marks at the time of waging the battel, *Et in tonsione mea* (saith the deed in the first person) *5. marcas*.

Upon determination of this combat, as in the other of appeals, final and peremptory judgment is to be given, *quae enim* (saith ^o *Glanvil*) *per duellum fuerint terminata perpetuam habent firmitatem*: and the vanquished without death, to be judicially noted with perpetual infamy.

Examples of battels fought, and judgments given on the victory are very rare or rather are not in our published year-books, only a bout or two is adventured in *P. Edw.* the third's time, in a writ of right between *Peveler* and *Sherley*. In the late *Elizabeth's* time composition prevented the intended concurrence. But in an ancient written parchment report of the later years of *Edw.* the first, I have seen in a *droit patent* by *John de Croke, Richard de Gurney, & Godefrid de Bello-mont*, for the manor of *Gretton* in *Suffolk*, against the abbot of *S. Edmundsbury* before *Simon of Rochester* and his associates justices in eyre there at *Totbuhl*, that the abbot offered battel for his defence by his champion *Robert de Muford*, the demandant joining with him by the body of *Robert Fitz-William le Bret*: *Quo die venerunt partes servientes armati, & fuit duellum inter eos armatum, & percussum, & serviens praedicti abbatis convictus fuit & interfectus*; and thereupon a final judgment was given for the demandant's recovery.

With short recapitulation, thus I conclude; That, from antiquity combats of all sorts have proceeded; that from the *Lumbards* and *Northern people*, whose posterity filled this kingdom's continent, the judicial sort were hither first derived; that the causes were either criminal or civil, and both of different natures, and belonging to different jurisdictions, and so by several forms of combat have been of right triable; which forms in general view are here described. Of particular *exceptions* to the appellants, or *saving defaults* in the one, or to the champions or cause-self in the other, or any of them, the treatise is too particularly disposed for the design of this collection; which aims wholly at the general nature, and form, and antiquity of the *Duello* performed, omitting to those which have largely discoursed it, all interposed obstacles and niceties of inquisition.

— 9 *Pax una triumphis*
Innumeris potior. —

¹ Hen. VI. 6.

^m Haec omnia colligas licet ex Annal. Juris Anglic. 4 Ed. III. fol. 47. 29 Ed. III. fol. 121. 30 Ed. III. fol. 20.

ⁿ Hen. VI. fol. 6. 13 Eliz. Dy. fol. 301. & ex annalibus Johan. Stouaei, pag. 1133.

^o Chartam istam ann. 42 Hen. III. consecratam inter collectionem suam transcripserat offendit mihi Nicolaus Charles Lancastrensis facialis, quem studia mea bene merentem libenter agnoscunt.

^p Lib. 2. cap. 3.

^q 4 Ed. III. fol. 41.

^r Sil. Italicus, lib. 11.

TITLES
OF
HONOUR.

TITLE 2

NONO

To my most beloved Friend and Chamberfellow,

Mr. EDWARD HEYWARD.

[This DEDICATION was prefixed to the first Edition.]

SIR,

HAD I not been such a remote stranger to greatness, yet, beyond you, scarce should I have sought a name to honour this place. Being, as fortune hath placed me, I well could not, without charging my freedom of spirit with what, as the worst in manners, it ever hated, flattery. But I was resolved, that, as the architecture of old temples, you know, was either Dorick, Ionick, or Corinthian, according to the deity's several nature, so in analogy, should gifts of this kind be to the receivers, and that books should most fitly be consecrated to true lovers of goodness and all good learning. I would call books only those which have in them either of the two objects of man's best part, verum or bonum, and to an instructing purpose handled, not whatever only speaks in print and hath it's little worth ending in it's many words. In this of mine dealing with verum chiefly, in matter of story and philology, I give you the greatest interest, that in a thing of so publick right may be enjoyed. Your more noble studies, virtue, learning, and your love, to whatever is in those names, made you most capable of it. And to speak here freely, the special worth of your quality and of some more (*luti melioris*) compared with that world of natures infinitely varied by baseness of spirit, daring ignorance, bewitched sight, worst of inclination, expressions of scarce more that's not bestial than what clothes and coffers can, and the like have made me, I confess, doubt in the theory of nature, whether all known by the name of MAN as the lowest species be of one form. So generous, so ingenuous, so proportioned to good, such fosterers of virtue, so industrious, of such mould are the few: so inhuman, so blind, so dissembling, so vain, so justly nothing, but what's ill disposition, are the most. Our long society of life, and the special desert, which you know you may truly challenge of my endeavours, entitled you to it as from me. Never shall I not confess you to have been to me *ὡς ἐρησυχίας Σειρῶν*. Some years since it was finished, wanting, only in some parts, my last hand; which was then prevented by my dangerous and tedious sickness; being thence freed (as you know too, that were a continual, most friendly, and careful witness) by the bounteous humanity and advice of that learned physician doctor Robert Floyd (whom my memory always honours) I was at length made able to perfect it. And thus I employed

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the breathing times, which from the so different studies of my profession, were allowed me. Nor hath the proverbial assertion, that the lady common law must lie alone, ever wrought with me farther than like a badge of his family, to whom (by the testimony of the wisest man) every way seems full of thorns, and that uses to excuse his labour with a lion is in the way. I call you not my patron. Truth in my references, likelyhood in my conjectures, and the whole composure shall be instead of one, and of all else which, like invocations of Titulina, might be used. It comes to you only, that, if it live, it may be an enduring testimony of our loves and your desert. Happiness ever second your wishes.

Vive diu nostri pignus memorabile voti.

With you, at the Inner Temple,
September 23, M.DC.XIV.



T H E P R E F A C E.

[This PREFACE was prefixed to the first Edition.]

Bless me Mercury from the old enemy, *the daring ignorant* ! I know his hate to thee. And when he would seem to love, as sometimes he would, yet is he as unhappy in performing what is due to thee, as if he should sacrifice with a coal-black beast, in the darkest night, the throat pressed downward, to thy brother Apollo ; or then for safety of his sheep or gain, with blood to thee, when thou art

— ^a Εὐ τῷ Γάλακτι
Χαίρων, καὶ ἀρύνει σπενδόμενος. Μέλωνι.
Best pleased with milk and honey.

Thou knowest the unfitness of both, and him. I could not but wrong thy honour, should I, so near mention of thy name, speak to him. Thy worth, from him, protect me ! to all thy ingenuous favourites, in thy presence, as thou directest me, thus. Out of this title, table, and contents of the chapters (you have them presently after this Preface) the *sum* and *method* discover themselves. The *purpose* extended from the *highest* title to *gentry*, exclusively. That of *gentry*, or the same in another word, *civil nobility*, is, by which, as the first degree above the multitude, an honouring distinction is made, either by *acquisition* from the prince (every prince or state, having general power to make laws in their territory, may enoble) or by *descent* from noble ancestors. Or indeed you may not amiss comprehend *hereditary nobility* in that first kind, because a gentleman, by birth, is not only so in regard of his ancestors, *Sed quia, ob eam originem, princeps illum suis legibus nobilitat*, as ^b Bartol will have it. The prince, as it were, supposing that if the father be noble, the issue will resemble him. Which the *Persians* were confident on, where the queen was never so much as suspected ^c of incontinence, because the king was always esteemed of so truly royal parts, that the nature of her issue by another, would discover if she had changed the father ; as, on the other side, the *Spartan Ephori* most jealously guarded their queens, lest any but of *Hercules* posterity should govern : both states concluding *nobility* from their *ancestors worth*, which hath it's ground in the natural supposition of *likeness* betwixt children and those which get them. Καὶ γὰρ ὁ μὴ ὅμοιος (saith ^d Aristotle) τοῖς Γονεῦσιν ἢ δὴ τρόπον τινὰ τέρας ἐστὶ, i. e. For, one not like his parents is, in some sort, a monster, that is, not like him that got him, nor any other of the ascending or transverse line ; because it is thought, that, in the seed are always potentially several individuating ^e qualities derived from divers of the near ancestors, which by the formative power of the parents may be expressed in the children, with respective habitude to either sex ; although the later *Grecians* foolishly inquired only in *geneseos nobilitate*, non quae mater, sed quis pater (following the old ^f *Ægyptian* custom) and thought a king's issue by any concubine, as good as one by the noblest queen. But, indeed, both are even equally to be regarded. The consequent of this was long since disputed in that of the *mind's inclination* follows the *body's temperature* ; whereof

^a Antipater epig. α. cap. 48.

^b In c. tit. de Incolis. l. 9. Mulieres.

^c Plato in Alci-biade α.

^d De generat. animal. 4.

cap. 3. ^e De hac re imprimis consulendus Andreas Laurentius anatomic. lib. 2. quaest. 30. Luitprand, lib. 5. cap. 5. ^f Diodor. Sicul. lib. 2. De Lyciis vero Herodot. lib. 1. & Plutarch. ἐν γυναικ. ἀγέλας, apud quos in materna origine constituit nobilitas, nec non ad Ulpianum, l. 1. ff. ad municipalem ; septem familias Lovanij quibus de Liplius Lovan. 1. cap. 12. & Tiraquell. de nobilitate, cap. 18. §. 20. & seq.

Galen hath a special treatise. But because this likeness is oft times to a remote ancestor, as well as the father, therefore, it seems, is the special regard to be had to the number of descents in gentry. He that is so both *Ευγενής* and *Γενναῖος*, i. e. both descended from truly noble parentage, and withal following their steps, or adding to their name, is the gentleman that may lawfully glory in his title. Nobility in him being rightly *ἡ Αρετῆ γένος*, the virtue of his fathers, from whom he derived what he means to propagate. So, the fairer is his worth, because *ἀρεταμύην*, as one ^h says, *ἀπὸ τῆς Αρετῆς ὡς ἐκ πηγῆς καθαράς γέννηται μέν*, i. e. it flowing, from virtue, as from a pure spring, continues genuine, and like the first head. But, the ancestor's nobility in a degenerating issue, gives no more true glory, than Phœbus his name did to pp. Sixtus Quintus; who was wont to jest on himself, that he was ⁱ *domo natus illustri*, because, being of very mean parentage, he was born in so tottered a house, that the roof every where admitted the sun-beams.

Cur ^k Allobrogicis, & magna gaudeat ara
Natus in Herculeo Fabius lare, si cupidus, si
Vanus & Euganea quantumvis mollior agna?

And

—— Perit ^l omnis in illo
Nobilitas, cujus laus est in Origine sola.

So that, merit by quality, both in the first acquiring the prince's favour, and in his issue, are the true causes of nobility, as if the original collation of the dignity were so made, that the first deserving, and his begotten heirs, such only as were deserving, should enjoy it: and then is the civilian's definition of it enough comprehensive, that it is *qualitas illata per principatum tenentem, qua quis ultra plebeios honestos acceptus ostenditur*, which many canonists also follow; and so will it conclude as well that which the barbarous civilians call *Paradogium* (by mis-reading for ^m *Paragium*, as most learned Cuiacius persuades me, that is, feudal nobility, grounded on possessing anoble fief, whence the tenant is one of the *pares curtis*) as personal honour. Virtue plainly enobleth not civilly, but is a deserving cause of it only, whereof the prince must judge. If honour and deserving virtue accompany not each other, it is his fault or error. They should always so. And they were temple-fellows in old Rome. Bene (says ⁿ one) *ac sapienter majores nostri, ut sunt alia ætatis illius, aedes honori atque virtuti gemella facie junctim locarunt; commentum, ibi esse præmia honoris ubi sunt merita virtutis*. But in ancient Rome their nobles (a thing not unworthy to be here noted) were only those which could shew the images of such their ancestors, as had born a state-office (the *aedilitas curulis*, or any above it) which were of wax ^o expressing the face and body only to the shoulders, kept every one in several cases of wood or closets, and subscribed with the name of the dead (they called it *titulus* or *index*) and additions of his place or particular worth, as ^p C. Cassius his, which one of the family kept under Nero, had *DUCI PARTIUM*; or *DUX*, as out of a Mr. Tacitus, Lipsius notes. And these were carried at the funeral of him that had them, as his ensigns of nobility. The relation of Drusus his funeral gives a most special form of it. *Funus imaginum pompa* (saith Tacitus) *maxime inlustre fuit, cum origo Juliae gentis AEneas, omnesque Albanorum reges & conditor urbis Romulus, post Sabina nobilitas, Appius* (or ^q *Atta*) *Clausus, cæteræque Claudiorum effigies longo ordine spectarentur*. There were also other images of noble parentage set with affixed spoils of the enemy for trophies of virtue about the entries and base courts, which were so annexed to the freehold (as our phrase is) that they past always in conveyance of the house, neither was it lawful for the buyer to deface them: *Eratque hæc stimulatio* (are Pliny's words) *summa & ingens, exprobrantibus tectis, quotidie imbellem dominum intrare in alienum triumphum*. And as reversing of coats, or the like, hath been in later times, so with them the images, of men condemned capitally for matter against the state, or cen-

^h Maxim. Tyr. Dial. 28.

ⁱ Cicarella in vit. pontific.

^k Juvenal. satir. 8.

^l Lucanus in panegyrico.

^m Constit. feud.

tit. Quis dicatur dux, marchio. Alias nobilitandi causas vide apud Luc. de Penna in C. tit. de dig. L. Mulieres.

ⁿ Symmach. lib. 1.

epist. 21.

^o Polyb. hist. 6. Plin. lib. 35. cap. 2.

^p Tacitus annal. 16.

^q Lipsi. ad ann. 12. not. 59.

fured in such a degree, were broken, or, at least, omitted in their pompous funerals. Therefore in the last rites performed to *Junia*, wife to *C. Cassius*, and sister to *M. Brutus*, amongst the images of twenty several noble families, *Cassius* and *Brutus* were not born, yet *praeefulgebant*, as he says of them, *eo ipso quod effigies eorum non viderentur*. One of these images gave nobility. *Ancum Sabina matre ortum* (so *Livy*) *nobilemque una imagine Numae*. The rest which were first in those magistracies, were *homines novi*, and this distinction was both in the *patricij* and *plebeij*. But under the *Caesarean* empire, the bestowing of *consular* ornaments, and the like, supplied in divers, the magistracy it self, and the emperors so did enoble by *rescript* or *patent*, as it seems by that of *Celsus* a professor of the arts in *Rome*, whom *Theodosius* the first was requested *adjudicare nobilibus, pignore dignitatis, cum praerogativa scilicet consulari*. And the like, by several constitutions, was given to many, whose issues only, by the antienter form, were noble, themselves only *Novi*. As in *Rome* the *imagines*, or *jus imaginum*, were the only ensigns of *hereditary nobility*, so in *Greece* the descent, from noble antecessors, preserved; whence their gentlemen were called *Ευπαρίδαι*, i. e. descended from worthy parentage, which was noted in the particular names of their noble tribes, as, in *Athens*, in the *Pandionidae*, *Acamantidae*, *Hippochoontidae*, *Heracidae*, and others; to the making up of nobles, in whose posterity, was a concurrence of *Γένος*, *Γαυδεία*, and *Χρησίων ἑπαινετικῶν σπουδαίᾳ*, i. e. birth, education, and continual affectation of good studies. But how much honour consisted amongst them, specially in the name, appears also in that of *Pixodorus* a poor shepherd, one of whose rams, in fight, missing his adversary, struck on a stone, and, breaking off a piece, discovered it most white and fit for building of *Diana's* temple, about which, and of what kind of stone to make it, the *Ephebian* state, at that instant, sat in counsel; whereupon he presently came into their court, and shewed the piece. They, to honour him with publick rewards, changed his name into *Euangelus*, to whom, after his death, a yearly sacrifice was made in the place. You may remember the jest upon wealthy *Simon* by *Lucian's* cock, in that he thought himself, because he was grown very rich, worthy now *ἀντὶ διπλάτης πετρασίμαλ' εἶναι*, i. e. to have a name of four syllables instead of one of two syllables, that is, I think, *Simonides*, because it was both a name of honourable note, and as a patronymick expressing some noble descent. There are which make the *tria nomina* in *Rome* a note of their nobility. To that purpose doth *Calderin* interpret *Juvenal's* — *Tanquam habeas tria nomina* — which is rather indeed to be expressed in, as if you were an *ingenuus* or *libertus*, or as if you were a free man: which fits well the place, as the learned *Politian* wills. For the having of three names was not common either to all times, or all persons, of the free or noble *Romans*, but some had two only, as *Numa*, *Hofsius Hostilius*, in antienter time, others one, as *Romulus*, *Remus*, *Hersilia*, *Tatius*, and, afterward the mixture of the *Sabins* and *Romans* gave the double names; and, by retaining the name of the family, giving the fore-name (which was imposed the eighth day on females, and the ninth on males; as among the *Grecians* on the tenth day from the birth, and fifth from the *Amphidromia*) and adding the surname, which sometimes was from the ancestors also, they had usually three names, two of which every bondman manumitted commonly had given him from his lord or patron. So is the testimony of *Tertullian*; so that dream of the bondman which thought he had had *tria pudentia*, and was soon after set free, because (as it was interpreted) his freedom gave him two names, which made three (signified in the dream) with his own, that was, as to other of his kind, most usually one. So that *ingenuity*, not *nobility*, was designed by the three names. In most other nations (I think) until particular enobling, by the prince's authority, came in use, was a kind of distinction of nobility, and most near to that in *Greece*. None so barbarous, but had the like; witness the

^{*} Symmach. lib. 10. epist. 25. [†] C. tit. de profess. passim, & lib. 12. [‡] Demosth. in 107. Epitaphio, & Plato in Alcib. 2.
[§] Viruv. lib. 10. cap. 7. *Εὐδυσσεύς*, i. e. Qui facta nuntiat. De nominibus vide nonnulla, part. 1. pag. [¶] De nominibus Romanorum Titus Probus (sive sit Julius Paris, qui designati libri autor est) consulendus, alij. Atqui, ante alios, Jul. Scaliger in lib. 4. de caus. ling. Lat. cap. 92. quem tamen septimum diem nominibus imponendis destinatum tradidisse valde miror, cum & Festus in Lustrico, & Macrobius 1. sat. cap. 16. uno fere ore refragantur. Recte autem Titum Probum reprehendit de togae virilis tempestate.
^{||} Suidas in *Αἰσχύλῳ*, & in *Δεξιτέρῳ ἑστῶσαι*, & Scholiast. in Aristoph. aves. ² Quod vide pag. 326. transcriptum, & consulas Jos. Scalig. ad Fest. in curiales. ³ Artemidor. Oneirocritic. 1. cap. 47.

Gothick *Anses*; a name interpreting *half-gods*,^b or men above common human fortune, and applied by them to their chieftains valorously bearing themselves in the wars, and their posterity. Whence good conceit, of many, derives that name of the *Hansatick* society, beginning^c about cix. cc. of christ, some while before *Frederick* the second. But, it seems, they had no more or other known *ensigns* of nobility, than as the *Suevians*, who had antiently prerogative in *Omni*^d *expeditione regis Teutonici, exercitum praecedere, & primi committere*, in like sort as amongst the old *English* the *Kentish* men^e had the honour due to them always of being in the vanguard, and those of *Wiltshire*, with *Cornwall* and *Devonshire*, in the rear, which they all might challenge by the continual worth of their performance. That was their badge, therein their glory. But, after that arms grew hereditary in *Europe* amongst christians (for *Turks* paint them not,^f saith my author) by a general consent (which is, upon good ground, thought to have had it's beginning from the holy wars, the posterity thinking it a special glory to bear the same coat which the ancestor had displayed or shewed in his shield in defence of the *christian* name; and so with us^g about *Henry III.* they became more hereditarily established) when the prince enobled any, he usually gave him the particular of his bearing in blazon. An example thereof in *England*, it being also, to another purpose, worth observation, I here insert. *Richard II.* gave one *John* of *Kingston* a coat, and made him an *esquire*, so to enable him to perform some feats of arms with a *French* knight. The copy of the^h record is thus literally. *Le roy a tous ceux as queux cestes lettres viendront, salute. Saches, que come vn Chivaler Franceys à ceo que nous sumus enformes ad chalenge vn nostre liege John de Kingston a faire certains faits & points d'armes, ouesque le dit Chivaler, nous a fyn que le dit nostre liege soit le meulz honorablement resceuz & faire puisse & perfourmir les dits faits & points d'armes, luy auons resceuz en l'estate de gentile home & luy fait esquier, & volons que que il soit connus per armes & porte desorenavant, cestassavoir, D'argent oue vn chaperon d'azure ouesque vn plume d'ostrie de geules. Et ceo a tous yceux, as queux y appartient, nous notifions per ycelles. En testmoyance de quelle chose, nous auons fait cestes nos lettres patents, dones souz nostre grant seale a nostre paleys de Westminster, le primer jour de Juyl. Per briefe de privy seale.* Neither was, in ancient *Rome*, wanting a kind of hereditary *ensigns* peculiar to families, as the *torquis* or collar to the *Torquati*, the hair, or a kind of *jus capillitij* (it seems) to the *Cincinnati*, the surname of *Great* to the *Pompeys*, which is plain by that relation ofⁱ *Caligula*: *Vetera familiarium insignia nobilissimo cuique ademit, Torquato torquem, Cincinnato crinem, Cneio Pompeio stirpis antiquae Magni cognomen.* So, all of the *Draconteum*^k genus about *Thebes* were known by a special note on their bodies, and *Seleucus*^l his posterity by the form of an anchor on the thigh. *Filij, nepotesque ejus ancoram in femore* (saith *Justin*) *veluti notam generis naturalem habuere.* Neither was any one admitted to pretend himself of the *Pelopidae*, if he had^m not τὸ ἰεὺς τῶν πελοπίδων, i. e. that token for an *ensign* of his family, that is, the ivory shoulder, or one as white. But these were the notes only of their family, not of nobility, consisting in *Rome* only in the *images*, as, that of our times, in *coat-armors*, which, as *images*, express the worth of such as have born them, it being supposed (in warlike nations especially after those martial successes against the professed enemies of christianity, about c. d. and d. years since) that the war wasⁿ βασιλεὺς τὸ περὶ τῶν καρδιῶν ἀνιστοῦ ἀνιστῆς, i. e. as if you should say, an exact trial of a brave spirit. And hence, of later time, both men of the sword and gown, *Gens de robbe courte, & robbe longue*, as well *Togati* as *Armati* have this note of arms given them for their *ensign* of nobility; although clearly a prince may enoble without that (it being the sign, not substance, or cause) as you may see in that ordinance, to this purpose, of^o *Henry III.* of *France* in c. i. d. l. x. v. i. The disputation of civil nobility, with the particular appendants thereon, commonly discussed, would take up more room than this volume. It is, at large, enough in *André Tiraquel* specially. Here only are those titles which have precedence of this

^b Jornandes de reb. Getic, cap. 13. & abb. Urspergensis.

^c Chytraeus chronic. Sax. & vic. aliq. gent. lib. 23.

^d Lamb. Schaff-

naburgensis, ^e Jo. Sarisburiens. de nug. curial. lib. 6. cap. 18.

^f Septemcastr. cap. 10.

^g Clarent. in reliq. pag. 180.

^h Part. 1. pat. 13 Rich. II. memb. 37.

ⁱ Conimile Bernardo Angennine consiliario regis in ducatu Aquitaniae, rot. Vafcon. 23 Hen. VI.

^j Hen. VI.

^k Sueton. lib. 4. cap. 35.

^l Hygin. fabul. 72.

^m Justin. hist. 15.

ⁿ Julian. ἀπὸ τῶν Ἀντων. ἀπαξ.

^o Synel.

^p epist. 104.

^q Ordonnances du France, tom. 3. tiltre 5.

of lowest gentry. In delivery of them, I have used authorities of best choice, without the vain ambition of citing more than I needed. The best or first I took always for *instar omnium*; and, when common course of times would tell an understanding reader where I had my relation, I discharged my self of reference to the reporter. Taking liberty also of being jealous, where ever my inquisition might aid, I vent to you nothing quoted at second hand, but ever loved the fountain, and, when I could come at it, used that *medium* only, which would not at all, or least, deceive by refraction.

*Multum, crede mihi, refert, a fonte bibatur
Qui fluit, an pigro quae stupet unda lacu.*

But where-ever I was driven to take up on other mens credits, I acknowledge it. Nor if, that *Aristophanes* which was the only sufficient ^p judge at the trials, of worth in learning, instituted by *Ptolemy Philadelphus*, were present at my recitals, should he once find me play the base plagiarist. There are, which have in part handled some of my titles, and as their purpose. I abstain from comparison. Those which have done well, justify themselves; and them my page or margin often thanks. Divers, I know, have adventured on pieces of the subject, and come off with small merit in the state of literature. In regard of comprehension, I dare challenge precedence and primacy. Both the *Mahomedan* states and the *European christendom*, their *titulary honours* and the appendant *ensigns* are what with curious examination I have delivered. Nor doubt I, but that to *stories* also of the middle and ancient times, both *Greek* and *Latin*, hence may be some good light had, and that not unworthy their eyes which merit their place in the learned rank. Why not? how e're my sufficiency be, some of them know, that the understanding of *שִׁבְעָה*, i. e. *tata*, in holy ^a writ is referred by the ^r *Rabbins* to a chambermaid that asked her mistress for a *שִׁבְעָה* to sweep the house withal, whence one of them hearing her, before not knowing what it was, collected it was a *broom*, and that the verb was to *sweep*. As in her question, so in my discourses may occur what many a knowing man, if ingenuous, will thank me for. *Alius enim alio plura invenire potest, nemo omnia*. To others, which are but lovers of this kind of learning, I dare promise much of what they never before met with, not without reformation of divers errors, possessing them with the vulgar: perhaps with the learned. As in divers like that of *crowns* and *diadems*, which all have hitherto taught to have been amongst *royal notes* most antiently in *Europe*. I presume I have sufficiently manifested the contrary, and answered their urged authorities, producing also one out of *Euripides* his *Orestes*, seeming stranger against my part than any other: which, when I was to use, and having not at hand the scholiast (out of whom I hoped some aid) I went, for this purpose, to see it in the well-furnished library of my beloved friend that singular poet Mr. *Ben. Johnson*, whose special worth in literature, accurate judgment, and performance, known only to that *few* which are truly able to know him, hath had from me, ever since I began to learn, an increasing admiration. Having examined it with him, I resolved upon my first opinion, and found, as I guess, a new but more proper interpretation of the place, wherein I was confirmed afterward also by the judicious approbation of a man very learned (but especially in the *Greek*) and of most ready memory, Mr. *Arthur Best*, to whose continual kindness and instruction too, I shall always acknowledge my self much bound. And hence may you be confident, that the interpretation of *Pythagoras* his *Στέφανον μὴ τίλλειν*, or *στέφειν*, is not to be referred to *royal diadems*, or *kings*, as some will, unless he meant it to those of *Asia*, with whom indeed he had spent some time. Either he wished in it that you should not take from another his *crown*, *reward*, or *palm*, or that you should not *wrong* or *corrupt the laws*, as *S. Hierom* ^c expressly interprets it, by *leges urbium conservandas*; which is well justified by a *Pythagorean*, concurring therein, and giving ^d the reason,

^p Vitruv. in *quæstas*. ad lib. 7. ^a Jes. cap. 14. com. 23. ^r Kimchi in *rad.* apud Reuchlin. in vers. R. Nathanis Mordechai. ^c Auson. in *epist.* ad Symmach. in *Eidyll.* 11. ^d In *respons.* adverb. Ruffin. *epist.* 41. ^e Malchus in *vita* Pythagoræ.

because

because *Στέφανος ποτέων ἐς Νόμους*, i. e. *The laws are the crowns or intlosures of the commonwealth*. In promising more such, I will perform my word. If I leave untouched something, which may be looked for, of the *Mahumedan* states, refer it rather to my wants of instruction than negligence. As they are far from us, so relations of them are oft uncertain, and of a cozening credit, especially those of the middle times, when ignorance rode in triumph. And, until that most learned *Leunclaw* and *Busbeque*, what of them was well known? little, especially to our purpose. Nay even in this *European* light of understanding, how current went that idle deduction of the *Persian Sophi* from *woollen Tulipants*? it having origination in the *Sophilar*, *Sophi*, or *Suffi* (lar is but the *Turkish* termination plural) that were both of a reformed or separated religion, as also a special sect in philosophy, *quorum scientia est per infusionem ab intelligentijs, non per acquisitionem doctrinae*, as ^x *Andrew Alpag*, well skilled in their tongue and learning, according to their own conceits, faith of them. How the *Ethiopian* emperor (whom we corruptly call *Prester John*; and *Elias* ^y *Levita* writes him *פריטי יואן* *Priti Joan*) hath been ignorantly wronged by such as so missed both his name and territory, is seen in too much testimony. But of these, and the like, in due place. In our *Europe*, as writers afforded occasion, I have been large: omitting, I think, no obsolete title, the knowledge whereof may help to the understanding of those in present use. The like I say of *ensigns*. But such as were meerly proper to their times, and have not so much as their shadow left, I have willingly forborn. Among these, is the ancient *Jus capillitij* in *France*, whence you must interpret the story of *Q. Crothild*, that, when her sons, on whom she purposed to have settled the crown against *Hlothar* and *Hildebert*, were brought to her from them with a pair of scissars and a sword, by *Aradius* offering her the choice, whether she would have them shaven or put to death, answered ^z *Satius mihi est, si ad regnum non eriguntur, mortuos eos videre, quam tonsos*. For the shaving or cutting their hair was a putting them into the condition of subjects. *Οἰμυτον γὰρ* (saith *Agathias*) *τοῖς Βασιλεῦσι τῶν Φράγκων ἐπαπόλε καίρεσθαι, ἀλλ' ἀναγκάζονται τὸ εἶναι ἐκ παιδῶν αἰεὶ*, i. e. *It was not lawful for the French Kings to cut their hair, but from their infancy it was continually permitted to grow*, which they wear hanging down their backs curiously combed, and done with divers ^a such things as were fit for keeping it in neatest fashion: and this was *ὡς περ πινώρισμα ἢ γέρας ἐξάρετον τῷ Βασιλεῖ γένει*, a special *ensign* and honour of the royal line, which no subject, in whom the hope of succession was not, might wear; and hence took the vain *Grecians* occasion of that fabulous assertion, wherein they supposed those of the *French* line to be bristled on the back like hogs, and called them *Τριχοραχάτοι* i. e. as if you should say, *bristle-backed*; *ἐλέγοντο* (are the words of *George Cedren*) *ὅτι ἐκ τῶ γένους ἐκείνου κατὰ γέννησιν ΚΡΙΣΤΑΤΟΙ, ὃ ἐρμηνεύει ΤΡΙΧΟΡΑΧΑΤΟΙ. εἶχον γὰρ καὶ τὸ ῥάγος αὐτῶν τέλχος ἐκφυροῦντας ὡς χοίρει*, i. e. *those of the royal line were called Cristati, quod interpretatur* (so are the words of an ^b old historian exactly interpreting this out of a *Grecian*) *Trichorachati. Pilos enim habebant in spina veluti porci*: which the rather I cite, to shew that *Hotoman's* conjecture upon that place of *Cedren*, thinking it to be corrupt, is idle. Neither need it move, that they so ill interpreted *Cristati*. What's more common amongst them than mistaking of like kind? This custom of wearing long hair continued in the *French* kings, till about *Lewis* the younger, when ^c *Peter Lombard*, bishop of *Paris*, dissuaded them from it. It was in fashion also to be worn long amongst our sovereigns till *Henry V.* as is collected by their seals. And by that of *France*, may be interpreted the ^d *distich* to *William* the first,

*Caesariem, Caesar, tibi si natura negavit,
Hanc Willielme tibi stella comata dedit.*

made upon the comet appearing in *Easter-week* before *Harold's* overthrow, expressing, as if the author had first played on *Caesar's* baldness, and then by apostrophe told the conqueror, that the comet or *fixed starre* (as the old *English* and most signifi-

^x In *Avicenn. de anima aphorism. 9.* & de iis plura in ejusdem lib. de definit. & quaesitis. vid. pag. infra. ^y *Maforeth Hammaforeth* praefat. 3. vid. part. 1. pag. ^z *Greg. Turonens. hist. 3. cap. 18. Aimoin. de gest. Franc. 2. cap. 12.* ^a *Ῥήματα*. ^b *Landolph. Sagax miscell. 22. ex Theophane forsan, unde & Cedrenus forte.* ^c *Circ. a. CIO.C.LX. Autor reliquiarum.* ^d *Hen. Huntingdon. hist. 6.*

cant word is) portended him *Caesariem* or *Capillitium*, alluding to the *Jus Capillitij* of France, as it was a note royal. For, common opinion then supposed the comet a token of his future conquest. Of this nature is that of the old emperors ^e having fire in a lamp carried before them, which the *Persian* kings also had. And likewise those the *spear*, *crown of thorns*, *nails of the cross*, *sword*, *robes*, and *diadem* of Charles le Maign, all which ^f *Aventin* thus remembers: *Germani imperatores apud proavos nostros, hastam, coronam spineam, clavos (quibus christum servatorem nostrum excruciatum constat) insuper ensem, purpuram, diadema Caroli Magni progerere secum solebant*. But he says, that *Sigismund* the emperor Ann. c10. c00. laid them, to be kept as precious relicks, at *Norimberg*, where they are to be seen, having been all before usually carried with the emperors, *ut peculiaria sacrosancti imperij penetralia, Caesareaeque majestatis auspicia*. These, the *strewing* of the emperor's way with *gold-dust* and the like, as obsolete, I am silent of, as also such as are so peculiar (rather of custom, than greatness) that this place not so well fitted them. As that of *sealing in white wax* appropriated by the *French* to their King. *Il n'y a autre prince chretien* (says one ^g of them) *que seel en cire blanche que luy, les autres seelent en cire rouge ou verte* (he might have added *ou jaune*) & *touts les autres potentats sont armez en leurs seels, & nos roys seuls aux leurs, sont vestus d'habits royaux, & en roys iusticier non armez*. This sealing in *white wax* was permitted to *Renè* king of *Sicily* by *Lewis* xi. in c10. c0. lxxviii. But matters of this nature are scarce more belonging to our chapter of *royal ensigns* (for thither, if any whither, they should be referred) than that of the *roasting the whole ox* at *Francfort*, at the emperor's inauguration, or such like. In most of what I have done, testimonies of times past are my warrants.

*Securus licet Aeneam, Rutulumque ferocem
Committas: nulli gravis est percussus Achilles.*

For more safety, I observed that admonition. This jealous age would make a man do it where he needed not. But my reader shall miss nothing the more of what may, to the proposed end, furnish him. If where I dispute of dukes, marquisses, counts, and such, you find not so much out of old *Civilians* (I mean the elder *doctors* and *commentators*) as might be heaped up from them to that purpose, blame me not. I profess not the reading them, yet could have used them, but was not willing to load my margin with their names. Where they talk of *Meum* and *Tuum*, when their authority is requisite, they deserve to be heard. In things of this nature, to be extracted out of story and philology, they cease to be *doctors*, nay, are scarce *alphabetarians*, even the whole rank of them; until you come to the most learned *Budè*, *Alciat*, *Hotoman*, *Cujas*, *Wesenberg*, *Brissou*, the *Gentiles*, and some few more of this age, before whom the body of that profession was not amiss compared to a fair robe, of cloth of gold, or of richest stuff and fashion, ^h *qui fust* (saying all mannerly respect to you, reader) *brodée de merde*. The reason of the similitude is known to any that sees such impudent barbarism in the glosses on so neat a text, which from *Justinian* (he died 528.) until *Lothar* II. (he was emperor 855.) lay hidden and out of use in the *western* empire, nor did any there, all that time, profess or read it. But when *Lothar* took *Amalfi*, he there found an old copy of the *pandects* and *digests*, which he gave as a precious monument to the *Pisans* (hence it was called ⁱ *Litera Pisana*) from whom it hath been since (in c10. c0. xc. vi.) translated to *Florence*, where, in the duke's palace, it is, almost with religion, preserved, and never brought forth but with torches, light, and other reverence. Under this emperor *Lothar*, began the law to be professed at *Bologna*, where ^k *Irner* or *Werner* (as *Conrad à Lichtenau* calls him) first made glosses on it about the beginning of *Fr. Barbarossa*, in c10. c. l. and by the favour of this *Lothar*, was *Bologna*, upon the advice of *Irner*, it seems, constituted to be ^l *legum & juris schola una & sola*. And here was the first time and place of that profession in the *western* empire. But *Justinian*

^e Herodian. lib. 2. Xenoph. Cyropaed. 8. & v. Lipf. ad 1. Tacit. annal. num. 42.

^f Rablais livre 2. chap. 5. ^g Vid. Ang. Politian, lib. 10. Epist. Marquard. Breifacio.

^h Verba Lotharii apud P. Merul. Cosmog. part. 2. lib. 4. cap. 33.

ⁱ Annal. Boior. 5.

^j Du Haillan livre 3.

^k Odofredus apud Sigonum de regno Ita-

expressly ordained, that none should teach the *civil laws*, except^m only in *Constantinople*, *Rome* and *Berytus* : which, although *Bartol* interprets (as of necessity he was driven, to maintain his profession) with *nisi tempore jus academice sit quaesitum* ; yet why then was *Bologna* no place for the laws under *Justinian* ? for, they pretend there, to have been as an university from the grant of *Theodosius* the younger in c. d. xxi. Plainly under *Justinian*, who ever had taught out of one of those three cities, was *denarum librarum* * *auri poena plectendus*, and to be banished out of the city where he durst so profess. Neither would the matter of being an university have helped it. But before *Lothar*, the government was by the *Salick*,ⁿ *Lombardian*, and *Roman* laws (the *Roman* being some piece of what had been used in *Rome*) every one living according to either of them as he would make choice. About the same time also the two *bastard* brothers (by whose worth, and of the third, *Peter Comestor*, their mother thought she should be saved, neither would repent, but trusted to her merit in bearing three so famous) *Gratian* a monk in *Bologna*, and *Peter Lombard* at *Paris*, one made the *Decree*, the first volume authorized for *canon-law* by pope *Eugenius* III. and the other the *Sentences*. Such as since have written on the *digests* or *code*, until the clearer light of learning began amongst our fathers, talk for the most part like *Rabblais* his *Bridoye*. Some, most honoured of later time, that understood their text, and studied the laws, as well because they would curiously know, as be merely † *ἡ ἀποκριμματα τῶν Ἀγορῶν*, have, with judgment, instructed in part of this purpose. The margin confesses, without blushing, their and all other mens helps. If either *envy* or *ignorance* question how I, bred from the bottom of obscurity, and so far from court-custom, should dare at these honours, let it know, I learned long since from a great clerk (that *Robert* bishop of *Lincoln* under *Henry* III.) that there was, in libraries, greater aid to the true understanding of honour and nobility, than amongst gold and purple outsides. He being demanded by the king, *ubi* ° *moraturam didicit, quae filios nobilium procerum regni, quos secum habuerat domicellos, instruxerat, cum non de nobili prosapia, sed de simplicibus, traxisset originem, fertur intrepide respondisse*, that he was taught it in the courts of greater princes than the king of *England*, meaning of those antients, whose courts were represented in his volumes of story. In conjectures I durst not be too bold. Where but meer fancy can direct, it were ridiculous to regard them ; but when they seem to offer themselves, they deserve the choice of judgment. That religious abstinence of the old *Jews*, who referred all such *dignos vindice nodos*, as were too difficult for their humanity, to *Elias* his resolution, were good to be proportionably more observed in all learning, especially by those which are (and too many are) so unfortunate in their guesses, that on the apparently worst of divers they often insist. Malicious censure I regard not, ingenuous I honour. Reader, farewell.

^m *Constit. de juris docendi rat. §. Haec autem.* * *About thirty pounds of our money.* ⁿ *Sigon. de reg. Ital. 4. & 8. sub A. 1007.*
 † *Continual Practisers.* ° *Jo. de Aton. Constit. Othoboni tit. de Bonis Intestat. verb. Baronum.*



T O

My most beloved FRIEND,

E D W A R D H E T W A R D,

O F

C A R D E S T O N *in* N O R F O L K, *Esq,*

WORTHY SIR,

THAT affection, which thus gave you, some sixteen years past, the first edition of the Titles of Honour, was justly bred out of the most sweet community of life and freedom of studies, which I then happily enjoyed with you. And your excellent constancy to virtue and good arts, besides the mutual habitude of no intermitting friendship between us, hath so strongly since confirmed it, that, although you had not such a former right to this second also, yet you only or a name of such worth (in what rank soever) I should have sought for, if any, to have placed here. Books have been usually dedicated, either for instruction, as Cicero's offices to his son, S. Luke to Theophilus, and the like; or for censure, whether they were fit to be made publick or no, as that of Aufonius to Pacatus, with *Sive legenda sive tegenda putes*; or for love and honour only to the receivers. The first kind are private of their own nature; though afterward they often become publick. So are they of the second, until at the peril of his judgment, who is
so

so made censor, they be offered to the view of the world. And such a one, in truth, only is a patron to another's work, and to the edition; and that either according to the reciprocal offices between patron and client in the old state of Rome, or as an assignee of a slave there, made only to judge whether he deserved manumission, was when he had given it him. And this kind hath been used as well for the safety of the author as for the defence of his wit or learning. For cum omne genus studiorum (as he says) liberius & erectius periculum servitus fecisset, doubtless that care also grew more frequent in dedications. And there had been special use of it in one of the first books (if not the first) that ever was published, as they say, among the Greeks. I mean that of Anaxagoras, of the light and shadow of the moon, wherein it is scarce to be questioned but that he opened also that his opinion of the sun's being of such consistence as iron heated to the utmost height, or, as he called it, *μολδρθε διάτρυθ*, for which he was accused by Cleo (in their Heliæa, I think, which was the proper court for publick affairs) as guilty of blasphemy, or of an unsufferable heresy against the Athenian worship of his time. And though his scholar Pericles undertook his defence, yet he was fined for it at five talents and banished his country. But the title of patron is grossly, though commonly, abused, where no censure or power at all of suppressing, correction, or monition, is left to him that is stiled so. As if one could be put into the state of a libertine, without a former servitude! or be bound so to receive, what he knows not, into his protection! But of the third kind, is this to you; Dear Sir. You are one that can rightly esteem a work, and judge both of it, and of the ability too that begets it. And to such only are these kind of gifts to be thus presented. Love and honour are best testified by what fits the quality to which you give them. For who would offer gold to those Americans that set greater price on the like or less quantity of glass or copper? They are not so guilty of disvaluing as is the common enemy ignorance, or, that which is next it, some fragment of knowledge supported only with an illiberal exercise of depraved reason, when the front of any piece of good learning raised out of liberal disquisition, is dishonoured with the name of any master of either of them; what sound of opinion or addition soever besides be hung about him. You remember the tale in Lucian, of that AEgyptian king, who among other his magnificent entertainments of his people, shewed them a black camel, shining with

with most rich trappings, and such jewels as were not beneath the value of some great prince's possessions. But they, instead of being taken with the rare novelty, and the precious glory that accompanied it, wholly either contemned or neglected that, and with a scattered amazement only, at the unusual colour of the beast, would have quitted the theatre. And upon this of mine (done, I will take leave to say it, out of rich and most select stories and cabinets of civil learning) what other kind of value than such could be set by any that are either strangers to all manly knowledge, or else, equally with such, despise what e'er it be that falls not within the narrow captivity of some profession that they are fettered in. But the truly generous soul well knows and freely uses it's own strength, not only in prudently gaining and judging of what it-self selects and loves best within the vast circle of knowledge; but in justly valuing also what another chuses there. It is said that all isles and continents (which are indeed but greater isles) are so seated, that there is none, but that, from some shore of it, another may be discovered. Some take this as an invitation of nature to the peopling of one soil from another. Others note it, as if the publick right of mutual commerce were designed by it. Certainly the severed parts of good arts and learning, have that kind of site. And, as all are to be diligently sought to be possessed by mankind, so every one hath so much relation to some other, that it hath not only use often of the aid of what is next it, but, through that, also of what is out of ken to it. Nor was there a more useful lecture in the old schools than that of the Platonicks when they first taught ἐν τοῖς μαθηματικαῖς τὸ κοινόν, the common or mutual use that one art or discipline had of another. I confess, Sir, your nobler contemplations of nature and the mathematicks, are far remote from the subject I give you. Yet there is habitude even between it and them also. States themselves are from nature, and the supreme and subordinate powers and honours in them, from the example of it. And the often degeneration of posterity, in some nobilia portenta (as Valerius calls them) from the merit of their ancestors that were first raised to dignities, may soon fall here into your observations of nature also. Antiently that merit (it is Aristotle that notes it) was principally grounded either in an active and stirring wit and other such worth, or in that which was grave and more settled. For to these two, and the various employments fitted to them, the chiefest parts of civil merit are reducible. But, says he, as plants, so men vary from their first

stock. The nature of that is often retained in posterity but for a time, and then they whose ancestors were raised for active or stirring spirits, degenerate (as virtues often do into the vices that would dissemble them) into wildness and levity; as his examples are in the posterity of Alcibiades and the elder Dionysius; and the other kind into lazy dulness, as the descendants of Cimon, Pericles, and Socrates. And for the mathematicks too; the working by geometrical proportion, between merit and advancement, you know is ever to be exercised in that distributive justice which creates such dignities and titles as are represented here. Thus, some parts of your own studies, may perhaps be sometimes pleased with it. But in earnest; as it comes from me, I know it is acceptable to you. And if it have the fate of a long life, it will return me a large retribution by transmitting the memory of our friendship to posterity.



T H E P R E F A C E.

Somewhat was thought fit here to be said to you, reader, of the *materials* and some other particulars that concern the composition of the work. For, of the nature of the subject and the method, the beginning it self, and the heads of the chapters of both parts prefixed together, give a view full enough. The *materials* have been principally taken out of several *authors* that have purposely written of parts of the subject, out of the *histories* of several states and ages, and out of their *constitutions* and *customs*.

Of those *authors*, some are, that write of the titles of the old *Roman* empire (whence divers of the present, in most states, are deduced;) some of the later, or *Greek*, *French*, and present *Roman* and *German* empire; some of the kingdoms of *Naples* and *Sicily*, and other parts of *Italy*; divers of the titles in *France*; divers of those in *Spain*; some of our *English* titles, and of those in *Scotland*. For the subject, by parts, hath not been rarely handled in the latter ages, but thought most worthy of good hours to be spent on it, by some of the greatest both lawyers and divines too sometimes, as also by others of singular eminency. And in those remote ages, wherein we place the greatest flourishing of wit and good arts, that part of it which was then the chiefest, and (if you except their sacred and civil offices of employment, which were frequently added to it also) the sole subordinate title of personal dignity, that is, *gentleman*, *nobilis*, or *Ευγενής*, which is literally interpreted by *well-born* with us and the *Dutch*, being so but the same in substance with one that had *jus imaginum* in old *Rome*, was written of by it self by some great names of that time. One book was written by *Aristotle*, being also of better blood and descent than most of the known philosophers, *ὡς ἔστι Εὐγενέας*, or of *gentry* (which was then most usually taken to be as an inheritance of remarkable estate and virtue derived from the ancestors) a fragment whereof is put at the end of some of his editions. And that he wrote such a one, is justified also by *Laertius* in his life, and by ^a *Athenaeus*; though indeed *Plutarch* doubts whether ^b that were his or no, which in his time was inscribed so. And I verily believe, *Plutarch* meant but the self same whereof the fragment attributed to him is a part. For the passage in him is, that *Demetrius Phalereus*, *Hieronimus Rhodius*, *Aristoxenus* and *Aristotle* (ὅτι ὁ ὡς ἔστι Εὐγενέας βιβλίον ἐν τοῖς γινώσκουσιν Ἀριστοτέλους δεύσαν, if that book of *gentry* be truly *Aristotle's*) all agree that *Socrates*, while his wife *Xantippe* lived, took also into his house *Myrto*, (*Μυρτιάδων Ἀριστίδους* niece to *Aristides*) and maintained her. Now in that fragment, the words are, *οἱ μὲν γὰρ ὡς ἀγαθῶν γονέων Εὐγενεῖς εἰσι νομίζουσιν καὶ ἀπὸ τοῦ Σωκράτους διὰ τὸ τῷ Ἀριστίδους ἀπέλτῳ εἶναι τῷ Σωκράτει αὐτὸς γενναίαν εἶναι*, for some esteem those *well-born* or of genteel blood, that are born of good parents, as *Socrates* did, in that he esteemed *Aristides* his daughter generous by reason of her father's virtues. This was part of that which I presume *Plutarch* had, in that book of *Aristotle* concerning *Myrto*, though he more truly make her niece to the great *Aristides*. For, that *Socrates* should marry *Aristides* the just (who is meant here) his daughter, the concurrence of times, the most exquisite touchstone for story, permits not, as it was long since ^c also observed. Unless you will interpret *Aristotle* according to that of the old ^d *Civilians*, received doubtless out of such as were antient also to them; *Liberorum appellatione*, *nepotes* & *prone-*

^a Dipnosoph. lib. 13.^b In *Aristide*, sub extremum.^c *Athenaeus*, lib. citato.^d ff. de verb. signif. l. 220, 201, 104, & 56.

potes, caeterique qui ex his descendunt continentur. Plutarch also, περὶ Ἐυγενείας, or of *gentry* is twice cited in ^c Stobaeus, who hath also two titles of *gentry* and *gentlemen*, or *nobles*, and some fragments of him. But the most of that which in the latter of Stobaeus (in the first edition of him) is attributed to Plutarch, is the self same which is the greater part of that which we call Aristotle's. Several books, with the same title, of Diogenes of Babylon, or, as he is more rightly called, of Seleucia, are remembered likewise by ^d Athenaeus, as also one written by Metrodorus in ^e Laertius. And Philo the Jew hath left one whole to us, περὶ Ἐυγενείας, or of *gentry*, though all the other (saving the fragments we speak of) be utterly and long since lost. And although these wrote as philosophers, and so spent much of what they said doubtless upon *natural* and *moral nobility*, or on that which was as proportionable to what in the latter times we call *nobilitas christiana*, as the height of virtue, in paganism, could be to the best exercise of religion; yet there can be no question but that they handled also *civil nobility* or *gentry*, which is part of our subject here, and by the *Academicks* or *Platonicks*, and the *Peripateticks*, was specially reckoned among external things that are good, and by the *Stoicks*, among such as are indifferent only. And I cannot imagine that any expression doth more summarily denote both their conceptions of *gentry*, as also the estimation that it had in their civil considerations, than that quadripartite division of it in the school of Plato. Διαίρεσις ἡ Ἐυγένεια εἰς τέτταρας. "Ἐν μὲν ὧν ὡς οἱ πορζονοὶ καλοὶ ἀγαθοὶ καὶ δίκαιοι τὰς ἐκ τῶτων γεγεννημένους, εὐγενεῖς φασὶν εἶναι." Ἄλλο δὲ, ἐὰν ὧσιν οἱ πορζονοὶ διδυναστευόντες καὶ ἀρχόντες γεγεννημένοι τὰς ἐκ τῶτων διγενεῖς φασὶν εἶναι. Ἄλλο δὲ, ἐὰν ὧσιν οἱ πορζονοὶ ἰσχυροὶ οἷον ἀπὸ στρατηγίας, ἀπὸ στρατιῶν ἀγώνων καὶ ἡ δὲ τὰς ἐκ τῶτων γεγεννημένους διγενεῖς ποροῦμεν. Ἄλλο εἶδος, ἐὰν αὐτὸς τις ᾖ γεννάδας καὶ ψυχῇ καὶ μεγαλοψυχίας, καὶ τῶτων εὐγενὴ φασὶν καὶ ἡ γὰρ διγενείας αὐτῇ κεραιτίζῃ. καὶ ἄρα Ἐυγενείας τὸ μὲν, ἀπὸ πορζόνων ἐπισημῶν, τὸ δὲ διωγῶν, τὸ δὲ ἐνδοξῶν, τὸ δὲ ἀπὸ τῆ αὐτῆς καλοκαρίας, Nobility or *gentry* is divided into four kinds. Such as are born of good and just parents, they call noble. If the parents be men of power or governors, their children also they call noble. Those also we call noble, whose ancestors had honour either from command in the wars, or from any of those games wherein crowns were rewards to the victors. And lastly, him also they call noble that hath his own inbred dignity and greatness of spirit. Of all which, this is the best kind of nobility. So that nobility hath its ground either from ancestors eminent for justice, or from such as were powerful, or from those that had that (other) glory, or from a man's own worth. And, what is much to this purpose you have in obvious pieces of some of their works that remain under other titles to this day. But for many ages afterward, and until about ccc years since, I remember not any authors (except the collectors of the Codes, which are to be accounted among the constitutions of former time; and that of Cassiodor his *Formulae*, which are a piece of *History*) that have left any treatises titled either of *gentry* or of any other parts of the present subject. Bartol, that great lawyer (who flourished about MCCCXL of our saviour) wrote something of *arms* and *gentry*, which is extant among his works. And since him very many, but not any till long after him, have written not only *de nobilitate* but of other titles that use to be superadded to it, and that as well in whole books with titles that profess as much, as also, by the way, in other treatises, both which kinds we have diligently used here.

Under *histories*, I comprehend here not only the numerous store of *histories* and *annals* of several states and ages, wherein the actions of them are put together in some continued discourse or thred of time, but those also that otherwise, being written for some narrow particulars, and sometimes under other names, so shew us in example what was done in erecting or granting or otherwise, concerning the titles here meddled with, that we may thence extract what conduces to the representation of the forms and patents of erections and grants, and of the circumstances and nature of the being of them. As that of Augustin de Paz of the house of Bretagne, those of Andre du Chesne of the houses of Montmorency, Chastillon, and others; of John Schoier of the house of Croy, Franciscus Modius his *Pandectae Triumphales*, the *Nobiliario genealogico de los reyes y titulos de Espanna* written by Alonso Lopez de Haro, and the like, together with

^c Serm. 84, & 86.^d Dipnosoph. lib. 4.^e In Epicuro.

the *Codex piarum donationum* and the *Diplomata Belgica* of *Aubertus Miraens* dean of *Antwerp*, and such more. Out of this kind, which is publick in print, I have for the most part supplied my self with whole forms of the emperors, kings, and others charters or patents wherein the very essence of most of our subordinate titles consists. I mean for foreign nations; whose records indeed or publick acts have in good measure, for this purpose, been by those and the like writers communicated to us who, living at home only, cannot have access to them. And for the forms and creations in the declining time of the empire, *Cassiodor* and the *Notitia utriusque provinciae* gave me best light. But for titles erected or granted by the kings of *England* and *Ireland*; the records or rolls themselves of the *Chancery* of *England* sufficiently enough stored me with whole forms of the charters or patents of them, though withal, some testimonies concerning those of *Ireland* I have received out of the records of that kingdom also. With those records or rolls of the *Chancery*, I have used also such as give help here in the treasuries of the *Exchequer*; besides the registers of the vicar-general of the archbishop of *Canterbury*, some of the bishoprick of *Winchester*, divers original charters, with many other such pieces and passages, as well in verse as prose, as are to be reckoned for history or among the parts of it, and of necessary use in the search of it; though they bear other titles, and are too much neglected chiefly by compilers of annals and history, who for the most part seek no other materials or helps, than what obvious volumes that bear but such kind of names as their own shall, can easily afford them.

Those constitutions and customs of several states and ages, that is, the laws of them, partly are had out of those authors of treatises and histories before spoken of, but principally out of volumes that purposely contain them. As out of *Justinian's* body of the laws, *Theodosius* his code, and the constitutions joined usually with either of them, the volumes of the imperial constitutions of the *French* and *German* empires, the *Codex legum antiquarum*, the *Bullary* of the see of *Rome*, the councils, rituals and ceremonials as well of the *Eastern* as the *Western*-church, the constitutions and customs of *Naples* and *Sicily*, and some other that belong to some states that are or have been in latter ages part of the *Empire*; out of the *Partidas* and *Recopilacions* and *Pragmaticas*, of *Castile*, the ordinances of *Portugal*, *Navarre* and such more, the edicts and ordinances, and the customier of *France*, the statutes of *Scotland* and *Ireland*, and the statutes and customs of *England*, besides divers decisions that more peculiarly and respectively belong to those nations. Partly also they were had out of some observations communicated through the courtesy of friends, who are in their due places acknowledged. And plainly, in all this kind of learning, concerning either things or persons, as they are a part of any state, there is nothing more conduces to a right judgment than the careful examination of constitutions and customs, their received interpretations and their force, in the state and age of which any civil disquisition is raised. For they are the very compass to direct in all judicial proceedings; and of singular use also in whatsoever is deliberative. The necessity and excellency of them in civil learning, is manifestly exemplified in the course which both that great master of wit and art, and his scholar *Theophrastus*, used in their getting and teaching what they knew of it. The master well considering it would be a vanity to seek for or strive to raise, as some before him had done, such precepts or knowledge of it, as should be fit for general instruction to posterity, either out of his own fancy, how excellent soever, or out of the pattern of his own or any other single state how well soever framed or governed (for that which may be most convenient or just in one state, may be as unjust and inconvenient in another; and yet both excellently as well framed as governed; and it is most observable that *Plato*, as *Laertius* says of him, πολιτείας μὲν οὐκ ἦσ' αὐτῷ, ὃ τοι πολιτικὸς ὢν ἐξ ὧν γέγραπεν, αἴσιον δὲ τὸ ἥδην τὸν δῆμον ἄλλοις πολιτεύεσσι ἐνεειδέναι, meddled with no publick employment, though he were made also for civil business, as appears by what he hath written; but the cause was, for that the customs of the state were wholly different from his learning) provides first, for his principal materials, the several frames, constitutions, and customs of the states that then flourished as well in *Greece* as in other

parts of the world that were known to him. For he wrote one volume titled ^h Νόμιμα Βαρβαρῶν or the laws of such states as were foreign to Greece. And the body of the greatest work he made of this kind, he called Πολιτεῖαι πόλεων or the frames or forms of several states, or συνηγμέναι πολιτεῖαι, several states collected, as his own words are at the end of his *ethicks* where he professeth his having this provision. And therein he represented CIVIL several common-wealths (*Guilielmus Burlaeus* says CLX) some popular, some oligarchical, some optimacies, some monarchies, with the various mixtures of these. And out of this he often cites in his *politicks*, as also *Julius Pollux* doth sometimes, *Harpocraton*, *Athenaeus*, the scholiasts of *Apollonius Rhodius*, and of *Pindar*, *Clemens Alexandrinus*, and some other of the antients. Other works he made of the same materials, as his Δικαιώματα πόλεων, or courses of justice of several states, in two books, his four books of justice, as many of laws, and some such more. And being furnished with the volumes of these (which are lost and long since have been so) he wrote his *politicks* that are read in the schools, and are the chief texts by which we are all first bred to civil knowledge. *Theophrastus* following his master's example, collected also out of the constitutions and customs of several states, four books πολιτικῶν ἐθῶν, or of civil customs and manners, and then wrote much also both of laws and policy. All which *Cicero* in his fifth *de finibus* shortly comprehends in that of them both; *Omnium fere civitatum, non Graeciae solum, sed etiam Barbariae, ab Aristotele, mores, instituta & disciplinas; a Theophrasto leges etiam cognovimus.* Thence was it also that *Demetrius*, scholar to *Theophrastus* collected his five books περὶ τῆς Ἀθηνῶν νομοθεσίας, or of the course of making laws in Athens, and *Dionysius Metathemenos*, a volume περὶ Βαρβαρικῶν ἐθῶν, or of the customs of nations that were foreign to Greece, and *Heracides*, his πολιτεῖαι, or the forms of several states, some slight fragments whereof are extant to this day and publick. And according to these they formed the precepts and directions of their civil learning, betwixt which and the multiplied variety of it in the succeeding ages and the present (wherein the faces and frames of government, and of constitutions and customs, are often doubtless as different from all those which they knew, as any of them were then one from another) though much analogy be in some particulars, yet plainly the phrases and notions concerning just or unjust, and convenient or inconvenient, in those and the like precepts and directions of philosophers or others that only out of ages and states past, or precepts or directions taken out of them, seek any of this kind of learning, are often so disproportionate to what they are applyed in disquisitions concerning such states as are wholly of another mould or frame, that it cannot be doubted but that if any of those great writers of Greece were now living again, they would in recognizing and fitting their *politicks* to present use, first inform themselves of the several faces and forms of government, and the constitutions and customs of the present ages, (as they did of their own times) and of their grounds and reasons, and according to them make instauration of divers of their precepts and directions, no otherwise than they would new examine the lame astronomy of their ages with the later observations of *Ptolemy*, *Copernicus*, *Tycho*, *Galileus*, *Kepler*, and such more, or their learning of generation, corruption, digestion, transmutation and other like by the later experiments of chymists. And it was long since complained of by that great fryar, *Roger Bacon*, to pope *Clement* the fourth, that the right study of that part of moral philosophy, or of civil learning, which depended on the variety of laws, and several forms of state, according to that example of *Aristotle* and *Theophrastus*, where wholly omitted in the schools. And that such knowledge as was had of it, was only had laicaliter, or according as any might take consideration of the laws and customs and the changes of them in the particular states only when he lived, either for practice, or obedience, or both; but not philosophice, or in such sort as that by comparing the manifold variety of several states and times (as we find them since those *Grecians* wrote) just precepts or directions might be doctrinally delivered concerning them. *Secunda pars moralis philosophiae* (so are ⁱ his words; the first part of

^b Varro de ling. Lat. lib. 6. & Apollonius in hist. mirab. 11.

ⁱ Opere minore ad Clem. pp. V. cap. 20. m^c.

moral philosophy, he makes to concern divine worship, the third, virtues and vices; the fourth, the distinction of sects of religion; the fifth, the propagation of the best; and the sixth and last, the right way of practice in courts of justice) dat leges publicas, & primo de cultu divino, & deinde de regimine reipublicae & civitatibus & regnis; & sub hac parte continetur jus civile imperatorum & regum per universum mundum. Et multi tradiderunt multa de hac parte. Sed Aristoteles & ejus discipulus Theophrastus omnia compleverunt, ut dicit Marcus Tullius quinto academicarum libro (plainly he meant quinto de finibus) & ab his habuerunt omnes Latini omnes leges principaliter; quanquam leges xij tabularum fuerunt transcriptae ex dictis Solonis Atheniensis. Sed addendum est, quod haec pars philosophiae non est apud Latinorum usum nisi laicaliter, secundum quod imperatores & reges statuerunt. Nam philosophice, secundum quod tradita est ab Aristotele & Theophrasto, non est haec pars in usu Latinorum. By Latini he means here, as in his *specula mathematica* also, and divers other parts of his works, the universities or schools of the western church of that age, not so much because indeed the *Greeks* of those times, and since, often stile us not only *Franks* but also *Latins* (as appears obviously in their oriental stories) as because the works of *Aristotle*, *Galen*, *Euclid*, *Ptolemy*, and such more which in the schools they then usually read, were only in *Latin*, and translated, not from *Greek*, but from the *Arabick* of the *Arabians* or *Saracens*, among whom, in *Africk* and *Spain*, the arts principally flourished about 5 years since. And I remember I saw once in some author of the ages wherein the western christians began as it were a trade with the *Saracens* for such learning, the name of *studia Saracenorum* given to the studies of natural philosophy and the arts. So that *Latini* here are opposed to *Saraceni* or *Arabes*.

Of those writers of parts of the subject, those histories, and those constitutions and customs, the most are publick in print; yet very many, only manuscripts. For the printed; there needs no further admonition. But for the manuscripts, which are either books or charters, and other like instruments in libraries or private hands, or in rolls or records kept in the treasuries or offices of courts of justice; they are all noted, as likewise the printed are in the margin, and to what they are cited. To those manuscripts of the first kind, most commonly is added, in whose hands they remain, or out of what library, or whence or where I had the use of them. But the most and chiefest of them I used long since by the most noble curtesy of my dear friend sir Robert Cotton, a man that was incomparable, as well in the communicative bounty, as in the excellence of civil observation and knowledge. Neither had I by his favour the use only of that inestimable library of his industrious, judicious, and most chargeable collection; but of some manuscripts also, that being sometimes lent only to his hand, were returned to their owners by him. Divers I had from other hands, and in other places. And some are of mine own too. Often therefore the margin cites manuscripts expressly out of that library, and sometimes out of some other hands; and ms. sometimes is only put in the margin, without any addition of the place where it remains. But where ever that only occurs so, or any other manuscript is mentioned without other circumstance in one place or other, to denote where it is, it means either that it is mine own, or else that it was of them that being used from his hand were either restored to their owners, or were such, as I was not sure at the time of the writing, whether he had made them part of that library or no. For the rest of this kind; the hand, library, or other place that furnished me, is noted with them. With those of the second kind, the places where they are kept are rarely noted. Out of their own nature, it is known to men that are acquainted with records, where they are. The forms of patents or charters of creation, and the like are inserted at large in the tongues we find them: as *Latin*, *French*, *Spanish*. So are some ceremonials of coronations and creations, and the *Spanish* *pragmatica* concerning precedence, and the attributes to be given, in the abstract or concrete, to persons of honour; and that without translations. And so is also whatsoever is else cited in *Latin*, *French*, *Spanish* or *Italian*. For, either the discourse in *English* that accompanies it, sufficiently supplies a translation, or else the matter or language is such, that a fit reader, assisted with that discourse, may without difficulty understand it. For I expect not here

here a reader without some such measure of knowledge, as is usually had by liberal education. And that of *Lucilius* in the front of the first edition speaks the mind of this also; *Perfium non curo legere, Laelium Decimum volo*. As it fears not what height soever the reader's learning be at, so it requires one raised, at least, above a sordid ignorance. The copy, by reason of some inevitable occurrences, hath been so long at the press, and delayed there, and is now at length published so long after the time it was ready for it, that thence alone we doubt not but to be excused wheresoever any man, that hath, since the finishing it, had accession of any other title or attribute to be used with his name, than we could then use to him, is here mentioned without it. To have altered that now, had been much more trouble, than the moment of it is worth. The particulars that we meddle with by discourse, are faithfully, diligently, and freely enough also handled. But it is true, that some particulars concerning the titles here handled, are wholly pretermitted, and some are touched only *remissive*, as the lawyers call it. The reasons whence that proceeded, are sometimes expressed; and where they are not expressed, a discreet reader may without difficulty guess at them. And for any other, I had rather he should tax me for it, than receive further satisfaction here concerning it. Divers things are disputed here against some published opinions of other writers, and that as well of great worth as name; but without the ambition of naming them or making a personal quarrel in print, which is often but a busy vanity of hours that might be easily better employed. My own part, I presume, is so well maintained and cleared, that the *reasons* and *authorities* which strengthen it, sufficiently confute adverse opinions, without mustering their authors together. Something also of some foreign countries that might be expected under the title, have no place here, because my store of materials, however none of the slenderest, was not furnished with them. It was fit here to trouble you with thus much, reader; and so I leave you to the use of it.



T I T L E S

O F

H O N O U R.

The First P A R T.

C H A P. I.

- I. *The purpose and disposition of the whole work.*
- II. *The twofold original, of the supreme titles of king and emperor.*
- III. *Of the first kings which, in antient story, are attributed to the time before the flood.*
- IV. *Of the first king and propagation of kingdoms after the flood.*

TITLES of Honour, being those various names of greatness or eminency, which are the most distinguishing titles of civil dignity, are either *ecclesiastical* or *temporal*.

The *temporal* titles of honour (for we wholly omit all *ecclesiastical*, as *ecclesiastical*) are either *supreme* or *subordinate*. The *supreme* are either belonging to *singular persons* in independent monarchies, as *emperor*, *king*, and what else is so *supreme* according to the customs and languages of several nations, or such as in popular states and optimacies are the honouring titles of *more in one body*, or of that number which hath in it the *supreme* rule of the state. The *subordinate* belonging to *singular persons* (those that belong to *more in one body* we omit also) are either such as are *primarily officary*, and only *by consequent* of their offices, *honorary*, as *viceroys*, *constables*, *chancellors*, *admirals*, *presidents*, and many other of far less dignity; or such as are *primarily honorary* and have their offices or power (where any belongs to them) rather *consequential* or *annexed* to their honours, as the several titles of *the heirs* or *successors* *apparent* of *supreme princes*, that of *king* as it hath been attributed to some subjects, *archduke*, *great duke*, *palsgrave* or *count palatine*, *landgrave*, *prince*, *marquis*, *count* or *earl*, *vicount*, *vidame*, *baron*, *banneret*, and the rest of *temporal dignities* to that of *gentleman* or *nobility*; or such as express only *degrees of learning*, as *doctor*, *master*, *licentiate*, and the like. These

of the last kind likewise wholly, and the first that are *primarily officary* we omit here; saying where sometimes they conduce to the right understanding of such as are *primarily honorary*, which are only the subject of the work.

In the handling of the titles thus designed for the subject, we make *two parts* of the work according to that division of *supreme* and *subordinate*. One for each of them. Yet so, that the title of *king*, as it hath been sometimes given to subjects (excepted only that of *king of Italy*, *king of Germany*, or *king of Romans*, as it denotes only the apparent successor in the empire) is cast into the *first part* with the title of *king* which is *supreme*. It was the easier and clearer method to do so. And all denomination being from what is most or greatest, the *first* will so remain proper enough to *supreme titles*.

Thus, the *beginning* of *supreme kingdoms*, or *the first king*, the titles of *king* and *emperor*, *queen*, and *empress*, the title of *lord* and such like given as *essential* and *general* to *supreme princes*, with that of a *subject king*, have their place in the *first part*. But also, because the most of *supreme princes* have other names or titles which are *accidental* or *particular* to them, and also *forms of speech* and expression, and *ceremonies* of *coronation*, or *investiture*, with *ensigns* proper, for the most part, to *supreme majesty*, therefore also, those *accidental names*, *forms of speech*, and *ceremonies* and *ensigns*, with some other incident particulars touching their honour, are likewise added. *Accidental*

names I call those of *Caesar, semper augustus*, or *zu allen zeiten mehrer desz reichs*, that is, *always an increaser of his empire*, (as it is in the Dutch titles of the emperor) *le roy treschrestien, Defender of the faith, Catholick King, Amir El-mumenin, Prester John* (as we commonly call the emperor of the *Abyssines*) *Sophi* (for in the supreme titles we take also those of the *Mahumedans*) and the like; in the memory of which some other of the elder times, as that of *Pharaoh* and *Ptolemy* in the *AEgyptian* kings, *Porphyrogenetus* in the *Greek* emperors, and some more of the same nature are inserted. The forms of speech, or expression, understood here, are those of speaking in the plural number, that of the addition of *by the grace of God*, and the attributes of *majesty, serenity, high and mighty*, and the like. And under ceremonies and ensigns, are comprehended here, the anointing, the crown, the scepter, the globe and cross, with some such more, that best appear out of the ceremonials of inaugurations, some of which are transcribed hither and others noted by direction to them.

In the second part, the original, continuance, and being of the subordinate titles are handled, together with their ensigns, legal forms of creation, and such more. But so, that what was thought fit to be said here concerning the title of gentleman, is by itself cast into one chapter, the rest being divided, for the most part according to several states wherein they are too disproportionate and incommensurable one to the other, to be well mixed together. But because in the just consideration of them, we cannot but fall on some obsolete names of dignity, which were either the same or very proportionate with some of them, as also upon the nature of feuds or noble tenancies, out of which the greatest part of those dignities, as they are now in Europe, have been raised, besides some more general attributes, which the stile either of present or ancient custom hath given to them; therefore those obsolete names, the beginning and nature of feuds, and somewhat of those more general attributes are also added. By the obsolete names I understand here those of *princeps juventutis, Sebastocrator, epeling, clyto*, and such like. And under the name of attributes more general than such as denote this or that dignity, I mean those additions of *clarissimus, spectabilis, illustris, superillustris*, and such more. To these as corollaries, at the end of each part we join something of place and precedence. So much as may give good directions in questions that may arise of it; but so little and in such sort as that we may be sure here to decline both the envy and dislike that may follow the determination of any point concerning it. The purpose and disposition of the whole being thus designed out (the more particular method whereof more fully appears in the arguments prefixed to every chapter) first of the beginning of kingdoms, the first king and propagation of that title.

(1) II. That supreme title of king or empe-

ror (as we now understand the name of emperor) which is distinguished from other dignities in this, that it acknowledges no superiour, but, according to the various institution of several kingdoms, is accompanied with the highest rights of majesty and sovereignty, hath a twofold original, to which all supreme kingdoms have relation; either from the power of the sword, or conquest, used by some ancestor of the present kings, who thence, as heirs, derive their sovereignty in the territories, and over the people of their kingdoms; or by some choice proceeding from the opinion of the virtue and nobleness of him that is chosen. The kingdoms made by the first course, being of their own nature hereditary; those that have begun by choice have been in some particulars also hereditary, and in other have continued elective. Of the form of the first, we have examples in the beginning of the Assyrian monarchy; in the accession of the title of king or emperor, over divers conquered countries, to the old Roman emperors, and such like; besides the kings of Castile and Portugal; there being in the title of the kings of Portugal an express mention of such a beginning in part of their dominions; for they are called lords *da conquista & navegaçam & commercio da AEthiopia, Arabia, Persia, & de India*, that is, of the conquest, navigation, and commerce of AEthiopia, Arabia, Persia, and India. And for that second course which is by choice, it may be seen in the ancient kings of the state of Greece; in Deioes among the Medes; in that of Numa, who as some of his successors also, was chosen king of Rome upon the interrex his pronuntiation of *Quod bonum, faustum, foelixque sit, Quirites, regem create; ita patribus visum est*; in the kingdom of Poland; in the election of the emperors of Germany, and the like. Neither was the kingdom of the Israelites (if we regard only the human way of instituting it) begun otherwise. For there the people having referred themselves to Samuel, for the election of their king, he made a choice for them in the anointing both of Saul and David, from whom the title continued hereditary.

III. Under what time the beginning of kingdoms or the first king should be placed, is most uncertain. For, although in the time before the flood, there be no express mention in the holy story of a king, and that the common opinion be, that in Nimrod or Belus (father to Ninus) the first monarchy began after the flood; yet there is reason enough to conjecture, that there were kings also long before both him and the flood. For, besides that Cain's building of a city, and denominating it from his son Enoch, seems to have a character of a kingdom in it, Cedren, instructed out of the ancients, goes as high here as possible, and makes Adam the first king and governor, and that with reason enough. Οὐρανός, saith he, ἡγεμόνευσε τὸ γένος τὸ ἀνθρώπων δι' ὅλης αὐτοῦ ζωῆς, He governed, or commanded all mankind, as long as he lived; and Seth succeeded him in that empire. And if we might believe that

^a De aeyo illo videtis Jacobum Boulduc, lib. 1. de ecclesia ante legem, cap. 15. Jos. Salianum, &c.

of *Alexander* the great his letter to *Aristotle*, of which ^b *Joseph Ben Gorion*, an *Hebrew* author indeed of no great credit, tells us, *Kenan* the son of *Enosh*, or grandchild to *Seth*, was buried in an island of the east *Indian* sea, and that the memory of it remained there in tables of stone in *Alexander's* time, as he relates also to *Aristotle*. And besides, we see in those of the following times, who have left us fuller testimonies of particular forms of government, that monarchy hath continually been, and, to this day, is not less generally admitted and established in all nations, than as if it were derived out of the law of nature, which doubtless was not less followed in those many ages before *Nimrod*, than it hath been since him. And thence is it that divers good authors have without question supposed the monarchick government, both to have been presently upon the first times, and also that, in the frame of nature itself, man as a civil creature was directed to this form of subjection. *Principio rerum* (saith *Justin*) *gentiumque imperium penes reges erat, quos ad fastigium hujus majestatis non ambitio popularis, sed spectata inter bonos moderatio provehebat*. And *Seneca* to the same purpose; *primi mortalium, quique ex his geniti, naturam incorruptam sequebantur, eandem habebant & ducem & legem, commissi melioris arbitrio. Naturae est enim potioribus deteriora submittere*. As if the sole observation of nature had necessarily led the affections of men to this kind of state. Whence it is also, that while others of the most curious, in their philosophy tell ^c us of the angels, and the supreme heavens being immediately governed by the first maker of all things, of the planets and other stars being ruled by the sun, and of separated souls and the air being subject to the moon; they add together that, upon earth, kings are in like fort governors, as if natural reason had first ordained them on earth by an unavoidable imitation of the creator's providence used in that institution of a monarchy or government in the air, stars, and heavens. Neither do the antientest *Gentiles* otherwise speak of those elder times, than with a clear supposition of monarchy, even in the infancy of the world; those kingdoms of *Saturn*, *Jupiter*, *Neptune*, *Pluto*, and the like, fully denoting as much. For under those names applied to distinct kingdoms, not Gods, but the monarchs of land and sea, in the first times ^d were understood. But to omit the conjectures that may be thus drawn either out of that known consent of nations of later time, or from the opinions of those antients which derive a monarchy out of the institution of nature, and so place it equal with the first age of the world; we have also express testimonies of the kings of *Chaldaea* that began to reign long before the flood, as *Alorus*, *Alasparus*, *Amenon*, *Metalarnus*, *Daorus*, *AEdorachus*, *Amphis*, *Otiartes*, and *Xisuthers*, in whose time (they say) the flood came. Neither is the

relation of these kings to be wholly contemned as supposititious, in regard we have it from that most antient and learned priest of *Belus*, the true *Berosus*, who lived about MM. years since, and out of the memories of the *Chaldees* (which they had received by tradition and preserved in writing) composed the body of the *Chaldean* or *Babylonian* history; and from *Berosus* it was long since received as a story of credit by those authors of great name, *Abydenus*, *Apollodorus*, *Alexander Polyhistor*, and others, cited and used to this purpose with *Berosus* in *Josephus* and *Eusebius*. Nor is it rashly therefore to be rejected, because the holy story of *Moses* justifies it not. So, and upon a like reason, might we deny that ever *Enoch* made any prophecy, although *S. Jude* cite it. But, as that of *Enoch* is supposed by the most learned ^e *Tertullian*, and others, to have been as a tradition to posterity conveyed through them which were saved in the ark, (that we may omit here the relations of the wives of *Cain* and *Seth*, and divers such other particulars of that time, in *Josephus*, *Epiphanius*, *Cedren*, the chronicle of *Alexandria*, *Said* ^f *Aben Batrique* patriarch of *Alexandria*, and the like) so might this of the *Chaldean* kings be preserved, and from the same persons delivered to such as might afterward commit it to writing; which were not at all difficult to conceive, if *Xisuthers*, the last of them, were, as *Cedren* tells us, no other than *Noah* himself. Besides also, *Berosus* delivers that the *Chaldee* stories testified, that the memories of the times before the flood were written, and by command hidden in the earth at *Heliopolis* or *Bethsamesh*, whence they were afterward taken and preserved in *Babylon* for posterity. But indeed, if we think of those kings together with the years of their reigns, as they are expressed out of *Berosus*, the story of them may seem not only incredible, but most ridiculous. For, he that hath fewest years among them, reigned, saith *Berosus*, no less than the space of three *sari*, that is (as they compute) *xmcccc* years, every *sarus* being accounted *mmdc*, and some of them continue *xviii sari*, which is *lxiv.m.dccc* years; the whole number of the reign of all ten of them, being *cxx sari*, which is *ccccxxxii.m* years. But that great affectation which the eastern people, besides the *AEgyptians*, had of deriving their states through many millions of years, might be cause enough of this portentous supputation; and yet the beginning and succession of the kings, perhaps true enough. And it may justly be doubted, that either the various tradition and transcription of several ages and authors did beyond measure increase the numbers, or that these are not rightly apprehended, while we see that the whole content of the ages comprehended in those stories of the *Chaldees* (as is also remembered out of *Berosus* by *Alexander Polyhistor*) amounts not near the number of the reigns of all those kings. For it is expressly limited to fifteen myriads, or a hundred and fifty thousand years

^b Lib. 2. cap. 11. atque inde, idem habent rabbi Abr. Zacuthius in Juchasin, fol. 6. b. & R. David in Tzemach, fol. 2. b. part. 2.

^c Hermes Trifin. in *Kēn* ἡ *Kōsus* ejusmodi fere commentum habet Ecphantus Pythagor. apud Stobaeum, λόγ. μ.

apud Lactant. lib. 1. de falsa relig. cap. 11.

^d De cultu muliebri, cap. 3.

^e Ms. Arabice de AErīs, in biblioth. Cottoniana.

in the fame *Berosus*, from whom we receive those ten kings that take up *cxx sari*, or *ccccxxxii. m* years. Whence it must follow that either we reckon not right when we attribute to every *sarus* *mmmc solar* or *lunar* years, or else that the number comprehended in the *Chaldee* stories, which were most carefully kept, as he saith, in *Babylon*, is falsely designed by fifteen myriads; the truth being also that other of the antients speak of a far greater number of years in the *Chaldee* stories, than is yet here mentioned. So that we may conceive, that, as well as their accounts of years so exceedingly increased and differed in themselves, even after such time as they had brought them to most ridiculous sums, they might likewise at first (while yet the reigns of their kings were within the limits of man's life) through that common disease of their affectation of antiquity, add some ages to every of them, and afterward so often iterate such kind of addition, that at length so many thousands, as they dreamt of, might be so produced. But also some old authors, to take off this absurdity of number of years, and so to save that of the *Chaldee* monarchy before the flood, have far otherwise understood the space of time contained in a *saros*. For they (I mean those *Greek* monks *Panodorus* and *Anianus*) take it not for *mmmc* years, but for so many days, although the very words of *Abidenus* be *ⲉⲩⲁⲭⲓⲛ*, that is, a *saros* is the space of *mmmc years*. So that this way, by the liberty of changing one notion of a space of time into another (which is often used in matters of greater moment,) the space of a *saros* shall be but about ten years, or indeed exactly ten of those years, which, consisting only of *ccclx* days without the five *epagomenae*, were used in the eastern parts. And thus, the *cxx sari*, or the whole age of those ten kings comes but to *mcc* years, if they be resolved into those years of *ccclx* days, or to *mcclxxxiii* years six months and *xxv* days, if they be accounted by the old *Aegyptian* or aequable years of *ccclxv* days, which make the common year at this day. And thus also the longest reign among them will fall out to be but *clxxx* years, which is a time short enough in regard of the ages before the flood. This account being presupposed, those monks divided the time before the flood into *ⲭⲉⲃⲟⲩⲁⲗⲁⲗⲟⲩ*. (as they call it) that is, the time wherein there were no kings, and *ⲭⲉⲃⲟⲩⲁⲗⲁⲗⲟⲩ*, or the time which had kings. That wherein no kings were (if we reckon according to the true chronology of that time, and not by the account of these *septuagints*, which those monks, as the most of other *Greek* authors, use) falls to be about *ccccclx* years after the creation, and the rest, which is about *mcc* to the flood, is the time of those kings we speak of. So that by this fancy, (which indeed *Georgius Syncellus* by no means would admit) about *ccccclx* years after the creation, the first king *Alorus* began to reign, as a man designed by God himself to be *ⲧⲁⲗⲁⲩⲟⲩⲱⲩⲱⲩⲱ*, that is a shepherd of

the people, as *Abidenus* speaks of him. And he was, as the rest of his successors, of the race of the giants of that time, if at least we might herein give credit to the author of the chronicle of *Alexandria*. Neither were the *Aegyptians* histories without a race of kings among them, in the time also before the flood.

IV. In some of the *Greek* stories, that eastern kingdom of the *Chaldees* is continued through the flood in *Noah*, whom they make the same with *Xisuthers* the last of those ten kings. And from him they derive the supreme monarchy of the earth then inhabited, to *Sem*. For upon that division of the earth, which they suppose he made to his three sons by his testament, which he sealed up and delivered, they say, to *Sem*, not only a third part, but the chief empire of all was transferred to *Sem*, *ⲁⲩⲉⲙⲉⲩⲁⲗⲟⲩ*, as their words are, *ⲁⲩⲉⲙⲉⲩⲁⲗⲟⲩ* *ⲙⲉⲣⲉⲩⲁⲗⲟⲩ*, that is, who succeeded to *Noah* in the empire. And thus, if *Noah* were the same with *Xisuthers*, he was king about *clxxx* years before the flood (if the *sarus* be accounted by the days, as is before noted) and continued so until his death; his son *Sem* succeeding him. But also the other two brothers *Cham* and *Japhet*, having those large territories designed them in the holy story, were kings too, it seems, but inferior in dignity. *Cham* having the fourth, as *Sem* the east, and *Japhet* these western parts. And this title of king in *Sem* is in express words noted in the holy story also, if at least, according to the most received tradition, *Sem* and *Melchisedech* were the same person; for he is named the king of *Salem*.

(2) But the most commonly received opinion of the first kingdom or monarchy, is that which supposes *Nimrod* to be the author of it, and is grounded upon that text of the holy story which tells us, that the beginning of his kingdom was *Babel*, and *Erech*, and *Accad*, and *Calneh*, in the land of *Shinar*; this being indeed the first mention of a kingdom that occurs in *Moses*. And that territory which is assigned to him denotes him the king of *Babylon*, or of the *Assyrians*, whose empire is usually taken for the first monarchy of the world. With this received beginning of a monarchy, we cannot but consider also the time or age of it, the various names that are given to him that began it, besides the propagation of the title of king and of kingdoms through the earth.

The just time wherein this kingdom began in *Nimrod*, is not enough certain. But among the antients, the most common opinion is, that it falls in the age of *Abraham*, about *ccccxl* years after the flood. And some great chronologers of our time will likewise have it so. And the holy story giving no express character of exactness of time herein, they commonly take this for a clear ground, that at the time of the building of the tower, and the confusion of tongues, *Nimrod* had possessed himself of this empire. For by the direction and command of him, as of a king, they say, the tower, whence the con-

^s Cicero de divinatione, lib. 1.

^b Georg. Syncellus apud Scalig. in not. Euseb. pag. 246.

fusion followed, was built. So *Josephus*, being a Jew, writes, so *Epiphanius*, *Eucherius*, the author of the chronicle of *Alexandria*, *Constantine Manasses*, *Cedren*, and others. Now the confusion is placed by the Jews in their chronicles, about cccxl. after the flood, and about the xlv year of *Abraham's* age; that of *Eber's* naming¹ his son *Phaleg*, because in his days the earth was divided (upon the confusion of tongues) being thus withal interpreted, that *Eber* was a great prophet, and that out of his spirit of prophecy he fo named his son at the birth (which was but ci years after the flood) because the division or confusion was to fall in the end of his days, which were about cxxl years afterward. Neither is it conceived by some that until such a time after the flood, the eight persons and their posterity had sufficiently multiplied themselves to be thus capable of such a division. Nor is it without fair ground that they deliver that *Eber*, thus named *Phaleg*, out of the spirit of foreseeing prophecy, if at least he so named him upon the birth, as the custom was. For although in other examples of the holy story, we see that the imposition of names were upon accidents that fell about the time of the birth, and that express testimonies be^k in the fathers of our church, that *Phaleg* was then born when the division happened, yet here the very text directs us otherwise. For it expressly tells us, that *Joctan* (the younger brother of *Phaleg*) with thirteen heads of families which were of his posterity, were part of the number of them which divided the earth. If then these also were at the division, it will be plain that the reason of *Phaleg's* name was so long at least after his birth, as that *Joctan* and of him thirteen sons might be born, which may well make up the time of about cxxl years, as their account is. And this very reason doth *Rabbi Jose* in the *Seder Olam* use for the interpretation of that place, touching the naming of *Phaleg*.

But what necessity we have to believe that first ground of this chronology, which places the beginning of this kingdom equal with that division of the earth, I conceive not. It is true that divers good authors with one mind admit it, and therefore it is not without much consideration to be rejected. But let that be omitted, and the prophane stories of the antientest times to this purpose examined, and there will be reason enough found to believe, that this beginning of the *Assyrian* monarchy is to be cast into a far elder age, that is, into the time that falls about lxx years after the flood, within which time, *Nimrod*, being nephew to *Cham*, might be at least about xxx years of age, and not unable to bear those attributes which the holy story hath given him. For there is a consent in the best and¹ antientest testimonies that concern this point, that the *Assyrian* monarchy stood about m.ccc years, and ended in *Sardanapalus*, from whose time, if we account backward, we shall come near the lxx year after the flood, which

this way designs out the age of *Nimrod's* beginning. Others hereof otherwise. But indeed we shall no where find better satisfaction herein than such as will still retain with it too much incertainty.

For the divers names of this first king, the most general that he is known by, is *Belus*, which also was a great deity in those eastern parts. Neither is he to be called *Ninus*, as some name him, attributing (as *Trogus* and some others) the beginning of the first monarchy to that name. For *Ninus* was his next successor, as expressly *St. Augustine*^m notes out of the *Greek* history. He is also named *Nabrodes* and *Nebrod* (as the *Septuagints* call him) *Evechous*, *Saturn*, and supposed by some to have been the same withⁿ *Zoroaster*. Some also have taken him to be the same who is called *Amraphel* afterward in *Moses*. Neither is it strange to find so different names given to one prince in those eastern parts. But that which most properly agrees with him as he is described in the holy story, is the name of *Orion*. The *Assyrians* (saith *Cedren*) made *Nimrod* a god, placed him among the stars of heaven, and called him *Orion*. He first shewed the art of hunting, and therefore the constellation called the *Dog*, is joined with him. The holy story says, he was a mighty hunter, that is, גִּבּוֹר צַיִד *gibbor tzid*; and so they express him in thus making him the same with *Orion*, who is both living and dead supposed to be so, in the memories both of the^o *Ægyptians* and *Grecians*; (³) and therefore also he hath the less dog and a hare joined with him. And among other like names he is expressly to this day called *Algebar* among the *Arabians*, that is, mighty, strong, or the giant, which is but varied only by dialect from that very *Hebrew* word which denotes *Nimrod*, in the addition of mighty hunter, or Γῆρας κυνηγός, that is, a giant hunter, as the *Septuagints* translate the holy text. And beside this also, in the old astronomy (as if *Orion* were specially to be designed out for a king or emperor; therein also to agree with *Nimrod*) he is supposed the chief leader of all the southern constellations. And as in their northern descriptions, they began at the lesser bear or *Cynosura*, (⁴) so, of their southern images, *Orion* was the first.

Hoc duce per totum decurrunt sydera mundum

saith *Manilius*, following this course as *Aratus* had also done before him; which interprets that of *Homer*, speaking of the bear;

Ἦ τ' αὐτὸς ἐπέρεται καὶ τ' ὀρίωνα δυνεύει.

as if he had said, that she had as the princess of the North, observed and looked at *Orion*, prince of the South, which *Manilius* imitated in his

Arctos & Orion adversis frontibus ibant. (⁵)

But this is observed here only to shew the fancy of the antients touching *Nimrod*, in their me-

¹ Rabbi Jose in Seder Olam Rabba. 172 Phaleg est dividere.

civ. Dei, lib. 16. cap. 11.

² Ctesias apud Diodor. Siculum, biblioth. 3.

³ Trog. lib. 1.

⁴ D. August. de civit. Dei, lib. 12. cap. 10. & videlicet Agath. lib. 2.

⁵ Loco dicto.

⁶ Apud Epiph. lib. 1. circa init. & vide chron. Alexand. pag. 89.

⁷ Damaſc. in vita

mory of his beginning of monarchy. And it is not unlikely that at first it proceeded wholly from Grecian vanity, though it be attributed to the *Assyrians*. Neither doth the occurrence of the name of *Orion*, in the septuagint's translation P of the holy text, give any light here or ground to that conceit. For the original there is כֶּשֶׁל *Keshel*, which (having no relation to *Nimrod*) is in the vulgar turned by *Arcturus* in one place, and in the other by *splendor*, the *Rabbins* Q in the mean time not enough agreeing among themselves what constellation they would have it signify. And of the time of *Nimrod's* kingdom, and his various appellations thus much.

After him or rather in his age (if it fall equal with the time of the division of the earth, as the common opinion will have it) there was so general a propagation of this title of king over the earth, that there is scarce a nation, whereof there is memory in those ages, without a king, or prince, or monarch, by name assigned to it. For in the holy memories of that division among the posterity of *Noah*, we see that the earth was so divided that the heads of families took their several parts according to their language, and according to the families in their nations. And they which are named there were doubtless the kings or supream princes of the nations of which they were authors; that is, אֲלֹפִיִּם *Allophim*, i. e. *princes*, or מְלָכִים *Melakim*, i. e. *kings*, as the words of ^r *Moses* are where he more especially designeth such titles. And in that division (which, as it hath relation to the more eastern and southern parts in *Sem* and *Cham*, is somewhat clear in *Moses* his expression of it) the parts of *Japhet* also and his posterity, as of *Gomer*, *Magog*, *Madaï*, and the rest, with their kingdoms, are in antient testimonies of the Greek ^r church extended by express words, from the northern part of *Asia* into this island of great *Britain*, and the neighbouring countries. For so they interpret that of *Moses*, where he says that the isles of the nations were divided by them. And besides the testimonies of prophane history which tell us of those more famous and great kingdoms of the *Sicyonians* begun in *Ægiæleus*, that of *Tanaus* his kingdom in *Scythia*, *Vexoris* among the *Ægyptians*, and other like that are cast into an age even as ancient as this of *Nimrod*; the holy text also hath occurrences of kings to be referred to that age; as in that of *Abraham's* war with *Kedorlaomer* king of *Elam*, where the kings of divers other nations, some as supream, some as subject-kings, are mentioned. Whence it is that they say, about *Serug's* days, who was born upon clxx years after the flood, δι' ἀνδρῶν τοι τὸν αἶψ' ἀλλήλων αὐξήσαντες τὴν οὐρανὴν καὶ ἐαυτοὺς ἡξέσαντες ὡς βασιλεῖς, as *Cedren's* words are, that is, *men arrogating to themselves power over each other, made themselves emperors and Kings*. And then, saith ^r he, *did they first use arms, and make war on each other*. Afterward

the course of the holy story every where shews as much in the succeeding times, not only by express naming of particular kings, (which had been made either by the sword or by choice) but also by that general assertion of the *Israelites*, when they desired *Samuel* to make a king over them. For they then suppose themselves only of all other nations to be without a king; and request *Samuel* to give them one that might judge them כְּכָל הָעָם *Kekal-hagaim* (as the words are) that is, according as all other nations had. Neither were the *Israelites* (if the tradition ^r among them may be believed) without a command from God himself, that they should choose them a king when they should come into the land of promise. In the following times we see the perpetual succession of kings in most parts of the world, either anciently known or lately discovered. And although divers of the chiefest states of the old *Grecians* (and I think only of the *Grecians* in the elder ages) were in their most flourishing times *Democracies* or *Optimacies*; yet the more ancient states there, were in every place *Monarchies* as it is also expressly noted by ^r *Pausanias*. Βασιλείαι, saith he, πανταχῇ ἔτι ἐν Διμοκρατίαι παλαιαὶ καὶ δεσποῦσσαι, that is, *every where in Greece in the antient times their states were monarchical and not popular*. For all other states which keep their names till this day, the common stories of them plentifully shew both the beginnings and the particular propagation of monarchy in them, neither is this a fit place for them. And of the first king and the propagation of kingdoms, hitherto. In the delivery of which, we have relied on the best testimonies of the antients besides the holy text, neglecting, with cause enough, those traditions of the *Scythian* or *Ægyptian* ^r kings after the flood, to be elder than the *Assyrian* monarchy; that of *Prometheus* (king of *Thesaly*, and son to *Deucalion*) his being supposed the first man ^r that ever reigned as a king, and such more. Neither, in all this, have we given any credit to that nest of the *Annian* counterfeits,

— & autres, qui menteurs
Abusent du loisir & bonté des lecteurs.

as *Du Bartas* well speaks of them.



P Job cap. 38. comm. 31. Jesay cap. 13.

Q Euseb. lib. 2. a. pag. 12. Cedren. pag. 11.

hist. & Constant. Manasses Annal. part. 1.

Q Vide Aben Ezra ad Amos, cap. 5. & David Kimchi in radic.

Chronie. Alexan. pag. 63.

Apollon. Argonaut. 3.

Munster. ad 1. Sam. cap. 8.

Vide Genes. cap. 36.

In Boeoticis.

Justin.

CHAP. II.

- I. King and Emperor: what Emperor denoted, and how the title was used.
- II. The hate in Rome to the name of Rex, and how their emperors abstained from it. Their title of Princeps.
- III. At length, others called them kings, but they wrote themselves only emperors, until the use of basileus, or king, and emperor, grew promiscuous in the Greek expressions of their title.
- IV. Differences between the emperors of the east and West, about the titles of basileus, and rex, and emperor.
- V. The title of emperor given to the kings of England, France, Spain, the great duke of Muscovy, the Grand Signior, Prester John.
- VI. The supremacy of those and other kings, free from the subjection of the empire of Rome, against the common, but ridiculous, opinion of many civilians.

Hitherto the beginning and propagation, of the title of supreme princes, being thus deduced, the next consideration falls touching those two great names by which they are stiled, that is, *king* and *emperor*.⁽⁶⁾ Of which, in the elder times, plainly the first was the superior, and that of *emperor*⁽⁷⁾ denoted only a general or leader of an army, from whence it was translated to signify what now it doth in the title of emperor, used especially by the successors of *Julius Caesar* in the *Roman* or *German* empire. For when he, through the greatness of his own fortune, and by reason of the degenerating spirits of the *Romans*, had made himself master of their so free state, he thought it safer to retain than innovate his title of supremacy; and therefore having the perpetual office of *dictator* and *consulship* with the place of general or *imperator* (as the word had relation to his military forces) he took that also (being as willingly given him as the rest) for a perpetual title: *Honores nimios recepit* (saith *Tranquillus*) *ut continuum consulatum, perpetuam dictaturam, praefecturamque morum, insuper praenomen imperatoris, &c.* And after him, it hath continued to this day in the title of his successors: yet withal since him, and before his next successor *Augustus*, it was used likewise in their titles, who for a breathing-time had with a desperate cure recovered the publick liberty. For both *Brutus* and *Cassius* have it in their attributes upon their coins inscribed, sometimes with two pignards and the cap of liberty, thus, *BRVT. IMP.* and *C. CASSI IMP.* *LIBERTAS*, and the like: as also it occurs in the inscriptions of *Lepidus* and *Antonius*, the XXX tyrants, and some others. But whereas

that passage of *Tranquillus* makes it his *praenomen* or forename, as if it were first to be mentioned in the title of the emperors who derive from him, I think he was deceived. For in all the inscriptions that occur of him in his coins or otherwise, I find not the title of emperor preceding his name, but always subsequent: as *CAESAR IMP. P. M.* and the like very often. Neither was it in his successors constantly kept as a forename but sometimes it preceded; as may be seen in divers of *Augustus* his coins and the following emperors, as especially in that of *Justinian's* title, *imperator Caesar Flavius Justinianus*; and sometimes it followed, as at this day it doth in the emperor's title. But indeed it appears that in the successors of *Julius*, there was a difference in the use of it as subsequent, and the making it a forename. For the using of it as subsequent, denoted only (or at least chiefly) some great performance by arms in settling or encreasing the empire. But when it was a forename, it signified, in those elder times, only the emperor's supremacy in the state. Whence it falls that sometimes it is used twice in one expression of the emperors; as in one of *Augustus* his coins the inscription is, *IMP. CAES. AVG. IMP. IX. TR. P. V.* where the forename of *imperator* denotes his supremacy, but that of *IMP. IX.* (which is subsequent, and signifies that he had, as a general, deserved a triumph nine times) hath relation only to the several great benefits, which the state had received by his arms. That which follows *TR. P. V.* being the number of the years since he had the *tribunitia potestas* given him; which was also every year renewed to the emperors, and therefore in that number also the years² of their empire were expressed.

II. The title of *emperor* being thus settled in *Rome*, although the emperors had the substance every way of whatsoever is comprehended in royal majesty, yet in the elder times of the empire they purposely abstained from the name of *rex* or *king*, being a word grown odious to *Roman* liberty, from the time that it was cast out by *Brutus*. In solemn memory whereof they yearly celebrated on the VII kal. of *March* (the XXIII of our *February*) their feast *Regifugium*. As also they provided, lest the giddy multitude might again desire to have a king, that no concourse for merchandize in the city should ever happen upon the *Nones* of any month (king *Servius Tullius* his birth-day, they knew, was in the *Nones*, but not of what month; and therefore they provided it) *Veritine quid nundinis collecta universitas, ob regis desiderium, novaret*, as^a *Macrobius* his words are. And *Cicero* though he acknowledged that *Caesar* was *revera rex*, fully a king in substance, yet upon the hate that continued of that title, he tells us, that^b *Regem Romae posthac nec dii nec homines esse patientur*. And to palliate some part of his ambitions, *Caesar* himself being saluted *king* by the multitude, but withal perceiving that it was very distasteful to the state, by the *tribune's* pulling off the white

² Dio Cassius, hist. 53.^a Saturnal. 1. cap. 15.^b De Divinat. lib. 2.

fillet from his laurel, answered, *Caesarem se, non regem esse*; refusing utterly also, and consecrating the diadem, which *Antony* would have often put on his head, to *Jupiter*. For the same reason, did *Octavian* abstain from the name of *Romulus* which yet he much affected. Alike was the dissimulation of the next *Tiberius*, under whom were *eadem magistratum vocabula* (as *Tacitus* his words are) which were before, but the sum and sway of things was ingrossed and cunningly kept under one, differing in name, not in nature, from a king; as was observed also by him that subscribed *Julius* his statue with

Brutus quia reges ejecit, consul primo factus est. Hic, quia consules ejecit, rex postremo factus est.

But also *Princeps*, and *Principatus*, and *Principium*, were proper names for them and their greatness. *Augustus* (saith *Tacitus*) *cuncta discordiis civilibus fessa nomine principis sub imperium accepit*. And *Sueton* of *Caligula*, thus, *Nec multum absuit quin statim diadema sumeret, speciemque principatus in regni formam converteret*; (⁸) that of *princeps* being taken only to supply the name of *rex*, to save them from the envy which it would have drawn on them. There being also the like original of *princeps* for them as there was of *imperator*. For as the one came to denote the supremacy in the state out of the use of it in the army, so the other to signify the same thing out of the use of it in the senate. For the title of *princeps senatus* (which was known familiarly in *Rome*, and so might be used without envy) furnished *Augustus* and his successors with the title of *princeps*, as it had relation to the whole common-wealth.

III. In the following ages, it was long before any of the emperors used the title of *king* (although the emperor *Aurelian* wore a diadem and other ensigns that were proper to the name of king) but in their letters, commissions, and embassages, they stiled themselves always *emperors*. Which is expressly delivered by *Synesius* that lived under *Arcadius*, about *cccc* years of Christ, shewing also that it was then usual in the writings and speeches directed to them, to have them stiled *kings*, especially by the *Grecians*. *Ἡ μὲν γὰρ ἐν (saith he to the emperor) ὑμᾶς ἀξιωματικῶς καὶ κατὰ τὴν βασιλείαν, καὶ κατὰ τὴν ἡλικίαν, καὶ κατὰ τὴν ἐξουσίαν, εἶπε μὴ, Συνθεία ὁ σύλχαρος τίς ἔστιν ἡ περὶ τὴν ἀνδραγαθίαν ἀνδραγαθίας εἰκόνα.* i. e. *We think you worthy of the name, and so call you kings, and write you so. But you, whether you know so much or not, yet agreeing to custom, have seemed to dislike so swelling a title.* And indeed, the authors of the imperial story, before that time, have *regnum*, for the state of *Rome*, *sedile regni* for the emperor's throne, and such more: the dislike of *rex* growing at length out of fashion, as especially appears in the chusing of *Regillianus* (general in *Illyricum*) to be emperor, as it were, on a sudden jest,

when one had derived his name in declining *rex, regis, regi, Regillianus*, the acclamations presently ^c following, *ergo potest nos regere; ergo potest rex esse*. This was about *Gallien's* time, some *cclx.* after our saviour. And *Ulpian* (a great lawyer under *Alexander Severus*) calls that ^f *lex regia*, which transferred the people's power to the emperor. And in the *Code*, *regia majestas, regalis sensus, regia urbs*, and the like, occur with relation only to the emperor's dignity. And *regnum* occurs sometime in *St. Ambrose* ^g to denote the empire. But as the *Grecians* usually called them *Βασιλεῖς* i. e. *kings*, as also the *Hebrews* and ^h other of the east (for the learned *Drusus* ^{*} notes that he had a book, inscribed *מלכי רומי* i. e. *the Roman kings*, being the lives of the emperors; and in *Luke* *ijj.* where the original is in the *xv.* *ἡ βασιλεία*, i. e. *of the empire of Tiberius*, the *Syriack* turns it *רמלכותה* *of the reign or kingdom*; and *Paul's* appeal, according to the *Arabick*, is, *I appeal to Caesar the king*; which is agreeable to the emperor's titles, in the lives of the four evangelists, in that language) so also the *Constantinopolitan* emperors could not at length find greater titles for themselves or fitter than *king*. If you regard how others under them applied the name; examples are familiar in the ⁱ acts of their councils, histories, and such like. If, how they themselves in the first person, read the titles of *Justinian's novels* (which they call *authenticks*) and in them it will appear, that the names of *Αυτοκράτωρ* or *emperor*, and *Βασιλεῖς* or *king*, were indifferent, although the *Latin* translation hath him always by the name of *imperator*. The same is justified by *Theophilus* his *Greek* translation of the institutions. And that great volume of laws, published by their emperor *Leo* (about *dcccc*) comprehending a collection out of the *digests, code, novels*, and other *imperials*, was titled *τὰ βασιλικά*, as if you should say, *the king's laws*, whereof an epitome is now only left; and in that, the *Latin* ^k *princeps* or *imperator*, is often turned into *Βασιλεῖς*. (⁹) So that at length the name of *emperor* and *king* grew to be as one, although the *Romans* so much (for the remembrance of their liberty) at first distinguished them.

IV. But in the divided empires, upon new occasions, came much affected differences touching those names of *king* and *emperor*. The western emperors, in regard that the States of the *Goths, Lombards*, and *Franks*, which had over-run and possessed much part of the empire, were called *kingdoms*, and their heads, *kings*, rather desired the continuance of the name of *emperor*, as a note, in common account, of greater majesty. After the translation of the empire from *Constantinople* to the *French*; the eastern princes continued still their name of *Βασιλεῖς*, which they supposed the greater title, and were, at first, not much against the allowing of it to the *Western* emperors, as appears in that of the

^c Lib. *mel* *Pamphylus*.

^d Vide *Casaub.* ad *Spartian.*

^e *Trebell. Poll.* in *30 tyrannis.*

^f *D. de const. Princip.* l. 1.

^g *Orat.*

^h *Athenagor.* in inscript. *Apolog.* & alii passim. ^{*} *Prætorior. lib.* 9. ⁱ *Concil. Ephesin.* & ibi *Cyrrillus.* *Hefychius* (qui sub *Anastasio* floruit) in *Constantinopoleos* descript. *Procopius*, alii. ^k *Basiliic. lib.* 2. tit. 6. ubi l. 31. ff. de leg. & Sen. & alibi.

embassadors of *Michael Curopalata* to *Charles the Great*, who, for confirmation of a league, came to him at *Aix*, & *scriptum pacti* (as my author¹ says) *abeo in ecclesia suscipientes more suo, id est, Graeca lingua laudes ei dixerunt, imperatorem & basileum appellantes*. Which was a name afterward (although mere Greek) bestowed on *Charles* his successors by their monks, preferring it far before the *Latin, rex*. One of^m them thus, of *Charles* surnamed *Crassus*;

*Urbs mandata fuit Karolo nobis Basileo,
Imperio cujus regitur totus prope Cosmus.* (10)

but when *Basilius Macedo*, the *Constantinopolitan* emperor had received letters from pope *Hadrian II.* wherein *Lewes II.* then emperor of the West, was called *basileus* or emperor (for so *basileus* was now understood) he caused that honorary title to be rasedⁿ out of the letters, and, concerning his challenge to it as what was only proper to himself, dispatched an embassy to *Lewes*. This embassy *Lewes* answers by one *Autprand* (as it is reported by *Rempert* or *Erempert*, cited and first published by Cardinal *Baronius*) and out of his letters the effect of the quarrel may be best understood. He first tells *Basilius* that he knows no reason of his dislikes towards him, *nisi forte super Imperatoris nomine velit haec cuncta sentiri. Verum apud nos* (saith the western emperor) *multa lecta sunt, multa quidem indefesse leguntur; nunquam tamen invenimus terminos positos, aut formas, aut praecepta prolata, neminem appellandum BASILEA nisi eum quem in urbe Constantinopoli imperii tenere gubernacula contigisset, cum gentium singularum monumentis interim postpositis, sacrae nobis affluenter historiae monstrarent, plurimos fuisse basileos. — Et noli vel nobis quod dicimur invidere, vel tibi singulariter usurpare, quod non solum nobiscum sed & cum pluribus praepositis aliarum gentium possides. — Sed nec hoc admiratione caret quod asseris Arabum principem^o protosymbolum dici, cum in voluminibus nostris nihil tale reperitur, & vestri codices modo per architon, modo regem vel alio quolibet vocabulo nuncupent. Verum nos omnibus literis sacras s. praeferrimus, quae non protosymbolos, sed reges Arabum & Sabae perspicue consitentur, Chaganum vero, non praelatum avarum, non Cazarorum aut Northmanorum nuncupari reperimus, neque principem Bulgarum, sed regem vel dominum Bulgarum. Verum idcirco ab iis & omnibus Basilei debitum vocabulum adimis, ut hoc tibi soli non tam proprie quam violenter inflectas.* Then he proceeds with the translation of the empire from *Constantinople* to the *Franks*, ob ignominiam *Graecorum*, who were not able any longer to defend the church: and, whereas *Basilius* would have him titled only *rex* (or *riga*, as the *Grecians* had barbarously made that word in their fourth case) he adds further, that the true inter-

pretation of their *Basileus*, was in that word *riga*; as indeed, children know it is. Neither was it given or taken as any dishonour when *Baldwin* earl of *Flanders*, *Lewes* earl of *Blois*⁹ and divers other, wrote to *Otho IV.* emperor, with this inscription, *Excellentissimo domino Othoni Dei gratia Romanorum regi & semper augusto*. Divers like examples are. Nor have the *German* emperors of the later ages thought, it seems, the title of *rex* less than that of emperor. Indeed in the time of that *Otho*, and afterward, it was conceived by many in their gross flatteries to *Rome*, that before the coronation there (or some coronation that supplied as much) he that was chosen for emperor should be called *king of the Romans*, or *rex Romanorum*, or as they express it in high *Dutch*, *Römischer konig* only, as if the title of emperor were not due to him until that coronation. Hereof we see notice taken by *Antoninus*, speaking^r of the coronation of *Sigismund*, as also by *Leonard Aretin*^r upon the same occasion, and so by others. But they justly condemn it as a vain cavil. Nor doth that of *Henricus Bebelius*^r written against them convince more than only thus much, that they had no reason to quarrel at that title of *imperator*, as being less than *king*. For use hath made it equal with *king*, where supremacy is. And, *postquam aliquis ex nostris*, saith he, *in regem Romanorum est electus, mox omnia imperatoris officia exercet, & ut loquar more leguleiorum recentium, de facto habet plenariam omnium rerum administrationem, supremamque potestatem; nec aliquid addit creatio in imperatorem nisi quandam solennitatem & quaedam ornamenta, quae Romanus pontifex, non nos excogitavimus. Ut igitur rex aliquis Romanorum primum dicatur & postea imperator coronatione pontificis, solum est sedis apostolicae, non Germanorum institutum, ut leges in c. venerabilem extr. de electione.* Thus much *Bebelius*. And in the later age of this empire, especially from *Charles* the fifth to this day, the names have been taken so indifferent, that after the election, and without coronation at *Rome*, the emperors most frequently call themselves in their stiles *etwehiter Römischer keyser*, that is, *electus Romanorum imperator*, and sometimes also *electus Romanorum rex*, as if the two titles of *rex* and *imperator* had no difference. But understand this to be spoken of the title of *king of the Romans* compared with *emperor*, in cases only where the same person is already chosen for emperor, not where by designation only of a successor a king of the *Romans* is made in the empire. For that kind of *king of the Romans* hath no place here, but comes in the second part, as the apparent successor. But for this point of the indifferent use and identity of titles of *rex Romanorum*, and *imperator* in the empire, and of the names of *imperator* and *imperium* used as well before the coronation received from *Rome*, as after, it is

¹ Anonym. in annal. Franc. ann. 812. & vit. Caroli Magni.

Baron. tom. 10. A. 871. ^o Achmet onirocritic. ca. 18. & historici orientales: verum protosymboli Vezirazes five Vezirum primos magis denotant: consulas licet, Leunclav. Pandect. Turcic. cap. 14.

Slavorum lib. 6. c. 19.

^r Chron. part. 3. tit. 22. cap. 10. §. 1.

h. h. Frederic. 1. lib. 7. vers. coronam imposuit, &c.

^r Apud Goldast. Politic. imperial. part. 1.1. pag. 586. & vide Lupoldum de Baebengara. de iuribus regni & imperii Romani, cap. 6. 16. &c.

^m Abbo. Floriac. de Obsid. Luret. 1.

^r Lib. 6. epist. ad Cyriacum: & vide Spiegel, ad Gunther. de

Arnold. Abb. Lubecens.

⁹ Arnold. Abb. Lubecens.

^r Ms. hist. Longobard. ap.

Ms. hist. Longobard. ap.

with a multitude of choice examples more largely opened and cleared by the learned *Melchior Goldastus*,^a where also he notes out of the old charters of the church of *Hamburgh*, and others, that until the coronation at *Aquisgran* (which is the first that belongs to the emperor, and is to be performed by the archbishop of *Cologn*) the emperors would antiently stile themselves sometimes *ordinantes*, and their coming to the empire *ordinatio*, and after that they would use *rex* and *regnum*; as in a date of a charter of *Henry* the third to the same church, *Data anno domini incarnationis* 1040. *anno autem domini Henrici regis tertii ordinantis III. regni primo*: another of the next *Henry*; *data anno Domini incarnationis* 1042. *anno autem ordinationis Henrici IV. regis VIII. regni vero VI.* Whereas notwithstanding no man can doubt but that they were truly kings before their coronations as well as after, and so truly also emperors by virtue of their elections, without the solemnities, although yet (according to vulgar apprehension) they distinguish the years of their *regnum* from those of their *imperium*. Yet also upon^x other ground besides those imperial letters of *Basilius Macedo*, it hath been observed that the eastern emperors did in contempt, stile the western *reges* only; allowing their *Basileus* to none, but themselves and the king of *Bulgary*, who had also^y his crown of gold, his tiar of silk, and red shoes, for his royal, being also imperial, habiliments. And so *Georgius Logotheta*, always names the king of *Bulgary*, Βασιλεὺς τῶν Βουλγάρων, but the king of *Hungary* and *Sicily*, Ουγγαρίων, and Σικελίας Πῆξ, or *rex Siciliae*; and the prince of *Achaia* only Ἀχαΐας Πρίγκηψ, or *Achaiae princeps*. But I think it proceeded not so much from contempt, as use, bred amongst them, to call foreign dignities, by the names of that prince's country to which they were applied: as appears in *Sultan*, *Ameras*, *Amerumunes*, and *Chagan* (the same with *Chan*) and the like, copiously mentioned by *Simocatta*, *Anna Comnena*, *Codin*, *Achmet*, *Cantacuzen*, and the more obvious oriental authors. And, they never agreeing willingly to that translation of the empire, but supposing themselves as emperors of *new Rome* (for so *Constantinople* was called) and to be the legitimate successors of that majestic title, τῷ Κόσμῳ Κύριε, or *lord of the world* (wherewith *Antoninus* long before blazoned^z himself to *Eudaemon*) could hardly but endeavour such distinction of names, that so they might have one peculiar to their own greatness. Which, how could they better do, than by keeping their own to themselves (that is, *Basileus*) and giving other princes every one the language of every one's own territory?⁽¹¹⁾ and the princes of *Sicily* in the time of *Constantine* the great (saith^a *Nicephorus Gregoras*) were called Πῆγες or *reges* only. Indeed, that eastern emperor, *Basilius Macedo*, had most reason to take

care of this matter, being the first of them, after the translation to *Charles the Great*, that was likely to have regained his predecessor's glory. And therefore his bishops in that VIII general council at *Constantinople* did also *nomen imperiale* (as one^b says of the western part) *nostro Caesari penitus invidere*; to which affected greatness an old^c author alludes, speaking of *Charles the Bald*, king of *France*; that, *omnem consuetudinem regum Francorum contemnens Graecas glorias optimas arbitrabatur*. Et ut majorem mentis suae elationem ostenderet, ablato regis nomine, se imperatorem & augustum omnium regum, cis mare consistentium, appellari praecepit. But in later times the difference was less respected; which is plainly seen in those letters of^d *Calo-Johannes* to *Conrad III.* thus inscribed: *Johannes in Christo Deo fidelis rex, porphyrogenitus, sublimis, fortis, augustus, comnenus, & imperator Romanorum ad nobilissimum fratrem & amicum imperii mei*, and answered by *Conrad*, calling himself *Romanorum imperator augustus*, and *Calo-Joannes, illustris & gloriosus rex Graecorum*. Whence also it is evident, that *rex* was not a name of contempt at *Constantinople*. For then would not this *Conrad* have called *Calo-Joannes* by that name. Neither, for that point, is advantage to be taken of the word *rex* in the eastern emperor's stile. For, it is most likely that his *Greek* (out of which, I suppose, my author had it translated) was their βασιλεὺς. But when this *Conrad's* successor, *Frederick Barbarossa* received letters from *Isaacus Angelus*, emperor of *Constantinople*, expostulating with him touching his passage through *Greece* into the holy land, and demanding hostages for security with this insolent title, *Isachius a Deo constitutus, imperator sacratissimus, excellentissimus, potentissimus, sublimis, moderator Romanorum, angelus totius orbis, haeres coronae magnae Constantinotini, dilecto fratri imperii sui maximo principi Alemaniae gratiam suam & fraternam & plurimam dilectionem*; he much stormed at the ambassadors, and told them that he scorned their master's favour, and, *de ipso* (as the words are) *non fero*, saith he, *aequanimiter si tam arroganter me praesumat de caetero salutare*: and that he himself had, by an established right, the name of *Romanorum imperator & semper augustus*, wherefore their master should rather have called himself *Romanorum* than *Romanorum moderator*. Upbraiding him with *Romania*, which is the same territory that was called *Thrace*, and lies by the sea of the eastern empire.⁽¹²⁾

V. But howsoever these emperors of the west and east thus strove about this great title of *emperor* or *basileus*; as if they had been agreed that no other prince might justly use it but themselves, yet it is plain that the kings of other nations took it as no less proper to their own

^a Replic. pro sacra Caesarea & regia Francorum maiestate, &c. adversus Jac. Gregerum cap. 37. Vide item Hieronym. Balbum, lib. de coronatione, & Goldast. in praefat. ad Jacobum Mag. Brit. regem, ad Tom. 3. Imper. confit. Nicolaum Cusanum, lib. 3. de concordia catholica, Hadrianum Saravian de imperandi auctoritate, li. 3. cap. 4. &c. ^x Gloss. Graeco-barbar. I. Meursii. ^y Curopalat. in Tzimisce. ^z Voluf. Maecian. ff. ad leg. Rhod. l. 9. ^a Niceph. Gregoras hist. 8. ^b Anastas. de vit. Pontific. in Hadr. II. ^c Annales, incert. auct. sub anno 876. Edit. a Pithaeo; eadem autem Siebertus. ^d Ortho Frisingens. de gest. Frederic. lib. 1. cap. 24. ^e Expedit. Asiatic. Frederic. 1. apud Canis. antiqu. lect. tom. 5. part. 2. Plura de Graecorum fastu & in occidentalem imperatorem invidia habes, in Luitprandi legat. a Canis. edit. & apud Baron. tom. 8. sub anno 868. transcripta.

greatness. The kings of *England* or *Great Britain*, have also justly used it, and that from ancient ages. For our *Edgar* frequently in his charters, called himself *Albionis & Anglorum basileus*; and, ^f in one to *Oswald* bishop of *Worcester*, *Anglorum basileus omniumque regum insularum Oceanique Britanniam circum-jacentis, cunctarumque nationum, quae infra eam includuntur, imperator & dominus.* ⁽¹²⁾ Wherein, by the way, it is observable, that the king of *England* or *Great Britain*, so long since wrote himself, and was emperor and lord of the *British sea*, as the expression is in that of *oceanus dominus & imperator*; which fully agrees with that of one of his successors king *Canutus* (or *Knout*) when sitting in his chair by the south shore, he used these words to the sea: *Tu meae dititionis es & terra in qua sedeo mea est, &c.* making (as the story is in *Henry of Huntingdon*) a moral use of it, but taking it clearly that he was no less lord, king, or emperor of the sea than of the land. Whence also in our common laws it is affirmed, that *the sea is of the ligeance of the king, as of the crown of England*, and divers other domestick testimonies justify as much. Neither hath it wanted the express acknowledgment of those strangers which being next neighbours to the sea, had most reason to quarrel at it, if there had been any scruple in the title. For when under our *Edward I.* and *Philip le Beau of France*, *Reginer Grimbaut*, then the *French* admiral, had injuriously exercised such a jurisdiction in the narrow seas, that not only he inroached upon the king of *England*, who was lord of them, but also committed divers oppressions against merchants and others, inasmuch that they were driven to complain in both kingdoms; the two kings appointed certain commissioners to hear those complaints, to whom the procurers ^h of the nobility and clergy, towns, cities, merchants, strangers, and others of *England*, as also those of the maritime coasts of *Genoa*, *Cathalaunia*, *Spain*, *Germany*, *Zeland*, *Holland*, *Friseland*, *Denmark*, *Norway*, and divers other places of the empire, exhibited a declaration of their injuries; and in that declaration they acknowledge clearly, that the kings of *England*, time out of mind, as kings of *England*, had been in peaceable possession of the sovereign lordship of the sea of *England*; the very words being thus in the *French* of that time, *Que les roys d'Engleterre par raison du dit roialm, du temps dont il ny ad memoire du contraire, eussent este en paisible possession de la souveraine seigneurie de la mer d'Engleterre, &c.* Those infinite other testimonies that justify as much, I omit here, having in their due place disposed them in my *Mare Clausum*, written about 1620. for the assertion of this marine dominion or empire to the crown of *England*; wherein also that great question,

touching the sea's being capable of dominion, is largely disputed, and the affirmative is clearly and fully concluded, especially out of the laws or customs of almost all nations known on the earth; not without plain answers to those arguments which are usually, among civilians, brought for the contrary. But for that title of emperor in the kings of *England*, we see also that it was used by others after *Edgar*. In a charter of about a thousand after our Saviour, made by king *Ethelred* to the church of *Canterbury*, in his stile at the beginning he calls himself *Gratia summitionantis i Angligenum, Orcadarum necne in gyro jacentium monarchus*, but subscribes with *Ego Aethelredus Anglorum induperator hoc privilegium ore manique crucis signaculo corroboro.* The like title ^k occurs in some other of that time, when yet questionless they did not conceive any greater majesty in the name of emperor or empire than in the title of king or kingdom. For they frequently used the words indifferently; as in the *Saxon* translation of *Orosius*, *pomana pice*, and *pomana anpealse* are promiscuously used for the *Roman empire*, the first literally denoting the kingdom of *Rome*, and the other the empire, as the words are grammatically distinguished. But also whatsoever the title of emperor imported, though it were not after the *Saxon* times used in the stile of our kings; yet the substance of it was sufficiently challenged in that of *William* the second, when he so confidently told archbishop *Anselm*, that *ipse omnes libertates habebat in regno suo quas imperator vindicabat in imperio*, as the words are in *Matthew Paris*. And in the transcript of a charter of the same *William* to the monastery of ^l *Shaftesbury*, I read, *Ego Willielmus rex Anglorum, anno ab incarnatione Domini 1089. secundo anno mei imperij, omnibus meis successoribus designo.* Therefore also under king *Henry VIII.* the ^m whole parliament conceived, and so expressed themselves, that by divers and sundry old authentick histories and chronicles, it is manifestly declared and expressed that this realm of *England* is an empire, and so hath been accepted in the world, governed by one supreme head and king, having the dignity and royal estate of the imperial crown of the same. And the king's power is also called *imperial* in another act of the same parliament. And the crown of *England*, in other parliaments of ⁿ later times, is titled the *imperial crown*; the kings of *England* being also in the express words of an *Irish* parliament titled kings ^o and emperors of the realm of *England*, and of the land of *Ireland*, and that before the title of lord of *Ireland* was altered into king. The *French* writers also, as especially *Carolus de Grassalio*, *Du Haillan*, and *Hierom Bignon*, shew this title of emperor given to the ancient kings of *France*. And for *Spain*; in the records of *Toledo*, there remains

^f Cod. Wigorn. ap. Joh. Dee, in monarch. Brit. & depravate leguntur haec apud v. c. Ed. Coke praef. lib. 4. & pat. 1 Ed. IV. part. 6. memb. 23. ^g Belknap. Rich. II. tit. Protection. 46. Seintgerman, lib. 2. cap. 51. ^h Coke, lib. 5. fol. 108 b. ⁱ Temp. Ed. I. de superioritate maris, &c. in acce London. ^j Praefixum est hoc diploma codici ms. in bibliotheca Cottoniana, ubi formulae sacrae coronationis regum Angliae. ^k Cod. Wigorn. ms. ibid. pag. 211. ibid. ^l Cod. Abbatiae Septon. apud dominum Arundel de Wardour ms. fol. 1. ^m Stat. 24 Hen. VIII. cap. 12. & 25 Hen. VIII. cap. 21. ⁿ 1 Eliz. cap. 1. & 1 Jac. cap. 1. ^o Stat. Hib. 28 Hen. VIII. cap. 2. & v. c. J. Davis decif. Hib. fol. 61.

to this day a charter of privileges given by king *Alfonso* the VI. (about 10 years since) which hath this title in it in these words, *Ego disponente Deo Alphonsus Hesperiae imperator*. So *Francisco de Piza* tells us, who was lately dean of the faculties of divinity and the arts in the university there. And the next *Alfonso* the VII. was crowned emperor of *Spain* in *Leon*, the ceremonies being afterward iterated in *Toledo*, as in the chief city of that empire, which is therefore also titled, *cabeça del imperio de España* (in a charter of *Pedro* king of *Castile*, given for the dignity of *Toledo*) and *alcaçar de emperadores* in an old rhyme of that country. And the arms of *Toledo* became from this to be the image of an emperor in his imperial habit, holding the mound in the left hand, and a sword drawn in the right. And one of this *Alfonso's* charters, dated in the M.C.LXXVI year of the *Spanish* aera, that is, M.C.XXXVIII of our Saviour, and confirmed by his successors to that city, styles him and his queen *Berengaria*, thus, *Sub dei nomine & ejus gratia, ego Aldefonsus dei nutu Hispaniae imperator, una cum conjuge mea imperatrice domina Berengaria*. And in the subscriptions of it, *imperator* only occurs for the title of this *Alfonso*. They say also that pope *Innocent* the second confirmed this name of dignity to him; which, *Mariana* says, he can very hardly believe. And there is an epistle extant of *Peter* abbot of *Clugny*, wherein this *Alfonso* is called *imperator Hispanus, magnus christiani populi princeps*. And some other antient kings of that country have had the same title, as out of the *Spanish* stories, *Hieronymo de Zavallos* a great lawyer of *Toledo*, *Valdesius* and other such, have largely observed.

The dukes also of *Muscovy*, which antiently used no other title than *Weliki knesi*, that is, in *Russian*, great dukes, have had of later times this title of emperor or *Czar*, (14) which *Basilius*, that was duke about M.D.XX. first took to himself. Yet this title he used not to all princes. In his letters to the emperor, the pope, the king of *Swetland* and *Denmark*, the governors of *Prussia* and *Livonia*, and to the great *Turk*, he used it, but not to the *Polonian*. Because (as my author says) neither of those princes would endure any new title in each other's letters: (15) although this *Basilius* his son, *John Basiliowich*, in his letters to the king of *Poland*, called himself *Czar*, which is emperor or king, but he was never refaluted from the *Polack* by other name than great duke, as *Gaguin* tells us. At this day his successors use the name of emperor, or *imperator totius Russiae*, or *magnus dominus, czar atque magnus dux totius Russiae, &c.* or *dei gratia imperator & magnus dux totius Russiae atque universorum Tartariae regnorum, aliorumque plurimorum dominorum monarchiae Moscoviticae*

dominus & rex, as I read in letters of safe-conduct given by the last *Demetrius*, who subscribed himself *Demetrius imperator*. Other princes give this emperor sometimes the same title; but the neighbour princes stile him usually but great duke. And in the league between *Rodolph II.* emperor of *Germany*, and the last *Grand Signior Achmet* agreed on in the year M.DC.VI. it was among other things concluded that they might both in their letters or otherwise at their pleasure, use the name of emperor. The same title is attributed to *Prester John*, and some others.

V. Neither is the use of this title of emperor, in the stile of other princes, any injury to the emperor of *Germany*, who is commonly so known by that name as if it were only proper to him. Indeed divers civilians, especially of *Italy* and *Germany*, which profess the old laws of *Rome*, tell us, that the emperor is at this day of right, lord of the whole world or earth, as their text also affirms, besides divers other flattering passages in good authors of the antient empire; as that of *Corippus* to the emperor *Justin*,

-----*Deus omnia regna
Sub pedibus dedit esse tuis.*---

and *Julius Firmicus* hath this courtly expression, that *totius orbis terrarum spatium imperatoris subjacet potestatibus; etiam ipsum eorum deorum numero constitutum esse quem ad faciendam & conservandam omnia, divinitas statuit principalis*. And in some coins also of the old emperors, the inscription is *VICTOR OMNIUM GENTIUM*, as if all nations whatsoever had then been conquered by them; and divers other such like are obvious. Neither could less follow, if this were true, than that none besides the emperor of *Rome* or *Germany* (which now hath succeeded into the place of *Rome*) might justly use this great title, which denotes the highest sovereignty. But it is most clear that neither antiently nor at this day there is any such title, as lord of the whole world, really due to him, and that divers other princes, as the kings of *England*, *Scotland*, *France*, *Spain*, beside others, have their supremacy, acknowledging no superior but God himself, and may every way as justly (as the emperor of *Rome*) be stiled emperors, or by any other name which expresses the fullest height of honour and dignity. First for the antient extent of the *Roman* empire; it is plain that it had its claustra, as *Tacitus* calls the limits of it. And when under *Trajan* it was at the greatest, being enlarged beyond *Euphrates* (which in the time of *Augustus* was the eastern limit of it, and by *Hadrian* was again brought to be so) it comprehended not the thirtieth part of the whole earth, neither had it ever in this island any further frontier than about *Edinburgh* in *Scotland*;

^p Hist. de Toledo, lib. 1. cap. 29. & 33. ^q Roderic. Toletanus, lib. 7. cap. 7. & Roderic. Sant. hist. Hisp. part. 3. cap. 51.
^r De rebus Hispaniae, lib. 10. cap. 16. ^s Tract. de cognitione per viam violentiae, gloss. 18. ^t Lib. de dignitate regis Hispaniarum.
^u Sigismund. com. rer. Moscovitic. & Gagu. Moscovit. cap. 5. ^x Possessin. in Moscovia, pag. 281. edit. in 80. 1587. The Russian Commonwealth, pag. 19. Londini 1591. ^y Dat. 28 Decemb. 1605. ^z Lit. reg. Elizabeth. ap. Hackluit, part. 1. pag. 339.
^a Merc. Gallobelgic. tom. 5. lib. 4. ^b Luys de Ureeta hist. Aethiopic. passim. ^c Axioms ff. ad leg. Rhod. ^d Mathaeos, lib. 2. cap. 33. ^e Constantius apud Adolph. Occ. pag. 552. ^f Ita etiam Bodinus de repub. lib. 1. cap. 9.

and in the declining times, it was daily straightened, both by the revolt of divers nations that were a part of it, and by the incursions of such as had never been yet conquered by the power of it. And plainly, at the height, it acknowledged some to be *liberi populi regesque*, or free and supreme states and kings, as the very words are of ^s *Paulus* a great lawyer of the antient empire. Then in the later times we see that, besides the states of *Asia*, *Africk*, and *America*, the greatest kings of *Europe* have from many ages been absolutely supreme, without any kind of colour of subjection to the empire. As for the kings of *Spain*; those great lawyers of that country, *Valdesius*, *Burgo de Paz*, *Diego Perez*, *Ferdinando Vasques*, *Couvarvias*, *Hieronymo de Zevallos*, and such more make it clear, that the king of *Spain* is from antient right free from all colour of this kind of subjection. The same in the kingdom of *France* is justified by those *French* lawyers, *Bodin*, *Chassanaeus*, *Bignon*, *Carolus de Grassalis*, and divers others. And for *England*; howsoever in a letter of complement from our *Henry II.* long since written to ^h *Frederick Barbarossa*, some kind of subjection may seem to have been acknowledged to the emperor of *Germany*, and although our *Richard I.* in his captivity, *Consilio matris suae deposuit se de regno Angliae & tradidit illud imperatori* (that is to *Henry VI.*) *sicut universorum Domino, & investivit eum per pileum suum*, as the words of *Roger of Hoveden* are; yet besides the release of this pretended right made by the same emperor *Henry* at his death, we find that the authority of all publick notaries, created by the emperor or his counts palatine, was forbidden here for this cause, *Eo quod* ⁱ *regnum Angliae ab omni subjectione imperialis sit liberrimum*, as the words are in a constitution of king *Edward II.* to this purpose. And it appears that in the elder times, publick notaries (who derived their authority either from the pope or emperor) were not at all ^k or were rarely admitted in any use in this kingdom; however the old ^l canonists deliver that notaries created by any other than the emperor or the pope, gained no credit to the instruments they testified. But indeed in those times with us, the credit of evidences and legal instruments was justified by authentick seals of the parties, and not by the subscription of notaries. But also under our *Henry V.* when *Sigismund* the emperor came hither with a purpose to make a peace between our *Henry* and the *French* king, he was not admitted before he had made solemn profession to the duke of *Gloucester* (who with a sword drawn in his hand, pronounced that he knew no other emperor here than the king) *nihil se contra superioritatem regis praetexere*, as it is observed out of *Titus Livius*, who ^m then wrote the acts of *Henry V.* and the

French war. But for the kings of *England*, to this purpose, there falls somewhat more in the next chapter touching the title of king of kings. Upon a like ground of meer supremacy was that law made by *James III.* of *Scotland*, wherein it is ordained, that *Sen* ⁿ *our souveraine lorde hes full jurisdiction* (so are the words of the act) *and free empire within his realme, that his bienesse may make notares and tabelliones quibais instrumentes fall have full faith in all causes and contractes within the realme; and in time to cum that na notar be maid, nor to be maid be the emperours autoritie, have faith in contractes civil within the realme, lesse then be be examined be the orinar and apprieved by the kingis bienesse.* (¹⁶) Which act as also that rescript of our *Edward II.* before cited, were made to prevent that pretended right which the emperors challenge to them and their counts palatine, in the making of publick notaries which may have credit no less universally than as if every place where they come, were subject to the authority ^o by which they are created. The same supremacy is acknowledged in the kingdoms of *Denmark*, *Poland*, and elsewhere. Whence also it was that when *Alonso* the IX. of *Castile*, would define what kings were (after he had dispatched the particulars that belonged to the emperor) he says that they are, every one in his kingdom, the vicars or vicegerents of God, placed over the people to govern them, ^p *bien assi come el emperador en su imperio*, that is, no otherwise than as the emperor in his empire. Therefore also *Antoninus* speaking of the difference between the emperor's title which he hath before he is crowned, from that which he bears afterward (for, before he is to be named king of the *Romans*, and afterward emperor) taxes it as an abuse in expression, ^q *Quasiminus fuerit* (as his words are) *regem quam imperatorem esse, quae barbara perversitas dicenda est.* Taking plainly the title of king, as it is, to be supreme in the greater monarchies of *Europe*. But for this matter (which is indeed of it self most clear) whosoever shall be troubled with the obvious opinions and arguments of the civilians, as especially of that *Neopolitan Marta*, *Zoannettus*, and the like, who attribute all temporal supremacy to the empire of *Germany*, as it hath succeeded to *Rome*; let them more fully by particulars satisfy themselves out of those learned and judicious lawyers that live under the empire, *Henningius* ^r *Arnisaenus*, and ^t *Bernardus Zieritzius*, besides ^u the *Spanish Zevallos*, *Albericus Gentilis*, and some more of the discreeter civilians, who have both singularly disputed this question, and have also vindicated the rights of supreme majesty to other kings of *Europe*, nothing at all derogating from the true dignity of the empire. And for the use of the title of emperor in the stiles of other kings

^s ff. de captivis, l. 19. & 24.
^t de jurisdictione.

^h Dorf. claus. 13 Ed. II. m. 6. in schedula.
ⁱ Videtis Spec. tit. de Instrum. edit. §. 8. restat.
^k Guil. Herbort. in decis. Rotae, nov. tit. de fide instrum. decis. §. 1.
^l Parli. §. Jac. III. cap. 31.
^m Parli. 2. tit. 1. Ley. 5. & 8.
ⁿ Spec. tit. de instrum. editione, §. 8. restat. Wefenbech. Paratit. ff. de fide instrum. &c.
^o Parli. 2. tit. 1. Ley. 5. & 8.
^p Chron. part. 3. tit. 22. cap. 10. §. 1.
^q De jure majestatis, lib. 1. cap. 2.
^r Commentar. de principum inter ipsos prearogativa. Jenae 1612.
^s Traët. de cognit. per viam violentiae gloss. 18. Disput. regal. 1. & de jure belli, lib. 1.

^h Radevic. de gest. Fred. 1. lib. 1. cap. 7. & videtis Horn en le miror des justices, cap. ste lib. 4.
^k Constit. Othonis, c. quanto & cap. quoniam & ib. 1. de Athona.

^l Arnisaenus in decis. Rotae, nov. tit. de fide instrum. decis. §. 1.
^m Arnisaenus in decis. Rotae, nov. tit. de fide instrum. decis. §. 1.
ⁿ Spec. tit. de instrum. editione, §. 8. restat. Wefenbech. Paratit. ff. de fide instrum. &c.
^o Chron. part. 3. tit. 22. cap. 10. §. 1.
^p De jure majestatis, lib. 1. cap. 2.
^q Commentar. de principum inter ipsos prearogativa. Jenae 1612.
^r Traët. de cognit. per viam violentiae gloss. 18. Disput. regal. 1. & de jure belli, lib. 1.

thus much. And hitherto, of the title of king, as it denotes a supreme upon earth; whence (according to the course proposed) we come both to the same title as it is *subordinate*, and to those great titles of honour *king of kings*, and *great king*, which it supporteth.

CHAP. III.

- I. *Of the title of king, as it is subordinate in subject-princes. With some particulars of the kingdom of the Isle of Man.*
- II. *The title of king of kings, and great king. With the old ceremony of giving earth and water instead of homage.*
- III. *Of solemn kissing the feet, hands or lips of supreme princes, and of adoration.*

THE name of king, as it denotes a subject or subordinate prince, occurs either for such as are supposed *tenants* to the emperor or supreme monarch, which are very obvious, or else for the *sons* of kings. Those of the first kind are frequent in the *Roman* story, as we see in the kings that were constituted under the empire in *Parthia*, *Armenia*, *Arabia*, *Persia*, *Jury*, and other parts of the world. For they had (as *Tacitus* says) *instrumenta servitutis & reges*. Whence it is that in some coins of *Trajan* we have *REGNA ADSIGNATA*, and *REX PARTHIS DATUS*, and the like. Thence is it that *Arrian*, in his *Periplus Ponti Euxini*, inscribed to the emperor *Adrian*, so often mentions kings with the notes of *ἐκ τοῦ πατρὸς τῷ αὐτῷ βασιλείαν ἔχει*, such a one holds his kingdom as given him by your father, and *ἐκ τοῦ πατρὸς αὐτῷ τῷ βασιλείαν ἔχει*, such an one holds his kingdom as given him by your self. And in the laws of *Rome* it was capital ^u to him *cujus dolo malo factum erit quo rex exteræ nationis populo Romano minus obtemperet*, as *Scaevola's* words are; as if all foreign kings had been their subjects. Neither is the holy story without the testimony of such kings. For there we have divers kings that were subject to *Kederlaomer* king of *Elam*, and other like are in the succeeding times. (17) And in later ages, the emperor of *Germany* hath created some dukedoms and other territories into ^{*} kingdoms, making the kings his tenants feudataries, yet crowning them and giving them *merum imperium*, or power of the sword, or of life and death, as the ceremony of the investiture imported, which was by the delivery of a sword. *Est enim* (saith *Orto* of *Frinsinghen*, speaking of the use of the emperor's court) *consuetudo curiae, ut regna per gladium, provinciae per vexillum a principe tradantur vel recipiantur*. (18) This was the common ce-

emony of investiture of a subordinate king, as it is also justified by that of *Guntherus* speaking of *Frederick Barbarossa* his giving a kingdom to one brother, and a dukedom to the other, when they were at difference who of them should be king. The emperor being at *Mersburg*, commands them both to come before him, and there so determines it.

— *Ut quaedam provincia tota Guidoni Cederet, at regnum cum nomine Petrus haberet. Ergo ubi vexillo partem quam diximus ille, Hic autem gladio regnum suscepit ab ipso (Hunc etenim longo servatum tempore morem Curia nostra tenet)* —

But also at or soon after the time of these kind of investitures, a crown (which the same author calls *brevius Diadema* in regard of the emperors) and other regal ornaments were commonly given, yet not (as I conceive) so much for a necessary part of the ceremony of investiture, as for a solemn attestation of it; the reality of the investiture in the empire consisting only or chiefly in the delivery of the sword, though at *Rome* the investiture of some kings, that by the pretence of that see have had the originals of their dignity from thence only, appears to have been by the pope's giving or sending the crown, scepter, and bull of creation without any sword, as we see in that of *Innocent* the third's ² creation of *Calojoannes* into the title of king of *Bulgaria*. I say, of some kings; for otherwise we see that by the very pontifical ^a of *Rome*, the sword is to be given by the metropolitan to an elected king, as if he received it by the immediate gift of him authorized by that see to make the investiture. And as there was a known form of investiture of subordinate kings, so is there found a precript also for the quality of him that might be thus made a king by the ^b emperor. In a little book printed at *Paris* 1539. titled *La division du monde*, I read; *Le prince que veult son pais estre reduit en royaume il doit aver quatre duches tenants l'une à l'autre, à chascune duche quatre citez, & que elles ne soient tenus que de luy, & chascun city un archevesque, & a chascun archevesque dix evesques que nous appellons provinces, ou autrement il ne poit estre roy. Et si doit faire roy per l'empereur & se faire corouner en allant par divers luy come son maieur, ou faire tant que l'empereur veult en son pais pour le corouner, which is almost but the same that was before published in that which they call *La Salade* (a book of matter of dignity and honour, written in very old *French*, and revived into the same tongue of the later ages by *Michael le Noir* under *Francis* the first in 1521. and then first printed) as I learn, out of some parts of it communicated to me by*

^u Ad leg. Jul. majestatis, l. 4. cuiusque.

^{*} Videffis Radevic, lib. 1. cap. 13. Otton, de S. Blasio sub an. 1186. Theodorici, de Niem in vita Joannis pp. 23. pag. 76. &c. Joh. Dubravium hist. Bohem. lib. 6. Helmond. hist. Slavorum, lib. 1. cap. 8. Arnold. Eubecens. Slavorum, lib. 6. cap. 2. Antonia. hist. part. 3. tit. 19. cap. 6. §. 1. Choppin, de dominio Franciae, lib. 2. tit. 1. Paul. Jou in legat. Moscovit. & Sigismund. in reb. Moscovitic. Cosmam Pragensem hist. Bohem. an. 1086. Laert. Cherubin. Bullar. tom. 1. pag. 37, 38, 40. alios item qui reges, tam a pontifice Romano quam ab imperatore, constitutos, saltem praetensum a pontifice regum continuendosque ius meminere. Id nos hic consulo praetermissimus.

² De gest. Frederic. 1. lib. 2. cap. 5. & Gunther. lib. 1. Austruados.

^a Laert. Cherubin. Bullar. tom. 1. pag. 38. ann. Chr. 1203.

^b De hac re

consulas Cuspinian. in Austria, Petrum de Vincis, lib. 6. epit. 26.

Fr. Hotoman. disp. de feudis cap. de regnis in feudum datis, &c.

Mr. William le Neve, *Tork* herald, a gentleman of singular industry and ability in whatsoever belongs to this kind of observation. It was printed by the special leave and direction of Francis the first, and therefore also I thought it not unworthy of a memory here; though withal I understand not any ground or reason, or indeed colour why those conditions ^c are or ever were requisite in the creation of a subordinate king. But also by the general course of subordination, the kings of ^d Cyprus have been tenants to both empires. And in the Eastern parts nothing is more frequent, than to have subject-kings under the Grand Signior and the Mogor; and other such examples are soon met with. But this title of king thus used, hath been quarrelled at by some, as if every kind of subjection and this title were wholly incompatible. Therefore did Francis the first of France much dislike, that Charles V. should ^e call himself King of Naples and Sicily, enjoying them as the pope's feudatary or tenant. And, when pope Pius V. would have made Cosmo de Medices, duke of Florence, king of the same state, the neighbour princes by no means liked it, and the emperor Maximilian II. answered directly to the French king's ambassador about it, *Non habet Italia regem nisi Caesarem*: according to that of Martial,

Qui rex est regem, Maxime, non habeat.

Whence it was that in the composition of all controversies between our Henry II. and his son Henry (who was crowned in his father's life-time) when the son would have done homage to his father, the father would not accept it, *quia rex erat, sed securitatem accepit ab eo*, as Hoveden's words are: as if such a title of dignity, and the doing of homage or expressing of subjection, could not have stood together. But this and other such passages must be understood, as the name of king denotes supremacy; the use of it in this other sense, as it is a subordinate title, being antient and frequent in the empire and elsewhere, and not without examples also with us in England. For in that heptarchy of our Saxons, six of the kings were usually but as subjects to the seventh being supreme, whom they called ^f *Anglorum rex primus*, or such like, which was as well given to others (the first, that had it, being Aella king of *Suffex*) as to that Egbert, whose glory and greatness consisted rather in the swallowing up of the other subject kingdoms into his own rule, and in the new stiling the heptarchy by the name of England (for he, in *parlamento*, saith my ^g author, *apud Wintoniam mutavit nomen regni, de consensu populi sui, & jussit illud de caetero vocari Angliam*) than in having a larger dominion than any of his predecessors.

(19) The like were those kings of the isle of Man, who were subject first to the kings of

Norway, then to the crown of England (under king ^h John and Henry the third) and afterwards to the kings of Scotland, and since again to the crown of England. They both stiled themselves kings in their seals inscribed with *Rex Manniae & Insularum*, and were so titled by their superior lords, as we see in that of our Henry the third's testifying, that he had received the homage of king Reynold. *Sciatis* (saith ⁱ he) *quod dilectus & fidelis noster Reginaldus rex de Man venit ad fidem & servitium nostrum & nobis homagium fecit*. But they were also in later times, titled the lords of Man or *domini Manniae*, by which title the dignity was not so restrained that therefore the name of king was taken from them. For our stories tell us expressly, that the lords of Man had withal the name of king, and might use also a crown of gold: so says Thomas of Walsingham, where he relates, that William Montague Earl of Salisbury, under Richard II. sold the isle to Sir William Scrop. *Willielmus Scrop* (so ^k are his words) *emit de domino Willielmo de Montacuto comite de Sarum, insulam Euboniae* (which is the old name of the isle) *cum corona. Nempe dominus hujus insulae rex vocatur, cui etiam fas est corona aurea coronari*. And another to the same purpose in the ^l publick library at Oxford. *Est nempe jus illius insulae ut quisquis illius sit dominus, rex vocetur: cui etiam fas est corona regia coronari*. But in the memories which remain of the gifts of this island made by our kings, to such as have been since vulgarly stiled kings of Man, the name of king or kingdom is not found, but only the title of lord; but with the addition of holding it as amply and as freely as any before had it. And while also it was in the hands of that William earl of Salisbury, he titled himself, it seems, only lord of Man or seignor de Man. For so I find him in his charter sealed with the arms of that island, quartered with those of his own family, under a crown that is only sturey with eight flowers, whereof four are much larger than the rest. It was made 22 Februarij, 6 Rich. II. to his beloved esquire Robert Sparry, for settling in him an estate in fee of divers lands and possessions in Sutton, Mountagu, Crowthorn, and Crofton Denham in Somersetshire, and came to my hands through the noble favour of the right honourable Henry earl of Huntingdon. The earl of Salisbury's stile in it is *Gilliam conte de Sarisbury seignior de Man & de l' Isle de Wight*. By the name of lordship also it was given by Henry the fourth to Henry earl of Northumberland, as an island won by conquest from Sir William Scrop, whereas indeed the conquest was no otherwise than that Sir William Scrop was taken at Bristol, and beheaded by those which were of the part of this king while he was duke of Lancaster, and made his way for the crown. And the words of the pa-

^c Videfis DD. ad c. 6. quaest. 3. c. Scitote. ^d Arnold. Lubecens. Slavor. lib. 5. cap. 2. ^e Bodin. de repub. 1. cap. 91. ^f Ethelweld. lib. 3. cap. 2. Beda hist. eccles. 2. cap. 5. circa MCCXX.

^g Idem fere in Alfred. Rhivallens. vita S. Edwardi. Verum ab Anglorum adventu ita dictam scribit Jo. Sarisburiensis Policratic. 6. cap. 16. alij ab Hengisto, ut Hector Boet. Scot. hist. 7. & Jo. Gower epig. in confess. amantis, & Hardingus. ^h Chronic. reg. Manniae. ⁱ Pat. 3 Hen. III. membr. 1. ^k 17 Rich. II. sub ann. d. 1393. p. 357. ^l Chronic. ms. ab ann. 43 H. III. ad 7 H. V. cui scilicet aliquis nomen Guili. Rishanger temere nuper praefixit: sub anno d. 1392.

tent are most observable. He ^m gives him, *infulam, castrum, pelam & dominium de Man ac omnia insulas & dominia eidem insulae de Man pertinentia, quae fuerunt Willielmi le Scrop chivaler defuncti quem nuper in vita sua conquestati fuimus & ipsum sic conquestatum decrevimus, & quae ratione conquestus illius tanquam conquestata cepimus in manum nostram, quae quidem decretum & conquestus in praesenti parlamento nostro* (that is, the parliament of the first year of his reign :) *de assensu domino- rum temporalium in eodem parlamento existentium quoad personam praefati Willielmi ac omnia terras & tenementa bona & catalla sua tam infra dictum regnum quam extra ad supplicationem communitatis dicti regni nostri affirmata existunt.* But it is not so much a wonder to see him give it as a territory acquired by conquest, if withal it be remembered that he had a purpose to have challenged the crowns of *England and Ireland* by a title of the sword and not by inheritance. But he was dissuaded from that claim by Sir William Thirning, chief justice of the common pleas, who was employed under him in his great affairs of state : and thence was it also that to give some satisfaction to the parliament that doubted it, he ⁿ made a publick protestation, that he *would not that any man should think that by way of conquest he would disherit any man of his heritage, franchise, or other rights, &c.* and therefore also he claimed the crown by pretence of hereditary descent. But for the title to the isle of *Man*, he altered not his purpose, it seems, nor did he continue in it without the consent of the parliament, that thus affirmed it to be by conquest. Some years afterward, the earl of Northumberland forfeited it, and it was in the same words given to Sir John Stanley ^o to hold it in fee by the tenure of two falcons, to be presented to the king at his coronation ; whereas the earl of Northumberland's tenure was to carry the sword, called *Lancaster sword* (being the same that Henry the IV. wore when he first arrived in *England*) at the coronations of the king and his successors. By this title it hath continued to this day in the posterity of Sir John Stanley, the earls of *Derby*, who have also by the same grant (as the earl of Northumberland had) the patronage of the bishoprick of *Sodor*, and are in common speech named *kings of Man*. And indeed that having the patronage of a bishoprick is such a special mark of royalty in a subject, as hath not at this day, nor for divers ages hath had an example in any territory of the crown of *England* ; although in more antient times there be express testimony of subjects being patrons of bishopricks in *England* also ; as we see in the ^p bishoprick of *Rocheſter*, which was of the patronage of the archbishop of *Canterbury*, as also the advowson of the bishoprick of *Landaffe* was ^q in the earls of *Gloceſter*. Like this title of *king of Man*, was that of *king of the isle of*

Wight, in the great *Beauchamp* earl of *Warwick*, under Henry VI. who ^r was then crowned king of the same isle. (²⁰) Such were the old kings of *Ireland* under the crown of *England*. Henry the II. granted to Roderick king of *Conaght*, that he should enjoy his territory paying a certain tribute, ^t & *quandiu ei fideliter serviet, ut sit rex sub eo paratus ad servitium suum sicut homo suus.* And in the ^u grants made by king John and Henry III. to the kings of *Conaght* and *Tesmond*, the like title of *rex* is often given them, as it is also observed by the learned Sir John Davis, late his majesty's attorney-general for *Ireland* ; as also in the pipe rolls of Henry III. his time, yet remaining in *Bremingham's* tower in the castle of *Dublin*, sometime *Oneale rex* (upon accounts) sometime *Oneale regulus*, denotes the subject-kings of that country. But it is most observable that some of those kings, though they bore that title, were yet, as they were kings, subordinate even to earls created there by the lords of *Ireland*, and held their kingdoms or their *regalitem* of them. So much appears in this deed of covenants for payment of *cl* cows, giving of hostages, keeping obedience, and some other things, made by Odo Onel, king of *Ter-Comel* in 35 Hen. III. to Walter de Burgo or Burk, then ^v earl of *Ulster*. *Omnibus praesens scriptum visuris vel audituris, Odo Onel rex Kenelean, salutem. Noverit universitas vestra me teneri nobili viro domino meo, domino W. de Burgo comiti Ulton & domino Conac. in tribus millibus & quingentis vaccis solvendis eidem videlicet ad festum omnium sanctorum, anno regni regis Henrici quinquagesimo quarto mille vaccas, & ad natale domini proxime sequente mille vaccas, & ad festum inventionis S. Crucis anno eodem mille & quingentas vaccas sine ulteriori dilatione. Insuper teneor, liberare domino comiti infra praenominatum festum omnium sanctorum quatuor obsides, videlicet, Conleht filium meum si quo modo ipsum habere potero & filium Ogalmuhtun de legitima sponsa sua procreatum & filium vel fratrem Mackanewel secundum filium, Okarry alumpnum meum de legitima sponsa sua procreatum, vel filium fratris sui. Et si obsides praenominatos praefato domino comiti, ut praedictum est, non fecero liberari, ego teneor redire ac reverti ad dominum comitem & me subijcere in omnibus prisonae & voluntati suae. Insuper promisi & obligavi me sub poena excommunicationis de caetero tenere & custodire Alianoram sponsam meam & consanguineam domini comitis bene & honorifice, eidem fideliter necessaria ministrando, & omnia jura sua tam in terris quam in aliis bonis quae ad eum spectare dinoscuntur, secundum usum & consuetudinem terrae meae sine fraude eidem restitui & rehaberi faciam. Et ad haec omnia supradicta fideliter & firmiter observanda super sacrosancta domino comiti praesiti juramentum, volens &*

^m Rot. 1 Hen. IV. part. 5. memb. 36.

ⁿ Rot. Parl. 1 Hen. IV. & Chronic. ms. a. 43 H. III. ad H. V. in bibl. Bodleiana. Th. de Walsingham, pag. 360. edit. Francofurt.

^o Pat. 7 H. IV. part. 2. memb. 18.

^p Cod. ms. Bullar. in recept. Seac. fol. 166. & Cod. parlam. Ed. I. in arce Lond. fol. 19. & 21.

^q Cod. ms. Bullar. in recept. Seac. fol. 166. & Cod. parlam. Ed. I. in arce Lond. fol. 19. & 21.

^r Hist. Teukesbur. ms.

^s Transactio inter Hen. II. & Roderic. apud Roger. de Hoved.

^t Claus. r. Joh. 6. memb. 18.

^u 17 Joh. chart. memb. 3. 6. Hen. III. chart.

^v memb. 2. in arce Londinens.

^w Videlicet quae ex tabulariis regis Hiberniae habet Camdenus in Brit. pag. 773.

concedens si illud infregero, quod abstit, quod licitum sit domino comiti me ejicere a regalitate quam ab eodem tenere debeo, sine spe gratiam vel misericordiam adipiscendi, & eandem, cui-cunque sibi placuerit, sine contradictione seu vendicatione mei vel meorum conferre. *Et insuper obfides praenominati pro voluntate sua antur. In cujus rei testimonium has literas meas domina comiti fieri feci patentes. Dat. apud Ancr. secundo die Octobris anno regni regis Henrici quinquagesimo tertio.* And observe here the special subordination of this king of *Tirconel*. For Henry the third had given the year * before the lordship of Ireland to prince Edward (afterward Edward the first) and under him had that *Walter de Burke* the earldom of *Ulster*, and under the earl, this *O'donnel* his kingdom. The use of the original, whence I took this, was vouchsafed me among other things by that most noble and learned lord the late earl of *Leicester*. It was left in the cabinets of his father, Sir Henry Sidney, that had been thrice lord deputy of Ireland. And of the first kind of subjects that have the title of kings, hitherto.

The second kind are the *sons of kings*. But I make them not a part in this division from any other ground than the passages of some foreign lawyers that affirm as much : there is a frequent opinion among them, that *filius regis rex vocari debet, quamvis regnum non habeat*, and that he is *rex* quoad nomen & dignitatem, but not quoad jurisdictionem, administrationem, vel alia similia quae respiciunt dominium. But at this day, as I conceive, there is no use of this appellation in the sons of any kings, howsoever in the antienter times about DCCC years since, the fashion in *Spain* was that the sons of the kings there, in their fathers life-time were stiled so both by their fathers and by themselves, as *Ludovicus de Molina* ² hath noted out of the charters of privilege given by them which reigned in the age immediate after king *Pelagius*, to the churches of *Oviedo*, *Compostella*, and others : and the like occurs in the elder times of the state of *France*. And in the old eastern empire, the lady *Anna Comnena*, daughter to the emperor *Alexius*, is stiled *Βασιλισσα* that is, *queen*, in the title of her *Alexiados*. But the lawyers do not otherwise allow that name to the sons of kings, than they do the name of duke, earl, or marquiss, to the sons of dukes, Earls, or marquisses, whereof more in the second part. And for the name of king thus applied, you may see *Alonso de Azevedo*, *Didacus Perez*, *Molina*, *Tiraquel*, and others which they cite to the same purpose.

II. The title of king thus applied to subjects, was the cause of that great attribute of *king of kings*, used by some supreme monarchs. It was first in the *Assyrian* empire. *Nabuchodonosor* ^a is so stiled in the holy story, being then king

of *Babylon*. ⁽²¹⁾ And after the translation of this empire to the *Persians*, *Artaxerxes Mne-mon* in his commission to *Ezra*, for the restitution of *Jerusalem* and the temple, thus salutes him. *Artaxerxes* (or *Arthabasta*, as in the original) *king of kings to Ezra the Priest*. And on the great *Cyrus* his tomb this epitaph was written in *Persian* characters, if you believe ^b the authors that have it.

Ενταυτῷ ἐγὼ καίμει Κύρῳ Βασιλεὺς Βασιλέων.

that is, *here I Cyrus lie who was king of kings* : which title also, that conquering ^c *Sesofis* king of *Egypt* (the same with *Sesoftris* in *Herodotus*) attributed to himself in his erected columns of victory. And *Plutarch* reports that *Tigranes*, king of *Armenia*, was angry and would not vouchsafe to answer *Lucullus*, *ἐπὶ Βασιλέα μόνον αὐτὸν ὃ Βασιλέων ἐν τῇ ἐπιστολῇ προσήνευσεν*, i. e. *because in his letter he had stiled him king only and not king of kings*. The use also of this title among the *Parthian* kings, is expressly seen in the lives of *Augustus* and *Vespasian* in *Dio* and *Xiphilin*. The same title had *Artaxerxes Longimanus* of *Persia*, as we see in the ^d epistle of *Hippocrates*, where he is called also *Βασιλεὺς ὁ μέγας*, i. e. *the great king*. This of great king was likewise used in the first empire : we read in the story of *Judith*, in the name of the *Assyrian* emperor, *Thus saith the great king, lord of all the earth*. ⁽²²⁾ And the prophet *Esay*, *so saith the great king, the king of Assur*. The same, applied to the *Persian*, occurs in *Herodotus*, *Xenophon*, *Josephus*, the *Apocrypha* of *Esther*, *Plutarch* and *Aeschylus*. And the bare ^e name of *ὁ Βασιλεὺς*, i. e. *the king*, without addition, is especially used for the *Persian*, whence the nation is ^f stiled also — *ἡ ἁγία βασιλευστέρα*, that is, *the most kingly nation*. So that both those titles of *king of kings*, and *great king*, were common to those emperors of the two first empires, as also (if we believe the history of *Judith*) that ceremony of receiving an acknowledgment of regal supremacy (which by the way I note here, because it was the homage received by kings in that time, from such princes or people as should acknowledge themselves under their subjection) by the acceptance, upon their demand, of *earth and water*. This demand is often spoken of, as used by the *Persian*; and a special example of it is in *Darius* his ^g letters to *Indathyrsus* king of the *Scythians*, where he first invites him to the field, but, if he would not, then, *Δεσπότῃ παρ' σὲ δῶρα φέρωι ΓΗΝ τε καὶ Τ Δ Ω Ρ ἔλθε ἐς λόγους*, i. e. *bringing to your sovereign as gifts, earth and water, come to a parley*. And, one of *Xerxes* his ambassadors that came to demand ^h *earth and water* of the state of *Lacedaemon*, to satisfy him, was thrust into a well, and earth cast in upon him. But indeed, I find it not referred to the

* Rot. Pat. 52 Hen. III. memb. 9.

¹ Gomez. ap. Azeved. in constit. reg. lib. 1. tit. 3. §. 3. Didac. Perez in leg. Castellae, lib. 2.

tit. 2. Tiraquell. de jure primogeniorum quaest. 33. c. 6. ² De Hispan. primogeniis, lib. 3. cap. 6. §. 15. ³ Daniel, c. 2. מלך מלך

Ebraice מלך מלך quo nomine Romanum Imperatorem vetustiss. Rabbini dictum notat. cl. v. & literarum (dum vixit) praefes Is.

Casabonius ad Trebel. Pollionis Valerianos. ^b Eustath. ad Dionys. ^c Strab. Geograph. 15. ^d Diodor. biblioth. 2. ^e Hippo-

crat. in epistolis. ^f Scholiast. Aristophan. in Αχαρησιν. ^g Dionys. Afer. in ^h ^h Herodot. in Melpom. & videlicet epist.

Coon ad Artaxer. ad finem Hippocratis. ⁱ Polyb. hist. 9. in orat. Lucifici. & de hoc more, Plutarch. in Themistocle.

Affyrian empire except only in *Judith*, where the king commands *Olophernes* that he should bid all the western nations ἐτοιμαστέ μοι γῆν καὶ ὕδωρ, i. e. *prepare me earth and water*; (23) and thence a most learned man of this age, makes it indifferent to both empires. (24) Nor is this custom altogether a stranger doubtless to that which ^k *Pliny* speaks of; *Summum* (saith he) *apud antiquos signum victoriae erat, herbam porrigere victos, hoc est, terra & altrice ipsa humo, & humatione etiam cedere: quem morem etiam nunc durare apud Germanos scio.* Whence the phrase *herbam dare* or *porrigere*, came to denote yielding; applied ^l most of all to those which lost in games of running, leaping, wrassling, and such like. In *agonibus* (saith ^m *Varro*) *herbam in modum palmarum dat aliquis ei cum quo contendere non cupit, & fatetur esse meliorem.* And, by a fancy applied, it seems, to these kind of ceremonies, the taking up of fish amongst water out of a well, was interpreted as a promise of the dominion ⁿ of the sea, to the *Athenians* in their sacrifices in *Delos*; as also, when *William* the *Norman* first landing at *Hastings* in *Sussex*, fell down, stumbling as he came out of his ship; *You have possession of England, sir, and you shall be king* (° said one of his knights) and observing that ^p he had took up sand and earth in his hand, he added; *and you have taken liberty and seisin of the country.* But, this is somewhat out of the way. That of *king of kings*, hath also been used by other states besides any of those empires. After the *Persians*, their neighbours the *Parthians* had it. *Regem etiam regum & exercitatione venandi & convictu Megistanum abstinuisse, quod apud Parthos iustitij instar est,* are the words of ^q *Sueton* upon the death of *Tiberius*: whence, it seems, it was left long after to ^r the prince of *Armenia*, stiled Ἀρχὸν ἡγεμόν Ἀρμενίας, i. e. the prince of princes, as the ^s elder *Valerian* was also expressly titled in letters of an eastern king. Of the *Egyptian Sesostris*, before. And when *Antony*, to render himself to *Cleopatra*, brought her the king of *Armenia* captive, and then liberally gave her sons both *Armenia*, *Parthia*, and *India*, he titled them *kings of kings*, and stamped monies also with this inscription, ^u *Reginae regum filiorum regum Cleopatrae.* How the later emperors affected it, I remember not. But *Maximilian's* jest was, that whereas others were *reges hominum*, he was *rex regum*, because his subjects would do but only what they list. But it is also found among the titles of the kings of *England*, when under them they had kings for subjects. In a charter made to the abbey of *Malmesbury*, in DCCC. LXXIV. the like stile is. *Ego Edgarus totius Albionis basileus, necnon maritimum seu insularum regum circumhabitantium.* And in ^x another

DCCC. LXIV. the subscription is: † *Ego Edgar basileus Anglorum & imperator regum insularum.* Note the majesty of his title, well justified by his own conquests. *Ille cum ingenti classe* (saith *Florence of Worcester*) *septentrionali Britannia circumnavigata, ad Legionum civitatem* (25) (that is *Chester*) *appulit. Cui subreguli ejus octo Kynathus scilicet rex Scotorum, Malcolm rex Cumborum, Maccus plurimarum rex insularum* (this *Maccus* is, in *Malmesbury*, called *Maccusius archipirata*, (26) he was then king of *Man*, and some adjacent isles) *& alii quinque Dufnallus, Siferthus, Hwucallus, Jacobus, Juchillus* (all kings of *Wales*) *ut mandarat, occurrerunt, & quod sibi fideles & terra & mari cooperatores esse velent, juraverunt. Cum quibus die quadam scapham ascendit, illisque ad remos locatis, ipse clavum gubernaculi arripiens, eam per cursum fluminis Deae, perite gubernavit, glorifying afterward to the nobility, tunc demum quemque suorum successorum se gloriari posse regem Anglorum fore, cum tot regibus sibi subsequenti-bus potiretur pompa talium & honorum.* The like almost being before in his uncle *Athelstan*, who, (as *Malmesbury's* words are) *Ludwalum regem omnium Wallensium* (I read *occidentium Wallensium*, as *Florence of Worcester* and *Roger of Hoveden* persuade; and that *Ludwal* was *Howel Dha*;) *& Constantinum regem Scotorum cedere regnis compulit. Quos tamen non multo post miseratione infractus in antiquum statum sub se regnatos constituit, gloriosius esse pronuncians regem facere quam regem esse;* which was expressed in that upon *Charles* ^z *Martel's* tomb,

Non vult regnare sed regibus imperat ipse.

imitated in more true verse, thus:

*C'est ce Martel le prince de François,
Non roy de nom, mais le maistre des roys.*

But for that of *Athelstan*, because some make flight of the report and endure ^a not the usual authorities that prove it, you may see the consent of *Ethelwerd*, *Hoveden*, *Florence of Worcester* (27) *Henry of Huntingdon*, and other antients. (28) But those subjects kings also fully maintain that title of emperor in *Edgar's* stile, and shew the highest note of supreme dignity in him, that the emperor of *Rome* could any way challenge: although no argument so really justify the supreme title of emperor in our sovereigns, as their own (29) independent right, which was justly challenged and preferred by our *Edward III.* when the emperor *Lewis of Baveire* would have had him kiss his feet in their interview at *Cologne*. The emperor (saith *Walsingham*) thought much *quod rex Angliae non se submitit ad oscula pedum suorum.* But the king of *England* answered him that he

ⁱ Draf. Observat. 12. c. 20.

^j Mus apud Athen. Dipnosoph. 8.

^k Hist. Nat. 22. cap. 4.

^l Malmesbur. de gest. reg. li. 3.

^m Hist. Normannic. ap. Camd. in reliquis.

ⁿ Conf. Porphyrogenit. de administ. Rom. imp. cap. 44.

^o Trebell. Poll.

^p In Caligul.

^q In Valerian. princeps principum.

^r Xiphilin. in Augusto.

^s Adolph. Oeco de Numisf. pag. 33.

^t Pat. i Ed. IV. part. 6. memb.

^u Non bonorum, ut in vulgat. cod. Florent. Wigorn.

^v Hieron. Bignon, de l' excel. des roys, livre 3.

^w Vid. Buchanan. rer. Scotie. 6. reg. 75. Sed & de hac re praeter scriptores nostros, vide Arnificum de jure majestatis, lib. 1. cap. 5. §. 4.

^x Nonius & Festus.

^y In antiquitatib. apud Servium in Aeneid. 8.

^z Se-

^a mus apud Athen. Dipnosoph. 8.

^b Malmesbur. de gest. reg. li. 3.

^c Hist. Normannic. ap. Camd. in reliquis.

^d Conf. Porphyrogenit. de administ. Rom. imp. cap. 44.

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ⁱ Adolph. Oeco de Numisf. pag. 33.

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^l Hieron. Bignon, de l' excel. des roys, livre 3.

^m Vid. Buchanan. rer. Scotie. 6. reg. 75. Sed & de hac re praeter scriptores nostros, vide Arnificum de jure majestatis, lib. 1. cap. 5. §. 4.

was *rex inunctus*, & habet vitam & membrum in potestate sua, & idcirco non debet se submittere tantum, sicut *rex alius non inunctus*, meaning that the king of England was no way different in supremacy or independency from the highest emperor whatsoever. Neither have the most judicious lawyers of the empire any other reason of their emperors dignity or precedence before other such absolute kings, than as the words of the most learned ^b *Arnisæus* are, *Quod omnia regna superat imperium antiquitate*, which (admit it were clearly true) can be no cause of superiority though it may be of precedence.

III. That of *kissing* of the emperor's feet (which occurs here and not untimely to be observed) was derived from the old use of it in the height of the *Roman* empire, which yet was sometimes turned into kissing the hand, the knee, or the lips. For, whereas it was usual either to kiss ^c the images of their gods, or, adoring them, to stand somewhat off before them, solemnly moving the right hand to the lips, (³⁰) and then, ^d casting it as if they had cast kisses, to turn the body on the same hand (which was the right form of adoration) it grew also by custom, first that the emperors being next to deities, and, by some, accounted as deities, had the like done to them in acknowledgment of their greatness. Neither was it wanting to some of the *Roman* generals, before the empire began, as we see in the ^e story of *Cato Minor*, whose hands the soldiers kissed, in special honour of him at his departure; being a favour which few ^f of his place in those days received among the *Romans*. (³¹) And for kissing the lips also, it is apparent that at first it was very usual in the empire. *Oscula cottidiana* (saith *Sueton*, of *Tiberius*) *prohibuit edicto*. Yet his edict against them, so took not the use away, but that it was frequent, after him, in their salutations. The reading of *Martial* alone tells every man enough of that. But, when some of his successors could not content themselves with the name of *Man*, but would be called *Jupiter*, be supposed carnally to lie with *Venus* and the *Moon*, and upon their infinite such like fanatick conceits, pretended themselves to be divine; they were not satisfied with those usual customs, but they thought themselves much wronged, and their majesty impaired, if they, who saluted them, presumed to kiss above their feet; although some of them also permitted their hands, and knees to the better rank. Examples of kissing their feet and hands are in ^g *Caligula* (and in him first) and of the knees, feet, and hands in the younger *Maximin*; yet his father the elder *Maximin*, although a tyrannical and most wicked prince, would ^h suffer none to his feet; *Dii prohibeant* (were his words) *ut quisquam ingenuorum pedibus meis osculum figat*. But *Dioclesian* (as *Pomponius Laetus* writes) constituted by edict, *ut omnes, sine generis dif-*

crimine, prostrati pedes exoscularentur: quibus etiam venerationem quandam adhibuit exornans calciamenta auro, gemmis, & margaritis. As the bishop of *Rome* doth for those which kiss his foot; being in a crimson velvet shoe with a golden cross on it. A ceremony antiently used to other bishops ^{*} and great prelates as well as the pope. But, of this custom to the emperors. *Tenuere* (saith *Lipsius*) *superbum, ne dicam impium hunc morem (quid n. homo, infra hominem, hominem abjiciis?) principes aliquot secuti, sed non e bonis*. And one of their best princes, *Alexander Severus*, it is delivered by *Lampridius*, that *salutabatur nomine, hoc est, Ave Alexander. Si quis caput flexisset, aut blandius aliquid dixisset uti adulator, vel abjiciebatur, si loci ejus qualitas pateretur, vel ridebatur ingenti cachinno, si ejus dignitas graviore subicere non posset injuriæ*. And ^k *Martial*, in *Trajan's* time, rejects those base flatteries that had been used to *Domitian*, and

*Ad Parthos, saith he, procul ite pileatos,
Et inopes humilesque supplicesque
Pictorum sola basiate regum.*

That, to the knee, was of later time in the ^l eastern empire, which *Conrad III.* extremely disliked at his interview with *Emanuel Comnenus*: neither would he, for honour to the person he did bear (being emperor of the west) so much as permit the emperor *Emanuel* to sit and receive a kiss of salutation from him standing. Whereupon the matter was composed by their counsellors on both sides, so, that *in equis se viderent, & ita ex paritate convenientes sedendo se & osculando salutarent*. Neither would *Muleasses*, king of *Tunis*, kiss pope *Paul III.* his foot, but his knee only. But kissing the hand of great princes is yet usual, and it is offered frequently as a testimony of serviceable love to other great persons; as it was antiently ^m also. (³²) *Inest* (saith *Pliny*) *in aliis partibus quaedam religio, sicut dextra osculis aversa appetitur, fide porrigitur*. Perhaps this kind of kissing came to *Rome* first from the old customs of the *Asiatick* kingdoms. For, when the old Persians meet (saith *Herodotus*) *you may know whether they be equal or not; for in salutation they kiss each other, but if one be somewhat inferior, they kiss only the cheeks: but if the one be far more ignoble* (*δεσποτικῶς ἢ προσκυνοῦντες τὸν ἑταρόν*) *he falls down adoring the other*. (³³) For, adoring simply is often taken only for a man to kiss his own hand or fore-finger with the bending of his body; but the falling down also (which supplies the kissing of the feet) joined with that ceremony, particularly denotes the *Persian* adoration. And as it appears out of that of *Martial* before cited, they did also (if the distance permitted) kiss the feet in the adoration of their kings. Thence

^b De jure majestatis, lib. 1. cap. 4. §. 1.

^c Cicer. in Verr. act. 5. de Herculis statua, & Lucret. lib. 1. saepe salutantur, &c.

^d Apuleius Milet. 4. & Plin. hist. 28. cap. 2. alii, & videlicet 1 Reg. cap. 19. 18. & Job. 31. com. 26. & 27. ^e P. Pithæus advers. 1. cap.

7. & Lips. elect. 2. cap. 6. Verum de adorationis hujusmodi more videndus imprimis doctissimus Cl. Salmasius in Vopisci Probum.

^f Plutarch. in Cat. Min. de hac re: vide eum in Bruto, ubi de conjuratis in Caesarem. ^g Dio Cass. hist. 59. ^h Capitolin. in Maximino juniore.

ⁱ Basingstoch. hist. Brit. 6. not. 6. ^k Cæsaubon. exercit. 14. §. 4. in Baronium. ^l Lib. 10. epig. 72. ^m Helmsold. hist. Slavov. 2. cap. 15. edit. Reineccii. v. Cantacuzen. hist. 1. cap. 16. ⁿ Arrian. in Epictet. 1. cap. 19. Senec. ep. 119. alibi. ^o Hac

fere phrasi utitur d. Matt. cap. 4. com. 9. arque idem est quod Curtio lib. 8. procumbere.

have you *adorari more Persarum* ὁ Νέστωρ Βαρθολομαῖος. Which is expressed by Euripides thus personating Phrygius, to Orestes;

Γ' ἔρποντο σ' Ἀναξ ὑμῖσι Βαρθολομαῖος
Γ' ἔρποντο —

That is, *falling down, I adore thee, O king, after the Persian manner.* And, *ipse* (saith Lampridius of Alexand. Severus) *adorari se vetuit* (meaning with the divine respect of kissing the hand) *quum jam coepisset Heliogabalus adorari regum more Persarum.* Another of ° *Zenobia: Adorata est more regum Persarum.* Whence, Seneca speaking of Caligula's offering his foot to kiss, says, he was *homo natus in hoc, ut mores liberae civitatis Persica servitute mutaret.* But, in Alexander's turning the Graecian liberty into this servitude, Q. Curtius expresses it by *venerari, procumbere, & humi corpus prosternere.* And thereof saith Justin, *retentus est a Macedonibus mos salutandi reges, expulsa adorazione.* (34) But that greatest kind of adoration (after the old Persian manner) is used to this day to the great duke of Moscow, the king of Calcut, the great Chan, the Turk, and such more. And a part of it is yet retained in that use of kneeling to the greater princes of Europe; and kissing their hands. But for the use of adoration in the empire, most particularly Procopius. He says, that the antient use, before his time, was, that one of the dignity of a *Patricius*, in his address to the emperor, *παρὰ μὲν ἐπὶ τὸ πρὸς αὐτὸν ἔκειτο, & δεξιὰν, worshipped or bended himself to the emperor's right pap,* and that the emperor dismissed him with a kiss on his forehead; but that all others of less dignity *γόνυ κλινάμενοι βασιλεῖ τὸ δεξιὸν ἀπὸ λαοσάτο, kneeled to the emperor on their right knee, and so departed.* And that no use was of adoration to the empress. But that Justinian, among other things which by Theodora's perswasion or for her sake he innovated, made it a law, that as well every *Patricius* as any other that came in sight of either him or her, should presently fall *eis τὸ ἔδαφος, ἐπὶ ὅμα χειρῶν & ποδῶν ἐς ἄραν τελευταμένων τῷ χειρὶ ποδὸς ἐκτεταπὲς ἀλάμω, upon the ground, on his face, and lifting himself up on his hands and feet, should kiss both the feet of each of them.* But also that kissing of the feet hath been used in Europe at the doing of homage upon investitures received from great princes, as we see in that of Rollo or Robert, first duke of Normandy, receiving the dutchy from Charles the Simple, and such more; (35) though in later ages, and at this day, the kiss in homage be on the cheek or lips, wherein it is so essential also that the homage hath not enough, it seems, of what is legal without it; whereupon in time of Henry VI. a great plague being about London, a bill was put up in parliament, desiring the king, for his own preservation, to ordain and grant (so are the words of the roll) *by the autoritie of*

this present parliament, that everiche of your said lieges, in the doing of their said homage, may omit the said kissing of you, and be excused thereof (at your will the homage being of the same force as though they kissed you) and have their letters of doing of their homage, the kissing of you omitted notwithstanding. And the bill having passed both houses, the subscription is, *Le roy le voet*, as the usual words of his consent are. (36) And of adoration and kissing the lips, hands, and feet, thus much by the way. And thus much of the titles of king and emperor.

CHAP. IV.

- I. Of the title of dominus or lord given to great princes, but also communicated to subjects of the greater rank. Senior, xequor, cheque, and the like.
- II. The kings of England antiently called only lords of Ireland. The deduction and change of that title.
- III. The attribute of the name of God to supreme princes, and swearing by them and by their genius. Divinitas nostra, and aeternitas nostra, and the like used by them; with the antient use in the eastern parts of having the name of a deity in their names.

FOR the fuller expression of majesty, other attributes also have been given to supreme princes, which be names as essential, as those of emperor and king, yet they are not convertible with them, nor so particularly design them. Those are chiefly *domini* and *dii*, or lords and gods, which are communicated also to some others which are subordinate. (37) For that of *dominus* or lord; it was frequent in the Roman empire. But Augustus utterly refused it, and by publick edict prohibited it to be given him. *Domini appellationem* (saith Sueton) *ut maledictum & opprobrium semper exhorruit.* Cum spectante eo ludos, pronunciatum esset in mimo, O DOMINUM AEQUUM ET BONUM! & universi quasi de ipso dictum exultantes comprobassent: Statim manu vultuque indecoras adulationes repressit, & insequenti die, gravissimo corripuit edicto, DOMINUMQUE se posthac appellari, ne a liberis quidem aut nepotibus suis, vel serio vel joco passus est. (38) Neither would he suffer his children or nephews, to use it in their compliments or other language to each other. For it was a fashion about that time, for every man to salute his friend, with the flattering language of *dominus* and *rex*, (39) as it is plain out of Martial. Neither would Tiberius endure this Title, not so much as in common salutation. Whereupon that great hi-

° Trebellius Pollio in 30. tyrannis, videlicet Theophil. ad Autolyce, lib. 1. de adorando Caesare. P De Benefic. 2. cap. 5. ° Adam. Contzen. Politic. lib. 7. cap. 4. §. 5. & de adoratione, osculatione manus, &c. videlicet Marc. Anron. Surgent. Neapol. illustrat. lib. 1. cap. 21. & Bullinger de imp. Rom. lib. 1. cap. 11. ° Arcana historia pag. 133. & vide Nic. Alemannum, in notis ad eum historicis, pag. 115. Mf. vet. apud Camd. in Normannis, & vide G. Gemiticenf. lib. 2. cap. 17. ° Rot. Parl. 18 Hen. VI. artic. 58. ° Martial. epig. 68. lib. 2. idem, l. 1. epig. 113. l. 4. epig. 84, &c. ° Tacit. Annal. 2.

storian and statesman observes, unde *Augusta* & *lubrica oratio, sub principe, qui libertatem metuebat, adulationem oderat*. And to the same purpose *Statius* speaks of *Domitian*.

*Tollunt innumeras, ad astra, voces
Saturnalia principis sonantes,
Et dulci DOMINUM favore clamant;
Hoc solum vetuit licere Caesar.*

which yet must either be referred to meer flattery or dissimulation, or else to the infancy of his empire. For, by his express command, the titles of his letters and such like were *dominus & deus noster sic fieri jubet*. And *Caligula* before him publickly also endured it. After *Domitian*, the first that permitted himself to be stiled by this title, was *Diocletian*, who, as *Victor* saith, *se primus omnium Caligulam post Domitianumque dominum palam dici passus*, & *adorari se, appellarique uti deum*. Afterward that apostate *Julian*, after his counterfeiting fashion, prohibited ^a it also. But, howsoever in publick salutations, it might be so much avoided, both by good and bad princes before *Diocletian*, yet both before and after him, it was promiscuously given them. *Festus*, lieutenant of *Jury*, in that of *S. Paul's* ^b appeal, calls *Claudius* absolutely *lord*. *Eudaemon*, in his petition to *Antoninus*, ^c calls him *κύριε βασιλεῦ ἀπὸ τοῦ κόσμου*, i. e. *lord emperor*, and the emperor in his answer, stiles himself *lord of the world*; as is before observed. And, in a gold coin ^d of the great and religious *Constantine*, stamped with his picture sitting, and his court-guard about him, the inscription is, *FELICITAS PERPETUA AUGEAT REM DOMINI*. *NOST*. By which, and the like, our most judicious ^e *Camden* observes, that this *Constantine* was the first that used this title in his monies and publick inscriptions. In the x. of *Pliny's* epistles also, *Trajan* is for the most part called *domine*: although his panegyrick to him, hath *principis sedem obtines, ne sit domino locus*. And the emperors are called *rerum domini*, by ^f *Sidonius Apollinaris*;

—— *Mea Gallia rerum*, saith he,
Ignoratur adhuc dominis ——

And *Lucan* also speaking of the beginning of the empire in *Julius Caesar*, from whence those titular attributes of greatness had their original in *Rome*,

*Namq; omnes voces, per quas jam tempore tanto
Mentimur dominis, haec primum repperit aetas.*

Neither *dominus* only, but *berus* also was given them, as the most learned *Casaubon* observes upon *Sueton's Octavius*. And for the later times, frequent testimony occurs in the imperial story. The Greek constitutions, and other testimonies of the *Constantinopolitan* emperors,

commonly give them the name of *κύριος*, i. e. *lords*, for which in their later corrupted idiom you shall have often *κύριος*, sometimes *κύριος* and *κύριος*. Whence in some passages *kursac*, and *fursac*, and the like (especially in the old *French* history of *Geoffrey Villehardouin*) occur, being no other than corrupted from *κύριος* or *κύριος* *Ιουστινιανου*. Neither were *Justinian* and *Theodora* his ⁱ empress, content with the usual names of emperor and empress, when any address of speech was made to them, unless *δεσπότης* or *lord*, and *δεσποινίς* or *lady*, were together also given them. The use also of the titles of *lord* given to supreme princes hath been in every kingdom of our *Europe*, as also in the *Mahomedan* state, where they have the name of *ameras*, *amir*, or *amira* (applied to the great *sultan*, and from him communicated to others) which truly (as that of *sultan* doth) may express *dominus*, or *lord*. ⁽⁴⁰⁾ And for that of ^k *Bodin* affirming, that by a law in the *Alcoran*, none was permitted to bear the name of *lord*, but their *caliphs*; I believe he was deceived, neither could I yet meet with any such law, or any example to justify his assertion. But, of *amir* and *sultan* and the like, more in their place. But as some of the emperors refused this name either because it seemed a relative to *servus*, i. e. *a bond-slave*, or in respect that it supposed (if ill interpreted) the subject and his substance in the property of the emperor, (for, in the ¹ laws of the empire, *domini appellatione continetur qui habet proprietatem etsi usus fructus alienus sit*; and *Augustus*, that so much refused it, could yet be very well contented to be made a god while he yet lived.) So an old *Jewish* sect, moved in a point of conscience with error, would by no means acknowledge it to any earthly prince, affirming, it was only proper to the monarch of heaven. The author of this sect was ^m *Judas* of *Galilee* under *Tiberius*. He and his followers so perversly stood for this nominal part of liberty (being, in other points, meer *Pharisees*) that no torments could extort their confession of this honorary title to the emperor. This *Judas* is mentioned in the New ⁿ Testament. Their heresy thus generally is spoken of by divers receiving it from *Josephus*. But I ^o cannot be easily persuaded that they merely stood on the word *lord*, *dominus*, *κύριος*, *רב* *rab* or *אדון* *adon*, which signify to this purpose near alike. For what is more common in their and our text of the Old Testament, than the name of *adon* or *lord*, given to far meaner men than princes? Thus shall you say (the words of *Jacob*) to my *Lord* [לַאֲדֹנִי] *Esau*. And in their salutations and addressed speeches, by both Testaments it appears, that, *master*, *lord*, or *sir* (expressed in the words which we have remembered) are familiar. I guess, they superstitiously did it rather out of that dreadful respect, which the *Jews* always had to the *tetragrammaton*

⁷ Sylvan. 1. in kl. Decemb. ² Sueton. in Domit. cap. 13. ³ In Misopogone. ⁴ Act. apost. 25. com. 26. *uber*. ⁵ Maetian. ff. ad leg. Rhod. *Affirmans*. & Rogo domine imperator ff. de his quae in testam. delentur, l. 3. ⁶ Adolph. Occa, pag. 537. ⁷ Camden. Brit. ⁸ Panegyric. ad Majoran. ⁹ Pharfal. lib. 5. ¹⁰ Quomodo, ex isthoc corrupto vocabulo, errores, apud Latinorum quosdam aevi barbari, irreperunt, videlicet in notis Theodori Douzae ad Georg. Logothetae chronic. ¹¹ Procopius in arcana historia, pag. 134. ¹² De repub. lib. 1. cap. 9. ¹³ De repub. Ulpian. ff. de S. C. Silianiano, l. 1. §. 1. ¹⁴ Joseph. *Αρχαιολογ.* 18. cap. 2. ¹⁵ Act. apost. cap. 5. com. 37. ¹⁶ Confulus de hoc Juda cardinal. Baronium annal. tom. 4. & Casaubon. exercit. 2. §. 19.

name of the almighty, that is; יהוה (now commonly expressed *Jehovah*) which none of them, they say, ever durst openly, nor any ^p might, but the high priest sometimes, pronounce, and that only in the feast of *reconciliations*, celebrated on the tenth of their month *Tisri*, and only in the sanctuary in his benediction. And always when it occurred in reading, they spake *adonai*, i. e. *lord*, for it, unless *adonai* went before or followed it in the text, and then they read it *elohim*, i. e. *God*, and upon this difference pointed it (when they had their points) either with the points of *adonai* or *elohim*. It will appear so in infinite examples, where our idiom hath the *Lord God*, the *Latin*, *Dominus Deus* and the *Greek* Κύριος & Θεός. Whereupon with a respect only to the translations, a most learned and ancient ^q father observes; *Deus quidem quod erat semper, statim nominat*; in principio fecit Deus coelum & terram. *Ac deinceps quamdiu faciebat quorum Dominus futurus erat, Deus solummodo ponit*. Et dixit Deus, & fecit Deus, & vidit Deus, & nusquam adhuc Dominus. *At ubi universa perfecit, ipsumque vel maxime hominem, qui proprie Dominum intellecturus erat, Dominus cognominatur*. For indeed it is true that until the holy story of the creation is perfected by *Moses*, the tetragrammaton is not added to *elohim*, but afterward in the second of *Genesis* יהוה אלהים (which they read *adonai elohim*, i. e. *the Lord God*) first occurs. ⁽⁴¹⁾ Considering then their *Jewish* superstitions, and how curious they were in ceremonies, syllables, titles, words defective either in point or letter, and the like; you may with probability conjecture that here was the ground of that *Galilaean* sect; thinking it not fit, perhaps, to stile any mortal by that honorary title, by any other than which the greatest, dreadful, and unspeakable name of the *C R E A T O R* was never openly expressed. Manifeste dixerunt sapientes (saith ^r *Rambam*) quod istud nomen separatum ⁽⁴²⁾ quod est quatuor litterarum, ipsum solummodo est significativum substantiae creatoris, sine participatione cuiuslibet alterius rei. But their scruple might easily be satisfied with that of the emperor *Cantacuzen*. Ἀπερσθησάντος τοῦ Κυρίου. (saith ^r he) ὁ Θεός. ἔτις ἐστιν ὁ Θεός, i. e. *Indefinitely or absolutely the name of Lord is only due to God, but man hath it* μετὰ προσθήκης ὀνόματος, i. e. *with some particular addition of person or place*, in regard of which he is so titled. But now, and from antient time, without scruple, both kings and also their greater subjects are usually saluted and written with the attribute of *lord*, or *dominus*, or *dominator*; as in *dominator in Asia and Africa*, in the stile of the kings of *Spain*. But *dominus* is here remembered under that notion by which it is a distinguishing attribute of greatness, and not as it is a word of ordinary salutation among all men of the better rank. *Seneca*, I remember, somewhere notes of the

Roman custom, by which every man whose name occurred not, was saluted *domine*, and as *domine frater* is frequent in the epistles of *Sidonius Apollinaris*, and other, and in *Sidonius* sometimes *domine major*; or as *domine* in that ^r epigram of

ὁκὶ ἐθέλω Δόμνε, εἰ γὰρ ἔχω δόμνευ.

or as every bachelor of art, or vicar, or parson, is called *domine*, or the like. But the name *dominus* is here to be thought of only as a distinguishing attribute of greatness, and as our *English* word *lord* is; and that without any relation of it to an interest of property or to servitude, and only as it denotes such superiors as king or subjects of the greater nobility with us, and men of special eminency in other states, known by the names of *heeren*, *dons*, *seurs*, *signiors*, *seigneurs*, *sennores*, *seniores*, and the like. Among which those names *signior*, *seigneur*, *senior*, and *senior*, are observable in that they denote an elder age, as if the person to whom they are attributed, were always of the elder sort of men; whereupon saith ^u *Mariana*, those words became to denote great lords, because *seniores imperare aequum est, unde consequenti tempore tum in monumentis Hispaniae tum in concilio- rum actis, praesertim quae Caroli magni aetate in Gallia habita sunt, domini ac principes seniores nuncupari coeperunt*. So the *Jewish* *Sabbidim* were called ^x *seniores* or *elders*, and *Abraham's* chief servant, ^y *the elder of his house*. ⁽⁴³⁾ And the *Persians* and those of the country of the great *Mogor*, have in the like notion

their title of شيخ ^z *sec* or *cheque*, being the same

with the word *seic* or *sheich*, that is, *senior*, among the *Arabians*, which occurs in the title of *Mahumed Ben David* before his *Arabick* Grammar, as also in the title of *Avicen* before his body of *Physick*. And an *AEgyptian* sultan is remembered in that old author de *Jouville* by the name of *Scecedun fils du seic qui vault* (saith he) *a tant a dire en leur language come filz du viel*, that is, the son of a *signior* or *senior*. So *Baldricus* ^z and ^a *Robertus Monachus*, and others speak of *Solimanus filius Solimani veteris* or *senioris*, which was doubtless the son of a *sheich*, *cheque*, or *seic*, which word with them interpreted *senior*. This title is most especially seen in the ancestors of *Shah Ismael Sophi* the *Persian* emperor, all which, as also himself, before his getting the empire, are called *sheichs*, *cheques*, *seics*, as if you should say *seniores*. And there is another word among the *Arabians* of the same signification with *sheich*,

that is ^b شيب *sheib*, by which men of the better rank are called, as among us, by the name of *signior*, *monsieur*, or the like. And they err that have restrained the ^c signification of *sheich* to the denomination of a saint or religious man.

^p Rabbi Moses in More Nebuch. part. 1. cap. 60. verum consule, si placet, syntagm. 2. de diis Syris, cap. 1. Hermogen. qui sane & dominum appellari noluit imperatorem, nisi (ut inquit ille) more communi. apologetic. cap. 34. Nebuch. part. 1. cap. 60. ^q Apolog. β. adverb. Mahomet. ^r Pallad. Antholog. a. epig. μ. ^s Marian. hist. Histp. 5. cap. 11. & in consil. feud. 1. tit. 27. Seniores pro dominis uti & jure nostro. Hierosolym. lib. 2. ^t Hist. lib. 3. ^u Kirsten. lib. 3. Grammat. Arabic. ^v V. Leunclav. pandect. Turc. cap. 188. & 18. & in onomastico.

^z Tertullian. adverb. ^a More ^b More ^c More ^d More ^e More ^f More ^g More ^h More ⁱ More ^j More ^k More ^l More ^m More ⁿ More ^o More ^p More ^q More ^r More ^s More ^t More ^u More ^v More ^w More ^x More ^y More ^z More

But for *dominus*, it is also written often in the middle times *domnus* and *dompnus*, in *Cassiodore*, *Sedulius*, *Landulphus Sagax*, and divers others. And as kings with their subjects of the greater name have been ever stiled by it, so queens have had and used the name of *domina* or lady. *Maud* the empress called herself *imperatrix Henrici regis filia & Anglorum^d domina*. And *domina Hiberniae* is ordinarily in the stiles of our English queens, before it was altered under *Henry VIII*. But, of the communicated name of *lord* and *lady*, and the like; more in the second part, in the chapter of English dignities and foemine titles.

II. The title of *lord* is specially observable in that ancient stile of the kings of *England*, wherein they were called *domini Hiberniae* or *lords of Ireland*, and not kings of that isle, until towards the end of *Henry VIII*. (⁴⁴) For the deduction and change of that title, thus. When the isle antiently grew full of petit kings (some of them converting their government into intolerable tyranny, which, others not enduring, made such a divided State in it, that easy occasion might soon be taken by their neighbours to invade them) *Henry II.* of *England* affected the crown of it, and to that purpose (as the times were) sent embassadors to pope *Adrian IV.* (⁴⁵) entreating him *ut sibi liceret* (as the words of *Matthew Paris* are) *Hiberniae insulam hostiliter intrare, & terram subjugare atque homines illos bestiales ad fidem & viam deducere veritatis, extirpatis ibi plantariis vitiorum*; which was granted by a bull, among other things, in these words, *& illius terrae populus te recipiat & sicut DOMINUM veneretur, jure ecclesiarum illibato & integro permanente, & salva b. Petro de singulis domibus annua unius denarii pensione*. And he pretends in his bull that all the isles of christendom are clearly part of the patrimony of the church of *Rome*. *Sane omnes insulas* (saith this pope) *quibus sol justitiae Christus illuxit, & quae documenta fidei christianae susceperunt, ad jus s. Petri & sacrosantiae R. ecclesiae (quod tua etiam nobilitas recognoscit) non est dubium pertinere*. But he would never have been able to prove that. *John of Sarisbury* (cited ordinarily also by the name of *John Bishop of Chartres*) was the chief in this embassy, being a man most dearly respected by this *Adrian*. And his report is also of an investiture made of the isle, by a gold ring sent to the king from the pope by him. His words are, *Ad preces meas, illustri regi Anglorum Henrico secundo concessit* (speaking of the pope) *& dedit Hiberniam jure haereditario possidendam; sicut literae ipsius testantur in hodiernum diem. Nam omnes insulae de jure antiquo ex donatione Constantini, qui eam fundavit & dotavit, dicuntur ad Romanam ecclesiam pertinere*. (⁴⁶) By the way, that pretence of the pope's having right to all isles by virtue of that donation of

Constantine must be restrained to the isles of the west, though the donation be construed most of all in favour of his see. For the words of it that concern this, are only, *omnis Italiae seu^f occidentaliū regionum provincias, loca & civitates*, the Greek (which was doubtless translated out of *Latin*; so that the first fiction of it was in *Latin*) being the same thus, *τάς τῆς Ἰταλίας ἡ Δυσμῶν & ἑσπέρων επαρχίας πόλεις & κτήσεις*, that is, *all the provinces, territories, and cities of Italy or the west*. Neither indeed do the words import more than the isles of *Italy*, which by the disjunctive in the context, is made the self same with the west. But the credit of that donation is so slight, that it makes not much matter how the words are or what they import. *John of Sarisbury* goes on; *Annulum quoque* (saith he) *per me transmissit aureum, smaragdo optimo decoratum, quo fieret investitura juris ingerenda^h Hibernia. Idemque adhuc annulus inⁱ curiali archiepiscopo publico custodiri jussus est*. All this was about 2 *Hen. II*. But nothing was executed. Some years after, *Dermut Mac Morrogh* king of *Leinster*, being distressed by the king of *Connacht* and *Orereck* king of *Meth* (⁴⁷) requested succours of the *English*, and had them. But upon giving these succours, *R. Strongbow* earl of *Pembroke* (to whose valour *Dermut* was much beholden) soon made himself of such a greatness within the isle, that he grew suspected to king *Henry*; but, to avoid suspicion, acknowledged whatsoever he had there, to the king, who some *xvii.* years after the pope's bull, entered the isle with an army, subdued a good part of it, and had homage of those petit princes, which retained, as before, so after this acknowledgment, the name of kings. Yet they were not *ordinati solemnitate alicujus ordinis* (as the ^k black book of *Christ-church* in *Dublin* speaks) *nec unctionis sacramento, nec jure haereditario, vel aliqua proprietatis successionē, sed vi & armis quilibet regnum suum obtinuit*. This king *Henry*, it seems, and his successors, following the syllables of that bull (which is mentioned^l also in another afterward sent in behalf of the *Irish*, by pope^m *John* the two and twentieth, to king *Edward II.* or *III.*) hence titled themselves *lords of Ireland*, putting it in their stile before *duke of Guienne*. And, in the annals of *Ireland*, we read that *Joannes filius regis dominus Hiberniae de dono patris, venit in Hiberniam anno aetatis suae duodecimo*, (which was the *xiiij.* year from the first entrance of *Henry II.*) and inⁿ confirmation of his title, pope *Urban III.* sent him a crown of peacocks feathers. As likewise *Henry III.* made prince^o *Edward* (afterwards *Edward I.*) *lord of Ireland*; which was the title first given, and perpetually used until towards the end of *Henry VIII.* though *Choppin* writes expressly that pope *Adrian* conferred upon our *Henry II.* *Hiberniae principatus titulum*, as his

^d Cod. ms. abbatiae Salopenfis. & videtur Camden. in Trinob. pag. 327.

jus decret. part. 5. cap. 49.

^e Theodor. Balsamon. in Phot. Nomocan. tit. 8. cap. 1.

^f L. curiali.

^g Apud v. cl. d. Jo. Davis, regium apud Hibernos nuper procuratorem.

^h Loc. depravatus, forte l. ingrediendum.

ⁱ C. lib. 2. tit. 1.

^k 11. & habetur in bullario magno Cherubini, tom. 1. fol. 156. & apud Philip. Ossullevan in histor. catholic. Hibern. tom. 2. lib. 1.

^l Constit. pontif. memorat. a Choppino de dominio Franciae, lib. 2. tit. 1. §. 11.

^m Ex synod. 1. & 2. Cassilens. & Armach. ap. Camd. de pavonum pennis in tendendis coronis, consulas Paschal. de coron. lib. 10. cap. 13.

ⁿ Pat. 52 Hen. III. memb. 9.

words are. How king *John* had obedience of most of the princes there, and established *English* laws, officers, and such more notes of supreme majesty, *Matthew Paris* most fully delivers. But plainly although the succeeding princes wrote themselves but only *lords of Ireland*, and called it *terra*, not *regnum*, *Hiberniae*, yet their dominion was merely royal. They had their *justices*, or *custodes*, or *lords lieutenants* or *deputies* (as at this day they are called) of *Ireland*, which were, as *vice-roys*, by patent, and had most large power given them with the very rights of majesty. ⁽⁴⁸⁾ Whence it was that some of the antients, of the very age wherein that bull of pope *Adrian* was sent to king *Henry* the second, calls that *regnum* or *dominium regni Hiberniae*, which was so given by the pope or taken by the king. For that matter see *Guil. Stephanides* P in the life of *Henry* the second, and *Giraldus Cambrensis* in his *Hibernia expugnata*. And *Roger of Hoveden* expressly ¶ of *Henry* the second; *venit rex Dreneford, & in generali concilio ibidem celebrato constituit Johannem filium suum regem in Hybernia, concessione & confirmatione Alexandri summi pontificis*. With this fully agrees that of *Richard* the second, who being himself, but in title, *dominus*, or *lord of Ireland*, created *Robert of Vere* (being then earl of *Oxford*) marquis of *Dublin*, and the same year duke of *Ireland*, with the fullest and greatest prerogatives or marks of sovereignty. Which had been ridiculous, if the king of *England* in substance had not been as a most perfect king of *Ireland*. He gave him for life (and that with the assent of both houses of parliament) the whole island itself with the adjoining isles, the tenure being by liege homage only (that is *homagium ligium*, as the words of the patent are, which denote such homage as excludes all exception of persons out of the profession of the tenant's faith to his lord; or such homage as by the common law is to be done to the king only; all other homage with us being *non ligium*, because the king and other lords are excepted in it) and the payment of five thousand marks during his life *nomine domini terrae Hiberniae*. And with this he further granted to him for life also the patronage of all bishopricks, abbies, and such like there which were in the king; power also to make a chancellor, treasurer, justices of both benches, barons of the *Exchequer*, sheriffs, coroners, and all other such officers, with the right of coining money, and such more royalties which are rarely separated from a supreme crown; and therefore also the patent it self, being most observable to this purpose, is faithfully here inserted.

SCiat is (*faith^r the king*) quod cum nos nuper scilicet primo die Decembris, anno regni nostri nono, per literas nostras patentes de assensu praelatorum, ducum, & aliorum procerum ac communitatis regni nostri Angliae, in parlamento nostro apud Westm. convocato tunc existentium, consanguineo nostro carissimo *Roberto de Veer comiti Oxon.* nomen marchionis *Dub-*

lin, imposuimus & ipsum de nomine marchionis ejusdem loci praefentialiter investivimus, ac eidem marchioni dederimus & concesserimus pro nobis & haeredibus nostris *terram & dominium Hiberniae* cum honoribus, regalibus, dignitatibus & aliis diversis juribus, libertatibus, ac mero & mixto imperio, habendum & tenendum de nobis ac haeredibus nostris ad totam vitam ipsius marchionis certis modo & forma in dictis literis nostris contentis; quas quidem literas nostras patentes idem consanguineus noster in instanti parlamento nostro nobis restituit cancellandas; Nos considerantes generis nobilitatem, probitatem strenuam & sapientiam praecellentem dicti consanguinei nostri, volentes eundem consanguineum nostrum potioribus praemiis sublimare, honoribus amplioribus etiam praerogare, de assensu praelatorum, ducum, & aliorum procerum ac communitatis regni nostri Angliae in instanti parlamento nostro apud Westm. convocato existentium, praefato consanguineo nostro nomen *ducis Hiberniae* imponimus, & ipsum de nomine *ducis Hiberniae* personaliter investimus, & *ducem Hiberniae* praeficimus. Et, cum exaltationem nominis concomitare conveniat adjectioni commodi & honoris, de assensu praedicti, laeto corde, dedimus & concessimus pro nobis & haeredibus nostris praefato *duci Hiberniae totam terram & dominium Hiberniae & insulas eidem terrae adjacentes*, ac omnia castra, comitatus, burgos, villas, portus maris, honores, maneria, forestas, chaceas, parcos, boscos, moras, mariscos, warennas, terras, tenementa, feodi firmas, redditus, servitia, aquas, piscarias, mineras, warda, maritagia, reversiones, escaetas, feoda nostra in dictis terra & dominio *Hiberniae ac insulis* existentia, una cum homagiis, obedientiis, vassallis, servitiis, & recognitionibus praelatorum, comitum, baronum, militum, & omnium aliorum liberorum tenentium, aliorum incolarum, & subditorum nostrorum, tam nativorum quam aliorum quorumcunque in terra dominio & insulis praedictis, ac cum omnibus juribus, jurisdictionibus, mediis atque bassis, denariis, censibus, proventus, confiscationibus, forisfacturis, emolumentis & proficuis, ac advocacionibus & patronatibus ecclesiarum metropoliticarum, & cathedralium, abbatiarum, prioratum, hospitalium, dignitatum, praebendarum, domorum religiosarum, ecclesiarum collegiatarum, & aliarum ecclesiarum, vicariarum, capellarum, officiorum & porcionum, & omnibus aliis advocacionibus quocunque nomine censeantur cum regaliis, regalitatibus, libertatibus, franchesiis, commoditatibus, custumis, praestationibus & omnibus aliis quae ad regaliam nostram pertinent seu pertinere poterunt, cum mero & mixto imperio adeo plene integre & perfecte sicut nos ea tenuimus & habuimus, seu tenuerunt, & habuerunt progenitorum nostrorum aliqui, ullis unquam temporibus retroactis, habendum & tenendum eidem *duci Hiberniae* de nobis & haeredibus nostris quoad vixerit per homagium suum ligeum tantum, quod quidem homagium in eodem instanti parlamento nostro nobis praestitit corporale, reddendo inde nobis & haeredibus nostris per annum

¶ Ms.

¶ Pag. 566. edit. Francof.

¶ Rot. cart. 9. Rich. II. memb. 1. & rot. parlam. 9. & 10. m. 3.

ad scaccarium nostrum Angliæ postquam præfatus *dux dictam nostram terram Hiberniæ conquestatus fuerit*, quinque millia marcarum durante vita sua prædictæ, nomine domini terræ prædictæ, & referto nobis & hæredibus nostris semper salvo. Volumus insuper & concedimus quod idem *dux Hiberniæ* omnia terras, tenementa, redditus & servitia & omnia alia quæ de inimicis nostris terræ illius poterit conquestari (exceptis illis terris dominicis quæ in manu nostra seu progenitorum nostrorum solebant existere, & ad antiquum dominium terræ prædictæ tanquam dignitati coronæ nostræ pertinere, & exceptis illis terris quæ de jure aliquarum ecclesiarum seu de hæreditate comitum, baronum, procerum & magnatum dictæ terræ existunt) habeat & teneat sibi & hæredibus suis de nobis, & hæredibus nostris sub homagio ligeo suo & hæredum suorum tantum pro omnibus servitiis imperpetuum. Concedimus etiam de assensu prædicto quod idem *dux Hibern.* cancell. thesaur. justic. de banco regio, & communi banco, barones de scaccar. vicecomites, coronatores, escaetores, majores, præpositos, senescallos, & alios officarios, quoscunque faciat & constituat totiens quotiens, & prout sibi melius pro regimine & gubernatione terræ, domini, & insularum prædictarum videbitur expedire, aliquibus concessionibus per nos vel progenitores nostros in contrarium factis sive concessis non obstantibus, & quod idem *dux Hibern.* monetam auream & argenteam in dictis terris dominio & insulis fabricari facere possit (ita quod moneta illa de alaia & assaia monetæ nostræ Angl. existat) ac etiam omnem aliam monetam in dictis terra dominio & insulis temporibus nostris aut aliquorum progenitorum nostrorum hæcenus usitatam. Provisio etiam quod si quæ dominia, castra, villas, honores, maneria, patrias, terras, tenementa aut si quæ alia quocunque nomine censeantur infra dictam terram & dominium Hibern. & insulas, dictum ducem Hibern. contigerit conquestari, quæ in manu nostra seu progenitorum nostrorum ad antiquum dominium Hiberniæ tanquam dignitati coronæ nostræ pertinere de jure solebant, ea omnia cum pertinent. idem *dux Hiber.* habeat & teneat de nobis & hæredibus nostris quoad vixerit sub homagio suo ligeo tantum absque aliquo alio nobis vel hæredibus nostris inde reddendo. Hiis testibus venerab. proceribus, W. Cant. Alexan. Ebor. & Rob. Dublinen. Archiepisc. R. London. W. Winton. T. Elien. & J. Dunelm. thesaur. nostro episc. Edoar. Eborum. Tho. Glouc. ducibus, avunculis nostris carissimis. Ri. Arundel. W. de Montecuto Sarum. Edr. de Courtney Devon. Hen. de Percy Northumb. Th. de Moubay Nottigh. marescall. Angl. M. de la Pole Suff. canc. nostro, comitibus. Joh. de Montecuto senesch. hospitii nostri & aliis. Dat. per manum nostram apud Westm. 13. Octob.

Per ipsum regem in parlamento.

But he enjoyed not this many years, but by the like authority lost it; and this so unusual dignity, that so began in him, ended also in him. Neither can there be a plainer and more remarkable testimony of the fulness of royalty over Ireland in the ancient kings of England, than this creation thus made by the king, and his whole parliament, into a title that is the highest next to king or emperor. And we know that the same king Richard had a purpose to have raised this duke of Ireland into the express title of king of it also, as appears by *Thomas of Walsingham: Ducem fecit Hiberniæ* (saith he) *facturus exposit de duce regem si fortuna faveret.* And mention is made of it also in the parliament rolls ^a of that time. All which shews that *dominium Hiberniæ* was taken to be no less than *regnum* in the kings of England. But at length, under Henry the eight, this title of lord of Ireland was ^{*} altered into king: the words of the act are; that *forasmuch as the king our most gracious dread sovereign lord, and his graces most noble progenitors, kings of England, have been lords of this land of Ireland, having all manner kingly jurisdiction, power, preeminences, and authority royal, belonging or appertaining to the royal estate and majesty of a king, by the name of lord of Ireland, where the king's majesty and his most noble progenitors justly and rightfully were, and of right ought to be kings of Ireland, and so to be reputed, taken, named, and called* (it being further added, that through want of use of the just title and name, divers attempts of disobedience had been in the *Irishry*) therefore it was enacted, *that the king's highness, his heirs and successors, have the name, stile, title, and honour of king of this land of Ireland, with all manner honours, preeminences, prerogatives, dignities, and other things whatsoever they be, to the estate and majesty of a king imperial appertaining or belonging. And that his majesty, his heirs and successors, be from henceforth, named, called, accepted, reputed and taken to be kings of this land of Ireland, to have, hold, and enjoy the said stile, title, majesty and honours of king of Ireland, with all manner preeminences, prerogatives, dignities, and all other the premisses, unto the kings highness, his heirs and successors for ever, as united and knit to the imperial crown of the realm of England.* Thus much ^y pope Paul IV. afterward confirmed to king Philip and Mary, with *de potestatis plenitudine, apostolica autoritate, regnum Hiberniæ perpetuo erigimus.* And in the stile of their parliaments it was henceforth called *regnum* or *realm*, no longer *terra Hiberniæ*. But of the title of lord in the stile of supreme princes, thus much. (⁴⁰)

III. That of *dei*, or gods plurally, is attributed to great princes in holy writ. (⁴⁰) But every one sees, that it were most impious flat-

^a The Patent is here imperfect in the Roll. But (the same rights and reservations in substance being before in the Charter of making him marquis of Dublin) this place may be mended out of those words which in the charter of the marquisate come in here; that is, *Homagii ligei referto & superioritate domini terræ prædictæ ac ligantiis nobis specialiter reservatis.* Rot. Parl. 9 & 10 Rich. II. memb. 3. ^y Sub anno 1386. fe 9 Rich. II. p. 352. ^u Rot. proc. & judicii 11 Rich. II. art. 11. ^x Stat. Hibern. 33 Hen. VIII. cap. 1. ^v Bull. ipsa, & Anton. Gabutiis de vita & reb. Pii V. lib. 2. & vide, si placet, bull. Pii V. 35. in consil. pont. edit. a Petro Mattheo, p. 615.

tery, to give them the name as it is truly significant; as the dissembling and unconstant ^a *Samaritans* did to *Antiochus Epiphanes*, styling him, in their epistles, god, who had indeed, to his utmost, profaned the holy temple of the true god, most cruelly handled the *Jews*, and in ^a contempt of their law and divinity, compelled them to eat hogs-flesh against their institution, and with the liquor, wherein it was boiled, daubed and abused as many of their bibles, as his wickedness could light on. So the *Jews* in their acclamations styled *Herod Agrippa* no longer man, but a deity; a touch whereof, S. ^b *Luke* hath. And the *Persian* king's title challenged as much to him in that: ^c *Rex regum Sapor, particeps siderum, frater solis & lunae, Constantio Caesari fratri meo salutem plurimam dico.* And *Mezentius* commanded ^d his subjects to offer to him all such sacrifices as they had destinate to the gods; professing withal, that no deity was above himself, whence he is called *contemptor divum* in *Virgil*. To these, like may be added of the *Roman* emperors, made or accounted gods in their life-time (for their *Απαθέωσις* after their death, whence the title of *divi* is most frequently given them, belongs not to this place) as *Augustus*, and divers (^e) others after him. And *Domitian*, and some ^e more were in their styles solemnly called gods. And *Martial* ^f hath,

Edictum domini deique nostri.

with relation to *Domitian*; but avoiding that and the like attributes under *Trajan*,

*Frustra, faith he, blanditiæ venitis ad me,
Attritis miserabiles labellis.*

*Dicturus dominum deumque non sum;
Jam non est locus hac in urbe vobis.*

Non est hic dominus sed imperator.

Neither was this only among the heathen emperors, but long after christianity received in the empire, the substance of the title of God was used by them, as we see in those frequent occurrences of *nostra divinitas, nostra pervenitas, nostra aeternitas, divinae vocis oraculum*, and such more in the codes, and elsewhere. And *Themistius* ^g to *Theodosius* the emperor; *ἀναθὲν π, βασιλεῦ, ἡ Γολιθία τὸ δ Θεότιττο. ἔνομα ὑμῶν ἐπεφήμισεν, lately the common-wealth, Caesar, gave you the title of Divinity, not, faith he, because you have store of gold, or that you have diadems and rich clothes, or that you suddenly make a poor man rich (all which are beneath such a dignity) ἀλλ' ἐπὶ μόνῳ Θεῷ ἡ βασιλεία ἐν ἐξουσία ἔσται δὲ ζωὴς ἑπιδόνα, but because only God and the emperor have power to grant a man his life. And *divus imperator* generally is used for the emperor by ^h *Justinian*, as by others also, and *divalia sanctita* for the imperial constitutions. And such kind of expressions continued on in the empire, as we see by an*

express constitution of ⁱ *Charles the Great* against them, as tasting too much of gentilism. Thence was it also that *Socrates*, writing the church-story of that age, says, he doubts, that he shall be reprehended by some that were of the more curious in titles, because he did not stile the emperors (in such passages as he had obviously of them) ^k *Θεοτάτους, ἢ Δεσπότας, ἢ ἑα χρηματίζεν αὐτάς, that is, most divine, and lords, and by other titles which the use of the time attributed to them.* But for all these, and the like, which taste of that old attribute of God to the emperors, that of a most learned and ancient ^l father is here observable; *Non Deum imperatorem* (saith he) *dicam, vel quia mentiri nescio, vel quia illum deridere non audeo, vel quia nec ipse se Deum volet dici, si homo sit. Interest homini Deo cedere. Satis habeat appellari imperator. Grande est hoc nomen est, quod a Deo traditur. Negat illum imperatorem qui Deum dicit. Nisi homo sit, non est imperator.* And in their triumphs, a solemn admonition always was to the emperor, *memento te hominem esse*, which great ^m *Philip of Macedon* had every morning remembered to him, before he admitted any, but him only whose office this was, to his presence. And *Tertullian*, speaking of those passages where princes in the scripture are stiled gods, adds, ⁿ *thar also ipsa idola gentium dii vulgo; sed Deus nemo ea re, qua deus dicitur.* But, as the supremacy of princes and their government is delegate from the Highest, their judgments being also called his, so in a general name they are titled gods even by God himself, because here on earth they should (for their power) be his ^o imitators. (¹²) And therefore they may also in that sense be stiled *divi*, or *dij*. *Divi christiani reges* (saith ^p *Contzen*, the present professor of divinity in *Mentz*) *vocari possunt eo modo quo dij, quia Dei sunt vicarij & Dei voce judicant.* But also he says, that those titles, *divus imperator, nostra divinitas, nostra aeternitas*, and such-like, are not altogether so fit for christian princes, for fear both of their arrogating more than they should, when they are so magnified, as also lest too much offence be taken by such as may miss in the reason of the application of those titles to them.

That obsequious impiety in the elder times, of attributing the name of God to the emperors, was the cause, it seems, that as well in the christian as heathenish times and states, the subjects of the empire continued that ill custom of swearing by ^q their princes. And if they did forswear by them in a suit (for if out of a sudden heat, they were pardoned) the punishment for the perjury was *fustigatio*, i. e. (as if you should say) *bastinadoing* (the Greek lawyers called it *ροπαλισμοῦ*) and whilst the officers beat the offender, they used this formal admonition; ^r *ὥρεσθ' ὡς μὴ ὀμνῶν, i. e. Swear not*

^a Joseph. Archaeolog. 12. cap. 7. & lib. 19. cap. 7. de Herode.

com. 22.

^c Amm. Marcellin. hist. 17.

epig. 8. & lib. 10. epig. 72.

rep. lib. 7. c. 4. p. 470. col. 1.

Apologetic. c. 33.

de ea re plura.

^b Politic. lib. 7. cap. 4. §. 4.

^d Oratione 5.

^e C. tit. de donat. int. virum & uxorem, l. 1. c. 3.

^f Capitular. de non adorandis imaginibus lib. 1. c. 3.

^g Aelian. Παικλ. 157. 9. c. 15.

^h Advers. Marcion. lib. 1.

ⁱ Hermenopol. Περὶ 1. 1. tit. 7.

^k Diodor. Sicul. in excerpt. apud Photium.

^l Cato in Orig. ap. Macrobi. Sat. 3. cap. 5.

^m Tranquill. in Domit. cap. 13.

ⁿ Lib. 5.

^o C. tit. de donat. int. virum & uxorem, l. 1. c. 3.

^p Hist. eccles. lib. 6. in proem.

^q Tertull.

^r Sthenid. Pythagoric. apud Stobaeum scdm. 46.

^s ff. de jurejur. l. si duo, §. 6.

rashly. But if the perjury were committed against God and his name, no punishment followed by their customs, because they supposed God would sufficiently revenge the abuse of his deity, expressing it thus: "Ἰκεν δὲ ὁ ἱεροῦ. Ἡμενοπούλου τὸ ὄνομα (saith Constantine & Hermenopulus) αἰ τῷ θεῷ γόρον; although it were certain by their canon law, that church-penances, but no other infliction, was provided for the perjured: as also, if in any suit the party had forsworn upon the holy evangelists, his tongue was cut out. (53) But all this (touching swearing by the prince or emperor, and his genius, and the punishment upon forswearing) had its original out of paganism. For, that punishment of fustigation was, it seems, instituted by Antoninus and Commodus, when it was usual to swear *per genium principis*, and *per principis venerationem*, as it is in a rescript of Alexander Severus, under whom the learned Terullian upbraids the Romans with; *Citius denique apud vos per omnes Deos, quam per unum genium Caesaris pejeratur.* And Athalarick the Goth, in a profession of future good government, to the Romans: *Ecce Trajani vestri clarum seculis reparatum exemplum. Jurat vobis, per quem juratis, nec potest ab illo quisquam falli, quo invocato non licet impune mentiri.* And Horace speaking to Augustus:

Jurandasque tuum per nomen ponimus aras.

which well fits with the name of those majestick pavilions or cloths of estate, under which the emperors sat usually. They called ² them ὀνομασθῆναι, as if you should say, *little heavens* for such gods to sit under. And for the christian times, the form of the foldiers oath was agreeing with what is already shewed; *jurant autem* (saith my ³ author, living about ccc.lxx. from our Saviour) *per Deum & Christum & S. sanctum & per majestatem imperatoris, quae, secundum Deum, generi humano diligenda est, & colenda.* And he gives a reason why they should swear by the majesty of the emperor. *Nam imperatori* (saith he) *cum Augusti nomen accepit, tanquam praesentis & corporali Deo, fidelis est praestanda devotio, & impendendus pervigil famulatus. Deo enim vel privatus, vel militans servit, cum fideliter eum diligit, qui Deo regnat auctore.* And in France anciently it was commanded in the laws of ^b the kings of their first christian times, *ut nullus praesumat per vitam regis & filiorum ejus jurare*, which shews that it was there practised. This use was also among the *AEgyptians*, as is apparent by Joseph's swearing, *by the life of Pharaoh.* And in later days, a Rabbin, that lived ^c about c. d. c. lxx. affirms, that if a man had sworn in his time in *AEgypt* (it was then governed by *chalisphs* ברשׁ המלך i. e. *by the king's head*), and had forsworn, he was subject

to capital punishment, neither could he redeem the guilt for his weight in gold. And when *Shach Ismael*, the first *sophi*, got the *Persian* empire, no ^d oath amongst them was so great, as to swear *by his head*. Thus it appears how, both among *Christians*, *Mahumedans*, and *Heathen*, a certain *sanctitas regum* (as ^e *Julius Caesar* calls it) was specially regarded. Whence, it seems, it came, that the having *a deity's name in the king's*, was so familiar among the antients. The *Tyrian*, or *Phoenician* princes had usually the names of *Beleasartus*, *Abdasartus*, *Ithobaal*, and many such like occurring in the fragments of *Menander*, and other annals of those parts; from the deity *Baal* and *Astaroth*, which holy writ speaks of. *Nebo* a *Babylonian* idol was a part of *Nebuchadonazar*, *Nabopolassar*, *Nabonitus*, their kings. In *Neriglosser*, is *Nergal* the deity of the *Cuthaeans*. (54) And in the names of the *Jewish* kings, is usually one of the names of the true god, as you see in *Abaziabu*, *Amaziah*, *Azariah* and divers such more. Among the *AEgyptians*, *Busris*, *Petosiris*, *Osiris*, kings; all of them having the greatest deity of that people in their names. That is, *Siris* or *Seiris*, which was the same with *Nilus*. (55) And the kings of our ancient *Britains* had *Belin*, or *Abellio* (one of their deities) in their names, as we see in that of *Cassibelin*, *Cynobelin*, and the like. But indeed the composition out of these names of deities was not only proper to kings. Their grandees and more honourable subjects (to whom even their highest rights of majesty and honour were after communicated) had sometimes the like; as we see in ^f *Neregal*, *Samgarnebo*, and *Nebuzardan*, with such more, and in *Daniel*, whom the *Babylonian* king named *Beltischatzar* ^g according to the name of his god, and in divers others. (56)

CHAP. V.

- I. Of the titles of Caesar and Augustus in the stile of the Roman or German emperors; and how they have been given to some other princes. The honorary denominations of the Roman emperors by other countries.
- II. The antient use of titling whole races of kings by one name in such sort as the emperors are known by the title of Caesar: the affectation of the names of Antonin in the Roman, and Constantin in the Greek empire.
- III. Most christian king, in the stile of the king of France.
- IV. Defender of the faith, when and how given to the kings of England. Defender of the church attributed to the emper-

^f Can. 64. Basil. Harmenopol. epit. §. 5. tit. 3.

^g Apologetic. cap. 28.

^h Cassiod. variar. hist. 8. epist. 3.

ⁱ Vegetius de rer. milit. 2. cap. 5. sub Valentiniano & Gratiano.

^j Legg. vett. apud Contzen politic. lib. 7. cap. 4. §. 6.

^k Abr. Aben. Ezra in Decalog.

^l Leuncl. Musulmanic. hist. lib. 16.

^m Sueton. in Julio, cap. 6.

ⁿ Jerem. cap. 39. vers. 3. & cap. 42. 30.

^o Daniel. cap. 4. com. 7.

ror. The title of supreme head of the church which began in Henry the VIII.

V. Catholick in the king of Spain's stile.

VI. The title of Porphyrogennetus in the eastern empire. And the emperor of Muscovy called white king or white emperor.

HITHERTO of such titles as are or may be given as *essential* and used as *general* to supreme majesty, in the stiles of the princes of *Christendom*. There are also others, which are *particular* to several states, and merely *accidental*. Of these, some have proceeded from the first authors of empires or monarchies; others have been of later time acquired. Some also are used in the first person, others only in the speeches and writings which those princes have from other men. In this number of accidental attributes, are those names of *Caesar* and *Augustus* in the empire, *most christian king*, *defender of the faith*, and such more: all which kinds, both in the christian and mahumedan states, with some other of the elder times with their originals and use, succeed here in their order.

I. First, for that of *Caesar* in the German emperor's title; it is clear that it is derived through the *Franks* and *Romans* from *C. Julius Caesar*, being the first emperor of *Rome*. But he was not the first that bare that name, as some ^h ignorantly have delivered. But others were so called before him; and that perhaps from the word *Caesar*, which ⁱ they say signified an elephant in *Punick* or *Maurish*, *quod avus ejus*, (as some say) in *Africa* ^k manu propria, occidit elephantem. Others of *Rome* deduce it from *Caesaries*, *quod cum magnis crinibus* (as *Spartian's* words are) *sit utero parentis effusus*; others *quod oculis caesis* ^l *ultra humanum morem vigerit*: all which is to be understood, of him which first bare the name. But for that of the elephant; there are old coins stamped on the one side with *DIVVS JULIUS*, the reverse having *S. P. Q. R.* and an elephant: which, although some refer to the plays and fights of elephants, shewed by the favour and cost of *Julius*; yet perhaps it may have allusion to that *African* original. But, how the word could be *Punick*, is not so well justified. The *Punick* being but a slip or branch propagated from the *Hebrew*; wherein (as that great president of the *muses*, the most learned *Casaubon* hath also noted) not *Caesar*, but פֶּרֶס signifies an elephant, as also in *Arabick*. ⁽¹⁷⁾ He therefore thinks the word was *Maurish*, as *Spartian* affirms it was. ⁽¹⁸⁾ And in another ^l place; in *targum Jonathanis* (saith *Casaubon*) כְּשִׁירָא cesira, extat, notione affine, pro scuto vel clypeo. Et fortasse inde est quod, *Punica lingua*, elephas Caesar dicebatur quasi tutamen ^o praes-

sidium legionum. But also the name of *Caesar* is derived from this, that the first of the family that bare it, was cut out of the womb at his birth. So *Pliny*; *Primus Caesar* (saith ^m he) a caeso matris utero dictus qua de causa ^p *Caesares appellati*: and a special testimony is also given for that derivation, in regard that the family was sacred to *Apollo*, being the God of physick, and having so preserved the first that had the name at such a dangerous birth. *Servius Honoratus* hath a passage to this purpose. *Omnes*, saith ⁿ he, qui scito matris ventre procreantur, ideo Apollini consecrati sunt, quia deus medicinae est, per quam lucem sortiuntur. Unde Aesculapius ejus fictus est filius. Ita n. cum esse procreatum supra diximus. Caesarum etiam familia ideo Apollinis sacra retinebat, quia, qui primus de eorum familia fuit, exscito matris ventre natus est. ⁽¹⁹⁾ But whencesoever the name was derived (and nothing is more uncertain than such derivations) it is taken as the most honourable title in the imperial stile: and so *Justinian* expressly calls it in his letters ^o to one *John*, his lieutenant of the east; τῷ τῆς ἡμετέρας (are his words) αὐτῷ ἀλλοτρίῳ τῶν ἡμετέρας βασιλείας συμβόλων περιουσίᾳ, i. e. *We are graced with this note of imperial majesty, more than with any other*. And the *Germans* at this day use the word *keiser* (from *Caesar*) for the emperor generally. From *Julius*, his nephew *Octavius* had this name left to him by testament: *In ima cera* (saith *Sueton*) *Caium Octavianum in familiam nomenque adoptavit*: from *Octavius*, *Tiberius*, and the rest received it. And although the blood or descent of this family ended in *Nero*, yet *Galba* and the rest that followed him (saving *Vitellius*; who cognomen *Augusti* distulit, *Caesaris in perpetuum recusavit*, as *Suetonius* of ^p him; and ^q *Tacitus* to the same purpose; *praemisit in urbem edictum, quo vocabulum Augusti differret, Caesaris non reciperet, cum de potestate nihil detraheret*) to this day, have it usually given them in the second and third person, when others write to them or of them. But in the first person, or the stile that the emperors themselves have used, since the translation to *Charles* the great, where they are expressed in *Latin*, *Caesar* is very rarely, if at all, used. *Charles* the great indeed had the two titles of *Imperator* and *Augustus* ^r fixed on him, which from his age hath been commonly used by his successors as well of the *German* as the *French* empire. But *Melchior Goldastus*, a most diligent man in the story of the empire, says, that he never saw a patent or charter of any of the emperors since *Charles* the great, with *Caesar* in it. *At vero a Caesaris appellatione* (so are his ^s words) *etiam ipse Carolus magnus, a senatu populoque Romano imperator Augustus* (id majestatis, non familiae nomen est) *salutatus, omnesque ejus in imperio successores quorum usque contigit diplomata inspicere, perpetuo abstinnerunt*. Though by his

^h Theod. Metochites in hist. Rom. initio. Glycas, Erymologic. mag. Cedrenus, alii Graecorum. Necnon Ebraei, ut videre est in Elia Thisbit. in סֶפֶר.

ⁱ Ap. AEL. Spartian. in AEL. Vero Serv. Honorat. ad 1. Aeneidos, Conit. Manaf. in annalibus.

^j Animadvers. in Tranquill. 1.

^k Hist. nat. lib. 7. cap. 9. videlicet Theodor. Metochit. histor. Rom. initio.

^l O Διότρε. Νεσφ. λ. κεφ. α.

^m In Vitellio cap. 7.

ⁿ Ad Aeneid. 10.

^o Praefat. ad Jacobum mag. Brit. reg. in tom. 1. constit. imperial.

^p In Vitellio cap. 7.

^q Hist. 2.

^r Scriptores perique Germ. sub anno 801.

^s Praefat. ad Jacobum mag. Brit. reg. in tom. 1. constit. imperial.

favour, there be a constitution of Charles the great, *de pace constituenda & conservanda & divisione regni facienda inter filios*, and that published among other things, by Goldastus himself^a where the title is expressly, *imperator Caesar Carolus, rex Francorum invictissimus & Romani rector imperii*, Pius, &c. And he hath printed this out of several manuscripts, as of sufficient authority. But it is the same which was first published by Petrus Pitbaeus among other pieces of the French^u history, under the name of Charles the great his testament, and by Pitbaeus, in his table of what he published with it, it is noted with this, that in *quibusdam exemplaribus Karolo magno ascribitur, non certa fide*. But do not the old stories that say *imperator & Augustus* was fixed on Charles the great, mean that *Caesar* was even expressly given him in the name of *imperator*? For in Dutch, as at this day, so long since, and it seems, as long since as Charles the great, *der Keyser*, or *Kaylar* (which is but the same word originally as *Caesar*) being received from the state of Rome where it so denoted the emperor, was taken to signify the very word *imperator*. Therefore, for *imperator*, the emperor in Dutch styles himself perpetually *Keyser*. And I presume that if we could see a history of that time written in Dutch, it would tell us that the name of *Keyser* (meaning *Caesar* as it denoted and was convertible with *imperator*) was fixed on him. And, it seems, the word was become so much of use in Dutch, that in that ignorant time they would therefore not use it in Latin, but turn it by *imperator*. Observe this stile of Charles the great in his charter of foundation of the bishoprick^x of Osnaburg in Westphalia. *Carolus imperator Augustus Romanorum gubernans imperium*, &c. If *imperator* were here used merely to denote what it did by it self among the old emperors of Rome, why then is *Romanorum gubernans imperium* added to it? for in that sense they are but plain synonyms; which I find not affected in that age or otherwise in the stiles of the empire. In the Dutch (wherein doubtless the title was first conceived, as it happens in other things of like nature) the stile plainly had been *Karl Keyser Behrer des Reichs der Romisch gewalt Voget*, &c. which were the same in Latin thus, *Carolus, Caesar Augustus, Romanorum gubernans imperium*. And in truth the word *Keyser* (which in the English Saxon, brought out of Germany, was written *Carepe, Casere*) was become to signify equally *imperator, Augustus, & Caesar*. So saith *Alfricus*, archbishop of Canterbury, in the Saxon times; *imperator, ⁊ vel Caesar, vel Augustus* he interprets by *Carepe*. But however, the word *Caesar* is of it self grown to be so significant (as an appellative as well as a proper name which at first it was only) in denoting supremacy, that it is sometimes used to other great princes beside the emperor of Germany, as it appears not only in some letters written between queen Eli-

zabeth and the grand signior^z Amurad III; but also in the very words of a league made between them, where he is called *Caesar*: and *Caesarea majestas*, is attributed to him.

Octavius, that was next successor to Julius Caesar, was honoured with the title of *Augustus* in the senate, *ὡς ἂν πλεον τι, ἢ καὶ ἀνδρωτέρως, ὡς*, as Dio's words are, i. e. *As if he had been somewhat more than human*. And, *non tantum novo* (so Sueton speaks) *sed etiam ampliore cognomine: quod loca quaeque religiosa, &c, in quibus augurato quid consecratur, Augusta dicantur, ab auctu vel ab avium gestu gustave*; and, for the word, he cites that of Ennius,

Augusto augurio postquam inclyta condita Roma est.

This was given him some xv years after Julius was slain, and that upon xvi. kl. of February, that is, the xvii day of January (as Censorin^a tells us; although some others differ from him some^b few days) upon the motion of L. Munacius Plancus, and thence is the epocha of the anni *Augustorum*, as they call it. The Greeks interpret *Augustus* by *Σεβας* or *venerable*. But certainly (as it is commonly agreed) it came first from *augeo*, which (besides the usual sense of it) is a proper word enough to sacrifice; as *augere hostias*, which the learned *Casaubon* remembers, and in like use the Greeks had their *αὐξω*.^c Pindar hath *αὐξομεν θυμους*; as if he had said *augemus hostias, or inferias*. And in *Sextus Pompeius*, *Augustus* is interpreted *Sanctus*; and divers inscriptions to gods and goddesses, are extant with *Augusto* or *Augustae*, and *aedes Augustae* occur sometimes for the heavens; and

Sancta vocant Augusta patres; Augusta vocantur,

Templa sacerdotum rite dicata manu,
saith^d Ovid.

So that this way, *Augustus* here may denote venerable, or most honourable, by a translation from the holy use of the word whence it was derived; which also agrees well enough with the fancies of *Dio* and *Sueton* touching it. But the interpretation of it in the Dutch title of the emperor at this day, makes it no otherwise than as if it came from *augeo*, as in the common notion it signifies actively to increase. For it is expressed only by *Behrer des Reichs* or *Hermeerder's Rycks* (as the low Dutch is) which signifies expressly an *increaser of the empire*, or *imperii auctor*, according to that of *Paulus Diaconus*, who lived in the court of Charles the great. *Hodie*, saith he of *Octavius*, *primum Augustus quod rem publicam auxerit consalutatus est; quod nomen cunctis antea inviolatum, & hucusque caeteris inausum, apicem declarat imperii*: others to like purpose. From *Octavius*, this title of *Augustus* (which afterward was turned also into *semper Augustus*) hath been used by the succeeding emperors to

^a Imperial. constit. tom. 1. pag. 145. ann. 806. ^b Grammatica mss. penes Moreton. ^c Lambard. eq. aurat. ^d Hackluit. voyag. part. 2. fol. 138. & 171.

^e De die natali, cap. 21. Se. vii. ^f & Vipfan. Agripp. 111. Coll. ^g Ovid. fast. 1. & Paul. Aquilog. histor. lib. 7. ^h Codex donat. piarum. Auberti Miraei, cap. 12. ⁱ In

^j Isthmic. Od. 4. ^k Faistor. 1.

this day. Only some very few in the antientest and dissembling times declined the ordinary use of it: and the empresses also were stiled *Augustae*. And thus, the title of *Caesar* being at first a note only of the first family of the emperors, and this of *Augustus* a designation of the splendour or greatness of their dignity (as Dio's words are) they are stiled *Caesares Augusti*; neither of the words denoting any power in them, but being only, now and ever since the first family ended, honorary. But although *Paulus Diacomus* says, the title of *Augustus* was in his time never yet used by any other prince, yet in ages since him it hath been applied also to some other. *Bodin* attributes it to our *William* the first. And the *French* had their *Philippus Augustus*; in the description of whose life, *Rigordus* an old author, thus salutes his reader. *Miramini, quod, in prima fronte hujus operis, voco regem AUGUSTUM. Augustus n. vocare consueverunt scriptores Caesares, qui remp. augmentabant, ab augeo, auges dictos. Unde isse merito dictus est Augustus ab aucta republica. Adjecit enim regno suo totam Viromandiam* (that is, the territory about saint *Quintins*) *quam praedecessores sui multo tempore amiserant, & multas alias terras; redditus etiam regni plurimum augmentavit.* This *Philip* reigned about cto. clxxx. *Frederick Barbarossa* being then emperor. And long before this *Philip*, their first christian king had it. *Ludovicus rex* (saith *Sigebert*, so he calls king *Chlovis*) *ab Anastasio imperatore codicillos de consulatu & coronam auream cum gemmis & tunicam blatteam accepit, & ex ea die consul & AUGUSTUS dictus est.* (60) The title also of Σέβας or *Augustus* is given to *Ptolemy Philadelphus* king of *Aegypt*, by *Manetho's* letters to him. But it is justly suspected that the word came thither surreptitiously. But the old *Romans* had another kind of multiplying surnames, to their emperors, by denominating them so often from countries or provinces, as they had done some brave act in composing, ordering, or conquering any of them. Examples of it are every where. Thence hath *Justinian* such a title with *Alemanicus*, *Gotticus*, *Francicus*, *Germanicus*, *Anticus*, *Alanicus*, *Vandalicus*, *Africanus*. And this way was that surname of *Germanicus* given by decrees of the senate to *Drusus*. But we need not doubt, but they had of these oft-times more by the flattery of the people than by desert. *Appellatus est Commodus* (they are *Lamprius's* words) *etiam BRITANNICUS ab adulatoribus, quum Britannii etiam imperatorem contra eum deligere voluerunt.* If the denomination were subject to a ridiculous interpretation, some of them abstained from it. As when *Aurelian* had the day of the *Carpi* (a people upon the river *Donaw* in the now *Hungary*) and heard that the senate would needs name him *Carpicus*, he presently writes to them

supereſt P. C. ut me etiam Carpiſculum vocetis. For *Carpisculus* signified a kind of shoe, which made him dislike the equivoue. Although on the other side the wicked *Caracalla* was proud of this title *Germanicus*, not only as it respected his *German* victories, but withal as it alluded to the murdering of his brother, signified by *Germanus*: affirming, that if he had conquered the *Lucani*, he would have been called *Lucanicus*; as ridiculous a name as *Lucanica*, signifying a kind of bogs-pudding, whence the *Romans* called those that were great eaters *Lucanici*. And these kind of denominations, as all other their titles of the elder times (as *Pater patriae*, *Pius*, and such more, which have been long since out of use) were given them by the state, or senate, not taken by themselves, ὅπως μὴδὲν ἀνὰ δόξαν τινὲς ἔχουν δοκῶσιν (as *Dio's* words are) that is, lest they might not seem to have any thing in them but what the state conferred on them.

II. That continuing of a denomination of emperors and kings from some great predecessor, was much antienter also than this use of the *Roman* empire. For in a like manner, we see that in the holy story, all the *Aegyptian* kings until *Solomon's* time are called *Pharaoh*, which was neither a proper name nor surname of the family, but only a title which every one of them had belonging to him as he was king. He that first had this name was called also *Narecho*. But *Manetho* says, that from him all that were kings of *Aegypt*, had this title as hereditary. Ἐκ τούτου, saith he, οἱ ἀπὸ τοῦ Νέχως ἄρτι κατὰ γένεσιν βασιλεῖς ΦΑΡΑΩ καλεῖσθαι ὀνόματι, that is, all the kings that descended from him are called *Pharaoh*. And *Josephus*; that all from king *Menis*, who was much antienter than *Abraham*, were called *Pharaohs*, which was proper only to kings, and not communicable to their queens. But, in prophane story, we have other proper names for them. That *Pharaoh* under whom *Joseph* was prisoner, some say was called *Themosis*; others, supposing *Themosis* to be the *Pharaoh* that was drowned in the red sea, and that his father's name was *Alisfragnuthosis*. But later and more curious computation, places the *Israelites* coming out of *Aegypt* under *Armais* *Pharaoh*; and *Cedren* under *Petisson*. He which took *Sara* is called *Nechias*; and, in the *Aegyptian* annals of *Manetho*, partly preserved in *Josephus* and *Eusebius*, enough more such occur. But also after *Salomon's* time some *Pharaohs* are remembered in the holy story with their other particular names; but none by the name of *Pharaoh* alone; as *Pharaoh* *Necho*, *Pharaoh* *Chopra*, (61) and *Shisach*. And I have found (saith *Josephus*) in the stories of my own country, that after *Pharaoh*, *Salomon's* father-in-law, none of the *Aegyptian* kings were called any more by this name, (62) which must be understood that none were called by this name alone, without the addition of their own proper names. The He-

^e Guil. Nothus Augustus dictus, lib. de rep. 2, cap. 2.

^f Vopiscus.

^g AEL Spartianus.

^h & videlicet Philatrium de haereticis.

ⁱ Archaeol, lib. 8, cap. 2.

^j Euseb. chron. lxxx, a.

^k Amm. Marcell. hist. 28.

^l Joseph. halofeos 6, cap. 11.

^m Reg. cap. 5. com. 1.

ⁿ Hist. lib. 53.

^o 2 Reg. cap. 23.

^p Sueton. in Claudio, cap. 11.

^q Manethon, apud Joseph. adv. App. a.

^r Jere, cap. 44.

^s 2 Paralip. 11.

brews write this name פֶּרַע; and there are some derivations of it, but none worth the remembering. Some think it signified a king in the *Ægyptian* idiom: so expressly *Josephus*. Ο Φαραὼν, faith he, καὶ Ἀγυπτίης βασιλεὺς σημαίνει, that is, *Pharaoh among the Ægyptians signifies a king*. So says *Julianus Africanus* and others. And in the *Ægyptian onirocriticks*, the name seems to be used for a king, as an appellative. If *Nilus* in a dream appeared to flow over (they say) then it signified that Φαραὼ ἐμφανήσεται μετὰ τῶν μετὰ αὐτὸν, as the words of *Achmet* are; that is, *the king with his grandees shall have cause to be glad*. Although the same author in another place speaks of one *Tarphan* whom he calls the interpreter, τὸ Φαραὼ τὸ βασιλεὺς τῶν Αἰγυπτίων, of *Pharaoh the king of the Ægyptians*, as if it were not so much an appellative as a proper name. But that of *Suidas* may be taken either way; all the kings of *Ægypt*, says he, were called *Pharaoh*, ἀπὸ τοῦ πρώτου Φαραὼ, or from the first *Pharaoh*, which may mean either the first king that had that name, or generally the first king. But after the *Grecian Monarchy* divided among *Alexander's* great courtiers, *Ptolemy the Son of Lagos* took *Ægypt* and *Africk*, and, from him, his successors were all called *Ptolemies* with some other addition; as *Ptolemy Philadelphus*, *Euergetes*, *Philopator*, and such like: which gave occasion of a foolish error in some, supposing, through the community of name, that *Ptolemy* the great mathematician, was one of the *Ægyptian* kings, and *Philadelphus*; which *Haly Aben Rodoan*, upon the *quadrupartite*, confutes against *Albumazar* and others. Indeed, he was an *Ægyptian* of *Pelusium*; but he lived under the *Roman* emperors, which *Haly* thence proves because his hypotheses of the stars, as they are placed in his *Almagest*, are of that time. It is certain, he was under the first *Antonin*, and a private man. ⁽⁶³⁾ According to this kind of continuance of names in succession, are in a manner those patronymicks of *Achemenidae* in the *Persian* kings, *Alevadae* in the *Thessalian*, *Cecropidae* in the *Athenian*, from *Achemenes*, *Alevas*, *Cecrops*. So were the *Danish* kings antiently titled *Skjoldungs* from their great king *Skjold*. The *French* had their *Merovings*, the old *Kentish* kingdom here its *Oiscings*, from *Merovee* and *Oisca*. And as among the *Ægyptians*, *Ptolemy*; so among the *Amalekites*, *Agag* was a name for every ^u of their kings, and for their nation also, derived into them from *Agag* the son of *Amalek*. For whereas in holy writ we find *Haman* the son of *Hammadetha* the *Agagite*, *Josephus* calls him the *Amalekite*, and the ^x *Chaldee Targum* מלך די מדינות אגג i. e. of the posterity of *Agag*, the son of *Amalek*. ⁽⁶⁴⁾ The *Parthian* princes from *Arfaces*, their first great monarch, were called *Arfaces* with some other name proper to every particular. *Cujus memoriae* (faith ^y *Justin*) hunc honorem *Parthi* tribuerunt, ut

omnes exinde reges suos Arfacis nomine nuncupent. The *Alban* kings in *Italy* had every of them the addition of *Sylvius*, as you see in the *Roman* story. And some old *Indian* kings ^a from *Palibothra*, which was their chief city, are called *Palibothri*. Most of the *Bithynian* kings were called *Nicomedes*. ^b And, instead of *Caesar*, it was purposed by *Ataulph* king of the ^a *West Goths* in *Italy*, that posterity should call the *Roman* emperors by his name, *Ataulphs*; and after their king *Flavius Autharis*, all the succeeding kings had that ^b forename. Upon that of *Lycophron*,

Κλέτης ἀναστὰν ἐπὶ τῶν Πάριον,

Isaac Tzetzes notes, that from this *Cleta* (an *Amazon*) all the queens which reigned there afterward bare her name. He means the city *Cleta* in the inferior *Calabria*. ⁽⁶⁵⁾ And of this kind, more might be observed. In later times the *Constantinopolitan* emperors much affected to give their children and themselves the great name of *Constantine*, not as first imposed, but as an addition to the proper name. The preface of a constitution ^c of *Heraclius*, thus begins: *In the name of the lord Jesus Christ; our God, Heraclius and Heraclius* ἡμεῖς, Κωνσταντίνος. *Heraclius* the son is stiled new *Constantine*, being taken in as a partner of the empire by his father. And in the monastery of *Suluna* at *Constantinople*, *Michael Palaeologus* and his empress *Theodora*, are painted with three inscriptions, the one being (as *Lennclaw* ^d remembers it, in *Latin*) thus conceived:

MICHAEL IN CHRISTO DEO
FIDELIS REX ET IMPERATOR
DUCAS ANGELUS COMNENUS
ET NOVUS CONSTANTINUS.

And the *Turks* used to call all those *Constantinopolitan* emperors *Constantines*, as also *Teggiurlar* in derision (*Teggiur* signifying a lord of some small territory) not thinking them in their later times worthy the name of emperor. But this of *Constantine* was no otherwise than the *Romans* used the name of *Antonin*. *Ita n. nomen Antoninorum* (faith ^e *Spartian*) *inoleverat ut velli ex animis hominum non posset: quod omnium pectora velut Augusti nomen obsederat*. And ^f *Lampridius* to the same purpose: *Fuit tam amabile illis temporibus nomen Antoninorum, ut, qui eo nomine non videretur, mereri non videretur imperium*. Whereupon, it seems, *Severus* his purpose ^g was grounded, that all his successors should have been called *Antonins*, as they were *Augusti*. And when *Alexander Severus* was by those turbulent acclamations urged to the name of *Antonin*, he earnestly and often refused it, lest the very name might breed in them expectation of what he should not be able to perform in his empire. It was a surname of the *Arrian* family, and first in *Pius*, when his grand-father (*T. Arrius Antoninus*) on

^e *Achmet*, in *onirocrit.* cap. 176. & cap. 4. ^f *Historiar.* lib. 41.

^g *Strabo*, *geograph.* 15. & 12. ^a *Alexand.* ab *Alex.* *genial.* *dier.* 1. cap. 2.

^b *Paul.* ^c *Warnef. de gest.* *Longobard.* 3. cap. 16. ^d *Circa Ann.* *dcxx.*

^e *Pandect.* *Turcic.* cap. 51. ^f *In Caracalla.* ^g *Diadumeno,*

& in initio *Heliogabali.* & vide *Capitolin.* in *Opilio Macrino* de hoc nomine, ^a *Spartian.* in *Getis.*

his mother's side adopted him. But, when they had given him the surname of *Pius*, it grew to be his name, thus: *T. Antoninus Pius*. Others in continued succession bare it, and that with affectation, either in forename, name, or surname, until the *Maximins*, and as some of the old writers would, till the *Gordians*; all deriving the honour of it from *Pius* and *Marcus*. The princes also or despots of *Servia*, are called by the *Turks* *Lazars*, from *Lazar* or *Eleazar Bulk* (these two being both one name) which first got that territory from ^h Stephen king of *Bulgary*. As also sometimes *Bulcoglar*, i. e. the sons or posterity of *Bulk*, which the *Servians* express, according to their *Slavonick*, *Bulcovitz*. So from *Crater*, the *Bulgarian* princes were *Cratovitz*, as in like analogy, the *Dalmatian*, *Cernovitz*; the *Albanian*, *Karolovitz*, deriving their title out of the *French Carolin* stock. But these and the like proceed from the authors of the family or predecessors, and are rather like princes surnames at this day, than honorary notes of majesty. Therefore have I briefly thus run them over, and return to such accidental attributes as expressly, both in their original and continuance, are of honour or greatness in supreme princes.

III. The *French* kings have from ancient time, to this day, been known by that addition of *most christian*. When it began in them is uncertain. Some fetch it from *Rome* to *Charles* the great. But so it should rather have ⁱ remained in the empire. Some refer it to the council of *Orleance* held under king *Lewis* or *Clovis* their first christian king, about the year ⁿ. But there are no other words in that council to this purpose, than ^k *Domino suo, catholico ecclesiae filio, Clodoveo gloriosissimo regi, omnes sacerdotes quos ad concilium venire iussistis*. Indeed in saint *Remigius* or *Remy's* ^l testament (he was the first archbishop of *Rhemes*) that king *Clovis* is called *Christianissimus Ludovicus*, and was the first christian king of great note and empire, although, if we believe the best stories of credit touching our island, king *Lucius* above ^{ccc} years before *Clovis*, was clearly the first christian king of *Europe* whereof any writer makes mention, unless, you think, *Tiberius* was a christian, because he somewhat inclined to christianity, and perhaps had embraced it, if he had perceived that the senate would have liked it. But the *French* king hath this title from ancient time fixed on him, and given him in solemn expressions of his name, in the second and third person, but not in the first. For he uses it not in the stile of his letters, commissions or grants. But others give it him, and he is known and expressed by it; often alone without more addition to it, *le roy tres-chretien*. And in the old register of the court of *Rome*, where the kings of christendom are in a catalogue, though none else have any addition, the king of *France* is thus noted, *rex Francorum christianissimus coronatur & inungi-*

tur. Divers letters also of the pope have antiently stiled him with that title, and some of them are as old as *Pipin's* ^m time. And for the credit of the *French* nation in this kind, *Agathias* that ⁿ lived above ^{cix} years since, affirms of them then, that *ἡμετέροις ἑπαινετοὶ τὸν χριστὸν ὡς ἐν τῇ ὁρθότητι ἡρώδης δόξαν*, i. e. they are all christians and most orthodoxal. ⁶⁶ As if he had designed the nation also to be *christianissima*; according as *Nicolaus de Clemangis*, in honour of that nation. *Haecce, fides, he, est antiqua virtus, laus probitas & religio culturaque iustitiae quibus sunt nostri majores prae caeteris terrarum populi Christianissimi appellati*? But how this of *Christianissimus* came first settled as peculiar to their kings plainly enough appears not. Some take it to have been given by *Pius II.* to *Lewis XI. of France*, ^p about ^{clx} years since; and pope *Alexander VI.* had some purpose since, they say, to have transferred it to *Ferdinand V. of Spain* from *France*.

The *French* also would have their king peculiarly honoured with the title of *Fils aîné de l'Eglise*; and they observe also that his dignity was antiently reputed such that the name of king absolutely, without further addition, denoted him. And to that purpose they use that of *Suidas*, *Ἰσὴς*, faith he, *ὁ Ἰσὴς Φεράγγων ἀρχηγός*, that is, *Rex denotes the king of France*, which, yet, I rather conceive to have relation to the emperor of the west. For the *Germans*, *Italians*, *French*, and the rest of *Europe*, were usually called *Franks* by them of the eastern empire; and so *Suidas* being of that nation, meant only the emperor of the west, to whom, as is before shewed also, they of the east allowed willingly no other title than *Rex*. But also for *Christianissimus*; not only some of the antient emperors of *Rome* (as we see in the epistles of Saint *Ambrose*, the council of *Aquileia*, in both the codes, and elsewhere) but also the kings of *England* have been titled with it, as appears in some letters and bulls directed to them from *Rome*. So in some councils of *Toledo*, and letters from the popes, the *Spanish* kings have it. But all this was before such time as it was conceived to belong more especially to *France*.

IV. The beginning and ground of that attribute of *Defender of the faith*, which hath been perpetually in the later ages, added to the stile of the kings of *England* (not only in the first person; but frequent also in the second and in the third, as common use shews in the formality of instruments of conveyance, leagues, and such like) is most certainly known. It began in *Henry VIII.* For he, in those awaking times, upon the quarrel of the *Romanists* and *Lutherans*, wrote a volume against *Luther*, in defence of pardons, the papacy, and vij sacraments. And of this work the original is yet ^q remaining in the *Vatican* at *Rome*, with his own hand, thus inscribed to pope *Leo X.*

^b Calchondyl. de reb. Turcic. lib. 6. & Leunclau. pandect. Turcic. cap. 46. & 54.

^c Tom. 2. concil. Aurel. 1. cap.

^d des royes de France liv. 3. pag. 514.

^e Histor. 2.

^f Flooard. hist. Remens. 1. cap. 18.

^g Lib. de lapsu & repARATIONE JUSTITIAE, cap. 9.

^h Mariana de reb. Hisp. pan. lib. 26. cap. 12. videlicet Valdes. de dignit. reg. Hisp. cap. 13. §. 21.

ⁱ Videlicet Valdes. de dignit. reg. Hisp. cap. 13.

^j Voyez Hier. Bignon de l'excellence

^k Mariana de reb. Hisp.

^l Francisc. Swert. in deliciis orb. Christ.

ANGLORUM REX HENRICUS,
LEONIX. MITTIT HOC OPUS ET
FIDEI TESTEM ET AMICITIAE. (67)

Whereupon the pope (in the XII year of his reign) conferred it upon him by his bull, commanding all christians that in their directions to him, they should, after the word king, add this of *Defender of the faith*. The bull itself (subscribed by the pope and cardinals of that time) is yet extant in that inestimable treasury of our great preserver of the best testimonies of time, Sir *Robert Cotton*; whence it is hither transcribed, and thus speaks :

LEO episcopus servus servorum Dei. Charissimo in Christo filio, *Henrico Angliae regi, Fidei Defensori*, salutem & apostolicam benedictionem. Ex supernae dispositionis arbitrio, licet imparibus meritis, universalis ecclesiae regimini praesidentes, ad hoc cordis nostri longe lateque diffundimus cogitatus ut fides catholica sine qua nemo proficit ad salutem, continuum suscipiat incrementum; & ut ea quae pro cōhibendis conatibus illam deprimere, aut pravis mendacibusque commentis pervertere & denigrare molientium, sana Christi fidelium, praesertim dignitate regali fulgentium, doctrina sunt disposita, continuis proficiant incrementis partes nostri ministerii & operam impendimus efficares. Et sicut alii Romani pontifices praecessores nostri catholicos principes (prout rerum & temporum qualitas exigebat) specialibus favoribus prosequi consueverunt, illos praesertim, qui procellosis temporibus, & rabida schismaticorum & haereticorum fervente perfidia, non solum in fidei serenitate & devotione illibata sacrosanctae Romanae ecclesiae immobiles perstiterunt, verumetiam tanquam ipsius ecclesiae legitimi filii ac fortissimi athletae schismaticorum & haereticorum insanis furoribus spiritualiter & temporaliter se opposuerunt; ita etiam nos maiestatem tuam propter excellā & immortalia ejus erga nos & hanc sanctam sedem, in qua permissione divina sedemus, opera & gesta, condignis & immortalibus praeconiis & laudibus efferre desideramus, ac ea sibi concedere propter quae invigilare debeat, a grege dominico lupos arcere, & putrida membra quae mysticum Christi corpus inficiunt ferro, & materiali gladio abscindere, & nutantium corda fidelium in fidei soliditate confirmare. Sane cum nuper dilectus filius *Johannes Clerk* maiestatis tuae apud nos orator in consistorio nostro coram venerabilibus fratribus nostris sanctae Romanae ecclesiae cardinalibus & compluribus aliis Romanae curiae praelatis *librum*, quem maiestas tuae, charitate, quae omnia sedulo & nihil perperam agit, fideique catholicae zelo accensa, ac devotionis erga nos, & hanc sanctam sedem fervore inflammata contra errores diversorum haereticorum saepius ab hac sancta sede damnatos, nuperque per *Martinum Lutherum* suscitatos & innovatos, tanquam nobile ac salutare quoddam

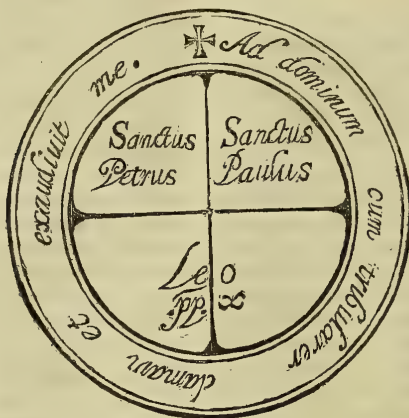
antidōtum composuit, nobis examinandum, & deinde auctoritate nostra approbandum obtulisset, ac luculenta oratione sua exposuisset, maiestatem tuam paratam ac dispositam esse, ut quemadmodum veris rationibus ac irrefragabilibus sacrae scripturae ac sanctorum patrum auctoritatibus, notorios errores ejusdem *Martini* confutaverat; ita etiam omnes eos sequi, & defensare praesumentes totius regni sui viribus, & armis persequatur, nosque ejus libri admirabilem quandam & coelestis gratiae rore conspersam doctrinam diligenter accurateque introspexissemus, omnipotenti Deo a quo omne datum optimum & omne donum perfectum est, immensas gratias egimus, qui optimam & ad omne bonum inclinatam mentem tuam inspirare, eique tantam gratiam superne infundere dignatus fuit, ut ea scriberes quibus sanctam ejus fidem contra novum errorum damnatorum hujusmodi suscitatore defenderes, ac reliquos reges & principes christianos tuo exemplo invitares ut ipsi etiam orthodoxae fidei, & evangelicae veritati in periculum & discrimen adductae omni ope sua adesse opportuneque favere vellent. Aequum autem esse censentes eos qui pro fidei Christi hujusmodi defensione pios labores susceperunt omni laude & honore afficere, volentesque non solum ea quae maiestas tua contra eundem *Martinum Lutherum* absolutissima doctrina, nec minori eloquentia scripsit, condignis laudibus extollere ac magnificare, auctoritateque nostra approbare, & confirmare, sed etiam maiestatem ipsam tuam tali honore ac titulo decorare, ut nostris ac perpetuis futuris temporibus Christi fideles omnes intelligant, quam gratum acceptumque nobis fuerit maiestatis tuae munus, hoc praesertim tempore nobis oblatum; nos qui *Petri*, quem Christus in coelum ascensus vicarium suum in terris reliquit, & cui curam gregis sui commisit, veri successores sumus & in hac sancta sede, a qua omnes dignitates, ac tituli emanant, sedemus, habita super hiis cum eisdem fratribus nostris matura deliberatione de eorum unanimi consilio & assensu maiestati tuae titulum hunc, videlicet, *Fidei Defensorem*, donare decrevimus prout te tali titulo per praesentes insignimus, mandantes omnibus Christi fidelibus ut maiestatem tuam hoc titulo nominent, & cum ad eam scribent post dictionem, *regi*, adjungant *Fidei Defensori*. Et profecto hujus tituli excellentia & dignitate ac singularibus meritis tuis diligenter perpensis, & consideratis, nullum neque dignius neque maiestati tuae convenientius nomen excogitare potuissimus, quod quotiens audies aut leges, totiens propriae virtutis optimique meriti tui recordaberis, nec hujusmodi titulo intumescas vel in superbiā elevaberis, sed solita tua prudentia humilior, & in fide Christi, ac devotione hujus sanctae sedis a qua exaltatus fueris, fortior & constantior evades, ac in domino bonorum omnium largitore laetaberis perpetuum hoc & immortale gloriae tuae monumentum *posteris tuis relinquare*, illisque viam ostendere, ut si tali titulo ipsi quoque insigniri optabunt, talia etiam opera efficere praeclaraque maiestatis

* The Bull is published also in Laertius Cherubinus de Nursia his Bullarium, tom. 1. pag. 545. & in Summ. constit. pontif. Petr. Martiaci in Leon. 10. constit. 12. pag. 227. and in English, in Speed's history in Henry VIII.

tuæ vestigia sequi studeant, quam prout de nobis & dicta sede optime merita est una cum uxore & filiis, ac omnibus qui a te & ab illis nascuntur nostra benedictione in nomine illius a quo illam concedendi potestas nobis data est, larga & liberali manu benedicentes, altissimum illum qui dixit, *per me reges regnant, & principes imperant, & in cujus manu corda sunt regum*, rogamus & obsecramus ut eam in suo sancto proposito confirmet, ejusque devotionem multiplicet, ac praeclaris pro sancta fide gestis ita

illustret ac toti orbi terrarum conspicuam reddat, ut iudicium quod de ipsa fecimus eam tam insigni titulo decorantes a nemine falsum aut vanum judicari possit: demum mortalis hujus vitae finito curriculo sempiternae illius gloriae consortem atque participem reddat. Dat. Romae apud sanctum Petrum, anno incarnationis dominicae millesimo, quingentesimo vicesimo primo. Quinto idus Octobris, pontificatus nostri anno nono.

✠ Ego LEO X. Catholicae Ecclesiae Episcopus ss.



- ✠ Ego B. episc. Ostien. car. S. ✠ ss.
- ✠ Ego N. car. de Flisco, episc. Albanus, ss.
- ✠ Ego A. episc. Tuscul. d. Farnesius, ss.
- ✠ Ego A. episc. Alban. ss.

PRIEST CARDINALS.

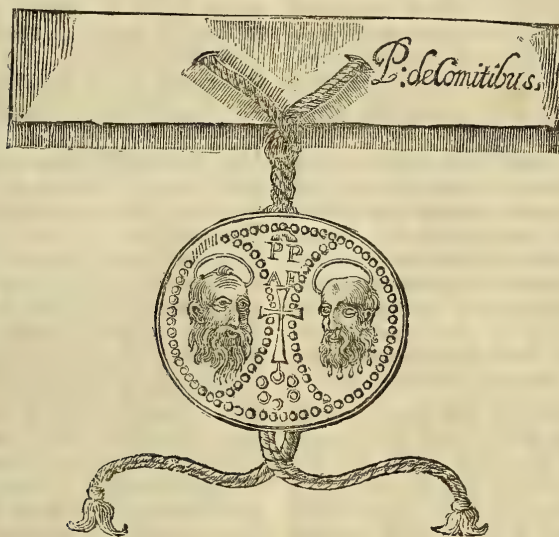
- ✠ Ego P. tit. S. Eusebij presbyt. car. ss.
- ✠ Ego A. tit. S. Mariae in Transtiberin. presbyt. car. Bonon.
- ✠ Ego Lau. tit. S. Quatuor Coronatorum, presbyt. car. prop. manu, ss.
- ✠ Ego Jo. Do. tit. S. Jo. an. por. Lat. presbyt. car. Rakanaten. manu propria, ss.
- ✠ Ego A. tit. S. Prisci, presbyt. car. de Valle, manu propria.
- ✠ Ego Jo. Bap. tit. S. Apollinaris, presbyt. car. Cavallicen. ss.
- ✠ Ego S. tit. S. Cyriaci in thermis presbyt. car. Comen. ss.
- ✠ Ego D. tit. S. Clementis presbyt. car. Jacobinus, ss.
- ✠ Ego L. tit. S. Anastasiae presbyt. car. Campegius, ss.
- ✠ Ego F. Ponzettus, tit. S. Pancratij presbyt. car. ss.
- ✠ Ego G. tit. S. Marcelli, car. presbyt. de Vic. ss.
- ✠ Ego F. Armellinus Medices, tit. S. Calisti, presbyt. car.
- ✠ Ego Tho. tit. S. Xisti, car. presbyt.
- ✠ Ego E. tit. S. Matthaei, presbyt. car.
- ✠ Ego Ch. tit. Mariae Arae coeli, presbyt. car. ss.

DEACON CARDINALS.

- ✠ Ego F. S. Mariae in Cosmedin. diacon. car. Ursinus, manu prop. ss.
- ✠ Ego P. S. Eustachij diaconus, car. manu propria, ss.
- ✠ Ego Alex. S. Sergij & Bacchi diacon. car. Caesoniinus, manu prop. ss.
- ✠ Ego Jo. S. Cosmae & Dam. diacon. car. de Salviatis, manu prop. ss.
- ✠ Ego N. S. Viti * : : : : diacon. car. Rodulphus, manu prop. ss.

* Quid sibi velint linearum in eo loco ductus omnino nescimus. Scimus tamen titulum hujusce Nicolai fuisse SS. Viti & Modesti.

- ✠ Ego Her. S. Agathae diaconus, car. d. Rangon. manu propria, ff.
 ✠ Ego Aug. S. Hadriani diaconus, car. Trivultius, manu propria, ff.
 ✠ Ego F. S. Mariae in Porticu, car. Pisanus, manu propria, ff.



But although by reason of the form of the page here, the subscriptions of the cardinals thus follow after the Popes and one anothers; yet in the bull itself, the bishop-cardinals are together on the right hand of the signet and close to it, and then, on their right hand, all the priest-cardinals are ranked; and on the left hand of the signet (at the like distance as the priest-cardinals are on the other side removed by reason of the bishops) the deacon-cardinals have their place; as in other bulls subscribed by the cardinals, the fashion is.

After this bull, Henry the VIII. presently used the stile according as the pope had given it him, and called himself, and was called, of *England and France king, defender of the faith, and lord of Ireland*. But after, the name of lord of Ireland was turned into king, then the word Ireland came in after France with the same title. And some medals of gold inscribed with his former stile and this addition, expressed in *Latin, Greek, and Hebrew*, were dispersed into many hands. But Sleidan, speaking of the pope's giving this attribute to Henry the VIII. says, that *honorificum cognomen regi attribuit defensorem appellans ecclesiae*; whereas that title indeed was more proper to the emperor, to whom more peculiarly is given that name (though not in his title) of *defender of the church*, or *advocatus ecclesiae*: whence also in the time of Henry the VIII. when the title of *defender of the faith* was new in England, there were verses made in honour of him and the emperor, and inscribed over the council-chamber-door in London at the Guild-hall, where they yet remain thus expressing them with each of those attributes.

*Carolus, Henricus vivant, defensor uterque,
 Henricus fidei, Carolus ecclesiae.*

But this attribute of *defender of the church*, came not to the emperor by any such means as that other did to Henry the VIII. The reason why it is so specially given to the emperor (but not in his ordinary stile) is because at his greatest and last coronation, which is to be performed by the pope in person, he is to take a solemn oath which binds him to be *defensor Romanae ecclesiae perpetuus*, as the oath was when Charles the V. was crowned at Bologna, by pope Clement the VII. *Ego Carolus Romanorum rex* (so are the words of it) *et brevi, dei gratia, futurus Caesar, per deum divumque Petrum promitto, polliceor testificor atque juro me in posterum pro viribus ingenio et facultatibus meis pontificiae dignitatis, et Romanae ecclesiae perpetuum fore defensorem, nec ullam ecclesiasticae libertati vim illaturum. Sed potestatem jurisdictionem et dominationem ipsius quoad ejus fieri potest, conservaturum ac protecturum, cujus rei testem voco deum ipsum et haec sancta evangelia*: as it is related by Georgius Coelestinus in his history of the diet of Auspurg, under the same emperor. And the same in substance was the solemn oath of the more antient emperors. Neither is that title of *defender of the church* differing (save only in the syllables of expression) from that of *servus apostolorum dei*, since used by the emperor Otho the III. not only in that patent of his gift to the see of Rome, but also in some of his instruments of privileges made to the church of Hamborough, as it is observed by a German, that without prefixion of his name, some x years since

^c Videbis Pet. Matth. in constit. pontific. fol. 27. & Adam. Contzen de repub. lib. 7. cap. 6. §. 2.

^c Sigonius de regno Ital. lib. 16.

wrote some annotations upon the donations of *Constantine* and the same *Orto* to that use. And with these agrees that article of the capitulation between the present emperor *Ferdinand* the II. and the princes electors, which was, *quod* " *toto illius nostrae regiae dignitatis officii & regiminis tempore, universam christianitatem, Romanam sedem, ejusdem summum pontificem & christianam ecclesiam tanquam illius advocatus fidei protectione conservare, &c. & debemus & volumus*, though the III electors, of the *Palatinate*, of *Saxony*, and of *Brandenburg*, being protestant princes, by their ambassadors protested against it. Some of the old kings of *Sicily* also used titles in their stile somewhat like these, as *Christianorum adjutor & clypeus*, and *Christianorum adjutor & defensor*, as we see in the observation of them made by *Scipione* ^x *Mazzella*. But besides that of *Defender of the faith*, *Henry* the VIII. by Act of parliament had the title of *Supreme head of the church of England*, annexed and united to the imperial crown of this realm, which was used by him and king *Edward* the VI. next those words of *Defender of the faith*: as also it was by the ^z lady *Jane* that pretended to be queen against queen *Mary*, in the proclamation that was made of her right to the crown. Neither did queen *Mary* at first abstain from it. But in the proclamation of her right also she was called so. But it hath been since wholly omitted: yet it was a great question in the beginning of queen *Mary*, ^a whether the writs of summons to the parliament, which had not this title in the queen's stile, were legal or no. But it was at length resolved upon great deliberation that they were legal, and that the act which gave the stile was to be understood only affirmatively without any negative inference that the stile should not be good without it.

V. As that of *most christian*, and *defender of the faith*, are peculiar to the *French* kings, and the kings of *England*; so the kings of *Spain* have their title of *Catholic*, which signified in like sort a clear exclusion of heresy, as that of *most christian* doth of judaism or paganism: and, this title of the kings of *Spain* is usually denoted by *catholica majestas*, or *catholic majesty*; as *Charles* V. (being emperor and king of *Spain* together) was by *sacra Caesarea catholica majestas*. The beginning of this is, by the *Spanish* writers, frequently referred to king *Recared*, who about the year *pxc*, in the third council of *Toledo*, was stiled so by acclamation of the bishops, in regard of his religious care and consent in rooting out the ^b *Arrian* heresy. Among the acclamations we read; *cui a deo aeternum meritum, nisi vero Catholico Recaredo regi? cui a deo aeterna corona, nisi vero orthodoxo Recaredo regi?* but in the inscription or stile of the council he is only called *gloriosissimus, piissimus & fidelissimus dominus*: neither

did pope *Gregory* the great in his letters that are extant to him, call him *Catholicus*. Afterward about the year *dcc. xl*, their first *Alfonso* had this attribute, both for his great performance against the *Moors*, and his singular love to unity of religion. He is commonly called *Alfonso Catholicus*. (⁶⁸) And since him, divers others of his successors in *Castile*, used it, as ^c *Gregorio Lopez* remembers out of the records of that kingdom. He says, that king *Ordono* the first (about *dccc. xxx.* after christ) used it in an instrument of endowment to the church of *Oviedo*, as also king *Sancho* the gross (about *dcccc. xxx.*) in a charter of privilege to the monastery of *Samos* in *Gallicia*: and *Alfonso* the VI. is called *catholicus rex* in a *Spanish* council ^d held under him. And long before him *Alfonso* ^e surnamed *Caso*. And *Sampiro* bishop of *Astorga* a very ancient writer of *Spain*, calls *Ramires* the III. only *rex catholicus*. So *Alfonso* VIII. is titled in an inscription that *Lopez* faith remains in the monastery of *Sabagun*. Other such ^f examples are. But howsoever such a use of it was sometimes had in the expression of the kings of *Spain* (the word being of it self such as denotes every good christian) others say it was not settled for a peculiar attribute to them until the time of *Ferdinand* the V. being king of *Aragon* and *Castile*, about the year *m. d.* Some write that he had it so annexed to his crown by pope *Alexander* the VI. So *Mariana* and *Zurita*, so *Diego de Valdez* deliver. *Ab Alexandro pontifice, faith & Mariana, Ferdinandus* (⁶⁹) *CATHOLICI cognomentum accepit in posteros cum regno transfusum stabili possessione. Honorum titulos principibus dividere pontificibus Romanis datur*: and in another place, *Catholici cognomen quod Recaredo olim regi, quo tempore universam Gothorum gentem, repudiatis Arrii opinionibus, in catholicae ecclesiae castra revocavit, in Tolitano episcoporum conventu acclamatum, intermissis multis aetatibus. Alexander eo nomine VI. Pont. Max. in Ferdinando Aragonae Hispaniae rege instauravit effecitque ut consequentibus regibus proprium haereditariumque esset*: and he says also, that before this time the kings of *Castile* were called *illustres* usually in the popes letters, but from this time they have been saluted from him by the title of *catholic*. But this which *Mariana* attributes to pope *Alexander* the VI. cardinal *Baronius* refers to one of his successors *Julius* the II. who was pope also while *Ferdinand* was king. But *Baronius*, I think, was much deceived. For in a bull of pope *Alexander* of the year *mdcdxcvii*, which was near seven years before *Julius* was pope, *Ferdinand* and *Isabel* are called *rex & regina Hispaniarum* ^{*} *catholici*. The bull is that of dispensation for the marriage of prince *Arthur* son to our *Henry* the VII. with the lady *Katherine* (afterward queen *Katherine*) by reason of their

^a Cancellar. Hispan. pag. 46.

^x Descript. de Napoli. pag. 471.

^z Hen. VIII. cap. 1.

^z Giuglio Raviglio di li successi.

d'Inghilterra &c. pag. 9. & 21. Ferrara 1560.

^a 1 Mariae, Dyer, fol. 98.

^b Videlic Gregor. Mag. lib. epist. 127. & 128.

Excellentias del reyno de Espanna, cap. 12.

^d Concil. Hispan. fol. 145.

^e Prudentio de Sandoval, pag. 165.

de dignit. reg. Hisp. cap. 13. §. 21.

^g De reb. Hisp. lib. 26. cap. 12. & lib. 7. cap. 4.

^f Valdef.

sis Garibay, lib. 6. cap. 6.

^{*} See also that catholici reges denotes them especially, in that bull of Alexander the VI. which gave them new found lands. Laert. Cherubin. de Nustria Bullar. tom. 1. pag. 392.

minority, being not yet of the years of consent to a marriage. The original is with Sir Robert Cotton. Of this matter among the *Spanish* writers (besides their histories) see especially, *Gregorio Lopez* in his *excellencia del reyno de Espanna*, and *Diego de Valdez de dignitate regum Hispaniae*. Neither is this title much used in the stile of the first person of the king of Spain, but in the second and third most frequently.

VI. As those before related are now particular attributes of honour, in the stiles of these great kings of the western parts; so in the later times of the eastern empire, that great title of *Porphyrogennetus* was almost in like use among them at *Constantinople*. For although there be one of the eastern emperors more known by the special name of *Constantine Porphyrogennetus* (that is, he (70) whose admonitions of state, constitutions, and *themata* are yet extant and published) yet plainly that was not a name peculiar to himself in particular. For he himself calls other (71) ^h of the eastern emperors *Porphyrogeniti*. And the emperor *Basilius* his novels are yet extant, bearing before them the same name. So *Emanuel Comnenus* in his inscription to the western emperor *Conrad III.* uses it. And, in the *Bodleian* library at *Oxford*, the *ms.* of *John Camaterus* his astrology, written some L. years since by a *Cretan* scribe in *Paris*, hath this inscription; *Ἰωάννης τῷ Καμπατίῃ, τῷ ὄντι τῷ (72) Καμυλῇ εἰς, ὡς δὲ Ὀδοντίας τῷ ἀστρον διαθέσει, ἐν συνύλει διὰ τὴν Ἰαμυρίαν πρὸς τὴν Βασιλῆα τὴν ΠΟΡΦΥΡΟΓΕΝΝΗΤΟΝ, παρρησίαν: (73)* where he calls *Emanuel Comnenus* the emperor *Porphyrogennetus* only, as if he had conceived this title to be alone so full, that no other name were requisite to express the emperor. But withal it must not be taken as if it had been solely proper to the emperors. For divers princes of the imperial blood had it also. *John Palaeologus*, nephew to *Andronicus* (the first emperor of that name and family) is called the ⁱ son of *Porphyrogennetes*. So *Constantius*, son of *Constantine Ducas*, is called by it in the lady *Anna Comnena* her *Alexias*. And this lady *Anne* being daughter to *Alexius Comnenus* the emperor, (74) is also, in the title of her book, stiled *Anna Porphyrogennetes*. And *Thomas*, brother to their last emperor *Constantine* surnamed *Dragafis*, in a confirmation ^k of a sale of lands, subscribes himself with it. Other examples occur in *George Phranzes*, and the rest of that nation. But in the reason and ground of this name, very learned men have been much deceived, though it be in truth most plain that it is deduced originally from a palace, built (as ^l some say, by *Constantine* the great) chiefly to this end, that there the empresses should be delivered and keep the solemnities of child-birth. The lady *Anne*, whom I remembered, clearly justifies it; she speaking of *Robert Guiscard's* death (he is always called in her story, *Rompert*) and her father's triumph, wherein he returned to *Constantinople*, says, that there he found *Irene*

the empress, her mother, in travel, in a house antiently appointed for the empresses child-birth: *Πορφυραν τὴν (δικημ) ἀνέχεσθαι* (saith ^m she) *ἐνομαζέσθαι, ἥ ἐστι τὸ τὴν Πορφυρογεννήτων θύμα εἰς τὸ Οἰκουμένῳ διδόναι, that is, they call that house, from antient time, Porphyra, whence the name of the Porphyrogeniti ⁿ came into the world.* With her herein expressly agree *Constantin Manasses*, and *Luitprand*; and a place in *Anastasius* touching *Constantin VII.* deprived of his eyes by his ambitious mother *Irene*. *Incluserunt eum* (are the words) *in domo purpurea, in qua ē natus est.* Hereto I doubt not but a special allusion is in that of *John* bishop of ^o *Euchaita*, writing in a courtly form of flattery, to *Zoe*, empress and wife to *Constantin Monomachus* about CIO L. of Christ.

Τῆς δὲ γενέας λείποντος, τῆς ΠΟΡΦΥΡΑΣ
Καίλιστον ἀνθρ., χρῶμα. τῆς Ἀλαργίδου.

and so, *Anna Comnena* calls her self *πορφυρὰ πθηνυμένη* ^{τὴν ἐν τῷ γένει} for she was born in that palace. Briefly, δ *Πορφυρογενήτης*, or δ *ἐν πορφυρῇ γενήτης*, in *purpura natus*, i. e. born in the place called *Porphyra*, are all one, and assumed by such as were there born. Neither is any question to be made of this reason of the name, although *Pontanus* (who for the oriental story hath well deserved) still leaves it as a doubt; not understanding *Nicetas* & *Choniates*, where he speaks of the empresses being near her time of delivery, and adds, that *ἡτοιμασμένη ἦν ἡ Πορφυρὰ καὶ ὑποτετίσθη πρὸς τὴν ἑσπέρου τῆς γενέσεως*, i. e. the palace *Porphyra* was prepared to receive the birth. But *Pontanus* turns *porphyra* by *purpura*, as if it were for purple cloth; in such a sense as it is in that of ^q *Claudian*,

— sic natus in Ostro
Parvus Honoriades genibus confidat avitis.

which I the rather cite, because the reason perhaps of the imposition of that name on the palace may be had out of it. For if the emperors issues at the birth were received and wrapped in purple cloth (as it seems they were; and children of (75) others in other colours) it might be proper enough to give the name of that special colour, wherein at the first instance of their infancy, they were received, to the place appointed only for that receipt: (76) And in the preface to *Camaterus* his astrology, we read also,

Ἀναξ μέγιστε Πορφυροέλασε κλάδε.

Where in a like sense, as in the other testimonies, a compound is made of *Porphyra*.

So the Prince, duke, or emperor of *Muscovy*, hath been, they say, of late time called the *white king*, or *white prince*: and that from the white robes which he uses, as *Sigismund a City Peer* of the empire, being ambassador thither from the emperor *Maximilian* the II. conjectures. *Sunt*, saith he, *qui principem Mos-*

^b De administrando Rom. imp. cap. 45. ^c Alexiados, l. 6. ^d Latine in Porphyra geniti.

^e Timemar. 6. Pontanus vero ad Phranz. l. 1. c. 6. de hac re dubitat, cum doctissimus Cujacius rem docte tetigerit, observ. 6. cap. 9.

^f Curopalat. de offic. Constant.

^g Turco-Graec. lib. 4. ep. 59.

^h Luitprand. hist. 1.

ⁱ Jo. Euchaitens. in hypomneum. πρὸς Δεσποίναν.

^j Hist. 5.

^k & Vulcanius ad themata Constantiniani quod miror. Diu vero est de nupt. Honorij & Mariae.

coviae album regem nuncupant. Ego quidem causam diligenter quaerebam, cur regis albi nomine appellaretur, cum nemo principum Moscoviae eo titulo antea esset usus (the emperor he means was *Basilius Iwanowich*) imo consiliariis ipsis saepe data occasione, & apte dixi nos non regem sed magnum ducem agnoscere; plerique autem hanc regii nominis rationem esse putabant quod sub imperio suo reges haberet. Albi vero rationem nullam habebant credo, &c. Credo autem (saith *Sigismund*) ut Persam nunc propter rubea tegumenta capitis *Kissilpassa*, id est, rubeum caput vocant: ita illos propter alba tegumenta, albos appellari. But I remember *Muscovy* is called *white*, *Russia alba*, and *Poland black Russia*: and perhaps therein may be the cause of the name. But *Gaguin* gives the reason, quod incolae omnium regionum ipsius imperio subjectarum, vestibus albis & pileis plerumque utantur. And hitherto of those accidental and singular attributes which are in use among the supreme princes of *Europe*.

CHAP. VI.

- I. *Prestor John*, or *precious John*, attributed to the emperor of *Aethiopia*, or of the *Abyssins*. The title of *padischah* *prestigiani* in some old kings or chams, of the territory of *Cathay*.
- II. *Chan* (that is, lord, or prince) in the eastern parts, which we commonly call *cham*.
- III. The title of *chaliph* in the princes of the *Mahumedans* empires.
- IV. *Bench* or *beg*, *seriph* or *xariffe*, *sultan*, *μὲν αὐτῶν*, *mully*, *fid*, *amir*, *amirelmumunin* and *padeschah* *musulmin* among the *Mahumedans*.
- V. *Sophi* attributed to the *Persian* emperor.
- VI. *Scha*, *schaugh* or *xa*, and *mirza* in the eastern states. Saith in some Greek writers.
- VII. *Schahana*, with the titles of *augusta*, *sanctissima domina nostra*, &c. given to empresses. And the original of the English name of queen; with that law of the *West-Saxons*, which denied the kings wives here the name of queens.

OUT of *Europe* we come into *Africk* and *Asia*, where also, the *Grand Signior*, notwithstanding his court and residence at *Constantinople*, is fittest to be placed. But in the delivery of the singular attributes of honour which occur in these parts, we shall also necessarily fall upon such as for their significance might be general to all supreme princes, although use and application of them in *Europe*, hath made them denote special princes of this or that kind in the

Mahumedan states; as *chan*, *padischah*, *sultan*, *amir*, *xa* or *shaugh*, and the like: which are by interpretation, but as *prince*, *lord*, *king*, or such like, and yet in ordinary use design only such princes as are of those parts of *Asia* or *Africk*.

I. Of these singular attributes of supreme honour used in those countries, that of *Prestor John* applied to the *Negush* or great emperor of the *Aethiopians* or *Abyssins*, hath the first place, both for the eminency of his name, and for that he is the chief christian prince of them. He is usually called (besides his proper name) in *Europe*, *Presbyter Johannes*, as if his name were the same in *English* as *Priest John*; and so was the inscription of the letters sent to him from the ancient kings of *Naples*, as *Scipione Mazzella* noteth. The stile, saith he, used, al Prete Juani d'India (for so also he calls him) was eminentissimo & invictissimo monarchae domino *Isach*, Presbytero Joanni, filio *David*, domino tabularum montis *Synai*, *Aethiopiaeque regi regum, fratri nostro carissimo*. And *Abassenorum rex* (saith *Andrew Alpago*) est *Alexander, dictus Pretejane*, which is in *Italian* the same as *Prestor John* in *French*; and *Postellus* calls him *Prestojanus*, and *Elias Levita* *פּרֵטִי יוֹאֵן* or *Preti Juan*. But if we believe the testimony of *Zaga Zabo* an *Aethiopian* ambassador to the last *Emanuel* king of *Portugal*, the names of *Prestor John* and *Pretejane*, and the like, are corrupted from *precious Gian*. For his *Aethiopic* thus expressed it,

Ἰᾶν Βελὺ i. e. *Gian Belul*, quod sonat (saith the translation published by *Damian a Goes*) *Joannes Belul*, hoc est *Joannes preciosus*, sive *altus*; & in *Chaldaica* lingua, *Joannes Encoe*: id, si interpreteris, etiam *Joannis preciosi* sive *alti significatum habet*. So that *Gian Belul*, this way, is a name added to the emperor as a special attribute of honour beside his proper name, out of their true *Aethiopian* tongue, which they use in common speech, not that which is spoken and written in their liturgies or holy exercises, and known among them by the name of *Chaldee*, but, more specially called *Giaein*, i. e. liberty, quod nimirum (as the noble *Scaliger* yields the reason) ea sola uterentur *Arabes illi victores, qui Aethiopiam insiderunt*. For he most learnedly (as in all things else) derives them thither from the *Abassens* or *Abassins* in *Arabia*, whence *Sept. Severus* had his denomination of *Arabicus*, as in one of his coins appears, inscribed with *ΑΒΑΣΣΗΝΩΝ*, of whom mention is made by *Uranianus*, an old author of *Arabick* affairs, placing them in *Arabia felix*; which perhaps solves their deriving themselves from *Melech* son to *Salomon* (as they fable) by *Maqueda* the queen of the south. For, where *Saba* is, there were those *Abassenes*, whence the *Latins* have their *Sabaei* and *tura Sabaea*. (77) But *Zaga Zabo* tells us that their prince is not properly

* Indice ver. Arabic. Avicennae subjuncto verb. Alhahes. praefat. 3. " גון בלר * גל * Hub. Goltz. thes. pag. 129.

† De orbis concordia, lib. 3. pag. 336.

‡ In Masoreth Hammasoreth,

ap. Damian. a Goes.

§ Ap. Stephan. Ἰᾶν Βελὺ in 'ACapods.

¶ Zaga Zabo.

stiled emperor of the *Abassins*, but of the *Æthiopian*s. The *Arabians* call them ^b *Elbabas* from the same reason, as we *Abassins*; but they are known to themselves only by the name of *Æthiopian*s, or *Æthiopian*s. Of this *Belul Gian*, is made the name *Beldigian*, by which, *Lues de Uretta* a *Spanish* friar says, they call their emperor. And *Bodin* notes that his name ^c is *Jochabellul*, that is, *gemma pretiosa*, as he says. ⁽⁷⁸⁾ So also *Joannes Coto-vicus*, ^d that his name is *Belulgiam* (meaning the same syllables, it seems, which *Zaga Zabo* gives us) *quod incomparabilis*, saith he, *præstantiæ immensique pretii gemmam significat*. But others endure not that of *Zaga Zabo*, and conceive that what he delivered to this purpose was only, to offer at a reason of the name of *Prester John*, given among us in *Europe* to his king that sent him: and that there is no such name belonging to this emperor of the *Abassins*, otherwise than by our misapplication of it, which proceeded from attributing that to him which indeed was antiently known to be given, by our travellers, to another prince in the eastern parts whose religion was somewhat like this *Prester John*'s. For, in the travels of such as first discovered to any purpose those eastern states (as they were of later time) mention ^e is made of one *Uncham* or *Unchan* a great monarch in those parts, ⁽⁷⁹⁾ and him they call *Presbyter Joannes*. *Non quod is sacerdos esset* (as the words of *Nicolaus* ^f *Godignus* are) *sed quia Archiepiscopi primatis more, quando pacificis rebus prodibat in publicum, unum habebat in comitatu qui erectam crucem præferret*: and when he marched with his army, he had always two crosses carried before him. And they write that one *Cinchis* who pretended himself begotten on a poor widow by the sun-beams, as a chosen king among the *Tartars* rebelling against this *Uncham*, overcame him; ⁽⁸⁰⁾ and, that in this *Uncham* the name of *Prester John* ended. This relation is of about the year *MD. C. XC.* and hath made the readers confound the corrupted names of both princes, although there were so great distance between them, that the one could hardly be derived from, or have any relation to the other. And some travellers ^g into those parts, have expressly delivered them both as one. But the most learned *Scaliger* teaches, that the *Asiatick Uncham* and his predecessors were called *فرستگياني* *Prestigiiani*, that is, in

Persian, *apostolick*, and so had the name of *Padescha Prestigiiani*, i. e. *apostolick king*, because of his religion ⁽⁸¹⁾ (being a *Nestorian*) which in *Æthiopic* *Chaldee* must be expressed by *Negush Chawariaw*. ⁽⁸²⁾ Divers other ^h conjectures are upon the name of *Prester John*, given to the emperor of the *Abassins*, in *Luis de Uretta* his *Æthiopic* history; but all to no purpose. But I wonder how *Munster* was so

much herein deceived, that he supposes the *Hebrew* epistle printed at the end of his *cosinography*, beginning *אני פרישט יואן* i. e. *Ego Pristi-ivan*, to have been sent from the *Æthiopian* emperor; especially seeing he took notice of both the *Asiatick* and *African* prince's name of *Presbyter Joannes*. The affirming in it, that *Thomas* the apostle was buried in his country, makes it plain enough that it came from the eastern parts, if at least it were not counterfeited. The title also is much differing from ⁽⁸³⁾ that which the emperor of the *Abassins* uses, an example whereof anon follows. But for the emperors of the *Abassines* or those *Æthiopian* kings, and the variety of their names or titles of honour, I add this out of a little annal, of those kings, from the flood till the age of our fathers, printed at *Rome* 1552. wherein also the reason of the name of *Belul Gian* is delivered. *Æthiopes regem suum, quem nos vulgo Prete Gianni corrupte dicimus, quatuor appellant nominibus, quorum primum est Belul Gian, hoc est lapis preciosus, atque perfectus. Ductum est autem hoc nomen ab annulo Salomonis, quem ille filio ex regina Saba, ut putant, genito, dono dedisse, quove omnes postea reges, veluti Davidicae familiae haereditario insigni, usos fuisse describitur. Deinde cum in sede David quam a Salomone identidem habuisse aiunt, electum collocant regem* [S] *Haze nominant, hoc est electum seu sponsum. Cum vero eum coronant, appellant Neghuz. Postremo cum vertice capitis in coronae modum abraso, ungitur a patriarcha, vocant Masih, hoc est unctum. Haec autem regiae dignitatis nomina, omnibus communia sunt. Proprium vero cujusque nomen cum aliqua rerum aut personarum significatione semper impositum duplex est; unum quod a parentibus natiuitatis, alterum quod baptismi tempore imponitur.*

II. But for that name of *cham*, or rather *chan* in the *Tartarian* empire; it signifies *lord* or *prince*, both there in all or most of the *Asiatick* states. And that *Cinchis* or *Cangius*, *Cingis* or *Tzingis* (for all those several names denote him) was called *Cinchis cham*, his son and successor *Hoccota cham*, or rather *chahan* or *chan*; and so also his successors were titled *chans*, although *Matthew a Mickow* a ⁱ *Polonian*, which seemed to have much knowledge in that his neighbouring country, long since delivered that *imperator eorum* (*Tartarorum*) *Ir Tli Ki* *lingua ipsorum, hoc est, liber homo dicitur. Dicitur* [S] *ulu cham quod sonat magnus dominus, sive magnus imperator. Ulu n. magnus, cham vero dominus* [S] *imperator est. Eundem aliqui magnum* ^k *Canem dixerunt* (meaning that they took *canis* for a dog) [S] *male interpretati sunt, quia ulu cham non significat magnum canem: cham etenim cum aspiratione dominum* [S] *imperatorem: S cam, sine aspiratione, cruorem* [S] *nunquam canem sermone Tartaro-*

^b Terra Hhabas, Æthiopia. Benjamin Tudelens. itinerar. pag. 101. & Alpag. in ind. Arab. Avicen. subnexo verb. Alhabes.

rep. lib. 1. cap. 9. in marg.

^c Will. de Rubruquis itinerar.

^d Itinerar. Hierosolym. pag. 209.

^e Pol. Venet. l. 1. cap. 51. & seq. Joh. de Plano Carpin. cap. 5. & Lud. Vartomann. navigat. 2. cap. 15. vide, si placet, Gerardi Mercatoris geographiam.

^f Nicolaus Godignus de Abyssinorum reb. lib. 1. cap. 5.

^g Aloyf. Cadamust. navigat. cap. 60. & Lud. Vartomann. navigat. 2. cap. 15. vide, si placet, Gerardi Mercatoris geographiam.

^h Damian a Goes, & videlicet Lud. de Uretta hist. Æthiop. lib. 2.

ⁱ De Samrat. Asian. l. 1. c. 8.

^k Imperator canis dictus est ubique Odorico in itinerario, & J. de Plano Carpin.

rum designat. But certainly it is *chan* or *cham*, which is their title for *lord*. For also the translation of ¹ *Haithon* the *Armenian* out of the *French* into *Latin* by *Salconi*, A. d. c. c. c. vii. hath usually *chan* in that sense, not *cham*; (⁸⁴) and *changlan*, with them, is the *son of the prince or lord*. Yet in *chambalu*, that is, the court of the *Tartar*, that *m* is well permitted, because of pronunciation. The *Turks* also call that *Tartarian* emperor *ulu chan* in the same signification, as *Matthew a Michow* would have it in *cham*. Neither do their grand seigniors abstain from this title of *chan*. *Amurad* or *Morad* III. used it ordinarily thus: *Sultan Murad chan bin sultan Selim chan elmuzaferu daima*, i. e. lord *Murath* prince, son to lord *Selim* prince, always victorious. In which, as ^m *Leunclaw* notes, there is an agreement of their always victorious, with the *Europæan* *semper augustus*, *semper invictus*. And in their *Ottomanick* line, there is one *Carachan* (⁸⁵) son of *Cutlugeck*, which had hence, that last part of his name. And in those great ⁿ irruptions of the *Tartars*, about the beginning of the *Ottomanick* empire, the names of great princes occur with this addition; as *Tartar chan*, *Thefir chan*, *chuis chan*, and such more. But amongst them divers are mis-printed with *than* for *chan*. (⁸⁶) So *Rabbi Zaccuth* in his history of the caliphs, hath *John Unad chan*, *Morad Chan*, *Temur chan*, *Altun chan*, and such more, for princes of *Asia*. And this title in that sense, is very frequent in the stories of the later ages, which are written of that part of the world, as we see in the *Musulmanick* history, the *Persian* story of *Mirkond*, the description of *Tartary* by *Martinus Broniovius*, and divers such more. Many names also corrupted in good authors, have part of their original from this *chan*. *Constantine* ^o *Porphyrogenetus* speaking of some *Turks*, which antiently planted themselves in the eastern part of *Europe*, says, that they had over them, as judges, two princes called *gylas* and *carchan*. But, saith he, *gylas* and *carchan* are not *δυνάμει*, *νόμιμα*, ἀλλὰ ἀξιώματα, that is, not proper names, but dignities. (⁸⁷) What *gylas* is, I confess, I have not yet learned, but my author affirms that it is *μεῖζον τῷ Καρχῶ*, i. e. greater than *carchan*. *Gula*, saith *Leunclavius*, signifies in *Turkish* a tower, whence the later *Greeks* have *τέλας*, in the same sense. This *carchan* or *carachan* (which may signify *black lord* or *prince* in *Turkish* or *Persian*) may perhaps be the same which is *cardarigan* in other stories of *Europe*. For the western idioms frequently make greater changes in pronunciation of the same words. And there are some attributes of princes in the ^p *Persian* story that so distinguished them by colours, as *karakuyonlu*, that is, *black sheep*, *kara issuff*, *kara Mahumed*, and the like. As also they had a royal family called *akuyonlu* or *white rams*; perhaps both those names coming

originally from some territories, which I know they called so. *Ac-bassa* also occurs among the *Turks* for the white lord or captain, and *ac-temur*, which signifies a white or bright sword, for one of the princes of the blood; so *caradenbet-schah*, that is, the black fortunate prince, and *cara-oglan* or the white son. *Cardarigas* (saith *Landulphus Sagax*) non est nomen proprium, sed dignitas maxima apud Persas, speaking of the self-same, which *Theophylact Simocatta* (he lived under *Heraclius* A. d. c. xxx) names *Καρδαραγαν cardarigan*: *Καρδαραγαν τὸ πρῶτον αἰχμήματα* (saith *q* he) *ῥίλον ὃ Πέρσαις ἐκ τῶ ἀξιώματων προσηγορεύεσθαι ὡς πρὸς ἀντιθέμενον πρὸς ἐκ τῶ γενήσεως ὀνομασίας ἑνὶ ῥέματι*, i. e. this is a dignity of the *Parthians* (he confounds here *Parthians* and *Persians* together) and the *Persians* love to be called by their dignities, in some sort disdaining the names imposed on them at their births. He uses *cardarigan* in the first case, which is nearer *carchan*, and perhaps unjustly turned into *chardarigas* by his translator. This of *chan* also, we have in that official dignity of *chanaranges*, remembered in ^r *Procopius*. And the *Armenian* that was in the *Roman* camp under *Narses*, *Justinian's* lieutenant, called ^r *χαρναρῶν* *chanaranges*, might perhaps have had that name only according to *Simocatta's* relation of the *Persian* custom. And what is *Zamergan* *Ζαμεργαν* or *Ζαρεργαν* that greatest prince of the *Huns* in *Justinian's* time, but *Zamer* or *Zaber chan*? Plainly *chaganus* or *chajanus* occurring in *Simocatta*, *Landulphus Sagax*, *Cedren*, *Callistus*, and others, denote the same as

chan. And in the same sense is *حاجان chachan* in the ^t *Arabian* geographer. So is that prince *Hunnorum* *Capcanus* in the life of *Charles* the great, written by a monk of *Engoleusme*. But I wonder at that in frier *William de Rubruquis*, where he saith, *Can nomen dignitatis, quod idem est qui divinator*. *Omnes divinatores vocant can*. *Unde principes dicuntur can quia penes eos spectat regimen populi per divinationem*. Unless we should read *dominatores* & *dominationem*, clearly he was deceived. He travelled in those parts A. Chr. c. c. c. l. iii. But questionless, *Cedren* well knew the signification of *chan*, in writing, that the emperor *Theophilus* ⁿ *προεβέβηκεν ἐδίδεατο τῷ χαγῶνι χαλκῶν*, i. e. received an embassy from the *chagan* or *chan* of *Chazaria*. (⁸⁸) This *Chazaria* or *Gazaria*, is that which the antients call *Taurica Chersonesus*, almost in-ised by the seas *delle Zabache* and *Maggiore*. For the *Asiatick* *Sarmatians* or *Scythians*, which ^x antiently under *Justinian* planted themselves about the river *Donaw*, and in this *Chersonesse*, called their prince, as, in their own country language, a king or lord was to be stiled. And *Chersonesus Taurica* hodieque (saith *Leunclaw*) habet suos *chabanes*. (⁸⁹) So in *Menander* (as ^y he is published in *Latin*) we read, *Bajanus Abarorum caganus*, that is, *Bajanus the prince or king of the Abari*.

¹ Haithon Arm. floruit monachus sub a. 1290. Curchinus item dictus, & Antoninus.

arch. Russiæ ap. Matth. Paris, pag. 875.

^o De administr. Rom. imper. cap. 40.

^p 2008, & 2010.

^q Maurician. hist. a. cap. 6.

^r Georg. Cedren. pag. 433.

^s Simocat. Mauric. hist. 7. cap. 8. & Agathias, lib. 5.

^m Pandeet. Turcic. cap. 3.

ⁿ Epist. Petr.

^p Mirkond chez l'auteur de les estats, empires, &c.

^q Agathias hist. rom. 6. & 6.

^r Nubienfi part. 9. climat. 6.

^s In excerpt. de legation. edit. a Carol. Cantoclaro,

pag. 259.

But those antient *Tartars* and the northern *Scythians*, by them in that large tract from the east of *Asia*, even to the river *Don* or *Tanais*, had long before the *Tartarian* empire of *Tzingis*, their emperors honoured with that title of *ulu chan* or *great lord*; which perhaps is but corrupted in him they call *umchan*. For above 1000. years since, one of a most large territory in those parts, thus inscribes his letters to *Maurice* the *Roman* emperor. ΤΩ ΒΑΣΙΛΕΥΙ ΤΩΝ ΡΩΜΑΙΩΝ Ο ΧΑΓΑΝΟΣ Ο ΜΕΓΑΣ ΔΕΣΠΟΤΗΣ ΕΠΤΑ ΓΕΝΩΝ ΚΑΙ ΚΥΡΙΟΣ ΚΑΙΜΑΤΩΝ ΤΗΣ ΟΙΚΟΥΜΕΝΗΣ ΕΠΤΑ that is, *To the emperor of the Romans the ulu chan* (or *great chan*) *lord of seven nations, and ruler of the seven climates of the world*. So *Theophylact Symocatta* ² expresses it in *Greek*, but by all likelihood the original (that is the *Tartarian*) called him, as they do now the emperor there, *ulu chan*. In the *Scaligeran* family or *de la Scala*, derived from the house of *Verona* (being by original *Gothick*) one of the line is called *canis*, which one of them says, had its beginning from ^a this word used in the *Slavonick* tongue. But it seems it is commonly taken as if it were *canis*, in the same notion as in *Latin* it signifies a *dog*. In the great *chan's* seal, (as frier *John de Plano Carpini*, that was sent ambassador into those parts by pope *Innocent IV.* in 1246. cc. XLVI. affirms) the inscription was thus, interpreted into *Latin*. *Deus in coelo & cygne cham super terram; dei fortitudo. Omnium hominum imperatoris sigillum*. And his ^b title was usually *Dei fortitudo, omnium hominum imperator*. ⁽⁹⁰⁾

III. Divers of the titles used in the northern *Africk* and *Turky*, are the same; the princes of both parts, being either out of one root and nation, or, at least so deriving themselves. From the beginning of the *Mahumedan* empire in *Bagded* and *Damascus*, *Mahumed's* successors

had the title of *chaliph*, ⁽⁹¹⁾ that is, حليفي or حليف. So also upon the division of that *Arabian* empire into *Chaldea*, *AEgypt*, and other parts, the name of *chaliph* was retained as the chief title of them, which pretended themselves supreme, no otherwise than as the name of emperor, by those which were of the east and west after the division of the *Roman* empire. This of *caliph* occurs frequently in the *Saracenic* or *Mahumedan* stories, and also in the old writers of the holy war, which the *Christians* had with the *Mahumedans* for recovery of the holy land. But the meaning of this of *caliph* is, out of its interpretation, *successor* or *vicar*, and denotes the *vicar* or *successor* of *Mahumed*, although *Magiser* in his *Turcico-Latin* Dictionary, turns it *princeps*. *Calipha* (saith the ^c great *Scaliger*) *est vicarius, & ita vocari vicarios praefecti praetorii nihil impediret, si quidem Arabice appellandi essent. Sed quum naib idem sit quod chalipha, tamen pontifices soli dicti sunt*

caliphae, legati autem & vice principum provincias regentes vocantur naibin, ut naib *Essam*, *legatus Syriae*. And, hoc nomine (saith *Benjamin Ben-Jona*, who, during the *chaliphat* at *Bagded*, was there) *caeteris omnibus Ismaelitis regibus* (so *Arias* translates him) *suspiciendus venerabilisque habetur: praest n. omnibus illis ut summus quidam omnium pontifex*. Whence one reason is, that sometimes *calipha* in old writers is interpreted by *papa*, the same relation being to our *Saviour* or *Peter* in the pretence of the pope's succession, as there is in the *chaliphat* to *Mahumed*; and the supreme princes of the divided *chaliphats* (like the old emperors of *Rome*) supposing themselves to be *pontifices maximi*, or chief *priests* in this succession, as well as supreme emperors. That of *papa* for the *chaliphs* occurs in *Rodericus Toletanus*, *Matthew Paris*, *Robertus Monachus* his history of *Hiernsalem*, and others. And therefore also *de Jowville* ^d an old *French* writer, calls the *chaliph* of *Bagded*, *l'apostle des Sarazins*; the name of *l'apostle* being often in the elder times applied to the pope. The name then, as it signified successor, and had reference to *Mahumed*, was proper to every emperor, which pretended himself the lawful successor of that impostor. But withal it was communicated, it seems, to subjects, that were of the inferior sort of *Mahumed's* priests. For in the emperor *Cantacuzen's* orations against the *Alcoran*, he speaks of one of their doctors, which being dead, was found with a crucifix about him, by reason whereof the *Mahumedans* would not bury him where they used to lay τὸς χαλιφας, that is, *their caliphs*, and says that the doctor was χαλιφας τὸ ἀξίωμα, i. e. *a caliph by dignity*, which I interpret a great priest or *Mahumedan vicar*. But perhaps *Cantacuzen* meant the *caliph* of the *AEgyptian* state, under the *Mameluchs* (for that was in his time) who indeed should by right have had the *sultan's* place, but, at the inauguration of a new *sultan*, the *chaliphs* there used, for fashion's sake, to make a solemn and imaginary sale or resignation of the *chaliphat* (that is the true right of being emperor) to that *sultan*, who, of the *Mameluchs*, or by their authority, was to succeed. By ^e *Peter Martyr* it is thus expressed: *A summo eorum pontifice Mammetes confirmatur. Habent n. & ipsi summum pontificem, ad quem hujus imperii machina, si AEgyptii homines essent, pertineret* (for the *Mameluchs* were originally christians apostates; first taken up as the *Fanizaries*.) *jus suum, ut caeteri consuevere, Mammeti Cairi regiam tenenti, triumi millium auri drachmarum pretio pontifex vendidit. Is califfas dicitur. E tribunali, foldano stanti pedibus, vitae necisque liberam potestatem praestat. Ipse descendit, seipsum spoliatur, soldanum imperaturum induit: abit privatus, permanet in imperio Mammetes*. He speaks of the inauguration of one of their *sultans*, *Mahomet* or *Mahumed*, whom he calls *Mammetes*. Yet the *chaliph* there retained his

^a Hist. ζ. 242. ζ. ^b Jos. Scalig. de vita Julii, in epist. ad Jan. Douzam. ^c Ap. Vincent. in specul. lib. 32. cap. 28. voyez les eflats &c. du monde, p. 844. ubi pro cygne cham legitur chuichuch cham, & videlicet Antonin. hist. part. 3. tit. 19. cap. 5. ^d Canon. Iliagog. lib. 3. ^e Chronique de s. Loys, chap. 74. ^f Legat. Babylonicae, lib. 3. ^g 100 pounds in our money.

name still, and continued afterward as high priest to the sultan. For *Martin a Baumgarten*, speaking of the presence of their sultan, and stately attendance of xx. c. Mameluchs (that word denotes the king's captives or slaves) says, that not far from the sultan or soldan, sedebat loco depresso papa ejus, quem ipsi calipha nominant. And among the Persians at this day some inferior & priests are called caliphs, subject to their great mustadeini. And to one of them the inauguration of the *sopbi* (heretofore in *Casé*, now in *Casban* or *Hispaan*) belongs, as among the Mameluchs it did of the *AEgyptian* sultan. And a like form of an imaginary or rather subordinate *chaliphat* at *Bagded*, ⁽⁹²⁾ as that of *AEgypt* or *Cair* was, is reported by ^h *Leunclavius*. Whence also we have in *Zonaras*, ⁱ that the *chaliph* in the Turkish empire was one *ὁ παρ' ἑσθ' ἀλλόθως τετιμητο, ὡς ἐν τῷ Μαχμέτ ἀπατάζοντι*, that is, *who was of an exceeding dignity among them, his descent being supposed from Mahomet*. The dignity of the great sultan being above this. To the same purpose and of a like *chaliph*, is that of *Matthew Paris* ^k to be understood, where he writes, that in terra de Baldach habitat papa Saracenorum qui caliphus appellatur, & tenetur in lege eorum, & adoratur sicut pontifex Romanus apud nos. Progreditur autem cum discipulis suis quos habet sicut papa & cardinales, ad mabumeriam, &c. But notwithstanding these subordinate *chaliphs*, both in regard of the spiritual or ecclesiastical succession as well as of the temporal, the supreme sultans bare it. And the Persian *sopbi* also hath, as *chaliph* or successor to *Ali*, the supreme disposition in all his church government; and therefore also in one of *seba Ismael's* coins, the inscription was, *Ismael caliph Lullah*, that is, *Ismael the vicar or successor of God*. And *Leunclavius* saith, he ^l hath seen it used in letters from the *sopbi seba Mabumed*, to the king of Spain. And, although the *Ottomanick* line which now reigns in Turkey be not indeed of *Mabumed's* kindred, but meer Turkish, yet those grand seigniors also have used the title of *chaliph*. So expressly affirms *Leunclaw* of *Amurad III.* in whose letters to the emperor *Rodulph II.* he had seen it expressly. So also in letters and patents of *Soliman* and *Selim II.* which had it translated by *baeres*, the original being *chaliph olem*, that is, the *Vicar* or *successor*, or *heir of the world*. And *Osmanicis* (saith he, using that word for the *Ottomanicks*) *persuasum est principem suum esse caliphen hujus seculi*. It was discontinued in the two *Selgucian* ^m families, but by the *Oguzian*, whence the present *Ottomanick* line is, it was renewed. ⁽⁹³⁾ The word *chaliph* is derived into *Arabick* from the Hebrew *חֶלֶפֶה* *cheleph*, which, with difference of dialect is the same in *Syriack*, and properly signifies *vice* or *ἀντι*. For, where in *S. Matthew*, it is remembered that *Archelaus* reigned *ἀντὶ Ἡρώδου*, that is, *in stead*, or as *successor* of *Herod*, the *Syriack* hath *חֶלֶפֶה הֵרֹדִים* *chealaph Herodes*, which is the same. Divers other ⁿ fan-

cies are touching this title, but they are vain and long since rejected.

IV. *Postellus*, a man that had great knowledge of the affairs of *Mabumedism*, and had seen divers of their stories, which this part of the christian world hath not yet received, tells us, that upon the division of that *Asiatick* empire into several Parts of *Asia* and *Africk*, the title of *caliph* was chiefly retained at *Bagded* (yet it was used also by some other emperors that pretended to be successors of *Mabumed*, as is already shewed) and that some others which made themselves supreme lords in the eastern parts, were called by a word of their own tongue, *benchi*. And they of *Africk*, saith he, ^o *seraphos, sultanos, and maulas*, id est, *opulentes, potentes, & protectores vocari voluere*. But also there was one common to all (*vocabulum omnibus commune*, as *Postellus* his words are) that is, *emir* and *emir elmuninin*, of all which severally. For that of *benchi*, which was the same

(as I conceive) with the Turkish *بنیچلر* or *ben-glar* being the plural of *بیچ* *beg* or *bengh*; it denotes lords, but at this day is most usually applied to lieutenants of princes under the grand seignior, but rarely to supreme provinces, although in the Persian empire the emperors have had it given them as ^p their greatest name, as *Hagmet beg*, *Alman beg*, *Morad beg*. The name of *seraphi* in *Postellus*, is the same with *seriph* or *xariff*, *jariffe*, or *xeriffe*, which at this day is known in the stile and stories of the kings of *Fez* and *Morocco*, being thus expressed in their

Arabick شریف that is, *scheriff*. Yet neither is this name to be so restrained to *Africk*, as if it were a title of honour there only. I have seen it in ancient letters sent from the *Mabumedan* princes of the east also. And the most learned *Leunclavius*, who was most conversant in the eastern states, writes, that the title of *seriph* is accounted a distinguishing note of honour for them which are descended from *Mabumed*, and therefore of greatest reputation and quality among the *Mabumedans*. Notum (saith ^q he) *quanto sint apud Mabumetanos in honore qui recta linea tam a propheta Mabumete, quam ab Ali Mabumetis genero, descendunt, aut se fingunt descendere*. *Hi Turcis Tartarisque scithi vulgo dicuntur, Arabibus autem seriphæ: quos maxima sane veneratione atque observantia quum prosequantur, etiam ipsi sultani seripharum* ⁽⁹⁴⁾ *appellatione velut augustiores se reddere volunt*. ⁽⁹⁵⁾ Yet that line of the princes of *Fez* and *Morocco*, which in this age have been called by it, are so specially known by the title of *xariph*, as if it were a name proper enough to design them only from other *Mabumedans*. For the story of those kings, written by *Diego de Torres*, is titled, *istoria de los xariffes*, or, *the history of the xariphs* only; and where he begins with *Mahamet Ben Hamet*, who was, about cxx years since, the author of that empire,

^g Cartwright peregrinat.

^h Pandect. Turcic. cap. 237.

ⁱ Hist. pag. 230. & vide eum pag. 204.

^k Hist. Maj. pag. 233. in

Rich. I. & pag. 1120. in Hen. III. vide de chaliphis hujusmodi, Leo Afric. lib. 8. & Bizarr. hist. Genuef. pag. 602.

^l Turc. p. 836.

^m Hist. Musulmanic. 1.

ⁿ Leunclav. epist. de reb. Turcic. p. 835.

^o De orbis concordia, lib. 2. pag. 243.

^p Epist. de reb.

^q l'auteur de les estates des empires, pag. 2023.

^r Pandect. cap. 3.

to his posterity, he says, he caused himself to be called a *xariffe*. And ^r *Clenard* that lived among them, and had great skill in their language and manners, expresses the king of *Marocco* only by *seriphius rex Marocci*. But both *Clenard* and this *Diego* understood well enough that the reason why he took the name, was only to gain himself the greater honour, by pretending in it, that he was descended from *Mahumed* their great prophet. For *otro nombre* (saith he) *se bazia llamar xarife, diziendo ser del linage de Mahomet*, that is, he would have himself called *xarife*, saying he was descended from *Mahumed*. And in his margin expressly, *xariffes entre Moros es lo mismo que descendientes de Mahoma*, that is, *xariffes among the Moors, are the same with those which are descended from Mahumed*. The word in it self signifies no other than *noble, illustrious, great*, or the like. For, in the new Testament, where ^t the original is *ἐδνής*, which is justly translated *noble*, or of *gentle* or *great blood*, the *Arabick* interprets it by this word thus,

ذوي الحسب الشريف *dwi alchaseb alshe-*

riph, and *وي حنسر شريف* *dwi ghenos*

sheriph, both which are to be translated by *illustrious*, or of *great blood*, or *amplu genere*, or *illustri familia*, or *cognatione oriundus*; as also the *Syriack* translator expresses it, *ܒܪ ܬܘܒܝܢܐ ܕܥܡܐ ܕܥܠܐ* *bar tobema rabba*, that is, *the son of a great kindred*, which is exactly agreeing to the *Arabick*, that for the most part in the new Testament is according to the *Syriack* expression. So in the *Arabick* ^t *proverbs*, this word is turned by *optimas* and *nobilis*, and it is

opposed to *دني* *deni*, that is, *ignoble*, as *nobilis* is to *vilis*. But as we speak in *Europe*, of *the princes of the blood*, meaning of the blood royal, so this word *seriph* denoting generally men of great or gentle blood, was used at length to design only such as were of *Mahumed's* blood. Such a one was that *seriph* with whom, *Leo Africanus* says, he ^u travelled to *Ilenfaghen* a town of *Hea* in *Barbary*, where that *seriph* pretended right to be chief lord or king. But whereas some have taken this ^x dignity or title of *seriph* to denote the heir apparent, or next successeur in the *caliphat*, and to be in analogy agreeable with the name *syncellus* in the patriarchat of *Constantinople*, or such like; doubtless they were mistaken. Neither is any question to be made of that sense of the title which is here delivered.

Those *sultani* which *Postellus* speaks of, are the same which are in our histories usually expressed by *soldani*. Neither was this so proper to *Africk*, as that it should be noted for a title of honour chiefly in those parts. The *chaliphs* of *AEgypt* and *Bagded* used it ordi-

narily and are stiled by it: and the *Ottomanick* race use it as a chief title to this day. The *grand signior* hath it commonly in his stile; sometimes with the addition of *olem*, as *sultan olem*, which is *lord of the world*. In *Arabick* it is سلطان *sultan*, which denotes *dominus* or *lord*, being made of *سل* *salat*, which signifies to *rule* and *govern* as a lord, both in *Hebrew* and *Arabick*: whence also we have *שילטון* *siltan* in the ^z holy story, for lords of the *Assyrian* monarchy. In *Spandugino* it is usually *sultan*, but by corruption. ⁽⁹⁶⁾ But as *dominus*, *fire*, or *signior*, with us in *Europe* are used both for *lord* as it implies power, and also for an appellative in our common salutations; so this of *sultan* is with the *Mahumedans* also, and is not restrained only to the designation of greatness. The like occurs in both *Greek* and *Latin* writers of later times, and that very often. For the *Latins*, it is obvious in the stories of the holy wars, and in the nearer writers of our age which speak of *Turkish* affairs. ⁽⁹⁷⁾ And for *Greek*, beside the common *oriental* stories, in letters sent from *Selim II.* to the state of *Venice*, about clb. D. LXX. of *Christ*, and written in most barbarous ^a *Greek*, *Selim* is thus stiled; *Αφεντελ Σουλταν Σελήμ ὁ Κωνσταντινουπόλεις Νέας Ρωμῆς*, with a large reckoning up of provinces and dominions, *αὐθεντίας ἡ βασιλῆς ὁλοῦ καὶ πάσι ὁ σκεπημένῃ ἡ τοῦ λέν, that is, sultan selim prince of Constantinople, new Rome, &c. lord and king of what is comprehended in our sight under the sun*. That *aphentes* is but a corrupted word from *αὐθεντίας*, which the later *Grecians* call *αὐθεντία*, that is, a lord or such like; their later custom being usual in proper names and divers other words, to make the termination in *πείλα*: ⁽⁹⁸⁾ and *aphentes* is there added to *sultan*, but as a word of the same signification. Whence also the later *Greeks* call the great *Turk* ὁ μέγας ἀφέντης, that is, *the great lord*, or *il grand signior*, or the *great sultan*. And in their coins (having commonly, as *Spandugino Cantacuzeno* says, the name and chief title of honour of the emperor, with some of their saints name on the one side, and some few words of a prayer on the other) it being thus applied, is reputed as the highest title that denotes power and supremacy. And the *Turks* (saith ^b *Cedren*) in the antient times when their greatness began in the more western parts of *Asia*, imposed this name on their king *Tangrolipax*. It signifies, saith he, *παντοκράτωρ*, and *βασιλῆς βασιλέων*, that is, *emperor*, and *king of kings*; which words indeed truly interpret it, as it expresses the eminency that it imports in the title of the *grand signior*. But, it is an error that some deliver, that the great *sultan Saladinus*, as the stories call him, or *Salah Eddin*, as his name is (who was *sultan* of *AEgypt* in the time of *Frederick Barbarossa*) first of all used this title. It is of much antienter use, and appears to be so in *Zonaras*, *Cedren*,

^r Epist. lib. 1. pag. 89.

^t D. Luc. cap. 19. comm. 12. & 1. ad Cor. cap. 1. comm. 26. Vide Num. cap. 1. comm. 16. & Psalm.

149. comm. 8. Arabic.

^u Centur. 2. proverb. 5. & 45.

^z Descript. Afric. lib. 2.

^a Zonar. hist. pag. 204. Curopalates Sey-

lizes histor. pag. 116.

^y Antonin. hist. part. 3. tit. 19. cap. 8. §. 4.

^z Dan. cap. 3. comm. 2.

^z Crus. Turco-Graec. lib. 4.

epist. 60.

^b Compend. hist. pag. 634.

legem Christianam quam vanam censuit, relinquens, legi Mahometi fideliter adhaereret. (101) It was especially used by the African princes that governed in Spain also, though it were common to all in the several *chaliphats*. *Jacobus de n. f. Vitriaco*, and *Marinus o Sanutus Torfello*, chiefly attribute it to them of Africa, with whom also it was very ancient. For *Postellus* says, he hath seen P coins of above 1000 years before him, stamped by an African prince with this title iterated in the inscription. *Erat*, faith he, *insigne vocabulum principis, & Africani potissimum quod vel ex numismatis patet. Nam ita inscribatur, ut compertum habeo, vetustissima moneta ante 1000 annos cusa* (he lived in the age of our fathers) *Josephus Emir Elmummin, filius Emir Elmummin, &c. usque ad atavos.* But in the later times it is become almost so proper to the Mahumedan princes in Africa, that scarce any else, I think, use it. They do frequently in the titles of their letters. So the divine *Scaliger* (102) tells us 4 out of the letters from the emperor of Fez and Morocco to the states of the Low Countries: and I have seen it in their letters directed both to queen Elizabeth and to king James. Some refer the first use of it there to *Abedramon* that built Morocco. And doubtless it was owned by every one that reputed himself a *chaliph*. But on the other side, some used this who abstained from the title of *chaliph*, as the ^r kings of Tunis. And as that of *xariffe* especially denotes their emperor to be of Mahumed's blood or of Phateme, so this is a title designing him to be a successor in the maintenance of the Mahumedan faith and religion.

But the *grand signior* hath instead of this, in latter times rather used the title of *پادشاه* *padschah Musulmin*, that is, *great king or emperor of the Musulmans*. *Padschah* being in Turkish and Persian, a *great king or emperor*; whence they call the German emperor, *Drum padschah* or the emperor of Rome, the French king *Frank padschah*. And the great Mogor also in his title styles himself by this name of *padschah*: whereof more anon where we speak of a part of this title, that is, *schah*. (103) Neither is this title of *padschah* given to any other that is meaner than a supreme king. The word *musulmin* plurally in the title signifies (as *mummin* in that other) *orthodoxi, fideles, or qui sincere credunt*, as *Raphalengius* interprets it. Hence is it made singular in *musulmannus* or *μωσουλμανος*, often occurring, especially in *Sphachanes* the Persian, and the emperor *Cantacuzen's* works; whence they have their verb *μωσουλμανίζω*, to turn Turk or Mahumedan. (104) And the old *chaliph* of Bagded is also in the Arabian ^r geographer mentioned, as by his most known title *امير المسلمين* *amir almusulmin*, with the addition in one place of

الباسي *Alaghbassi*, that is, *imperator Musulmanorum Abassaeus*, as the Maronits turn it. *Abassaeus* or *Alaghbassi* here denoting only the *Abassilar* family, of which there is mention in the *Musulmanick* story, and in *Benjamin Ben-Jona* as is before noted. The first that had that title of *amir Musulmin* was *Homer Ben Chateb*, the second *chaliph* after Mahumed, as it is noted by those "two learned Maronits, that to the great advancement of such learning as may be encreased out of the eastern tongues, are the king's publick professors of them at Paris: and afterward, both this and the other of *amir al-mumunin* grew common. But the greatest attribute which the *grand signiors* used since the taking of Constantinople, (105) is *huncher, hunchier, or hunggiar*, as * *Leunclavius* writes it; *id proprie* (faith he) *titulo nostrorum Augustorum respondere volunt, quo se imperatores Caesaris appellant*: (106) and *Megiser* in his *Turco-Latin* dictionary interprets it only by *imperator*. The first that used this *hunggiar*, was Mahumed II. which took Constantinople; and, after him, *Bajazeth* and *Selim* also had it. Whereupon, faith *Leunclavius*, *Ismael schah* the Persian *sopbi*, both in dishonour of the *grand signiors*, as also to upbraid their superstitious abstinence from swine's flesh (for that Jewish ceremony was wont to be of so great moment and regard amongst them, that, when they took a solemn oath for confirmation of any league or the like, (107) one execration was inferred thus, that if they stood not to the covenants, *que ilz fuissent dishonorez & dishontez, come le Sarazin que mange le chair de pourceau, as le seur de Jonville* that was amongst them with *f. Lewes of France*, speaks) *Ismael* (faith he) for that reason was wont to keep a very fat hog and still call him by the name of that Turk which then reigned, with the addition of *hunggiar*, as *hunggiar Bajazet*, or *hunggiar Selim*.

V. That *Ismael* was the first Persian king that had the now famous attribute of *sopbi*, or *il signor sopbi*, as some *Italians* call him; the original whereof is to be deduced out of story thus. Besides the four associates of Mahumed (*Abubaker, Omer, Othman, Ali*) which presently after him were the propagators of his traditions, there are other antient doctors of that church (they call them *imamlar*) as ^r *imam Malichim, imam Scheaffim, imam Achmet*, and others; all which four the Persians deadly hate, nor admit they of their doctrine. Neither will they allow of any traditions from *Abubaker, Omer, or Othman*; they are altogether for *Ali*, to whom, they say, the angel *Gabriel* should have given the *Alcoran*, but, by error, instead of him, he took it to Mahomet; and that *Ali* should have been the general *chaliph*, but that the other three, through the aid of some which were ill affected to him, cozened him of it. Neither is there a book or monument of the doctrine

* Lib. 1. cap. 3. o Lib. 3. part. 3. cap. 5. P De orbis concordia, lib. 2. pag. 243.

q Canon, Isagogic. lib. 3. * Herfonita & Sionita
epist. de reb. Turc. pag. 835. f Barth. Georgovitz, cap. 3. i Nubiens. part. 2. clim. 1. & part. 9. clim. 6.
in tract. de reb. orient. pag. 24. * Pandect. Turc. cap. 3. y Cantacuzeno sunt alia nomina eorum qui Mahumedis doctrinam dilata-
runt, atque ut patres aut summi doctores praeferunt. Orat. 2. & de ea re videndi Will. Tyr. de bello sacro lib. 1. cap. 4. & lib. 19.
cap. 20. & Jonvillan. chron. f. Ludovic. cap. 30. & 57, &c. & de hisce sectis, vide f. Cotovic. itiner. Hierosolymit. lib. 4. cap. 1, &c.

of either of those three, but when the *Persians* find it, they burn it. This sect from *Ali* deduced into *Persia*, was established there, by the doctrine of one whom they call *Sbaeh*, or *sophi Cheque*, who derived himself as descended from *Ali* (so called for his pretence of holiness and religion, which is denoted in *sophi*) and lived about the year CIO CCC. LXX. ⁽¹⁰⁸⁾ On the other side that of *Ali* is so hated by the *Ottomanicks*, that their *mistries* (that is, their patriarchs or archbishops) deliver it for doctrine that it is more meritorious, in *Mahumedism*, to kill one *Persian* than three-score and ten *Christians*. From that *Sbaeh sophi* through divers descents came one *sheich Haidar* (prince of *Erdebil*) living about CIO D. of our favour, and taught the new dogmaticals of his ancestors, shewing withal the *Othomanick* heresies. Upon the new doctrine (as it happens) great conflux was to the new doctor, who grew so far into such opinion as creates greatness, that *Usun Chasan* then king of *Persia*, gave him in marriage his daughter *Martha*, descended out of the *Greek* house of the *Commens* kings of *Trapezond*. By *Martha*, *Haidar* had a son named *Ismael*. *Usun Chasan* left his son *Jacupbeg*, sultan *Jacup* or *padischa Jacup* (as he is called) his successor, who began much to suspect his brother-in-law *Haidar* and his nephew *Ismael* with their multitude of followers, and, to prevent further danger, put *Haidar* to death. His nephew *Ismael* hardly escaped him, but fled with his mother to a friend of his father's, one *Pircul* a lord of great rank about the *Caspian* sea, ⁽¹⁰⁹⁾ and there had his education according to his father's religion. Sultan *Jacup* the king was poisoned by his wife; and, after some few *Persian* kings that interceded, *Alwan* or *Almut beg* (as some call him) succeeded in that kingdom. *Ismael* now, pretending the challenge of his father's estate, place, and his own inheritance; invaded part of *Persia*; had the day against *Alwan*, slew him; put his brother and successor *Morad* or *Amurad beg* to flight; and so got the *Persian* empire to himself and his posterity. And this was about c.xx years since. In this *shah Ismael*, son to *Haidar*, is the beginning of the title of *sophi* placed. But the reason of the name is given variously: some have taken it as if it had been imposed as a disgrace, by those of the *Ottomanick* empire, upbraiding the *Persian* with wearing a poor

woollen turbant (*sophi*, that is صوفية *tzophe* indeed signifies *wool* in *Arabick*) of slight value and poor fashion, in regard of the linnen or silk turbants of the *Turks*: and because the colour was red, and the folds of it twelve in number, they gave them also that name of *kisselbassalar* or *red heads*, and *enasserlar* or *twelve-folded*: all which *Leunclavius* thus expresses. *Ab Osmahidis*, saith ^z he, *sophi cognomentum*, & *kisselis bassae per ignominiam fuit inditum a sophi Arabica voce quae lanam significat. Quippe cum Mahumetani & praesertim Osmanici, more*

*veteri, tulipanto lineo subtilissimi operis caput involvant, nova isthaec sophilariorum religio praecipit inter alia, ne caput fastu quodam lineis ejusmodi spiris ornetur: sed ut tegumenta capitum e lana, non magis re pretii, consiciantur. Et quia laneum hoc tegumentum capitis, quo praeter aliorum Mahumetanorum morem, hi nunc utuntur, plicas habet duodecim, & Arabica vox enasser ⁽¹¹⁰⁾ duodecim significat, etiam aliud nomen enasserlariorum conseruunt sunt, ac si Graeco vocabulo dicas dodecaptychos, aut Latino duodecimplyces. Quod denique tegmen ejusmodi rubro duntaxat colore tinctum gestare soleant, kisselbassilarii quoque dicti sunt, velati capita rubra; the *Persians* being before called by the *Turks* *Azemlar*, and their territory *Azem*. And according to this opinion (which divers follow) thus came this *Ismael* and his successors to be called *sophi* and *kissel bassae* also: and for the name of *kissel bassae*, it is true, that it was communicated also to his subjects of the better rank, whom he commanded for distinction to wear red turbants. But this of *sophi* had not any such original from wool: and the most learned *Scaliger* justly flights it as ridiculous: neither did *Leunclavius* upon better consideration, in his *Musulmanick* history insist on it. *Quod quidam* (saith ^a *Scaliger*) *sophi a flocco lanae dictum volunt, hoc levius est ipso flocco lanae*: it being indeed plain, that those ancestors of *Ismael* were before known by that name of *sophi* or *sophilar* (according to the *Turkish* idiom in the plural) as by a word designing their sect, which was such as had all knowledge per infusionem ab intelligentiis non per acquisitionem doctrinae, as ^b *Alpag* says of them, who tells us of some of their opinions also, both in philosophy and divinity, as that the heavens consist of elementary matter and form, and yet are not corruptible or at least very hardly corruptible, being of the purest parts and temper of the elements as gold is; and that the intellectus primus first assumed the body of *Adam*, then of *Moses*, then of our Saviour, then of *Mahumed*, and this in the same sort as we *Christians* say, that the Godhead assumed the flesh, and such like. These and the many other opinions wherein they differed from the rest of the *Mahumedans*, were the cause why they had*

that name of *sophi* or صوفي *tzophi*, which in *Arabick* signifies *pure*, *elect*, or *one of a reformed religion* which they profess, against the *Ottomanicks*, with the like quarrels as the *Samaritans* had against the *Jews*, or the *Puritans* against *sober* and well-fertled *Christianity*: and so it is chiefly attributed, in titular designation to the emperor of *Persia*, as *catholicus* is to the king of *Spain*, or *christianissimus* to the *French* king; although the signification of either of those name may be communicated to every good *christian* in either of those kingdoms, as *sophi* is also to every one of this *sophian* sect: of which *Ismael*, being the first that reigned, transferred the

^a Leunclav. Pandect. Turcic. cap. 81. & 188. circa an. dom. CIO. D. XX. Nec tn. Pandectis acquiescas nisi optimi viri etiam historiam Musulmanicam inspicias, lib. 16. ^b De entendat. temp. lib. 5. ^c In Avicenna. aphorist. de anima 9. & lib. de definit. & quacit. pag. 124. b. Venetis 1546.

name to his posterity to this day, who derive from *Ali*, as the *xariffes* in *Africk* from *Mahumed*. But the whole story of *Ismael*, and the beginning of that sect is diversely delivered, *Leunclaw* differing in his *Musulmanick* story from what he had in his *Pandects* delivered of it, ⁽¹¹¹⁾ *Minadoi* from *Jovius*, and all of them from *Mirkond*. Neither is this a place to reconcile or examine them. But it is said, that in *Persia* they call not the king the *sophi*, but usually the *shah*, which signifies *the king* or *great lord*. It may well be so: for indeed every man is truly there a *sophi*, if not a *Mahumedan* heretic; that is, either of *Sheich sophi* his sect, as he should be, or of the *Ottomanick* religion. ⁽¹¹²⁾ But they are much deceived who tell us that it is abstained from in *Persia* as a name of disgrace, because, as they say, it signifies a *beggar* there. Both the reason and assertion are false. And it is attributed to this emperor sometimes in letters sent to him out of *Europe*, as in that of our queen *Elizabeth* written in *Latin*, *Hebrew*, and *Italian*, with this *Latin* title to a *shah Tamas* next successor to *Ismael*. *Potentissimo & invictissimo principi magno sophi Persarum, Medorum, Parthorum, Hircanorum, &c.* ⁽¹¹³⁾ and such more; although in others to him, it be sometimes omitted.

VI. But that eastern title of *shah* (sometimes written *xa*, and *sa* and *saa*, *saba*, *chab*, and *sebaeb*, and in *Persian* شاه or شاه, as it is writ-

ten in *Abraham Zaccuth*, that is *shah* or *xab*, but mis-turned into *Latin* expression by *sechus* in *Leunclavius*, and into *σακ* by *Theodore Zygomalas*) is attributed to the kings of *Persia* especially besides others, as *shah Tamas*, *shah Mahumed*, *shah Abas*, and the like. *Leunclavius* and *Joseph Scaliger* conceive it to be an appellation of greatness given to them, denoting as much as *don* among the *Spaniards*, or *monseigneur* among the *French*. But so it would perhaps fall out to be but as a synonymy with

Sheich, *cheque*, or *xequé*: that is, شيخ which is

as communicative as *lord* with us, and doth alone frequently denote those lords, *quorum augustae ditiones regni titulo dignae non habentur*, as *Thuanus* ^e his words are; although also, as our *lord*, it be used by supreme princes: and thereof enough before. But it is clear that this of *shah* is a far greater title, and more especially denoting *king*, or *great lord*, or the like; but also communicated, though not so frequently as *xequé*. For whereas *Ismael Sophi* that beginner of the present line of the *Persian* empire, and his ancestors, were before called *Sheichs* or *cheques*, after the getting of the empire, *Ismael sprezzato il nome* (as *Minadoi*'s ^f words are, and others agree) *de seic, fu chiamato faha, cioe re*, that is, *contemning the name or title of seic was called shah, which signifies*

king: and of this *Ismael*'s successors, he says, that they retained *il solo titolo di faha*: whence also, in that line of descent of the *Sophian* family, every one of them is called in story, *sha* or *cha*, as *sha Ismael*, *sha Tamas*, *sha Mahamed*, *sha Abas*; the former kings of those parts having most usually the titles of *chan*, or

beg, or ميرزا mirzah, a most known attribute in the *mogor*'s country, denoting as much as *great lord*, or the like: as *mirzah Abuzaid*, *mirzah sultan Hamed*, *mirzah Abubaker*, and such more. Yet also this title was not then first given to the *Persian* emperor. *Achmet*, ^g an old author, speaks of one *σαδ Νισαν βασιλεως της Περσας*, that is, *saa Nisan king of Persia*, where also, as *Scaliger* ^h lays, *praeter scha est aliud nomen multis principibus Persarum commune, Nisan: id eorum lingua est basta*. ⁽¹¹⁴⁾ From that title of *shah*, the eastern name *padischah*

is ⁽¹¹⁵⁾ made, which they write پادشاه or پادشاه, that is, the *greatest king* or *emperor*, which name the great *mogor* uses in his stile, as appears in his seal, a copy whereof with some other good instructions of those parts, I had through the favour and courtesy of sir *Thomas Roe*, his majesty's embassador now with the *grand signior*, and before with the *great mogor*. But *shah* alone is not proper only (as *padischah* is) to supreme princes, but is communicated often to such as are petty kings, or governors of Provinces, as *chan* is also, and the like titles among them. And the *Persians* call the Pope ⁱ *Rumscha*, that is, *lord* or *king of Rome*, as the *Turks* do *Rumbeg* in the same sense. That title also of *sha* occurs in some old writers, joyned with some other word, as *Κερμασα* and *Σεγανσα* in ^k *Agathias* for *Κερμασα* and *Σεγανσα*, *Κερμασα* being the *king of Kerma*: and *Σεγανσα* the king of the *Seganes* or *Segestanes*. So in *Chrysococcus* ^l *Μελισα* is for *Melicio sa* (as *Malicisch* in *Leo Afer*) being the same with *sultan Melic sa* in *Abraham Zaccuth*, who also hath *Salman scha*, *Sule scha*, and the like, for great lords of the eastern parts. So *Cosroassath* is in *Haithon Armenius* for *Cosroes shah*, and divers of the like kind are in Authors of the middle time.

VII. From that of *scha*, is the title of ^m *schabana*, which denotes a *queen* with them, as *scha* doth a *king*: thence is it that the lady *Pasa Kyritzze*, wife to *Jacup beg*, hath the title of ^m *schabana* given her by *Amirrad II*. So ⁿ *sida* or *saida*, from ⁿ *said*, denoting *lord*, is a *lady* with them. And in *Europe* also, *women* which have been born hereditary successors to such as have had the supreme titles already mentioned, have from ancient time the same names of honour attributed to them, but most commonly changed by

^e Ap. Hackluit. navig. part. 1. fol. 397. lib. 2. & Linschot. lib. 1. cap. 27. &c. lib. 16. & in onomastic. & lib. 14. Musulm. lib. 16.

^d A. Christ. CIO. D. LXI. 3 Elizabethae.

^f Onirocritic. cap. 3.

^h Canon. Ifagog. lib. 3. pag. 399.

^k Apud. Scalig. can. Ifagog. 3. pag. 399.

^g Historiar. lib. 26.

ⁱ Leuncl. Musulmanic. hist.

^l Hist. Afric. lib. 3.

^m Leunclay. hist.

variation of the gender, as we see in βασιλις, βασιλισσα, מלכה, malcha, royne, or reyna, queen, cuningine, empress, lady, and the rest. And the queens of England (as is before expressed in the examples of queen Mary and queen Elizabeth, beside that of queen Jane) have been stiled *defenders of the faith*. Neither only such as are heirs, but the wives also of supreme princes, and such other as bear these titles, have the greatest of them, by such variation of gender, communicated to their stiles, both in the life, and after the death of their husbands. This is clearly known in the names of *empress, queen, and lady* (whereof, as it denotes other women inferior to queens, more in the second part) and the emperor's wife is called *augusta*, which may be as well communicated to other queens, as *augusta* to other kings. But also it hath been attributed as well to the *grand-mothers, mothers, sisters, and daughters, and nieces* sometimes, of the emperors. Neither is it without example that a concubine hath had it. As it denoted the *empress*, it is no less antient than the beginning of the first age of the empire. *Livia augusta*, and *Julia augusta* occur in Tacitus. *Livia*, saith ^m he, in familiam nomenque augustae adsumebatur: and, *Julia augusta mortem obiit*. Some Coins also of that age, call her JULIA AUGUSTA, and DIVA AUGUSTA, and ΙΟΥΛΙΑ ΣΗΒΑΣΤΗ, and also LIVIA AUGUSTA. And she is *avia augusta* in Sueton (where he speaks ⁿ of her with relation to Claudius her grandchild, and *augusta proavia* to Caligula. In the following ages, *augusta* became an ordinary attribute to the empress, as appears frequently in the coins inscribed with *Julia* wife to Tiberius, Messalina, Agrippina, Octavia, Poppaea, Statilia Sabina, Domitilla, Domitia, in inscriptions to ^o Faustina, and the rest, with the title of AUGUSTA or ΣΗΒΑΣΤΗ. By the same name also she is frequently known in their laws. *Augusta licet legibus* (saith ^p Ulpian) *soluta non est, principes tamen eadem illi privilegia tribuunt, quae ipsi habent*: and in ^q another place, *quodcumque privilegii fisco competit, hoc idem & Caesaris ratio & augustae habere solet*. And in the ^r texts of the imperials, *augusta* often, and, *serenissima augusta conjux nostra*, and *divina augusta* occur, and *venerabilis augusta*, for the empress, who hath also the same ^t privileges with the emperor, as to be free from all charges, to give or take without insinuation or inrolment before the *magister census*; and conveyances also between her and the emperor are good during ^u marriage, which is a special prerogative of a queen or empress. Her gifts being also called *donationes imperiales*. And the servants of the empresses chamber having the same ^v privileges as those of the emperors, might not be sued in any court but only before the *magister officiorum*. And there are other such communicati-

ons of imperial dignities to her by the name of *augusta*, which frequently occurs also in other testimonies of the antients. But withal as, *rex* sometimes and justly denotes the emperor, so *regina* did the empress. *Donationes* (saith ^x Justinian) *quas divus imperator in piissimam reginam suam conjugem vel illa in serenissimum maritum contulerit, illico valere sancimus*. But that title of *augusta* was not always so attributed to the empress, as that she was presently to be stiled *augusta*, as soon as she was the emperor's wife. No otherwise than as some of the emperors had not their greatest titles by being invested in the empire alone, without publick acclamations that gave it them; so their wives were not truly *augustae*, until they were specially honoured with that name by the emperors, either by solemn appellation, or by that which was, in the later time of the empire, their coronation. So is that of Paulus Diaconus to be understood, speaking of Domitian, *uxorem suam augustam jussit nuncupari*. So that of Flavia Titiana wife to the emperor Pertinax, in Julius Capitolinus. *Eadem die, saith he, qua augustus est appellatus, & Flavia Titiana uxor ejus augusta est appellata*: and Lampridius of Mallia Scantilla wife to Didius Julianus. *Uxor, saith he, Mallia Scantilla, & filia ejus Didia Clara augustae sunt appellatae*: and Theodorus y Anagnostes, says that Basiliscus, who was, by acclamation in the field, made emperor, created his son Marcus into the dignity of Caesar, and his wife Zenonis into the title of *augusta*; ^{αὐγούστα}, saith he, ^{αὐγούστα} Ζωνωνίδου ἡ γαμήλιος αὐτοῦ. So he writes, that Justin, predecessor to Justinian, when he came to the empire, had a wife called Lupicia, and that her name was changed into Euphemia when she was made *augusta*, or γενομένη αὐγούστα, as his words are. And Zonaras speaking of Zoe, the daughter of Zauses, married to the emperor Leo Philosophus, says, that the emperor ^{αὐγούστα} ἀναγορεύσας, that is, called her, or gave her the title of *augusta*; which is expressed in Cedren by ^{αὐγούστα} ὁ βασιλεὺς Ζωῶν, that is, the emperor crowned her, or *augustalem* coronam imposuit, as Xylander well interprets it: where also Cedren says she lived a year and viii months ^{μὲν} ἀναγορεύσας, which is, after the title of *augusta* given her. And the same emperor, saith Zonaras, married a fourth wife (Eudocia being the next after that Zoe who was the second) called Zoe Carbonopsina, and ^{ἐκ} αὐτῆς αὐτῇ τῇ βασιλείᾳ μετέδωκεν ἀξίωμα, that is, did not presently honour her with the title of *empress*, or *augusta*, but afterward when she had brought him a son, he gave it her. And it is observable in the passages of the story of that time, that ^{αὐγούστα} ἀναγορεύσας, or to give her the name of *augusta*, in Zonaras, is the same with ^{αὐγούστα} εἰσεν, or to crown her, in Cedren: and that which Zonaras says of the not giving the title to Zoe Carbonopsina, is expressed in Cedren

^m Annal. 1. & 5. ⁿ In Claudio cap. 3. & Calig. c. 10. & 14.

^o Gruter, inscript. p. 260. & 261. ^p ff. de legib. l. 31. princeps. ^q ff. de jure fisci. l. 6. ^r C. ubi senator vel clariss. &c. l. 3. quoties. C. tit. de praeposit. fac. cubic. l. 3. cubicularios. l. si augusta 57. ff. de legat. 2. de usufruct. §. editio d. Marci. c. ^s C. de quadrienn. praescript. l. 3. & de donat. l. 34. &c. ^t C. de donat. inter vir. & uxor. l. 26. donationes. ^u C. de praepos. fac. cubic. l. 3. cubicularios. & vid. Minsing. ad instit. de usufruct. §. editio d. Mar. ^v C. de donat. inter vir. & uxor. l. 26. ^w Collectan. 1. & 2.

by ἐβίω χρόνον συγχρόνῳ μετ' αὐτοῦ ἀστεφής, or *lived a long time with him uncrowned*. All which shews that the title of *augusta* was not presently in the emperor's wife without coronation or some other way of conferring it on her by the emperor. But for the later ages and this day; I remember not the empresses title expressed by her self with *augusta* in it, but only *imperatrix*, and the rest of the emperor's title varied to the sex, as *Romanorum imperatrix ac Hungariae & Bohemiae, &c. regina, nata regina Hispaniae, &c. archiducissa Austriae, ducissa Burgundiae & Brabantiae, &c. comitissa Habsburgi & Flandriae, &c.* by which, *Mary* that had been wife of *Maximilian II.* stiled herself with the addition of *vidua* in her letters ² of thanks returned to our queen *Elizabeth* in Sir *Philip Sidney's* embassy of condolment to her, upon the death of the emperor. Neither was her seal inscribed with other than *Maria D. g. Rom. imperatrix ac Germaniae, Hungariae, & Bohemiae regina.*

For the *grand-mothers* and *mothers* of the emperors, honoured with this title (no other-wise than as if *Margaret* countess of *Richmond*, being mother to *Henry VII.* should have been called queen; for such as had been called so being wives to emperors, are already spoken of) *Antonia* grand-mother to ^a *Caligula* had it by his creation. So *Claudius* gave it to his mother *Antonia* after her death. *Decernendum curavit* (saith *Sueton*) *matri nomen augustae ab viva recusatum*, as the ^b true reading is not *ab avia recusatum*, which against the truth of story, supposes that *Livia* had refused it. And he stamped monies also with *Antonia augusta*. So *Helio-gabalus* had coins inscribed with *Julia Maesa augusta*, for the honour of his grand-mother, and *Julia Saemias augusta* for his mother. The like we see in *Mammaea* mother to *Alexander Severus*, stiled *augusta* in his coins. And *Sozomen* ^c says, that *Helena* mother to *Constantine* in her widowhood after her finding the cross, σεβαστὴ ἀνεκροῦχθαι, that is, *was called augusta*, which attribute she hath also in some old coins and inscriptions, and, it seems, had it not while *Constantius* lived. An inscription with this title, is conceived to her memory, ^d by the old state of *Naples* thus, with some others like it;

PIISSIMAE ET CLEMENTISSIMAE
DOMINAE NOSTRAE AUGUSTAE
HELENAE MATRI
DOMINI NOSTRI VICTORIS
SEMPER AUG. CONSTAN-
TINI ET AVIAE
DOMINORUM NOSTRORUM
CAESARUM BEATORUM
UXORI DIVI CONSTANTII
ORDO NEAPOLITANORUM
ET POPULUS.

So likewise it was sometimes given to the emperor's sister. There is extant ^e a rescript of the

emperor *Honorius* and *Theodosius*, which ordains that no man whatsoever be free from the payment of the *aurum lustrale*, or the five years payment to the emperor, *nec si ad domum* (are the words) *dominae ac venerabilis augustae Pulcheriae germanae nostrae seu nobilissimarum sororum pietatis nostrae pertineat*. And some coins of *Trajan* are inscribed with *Divae Marcianae augustae*; and, *Divae Marcianae aug. sorori Augusti*, occurs in an old inscription.

For daughters; in *Titus* his coins we have *Julia Sabina augusta, Titi aug. filia*, and ΙΟΥΛ. ΣΑΒΕΙΝ. ΣΕΒΑΣΤΗ Τ. ΚΟΡΗ, which is the same in Greek denoting *Titus* his daughter *Julia Sabina* by this title. So *Didia Clara* daughter to the emperor *Didius Julianus*, had with her mother *Mallia Scantilla* this name given her. The testimony of it is before cited out of *Lampridius*, and some coins of this *Julian* have her thus, *Didia Clara augusta*. Other coins have *Herennia Etruscilla augusta*. And ^f *Cn. Scia Sall. Barbia Ordiana aug.* both in Greek and Latin for *Etruscilla* and *Salustia*, daughters to the emperor *Decius*. And *Matidia* niece to *Trajan* by his daughter *Marciana* is called *augusta* and σεβαστὴ, both in his coins and in old inscriptions. An inscription, thus, *MATIDIAE aug. fil. Divae Marcianae aug. nepti Divae Sabinae aug. pii P. P. materterae*. And the coins have *Diva augusta Matidia, Matidiae augustae* and the like. Neither may we forget here that of *porphyrogenete* and βασιλίσσα or *empress*, attributed to the lady *Anna Comnena* (as it is before noted) which with these few what special indulgence hath been in giving that sex such of the greatest titles of their ancestors, as nevertheless were not so communicated to brothers or masculine posterity. And for the example of a *concubine* honoured with it; *Zonaras* relates that after the death of *Zoe* wife to *Constantine Monomachus*, he fell in love with a daughter of one of the princes of the *Alani*, which had been given in hostage to the emperor, and ἐπιστάχῃ τοῖς βασιλείοις, ἢ ταυτῷ ΣΕΒΑΣΤΗΝ ἐνομήσας, βασιλίσαν αὐτῇ τῷ Σεραπείαν ἀπέταξε, that is, *brought her into the court and called her augusta*, and appointed an imperial attendance on her, and had it not been for fear of *Theodora* (the sister of *Zoe*, both which were empresses together when this *Constantine* married *Zoe*; and *Theodora* yet continued the title) ἢ βασιλίσσαν, saith he, ἀν τῷ ἐρωμένῳ ταύτῳ ἀνέπε ἢ διαδήματι κατηύστησεν αὐτ, that is, *he had proclaimed this his mistress, empress, and had crowned her*. And of the title of *augusta* to the empress, the mothers, sisters, daughters, nieces and concubines of the emperors thus much.

But also as the emperors have their solemn attributes, of *sanctissimus, piissimus* and the like (of which more in the next chapter) so have the empresses *sanctissima, piissima, &c.* For *sanctissima*; an old inscription at *Lectore*

^a Dat. Pragae 16. Aprilis. 1577. extat in biblioth. Cotton. ^b Dio, hist. 59. & Suet. in Calig. cap. 15. ^c Lipsf ad Tacit. an-
nal. lib. 1. §. 44. ^d Hist. eccles. lib. 1. cap. 1. ^e Neapoli apud Gruter. pag. 1086. & ejusmodi aliam habes, pag. 284. ^f C.
Theodof. lib. 3. tit. 1. l. 21. Nemo mercator. ^g Ita Goltz. in thesauro, pag. 68. atqui & uxori Decii ejusmodi inscriptionem dica-
tam, & ex numismatis & ex vet. faxis constat. & praeter eum videfas Gruter. inscript. pag. 274.

in *Gascoigne* to the honour of the empress *Furia Sabina*, is thus conceived.

FURIAE SABINAE TRANQUILLUNAE
SANCTISSIMAE AUG.
CONJUGI DOMINI N.
M. ANTONII GORDIANI
PII, FELICIS, &c.

And *piissima*, and *venerabilis domina*, and *clémentissima*, and *charissima*, are the attributes of the empresses in old stones; and *domina nostra*, as appears especially in the inscriptions made to the honour of *Helena*, being the relic empress of *Constantius*, and mother to *Constantine* the great. And in *St. Peter's* church at *Rome*, among other jewels that were found in a cabinet upon the laying of a foundation for the pillars, there was a lady's bodkin inscribed on the one side with *DOMINA NOSTRA MARIA*, denoting the empress *Mary* wife to *Honorius*. The same title hath *Cornelia Salonina* the empress and wife to *Gallienus*, in an old stone at *Cordova*.

As the empresses had some of the greater attributes of the emperors thus given them, so the queen-wives of the kingdoms of *Europe*. They use their titles of *regina* and *domina*, as the kings those of *rex* and *dominus*. They have also the attribute of majesty, and the addition of *DEI GRATIA*, in the expressions of their names. But thereof, as it concerns kings, more in the next chapter. The queen-wife of *England* also hath of later time (as the kings) superscribed their names over their warrants or letters of publick direction or command, although in the time of *Henry VIII.* the fashion was, that the queens wrote their names on the left side of the first line of such letters or warrants, and not over it as the kings do. This appears in their letters and warrants extant of that time. But by the way, here it may not be untimely to note, as a corollary to this place, touching our name of queen (especially to such as are pleased with the origination of words) that howsoever *royne*, *reyna*, *regina*, and *cuningine*, be but words varied by the sex from *roy*, *rey*, *rex*, or *conning*; yet our word *queen*, which denotes the same, is from another kind of original, and of its own nature, signifies that habitude which is betwixt her and the king as they are husband and wife, rather than supremacy of power or place; although the use of the word now hath made it clearly applicable to *queens* also that are sole and supreme in government. For, if it were derived into *English* from the *Saxon* *Cýning* or *Cýng*, whence our word *king* is made, it would follow, that then the *Saxon* must have had (by such analogy as the *Dutch* use) *Cýningine*, or the like for queen. But the *Saxons* from whence our *English* comes, stiled a queen, in the antientest times, *cwen* or *Cwen*, which is but the same word as queen, the doubling of the vowel being but of later use. The word occurs for *regina* in *Alfricus*'s his *Saxon* grammar. And in the old *Saxon* text of *St. Luke*, we read, *Suð ðæler Cwen aþre on ðome, that is, the cwen*

or queen of the south shall arise in judgment. And in the old *Saxon* or *Dutch*, *quen* or *queen* signified a wife, as it is noted in a collection of some ^h essays of the tongues of the northern parts of *Germany*, published and, as I conceive, composed by that most learned *Bonaventure Vulcanius*. And *Cæsar* *Cwen* occurs for the empress, in some old *Saxon* homily touching the empress *Helen* wife to *Constantius*, and *Cwen* fugel is a female bird, as *Mr. Joscelin*, a man very learned in the *Saxon* tongue, and the story of *England*, notes in his *Saxon* dictionary.¹ And *Cwen* hýp is for one that attends or waits on a lady as an eunuch, as *Nowel* hath noted in his dictionary of the same tongue. So that, as *comes* or *dux*, in the elder times generally signifying every companion and leader, came afterward to denote in expression of dignity, those who were *comites regis*, or *imperatoris*, and such as were *duces a rege vel imperatore constituti*, and as *knecht* or *knight*, being of it self nothing but a servant or minister (as the use of it is at this day in the *Dutch*, and was antiently in our old *Saxon*) yet is now restrained with us to those which are honoured with the note of being chosen out, as most especial servants or ministers of the prince and state for their abilities, or the hope at least conceived of their abilities, in the wars; so *quen* signifying originally a wife or female companion, or *haec consors*, might afterward (as it doth with us, and very antiently did) design only the king's wife, and being once fixed in this signification and made convertible with *regina*, might be thence transferred afterward to the denotation of such women as had sole government and supremacy without any relation to a king or husband. This is the rather likely too, because *cuen* and *quens* or *cuenz*, which are the same, occur so frequently in the old *French* (which was mixed much with the old *Dutch*) for *comes*, as it denotes a count, or companion or consors: it being obvious to find *consors Augusti*, and *consors nostra* for the empresses, and *la compagne de nostre seigneur le roy*, in our ^k laws, for the king's wife, or the queen; and *præcharissima consors nostra*, and *our most dear consort* in grants to her from the king; as if *queen*, *consors*, and *compagne* (which is the phrase also of the *French* at this day¹ for the queen) had been ever to this purpose synonymous. For that use of *cuen* for *comes*, an old romaunt of ^m *Siperis de Vineaux*.

Le conte de Lancaster, qui eut un nom Henry, Met a conseil le conte que on dit de Warwic Sire quens, dites moy par dieu je vous en prie, &c.

So that old history of *Geoffry de Villehardouin*, marshal of *Champagne*, written about 60 years since, hath *Thiebaut cuens de Champagne*, & *de Brie*, and *li cuens leys de Blois* & *de Chartain*, and *li cuens Hue de San Pol*, and *Baudouin li cuens de Flandres*, and other such, for *comte*, although also he often useth the word

^a M. in bibl. Cottoniana.

^b De literis & lingua Getarum pag. 66.

ⁱ Ms. in bibl. Cottoniana.

^k Vide regist. fol. 1. Brion. fol. 279. b. 25 Ed. III. Stat. de proditoribus &c.

¹ Cod. Hen. 3. liv. 18. tit. 3.

^m Chez Claude Fauchet ea l'orig. des dignités l. 2. c. 3.

comte

comte to the same purpose. And I have a ms. history from Brute to Edward III. written in old French, whose author in the enumeration of the counts that came from beyond the sea to a solemn feast held by king Arthur at Chester, speaks of *Licher* quens of *Boloigne*, *Holdin* quens of *Flandris*, *Gerins* quens of *Chartres*, and such more that were at it; meaning the *comtes* of those territories. Yet he also hath the word *comte* often as a synonymy. So in a roll in the tower of London, touching the divisions between *Lewes IX.* of France, and our *Henry III.* in the year M.CC.LIX. *Simon* of *Montfort* is called quens of *Leycester*; and *Richard* of *Clare*, quens of *Glocester*; and *Humfrey* of *Boban*, quens of *Hereford*; *Roger le Bigod*, quens of *Norfolk*; *William de Forze*, quens of *Albemarle*, where yet *comte* and *quens* are used also indifferently. Divers like passages are in the old French or *Romaunts*. And so *quen* might be of both genders, thus to signify as well a wife as she is *vitae consors*, as comes or a count as he is *regis*, or *aulae regiae comes*. Neither doth the addition of the last letter here, make any difference of the words. For *quen* and *quens* are as much the same as *roy* and *roys*, *diem* and *dieus*, which indifferently occur in old French, in the singular number.

For England; it is observable also, that in the Saxon times, the wives of the kings of the West Saxons after *Eadburgh*, the daughter of *Offa* king of *Mercland*, and queen to *Beorthric* or *Britbricking* of the West Saxons, were not stiled *queens* or *reginae*, but only the *kings wives*, neither might they sit in state with the kings. This first proceeded from the wicked insolencies of that *Eadburgh* (she was married to king *Beorthric* in the year DEC.LXXXVII. and he reigned till the year DCCC.) who by professing herself to oppose all that the king loved, and using most frequent accusations against his subjects, with daily plottings of the ruin of their lives or fortunes, and at length also poisoning the king himself, drew so extreme hate upon the name of queen, that from his time, the law was, that the wife of the king of West Saxons should be denied the appellation and honour of a queen. So expressly *Asserius* *o Menevensis*, that lived and was familiar with king *Alured*, from whom he had this relation. *Gens Occidentalium Saxonum*, faith he, *reginam juxta regem sedere non patitur; nec etiam reginam appellari, sed regis conjugem permittit; quam controversiam imo infamiam de quadam pertinaci & malevola ejusdem gentis regina ortam fuisse, majores illius terrae peribent. Quae omnia contraria seniori suo & omni populo ita peregit, ut non solum suum proprium odium mereretur, ut a reginali solio projiceretur, sed etiam omnibus suis subsequatricibus eandem pestiferam tabem post se submitteret.* And *William* the monk of *Malmesbury* p to the same purpose. *Non enim West-Saxones* (so are his words) *reginam vel juxta regem sedere vel reginae appellatione insignire patiuntur propter malitiam Eadburgae*

filiae Offae regis Merciorum. And so likewise both *Matthew* q of *Westminster* and *Florence* of *Worcester*. This custom continued from *Britbric*, all king *Egbert's* time, who reigned about xxxvii years, but it was broken again by his son and successor *Ethelwolph*. For, he having married the lady *Judith*, daughter to *Charles the bald* of France, used ordinarily to set her by him in a chair of state, as a queen. Neither by reason of his sweetness of nature, which had endeared him to the state, was he so much as taxed for it. Nor did that law against the king's wife, it seems, continue long in force, although in the times of some of this *Ethelwolph's* successors there were a respect perhaps had to it. For in some memories of king *Edgar's* reign (he began in DCCCC.LIX.) the queen is stiled only his wife, or *legitima regis conjux*, or *cynninges gemæcca*, that is, the king's wife, and not queen. In the subscription of king *Edgar's* charter of privilege to *Hide*-abbey by *Winchester*, yet remaining in the inestimable library of that learned and worthy *Sir Robert Cotton*, and written in letters of gold in a hand of that age, his wife *Elstbrith* subscribes thus: ✠ *Ego Elstbrith legitima praefati regis conjux mea legatione monachos eodem loco, rege annuente, constituens crucem impressi: and also, ✠ Ego Edgifa praedicti regis ava hoc opus egregium crucis taumate consolidavi: and other like are of that time. This Elstbrith is the whom our stories commonly call Elfrida or Elstbrida daughter to *Orgar*, then earl or duke (for those titles were not then distinguished) of *Devonshire* and *Cornwall*. And that *Edgifa* was the third and last wife to king *Edward*, son to king *Alfred*, and grand-father to *Edgar*: yet by reason of that law touching the king's wife, she durst not, perhaps, stile herself other than the king's grand-mother; for so *ava*, as well as *avia*, in those times often denoted. And in the same library is extant also a reformation of the monastick life of both sexes; titled *regularis concordia Anglicae nationis monachorum sanctimonialiumque*, and written in *Edgar's* age, wherein he takes care of the monks, and his wife of the nuns, that is, his *gemæcean* *Ælfðriðe* or his wife *Ælfstbrith*. And perhaps hence it was, that the wives of great dukes or earls of that time in the West-saxon kingdom, which, after *Egbert*, had soon swallowed up the rest, subscribed by the name also of *conjux*, and not by any name of dignity, as if they would abstain from receiving any communication of title from their lords, as well as the kings wives did from the kings. For in the year DCCC.LXXX. when *Ethelred* or *Ethered* duke or earl of *Mercia* under king *Alfred*, by his^r charters gave land to the church of *Worcester*, he subscribed by the name of *dux* and *patricius*, but his wife, being otherwise a princess, and daughter to king *Alfred*, expresses herself in them, only thus. ✠ *Ego Athelstred conjux subscribens confirmavi: and in other charters only; ✠ Ego Aethelstred consensu: yet they are both together stiled* *ƿƿƿƿ ƿƿƿƿman ƿ ƿƿƿƿƿƿ**

^a Annal. Saxon. ms. in biblioth. Cotton.

& Choppin. de doman. Franc. lib. 3. tit. 5. §. 5.

^o De gestis Alfredi regis.

^r Regist. ms. & vetustiss. eccles. Wigorn. fol. 7. 29. 31. 211. &c. in bibl. Cotton.

^p De gest. reg. Ang. lib. 2. cap. 2.

^q Sub ann. 854.

in bibl. Cotton.

Церкна hlafordas, that is, *Æthred the alderman* or duke, and *Ethelfled, the lords of Mercia*, in an instrument of *Werfrid* bishop of *Worcester*, in the year DCCC.IV. made to the same church. But though in expressing the title of the king's wife, such respect were (sometimes after *Ethelulph*) had to that old law; yet it appears that under the same king *Edgar*, the wife was also sometime stiled *queen* or *regina*, which, compared with those other testimonies, shews, that as that law made under king *Ethelulph* was not now in such force, but grew obsolete; so on the other side, the expression of her without the addition of *regina*, remained in some use also through the custom, which that law, while it was in force, had induced. For the same *Elsthrith* subscribes in a charter to the church of *Worcester*, ✠ *Ego* Elfyred ^r *regina consensi* & signo crucis confirmavi: this was in DCCC.LXIV. and in another to the church of *Ely*, ^r occurs *Alsthrith regina*; both which and the rest shew, that the use of *regina* or *legitima conjux* without it, grew, by this time, promiscuous in the *West-Saxon* kingdom.

In other kingdoms of the heptarchy of that age, the title of *regina* was still given to the kings wives. ✠ *Ego* *AElsthrith regina* is subscribed with *Kenulph* king of *Mercia* in the subscriptions ^u of his charters to the church of *Worcester*, and ✠ *Saethrith regina*, often subscribes with king *Berthulph*, to the same church. So ✠ *Ego* *Cynethryth dei gratia regina Merciorum*, in some other, with king *Offa*; and among the coins of that age there is in *Sir Robert Cotton's* invaluable treasury, one inscribed with CENET. REGIN. on the one side, and EOBA on the other. But that *Ceneth*, is taken for queen *Cenethrith*. And frequently *AEthelsthrith* subscribes, *Ethelsthrith regina* with *Burgred* king of *Mercia* or *Mercland*, in the old register of *Worcester*. This *AEthelsthrith* was daughter to king *AEthelwulf*, and at her marriage, saith *Matthew of Westminster*, ^x *reginae nomen promeruit*. There is also a singular example of her in the chartulary of ^y the abbey of *Abingdon*, where she alone by charter gives to one *Cuthwulf* her servant, lands in *Lancinge*, in these words, ✠ *Ego* *Ethelsthrith regina, deo largiente, Merciorum cum consensu meorum seniorum concedens donabo* *Cuthwulfo*, &c. which is ^z aptly by some used to shew that the law of *England* then was, that a queen in this island might, as at this day, give or contract as a *femme sole*. And after king *Edgar*, it seems, that law of the *West-Saxons* utterly vanished, and the wives of the *Saxon* kings were ever stiled *queens* or *reginae* also. In an instrument ^a that testifies how *Agelwin* dean of *Worcester* (*decanus Wigornensis ecclesiae*; so is his title of that time; but a prior and convent then supplied what now the dean and chapter do) and his brother *Ordric* gave III cassats of land in *Cundico-*

tan to the monks there; *Edward* the Confessor *ad confirmationem sermonum istorum* subscribes, and then his queen *Edgith* thus; *Ego* *Edgith regina consentio*. So in a charter of king *Knout* to the abbey ^b of *S. Edmondsbury*, his wife *Alfgifa* calls herself, *Ego* *Alfgifa regina*; and in a *Saxon* charter of his to the same church, he stiles her myne queen *Ælfgif*, and *regina mea* *Alfgifa*, in the *Latin* of it, where he speaks of her giving the church a revenue of IV. M. eels in *Lakinghith*. It appears also clearly, that the *Saxon* queens were in the later times of that kingdom, crowned, anointed, and set with the kings in their seats of state, as other queens, and so that law or custom which proceeded from queen *Ethelburgh*, was soon abrogated. The particular solemnities of their coronation are yet extant. And their titles of queen, their coronation and anointing (as dignities communicated from the kings) have thence continued here, as in other states, to this day.

Divers prerogatives also are allowed in our laws to the queen-wife, as, those of making ^c gifts or contracts, or suing without the king, and receiving by gift from her husband (which no other *femme covert* may do) having her courts and officers as if she were a sole person; that if the king or she be plaintiff, ^d the summons in the process need not have the solemnity of XV. days, which is extended also to their children, brothers, sisters; and a *ses parens* (as the words are in the book called *Breton*) or *eorum parentibus* & *propinquis*, as *Bracton* says; and such like. It is also treason to plot ^e against her life. And antiently she had a revenue of queen-gold or *aurum reginae*, as the records call it, that is, the tenth part ^f of so much as by the name of *oblata* came to the king.

So in *France* the queen-wives are, as in *England*, like sole persons; and communicate with the king in his prerogatives. *Voulons que nostre compagne* (so are the words of an edict attributed ^g both to *Henry II.* and *Charles IX.*) *la roine ait, jouysse, & use de pareils & semblables privileges que nous, & soit recevoir a plaider en nostre cour de parlement par son procureur come nous par le nostre*. And as with us the queen's attorney and solicitor have place within the bar with the king's council, so there the queen's *procureur-general* is to sit with the king's bailiffs and *seneschaux*. The *French* queen's household-officers also have the same privileges as the king's; so have their wives and widows during their lives. She is also (saith ^h *Servin* the king's advocate general) exempt from the laws, *soluta legibus*, as well as the king. Divers and other singular prerogatives the laws of *France* ⁱ give to their queens. Neither for that of queen-wives being reputed as sole persons in regard of their estate, is the use, I think, otherwise in any kingdom.

Many of those dignities or privileges also are continued to ^k queen-dowagers, whom the

^r In Pat. 1 Ed. IV. part. 6. memb. 23.

^u Cart. antiq. in arce Lond. B. num. 11.

^x modi sunt in volum. de vitt. sanct. Angl. ad calcem adjecta ibidem.

^y V. c. Ed. Coke in praefat. ad lib. 4.

^z num. 58.

^a Stat. 25 Ed. III. de proditoribus.

^b Liv. 12. tit. 5.

^c Vide Gervaf. Tilbur. ms. in recept. scacc. & acta publica de ea re saepius.

^d Playdoiez, vol. 2. pag. 316.

^e Choppin. de dom. Franc. lib. 3. tit. 5. §. 5.

^f Regist. Wigor. ms. bibl. Cott. & alia ejus-

^g Bibl. Cotton. fol. 4. & in coll. aed. Christ.

^h Cart. 4 Ed. III.

ⁱ Cod. Hen. III.

^j Charondas ad qod. H. III. lib. 18.

French

French antiently called *roines blanches*, in memory (says ¹ *Ragueau*) both of *Blanche of Castile* queen-dowager of *Lewis VIII.* and mother to *Lewis IX.* and also of *Blanch of Eureux* queen-dowager of *Philip de Valois*, both which were ladies of most singular honour among the *French*, and for that reason had their names afterward thus honoured in their queen-dowagers. But whereas some ^m would have it, that no queen justly holds the title longer than during the life of her husband's being king, which communicated it to her; it is against all use, and sufficiently exploded by learned doctors that obviously speak of it.

Of the attributes and names of empresses and queens, hitherto. What this way may belong to other ladies, succeeds in the second part. And hitherto of those essential titles or nominal attributes given to supreme princes, and thus communicated by them. The course first proposed directs the next passage to the more special forms of speech or expression used by them or to them.

CHAP. VII.

I. The plural number, in the attributes given to one only, for a mark of greatness. How that is communicated to inferiors: the calling of superiors, or inferiors by their proper names.

II. *Dei gratia*, or by the grace of God, in the styles of supreme princes; and how communicated, by use, to such as are of a subordinate dignity.

III. Majesty in the attributes of supreme princes. The use of it deduced into the Roman empire. The use of appellation of persons by abstracts. Majesty how expressed and used in the eastern empire; and sacred Majesty. Majesty, and Grace attributed to the kings of England.

IV. The attributes of high and mighty, most excellent, illustrious, super-illustrious, with divers other such. The pompous styles of the Greek and Mahumedan emperors.

IN those forms of speech or expression that belong more especially to supreme princes (although also they have been and are variously communicated to inferiors) as the use of the plural number, the addition of *Dei gratia*, majesty, and the like, the first observed here, shall be that of the plural number, together with the expressions by the third person when the second is designed, and that old custom of not naming a superior in compellation. Neither is the nature of these forms of speech other than such that, while they depend not at all on one another, there needs no other method in delivering them than according to the obvious enumeration of them.

I. For that of speaking in the plural number; it is frequent that *we command*, *we ordain*, *our pleasure*, and the like (both in the second and first person) are attributed to the person of one alone being a monarch. (¹¹⁶) Not either out of any figurative speech in Grammar, which allows that the plural adjective or participle be joined with a singular name, as in *insperanti nobis* in *Catullus*, and in that of *Tibullus* to his mistresses,

Perfida nec merito nobis inimica merenti. (¹¹⁷)

nor from the promiscuous use of ordinary persons expressing themselves by verbs and pronouns plural of the first person, but from a singularity or special form belonging to greatness. Indeed the *Persian* and *Greek* emperors in *Esther*, *Ezra*, the *Maccabees*, *Hippocrates's* epistles, and such more, often use the singular as well as the plural; (¹¹⁸) as other emperors and kings also, in the more ancient times. But in the later ages it is otherwise; and nothing is more common than *our princely favour*, *our royal care*; and in the second person *vobis*, *vestre*, and the like in expressions of or to supreme princes: and from them, as other matters of honour, some inferiors often take it by communication. And to this purpose, that of the *Jews* is especially observable. They say that in their language, by reason of the plurality of virtues or power (being the true roots of dignity) which are supposed in a superior, they use the plural number to or of one man. Their *adonim* is plural, yet often used as singular. *Every tongue* (saith ⁿ *Aben-Ezra*) *hath its property.* As it is honourable in the (¹¹⁹) tongues of Europe, for an inferior to speak to a great man by the plural number: so in the Arabick (or *Ismaelitish* as he calls it) it is honourable for a great man, as a king, to speak in the plural. But also he transfers it to the honour of great men in the third person. So likewise (saith he) in the holy tongue it is honourable to speak of a potentate plurally, as *adonim* and *baalim*. For they say *אדוני קשה* *adonim kasha*, that is, *domini durus*, and also *לך באלים* *lachach baalim*, that is, *accepit domini ejus*. And upon this conceit do they interpret the plural of *elohim* joined with a singular verb, which, with us *Christians*, is taken by many for a mystical expressing the holy Trinity. But their grammarians make it an enablement of number, chiefly to express excellency in the persons, to whom it is referred. (¹²⁰) The use of this plural expression in the first person, is common in letters, writs, and laws of great princes: and, as some ^o note, it is by a use of *Spain* proper only to the king himself or to his vice-roys, as, *Nos don Philippe por la gracia di dios*, &c. *Nos don Inigo de Ribera virey de Naples*, &c. But with us in *England* it is communicated (and also in use) to divers which are not supreme: and I remember I have seen some instruments made in the first person by *Margaret* ^p countess of *Richmond*, mother to

¹ Des droicts royaux pag. 510. & Pasquier en les recherches de la France liv. 2. chap. 5. & liv. 6. chap. 33. ^m Vide gl. in c. scriptit. quaest. 27. & citatos apud Burgensem Marcum ad leg. Taurin. prooem. n. 10. & 11. ⁿ Ad Genes. i. ^o Sanford, in rudim. ling. Hispanice pag. 57. & Caesar. Oudin. in grammat. Hispanice pag. 38. N O S non accipitur aliter fere quam in ratione celsitudinis aut dignitatis in casu nominandi. ^p Rot. claus. 21 Hen. VII. part. 21. & 2. dorset.

king *Henry* the seventh, thus in the plural, *Nos Margareta comitissa Richmondiae mater excellentissimi principis domini Henrici regis Angliae & Franciae, domini Hiberniae, &c. Inspeimus, &c.* And other like often occur of earls and of other persons also of good quality, but much inferior to them, as both in elder time and at this day may be seen in commissions and other instruments of bishops, archdeacons, and some also that are their inferiors. But in the second person it is frequently communicated also. Of the German princes, a lawyer ⁹ of the empire speaking of the emperor's writing to them, says thus, *duces, & principes, consiliarios, & doctores non appellat, nisi numero plurativo (th, euch) quod tamen numero nobilem non honorant sed in singulari (du, dier) alloquuti.* This is especially seen in the writs of parliamentary summons directed to such as are in *England* lords of the parliament, or called to sit, with the king and lords, as counsellors in parliament (as the judges of both benches, barons of exchequer, the king's serjeants or other of his learned counsel) as likewise in the writs of calling serjeants. Neither, as it seems, may that kind of expression be legally and by the stile of the chancery, used in writs to any that is inferior to them. For in our year-books, it was adjudged naught, being used to the sheriff of a county. The case was that a ^r *quare impedit* being brought by the king for the prebend of *Oxgate*, in the diocese of *London*, the writ to the sheriff was, *praecipite Michaeli de Northumberlandam, against which the serjeants except, as against false Latin.* But, says *Thorp*, false Latin it is not, for it is a word of the plural number, and therefore is of greater reverence; and this is a common fashion for the king to send to a man by the word *vobis*. But, says the counsel on the other side, a man hath not seen such reverence made to a sheriff. And afterward, the writ was looked on by the judges, and they saw it was *praecipite*, and that it concluded with *habeatis ibi nomina summonitorum, &c.* whereupon it was adjudged that the writ should abate. (¹²¹) But even at that time, and before, as also at this day, by the stile of the chancery, every summons of parliament to the lords, as well spiritual as temporal, who have voice and place in the upper house, is, *vobis sub fide & ligeantia quibus nobis tenemini firmiter injungendo mandamus quod, &c. dictis die & loco personaliter interfutis*, in the plural number; and the like was and is common in the writs directed to the judges and others that are called into the upper house to sit as counsellors: and the like examples are in some other letters or writs of the king to persons of such quality: and the writ for every serjeant at law is; *quia de^r advisamento consilii nostri ordinavimus VOS ad statum & gradum servientis ad legem in, &c. suscipiendi, VOBIS mandamus firmiter injungentes quod VOS ad statum & gradum praedictum ad diem illum in forma praedicta suscipiendum ordinetis & praec-*

paretis. But for this of the second person, it cannot be so observed in all other languages. For both in *English, French, Italian, and Spanish*, the singular and plural in ordinary speech are often expressed alike. But for *Spanish* (as also for the *Italian*) it is observable, that in courtship they often decline the use of the second person, and express it by the third, as, ^r *si el quiere hazer lo*, which literally is, *if he will do it*, for *if you will do it*: so *sua signiora*, meaning *your lordship*: and *el suyo*, that is, *his*, rather than *vuestro* is used by the *Spaniards* though they speak to inferiors: and *el* or *be* rather than *vos*, which with them, though it be plural, yet is not better than *thou* with us.

But for particularly naming *superiors* or *inferiors*; there is an antient form (mentioned in *Servius Honoratus*) of expressing names when great persons speak or write to or of their inferiors, and of avoiding them by inferiors when they speak or write to or of their superiors. *Inferiors* (saith *Servius*) are honoured by their superiors. *if they be named by them when they speak to them; but it is a dishonour to a superior to be so particularly named by his inferior.* He speaks it upon that of *Juno* while she ruminates upon *Aeneas* his good fortune:

—mene incocepto desistere victam?

Nec posse Italia Teucrorum avertere regem?

Juno would not name *Aeneas*, but she calls him king only, being her inferior. *Honoratur enim* (says he) *minores a majoribus si suo nomine fuerint nominati: ut AEole namq; tibi, &c. contra contumelia est, si majores a minoribus suo nomine nominantur, ut Junonis gravis ira & pacem te poscimus omnes Turne, &c.* And this of omitting the particular names of our greater superiors in the context of speaking or writing in the second person, is frequent enough in the compellations of kings in the holy story and elsewhere, and in common use at this day.

II. In the expressions also of great princes, they are stiled to be so, *Dei gratia* or *by the grace of God*, which is familiarly seen in the titles of the kings of *France, England, Spain, Denmark*, and other of *Europe*. And this is conceived by some as if it were proper only to supreme princes; so says ^u *Chassanaeus*, and therefore he thinks it not competent for the duke of *Burgundy*, as duke; so *Rebuffus* a ^x great lawyer of *France*: and *Lewis XI.* of *France* prohibited *Francis* ^y then duke of *Bretagne* the use of it, as of that which were unfit for any other than such a prince as acknowledges no superior. (¹²²) But indeed, all things of this nature having their being, continuance and lawfulness out of use only, and such consent of persons and times as arbitrarily establishes, enlarges, or restrains them, the truth is, that it is not of it self only proper (nor was it ever so ac-

⁹ Jofias Nolden de statu nobilitatis civilis cap. 5. §. 2.

^r 29 Edw. III. fol. 44.

^r 6 Edw. VI. Dyer fol. 72.

^r Grammat.

Hispán. apud Sanford. in rudim. Hisp. ling. pag. 17. & Caesar Oudin. Grammat. Hisp. pag. 46.

^y In consuet. Burg. &c.

^z Ad consuet. reg. tom. 2. & Benefic. ante vac. art. 2.

^y Bodin. de rep. lib. 1. cap. 10.

counted) to supreme princes, but from them also communicated to their subjects of greater note, and to such also frequently as are not at all princes: yet in that communicating of it also, this still is to be observed; that where it hath not been settled in a subject by some lawful title, there the use of it by him, may justly be conceived for an usurpation upon the supreme dignity on which he depends. For it is taken (it seems) to import in it self as much as an assertion of being independent upon any save God himself. But, as some prerogatives that are of themselves merely imperial or royal, are yet by grant or prescription transferred unto inferiors; so the use of these words, by either of those ways may be acquired to the stile of a subject. All which in substance, is judiciously delivered by that great lawyer of Spain, *Marcus* ² *Salon de Pace*. *Eam Bartholomaei Chassanaei opinionem* (saith he) *non veram constanter ipse censeo, & tantum superiorem non recognoscen-tem dictis verbis uti posse, falsum esse existimo. Siquidem hoc minime autumo esse de praemi-nentiis regum superiori in temporalibus non sub-ditorum. Et quidem opinio Bartholomaei Chas-sanaei aliquo jure non probatur; & plerunque contrarium fieri vidimus, & etiam non principes, in suis titulis, praedictis exordiri verbis; quibus & inveterata immemorialisque consuetudo consentit: qua etiam regalia quaeri non am-bigitur—quo fit a recto & aequo jurisque tramite Bartholomaeum Chassanaeum recedisse cum arbitratus est, ducem Burgundiae dictis verbis, por la gracia de Dios, uti non posse, quia superiorem ipse recognoscit: & quidem regina nostra respectu ducatus Burgundiae praedicta etiam subijcit verba. Fortassis tamen si ali-quis ex hujus regni magnatibus dictis uteretur verbis, ab hoc de facto inhiberetur, quia ea ponere minime consueverunt, & propter regiam praecminentiam.* And by this reason of his, which relates to Spain, it may be conceived with us in England and in France, that the application of *Dei gratia* to the stile of any of the lay peers or lords should be taken as unjust, being not antiently used and continued among them, but restrained to the king only. But there is no necessity to be of his opinion in this, that in that stile of *Johan* queen of *Castile* (for of her he speaks) the *por la gracia de Dios*, should have as much relation to her title of dutchess of *Burgundy*, as it hath to her title of queen of *Castile*, *Leon*, *Aragon*, &c. There is no necessity of it, in regard only of the ex-pression; no more than the old stiles of the kings of *England* (when they wrote themselves, according to their possessions, by the grace of God kings of *England*, *France*, lords of *Ireland*, and dukes of *Normandy* and *Aquitain*, and earls of *Anjou*) necessarily import that they were *Dei gratia duces Aquitaniae*, &c. The French king might as well have quarrelled at that, as at the stile of the duke of *Bretagne*: all these dutchies and that earldom being anti-ently and equally fiefs of that kingdom: and

the words might very well be so conceived, that *Dei gratia* should relate only to the su-preme titles and not to those subordinate: no otherwise than in the stile of *William* bishop of *Ely* under *Richard I.* the *Dei gratia* had (as I conceive) relation to his being bishop only; not to his office of chancellor or chief justice of *England*, or to his being legat to the pope; for those plainly he could not pretend to have otherwise than *regis aut pontificis gratia*. Thus he ^a used to express himself *Willielmus Dei gratia Eliensis episcopus, domini regis can-cellarius, totius Angliae justitiarius & aposto-licae sedis legatus*. The same may be said of *John* of *Gaunt*, who wrote himself *Dei gratia rex Castellae & Legionis, dux Aquitaniae, Lan-castriae*, &c. plainly the *Dei gratia* had refe-rence to his supreme title of king only, not to his dutchies or earldoms. But for another cause it might perhaps have reference to the dutchy of *Burgundy* in that of *Johan* queen of *Castile*; that is, in regard of the dutchy as it is conceived to be a fief of the empire of *Germany*. For the custom there, both of antient and the pre-sent time, is, that their subordinate princes write *Dei gratia* as well as the emperor. For in the stiles of the archdukes of *Austria*, the dukes of *Saxony*, of *Baviera*, the counts palatines of the *Rhine*, the marquesses of *Brandeburg*, and such more, it is obvious, as *Dei gratia nos Alber-tus archidux Austriae*, &c. and *Dei gratia Fredericus comes palatinus Rheni superiorisque Bavariae dux*, &c. and the landgrave of *Hesse* hath it familiarly in his astronomical epistles to that great restorer of astronomy the noble *Dane*, *Tycho Brahe*; *Willielm von Gottes gnaden Landtzgrave zu Hessen*, etc. that is, *William by the grace of God landgrave of Hesse*, &c. And that which *Andrew Knichen*, chancellor to the duke of *Saxony*, speaks of his master touching the use hereof, is applicable to all those great princes of *Germany*. Cum illud, saith ^b he non fiat in despectum domini concedentis, sed ad amplificandum majestatem ejus & dignitatis concessae tuitionem, recte immemoriabili inter-sitio principes nostri saepe dicta locutione (he means *Dei gratia*) usi sunt & etiamnum utun-tur: (¹²³) so far is that from truth which some affirm concerning ^c the earl of *Flanders*, that the use of these words is a singular prerogative, among counts, to that earl only, and that none besides him might lawfully use it. And I re-member in the *Turkish* stories, some *Bashaws* use this of *Dei gratia* in their own stiles. And the dukes of *Venice*, who have their power from the state there, yet stile themselves always *Dei gratia dux Venetiarum*, as well in their seals as in their inscriptions.

But also both in the present and elder times, it is frequently in the (¹²⁴) stiles of spiritual lords. The titles of epistles in *John* of *Salisbury*, of *Fulbert* bishop of *Chartres*, *Gilbert* of *Ven-dosme*, *Anselm*, and divers such more in the el-der ages have store of examples for that matter. And *B. de Blancesfort*, master of the Temple,

² Prooem. relect. in leg. Taurin. 36.

^c Meyer de reb. Flandric. & Ortelius in theatro.

^a Matt. Paris, pag. 216.

^b Comm. juris Saxonici, duc. Saxon. cap. 1.

uses it in ^d letters to S. Lewis king of France. (¹²⁵) Neither is any thing more common in the instruments of bishops and abbots in the leidger books or chartularies of monasteries, yet remaining in divers hands, and in the old registers of the archbishop of Canterbury, the bishop of Winchester, and in such more. And for the later time to this day by the stile of the chancery, in the summons of our parliaments and writs to assemble or prorogue the convocations, the king gives to the archbishops the attribute of *Dei gratia*, in this form. *Jacobus Dei gratia, &c. reverendissimo in Christo patri praedilectoque & fideli consiliario nostro Georgio, eadem gratia archiepiscopo Cantuariensi, &c.* But in warrants and commissions to them, that of *eadem gratia* is most commonly omitted: and in like sort, the other parts of the title being changed, as use directs, are the writs to the bishops. And in writs of some other nature it is ^e in the Register and Fitzherbert in like form, but not always, given to bishops. But although it be so given them in the king's writs, yet at this day they use it not in the first person, but *Dei clementia* or *providentia divina*; although in the antienter times, *Dei gratia* be familiarly inserted in their titles.

Touching that use of it by our bishops in the elder times, there is a merry tale, not unworthy the relation, in *Walter Mapez* his sixth distinction, *de nugis curialium*, ms. remaining in the publick library at Oxford. He tells us, that *Joscelin* bishop of Salisbury under Henry II. (in whose time he wrote) when his son *Reinold* (who was by corrupt means chosen bishop of Bath and Wells) complained to him that the archbishop of Canterbury would not consecrate him, advised him thus, *stulte* (saith he) *velox ad papam evola securus, nihil haesitando; ipsique bursa grandi para bonam alapam, & vacillabit quocunque volueris: ivit ergo: percussit hic, vacillavit ille; cecidit papa; surrexit pontifex; scripsitque statim, in dominum mentiens, in omnium brevium suorum principiis. Nam ubi* (so goes *Mapez* on) *debuisset scribi burfae gratia, Dei gratia dixit: Quodcunque voluit, fecit. Sit tamen* (saith he) *domina materque nostra Roma baculus in aqua fractus, & absit credere quod videmus.* I do not at all english it, lest if I express it in mine own words, some conscious man should take it for a libel against some corruption that he is party to in the present time. But also for the use of it, these rules are observable, which I find in an old book written some ccc years since, and titled *rosula novella*; the author of it being *Petrus de Boateriis* a lawyer, who styles himself, in the preface, *artis notarii ministrorum minimus ac etiam judex*. They are here delivered as my copy gives them me, and were collected, it seems, by one that had curiously noted the use of it in that age among persons of dignity both in the laity and clergy.

*Primo, & so are the words, si scribat praelatus, posito nomine suo, debet dicere Dei gratia; licet dominus papa servus * Dei, causa excellentioris humilitatis, voluerit appellari.*

Secundo, notandum quod nullus praelatus quantuncunque magnus, cum apostolico (that is, the pope) *vel imperatori vel regi scribat, debet dicere Dei gratia de seipso, sed hoc modo, talis licet indignus vel immerens Bononiae episcopus, &c.*

Tertio, nota quod non debet aliquis cuicunque scribat, si modica praelatione fungatur vel honore, de se dicere Dei gratia, quia istud verbum Dei gratia quandam excellentiorem innuit dignitatem.

Quarto, nota quod nullus potest proprie uti isto verbo Dei gratia qui in laicali positus est dignitate, nisi sit imperator vel rex vel alter qui sui capitis receperit unctionem. Nam tales unguntur oleo sancto; & in rege potest dici evidentissime per exemplum; licet quidam servant contrarium in ducibus, marchionibus, comitibus. Sed hoc est ex defectu potius dictantium ipsas literas quam ipsorum marchionum, comitum, sive ducum.

*Quinto, nota quod ex parte mandantis epistolam in clericis, posito hoc verbo Dei gratia, debent adhuc in ejus salutatione ista tria poni, scilicet titulus, ordo, & devotio. Titulus est ponendus, id est, nomen ecclesiae in qua noscitur esse intitulatus. Ordo exigit ut dicatur si sit patriarcha, archiepiscopus, episcopus, vel si in alia noscitur dignitate. Devotio dici posulatur, quod per hoc verbum Dei gratia dicitur, licet inutilis & indignus & maxime a majoribus; licet ab imperatore vel ab rege non ponatur. Possunt etiam haec omnia laicis dignioribus adaptari, posito in hoc, loco ecclesiae, dignitatis laicalis nomine, id est, posito nomine laici mittentis epistolam, ponatur ejus dignitas, sic, marchio Hostiensis, dux Britanniae, comes Arundeliae, & sic de caeteris dignitatibus laicalibus. By all which it appears that although in those elder times, this of *Dei gratia* were in use in the styles of lay-princes & which were subordinate, as well as of prelates, the author imputes it rather to the ignorance of the secretaries of such lay-princes, than to their own directions; whence also, it seems, *Robert Guiscard* duke of *Apulia* and *Calabria*, and afterward king of *Sicily*, acknowledging himself as a feudatary to pope *Nicholas* the II. used it in his profession to him not absolutely, but qualified with the favour or grace also of the see of *Rome*. For thus he ^b expressed himself: *Ego Robertus Dei & S. Petri gratia dux Apuliae & Calabriae, & utroque subveniente, futurus Siciliae, &c.**

The antientest use of it in the empire, as I remember, is about *Charles the great*; for in some of his patents it is inserted. The *Roman* and *Greek* emperors before him, as I think, used it not; neither was it constantly observed in the styles of his successors till the later ages.

^d Epist. reg. & princ. edit. in tom. 2. gest. Dei per Franc. pag. 1176.

&c. fol. 132. & 2 E. &c.

^e Rosula novella ms. cap. 111.

prociator to Edward the VI. in his letters sometimes used it. See Holinshed, pag. 1237.

^f V. regist. orig. fol. 3. a. & b. 42. b. &c. & Fitzh. nat. ms. fed lego servorum Dei.

^g Edward duke of Somerset, lord

^h Scipio Mazzella nelle descrizione del regno

di Neapoli, pag. 420. & seq.

Otho III. titled himself sometimes nothing but *servus apostolorum*, as in one of his charters to the church of *Hamburg*; and in other charters *servus apostolorum* & *secundum voluntatem Dei salvatoris Romanorum imperator augustus*, as in that of his to pope *Silvester* II. Other different titles of other of the German emperors since him until the later ages are likewise obvious without this of *Dei gratia*. But by the Greek emperors, I have not observed it at all used. In stead of it, it seems, they had their Θεοσεβης or a *Deo coronatus*, which implied *Dei gratia*, but was but now and then used by them: the more ordinary and later expression of them being, by ἐν Χριστῷ τῷ Θεῷ πιστὸς βασιλεὺς, &c. that is, *trusting in Christ that is God*, or by ἐν Θεῷ βασιλεύς τῷ Πατριάρχῳ, as I have seen in some coins of *Leo* VI. and others of the eastern empire. But as in the western there was some use of it after the translation from the *Greeks*, but not such as was fixed as an essential part of the expression until a later age (which may be about cccc years since) so also in other kingdoms of Christendom some use of it was very antient, and perhaps near as old as of Christianity in them: but it was not any where fixed by a certain and known stile of the chancery or observation of secretaries, until about mcc. after the birth of our Saviour. And with us in *England*, *Ine* a *West-Saxon* king that lived many years before *Charles* the great, uses it; as *Ic Ine mis godes gife jereceaxna Cyning*, that is, *I Ine by the grace of God king of the West-Saxons*; in the preamble to his Laws: and so do some of his successors. But until about our *Henry* III. it was not of so constant use as that the stile of the king necessarily required it. And indeed at this day, instead of it, sometimes *divina favente clementia* * or the like is inserted in kings stiles, as appears expressly in that diligent and useful collection of instruments touching the late troubles of *Bohemia*, published by *Gaspar Lunderpius*. And for the use of *Dei gratia* in the stiles of persons either of supreme or subordinate dignity, hitherto.

III. Supreme princes are also in the second and third person commonly stiled by that abstract which designs their greatness; the name of *majesty*: as, *your majesty*, *his majesty*, and *his catholic majesty* for the king of *Spain*, *imperial majesty* or *keyserlich majestaet* for the emperor. This came into the kingdoms of Christendom from the use of it in the *Roman* empire, where it was as well in the first as second and third persons given to the emperors. The word of it self denotes all kind of special dignity (as if we should say in *English* a *greaterness*) as well in private persons as supreme princes and deities, which is elegantly delivered by *Ovid*, where he makes *Polyhymnia* relate that in the eldest times *par erat omnis honor*, there was no such distinction of place among the gods, but that every one sat any where at pleasure,

*Saepe aliquis folio quod tu, Saturne, tenebas,
Ausus de media plebe sedere deus.*

And that this continued until honour joyned with reverence, bred an alteration,

*Donec honor placidoque decens reverentia vultu
Corpora legitimis imposuere toris*

Of these two, says he, *majesty* was born, and she being seated in the highest throne of the gods, *fear* and *respect* were placed among them. Nor was there a deity which did not address and compose himself to her: and thence came the distinction and admiration of several dignities among the gods.

*Hinc nata majestas, quae mundum temperat
omnem.*

*Quaque die partu est edita, magna fuit.
Nec mora; confedit medio sublimis Olympo
Aurea purpureo conspicienda sinu. (126)
Consedere simul pudor & metus; omne videres
Numen ad hanc vultus composuisse suos.
Protinus intravit mentes suspectus honorum.
Fit pretium dignis; nec sibi quisque placet.*

Thus, saith he, *majesty* continued among the gods until the rebellion of the giants against *Jupiter*; and that, in this rebellion she so daunted them, that afterward she was honoured for it with a place next to *Jupiter*, whose Kingdom she defends by the greatness only of her presence and unarmed; that she came down also among men; and that since her coming down, both supreme and subordinate princes, and some also of all kinds have had their special dignity from her presence with them: whence it is that *majestas pueri*, *majestas matronae*, *majestas virginis*, and such like, have denoted the singular dignity, worth or quality of a child, a matron, a virgin.

*Fulmina de coeli jaculatus Jupiter arce
Vertit in auctores pondera vasa suos.
His bene majestas armis defensa deorum
Restat, & ex illo tempore culta manet.
Assidet inde Jovi; Jovis est fida custodia,
Et praestat sine vi sceptrum tenenda Jovi.
Venit & in terras: coluerunt Romulus illam
Et Numa; mox alii, tempore quisque suo.
Illa patres in honore suo, matresque tuetur,
Illa comes pueris, virginibusque venit.
Illa datos fasces commendat, eburque curule,
Illa coronatis alta triumphat equis.*

Thus *Ovid*. So that *majesty*, generally, denoted the singular quality or dignity of such as were specially eminent among those who otherwise had their degrees of great estimation; as *inter magna ingenia, majoribus vere inest haec majestas*: and *inter magnanimos, eorum, qui majori animo res gerunt, majestas lucet*, and so in other particulars. In this sense, *Vale ins Maximus* uses it, where he says, that when *Cato* went out of the theater because he would not see the *mimicks* present themselves naked in it,

ⁱ Apud anonym. in comment. ad diplom. Ottonis. 3. & vide Baron. annal. eccles. ann.
quæst. 60. & auream bullam Carol. 4. in initio, & de Dei gratia Camill. Borell. de praest. regis catholici c. 2.

* Videis Restaur. Calstald. de imp.

Factorum lib. 5.

the spectators with great acclamation professed *plus se majestatis uni tribuere quam universis sibi vindicare*. And, est illa, saith he, quasi privata censura majestas clarorum virorum sine tribunalium fastigio, sine apparitorum ministerio, potens in sua amplitudine retinenda. Grato n. E jucundo introitu animis hominum illabitur admirationis praetexta velata; quam recte quis dixerit longum & beatum honorem esse sine honore: and examples enough he hath in his chapter de majestate, for the explication of the word in this sense.

But as it hath happened to many other words (which have been restrained to particular use from a general) so to this of majesty. It became to be applicable chiefly, and in most use that occurs, to the state of Rome, and denoted the supreme dignity of it. *Majestas populi Romani*, is frequent in Cicero, Quintilian, and other good authors, to that purpose, and signifies τὴν ἀρχὴν καὶ διουσίαν τῆς πόλεως Ῥωμαίων, that is, the empire and power of the people of Rome, as ¹ Polybius turns *majestas populi Romani*. Afterward this majesty of the people or of the whole empire and state, was cast upon the emperors, (¹²⁷) and then it was *majestas imperatorum*. Neither was it long after the beginning of the empire but that in inscriptions to the emperors, the conclusion grew to be frequent, NUMINI MAJESTATIQUE EJUS DEVOTISS. or DICATISSIMUS, often expressed only by singles, thus; N. M. Q. E. D. And the antientest of this kind which I have observed, is ^m that of Septimius Acindynus to the emperor Trajan, remaining yet in Tarra-gona at S. Barbara's church. To the following emperors many like are obvious. Hence also ⁿ *augustalis majestas* is used by Justinian for the person of the emperor, and *imperialis* ^o *majestas*. And in the first person *Honorius* and *Theodosius* and other use *nostra majestas*; as ^p *nostra majestate dignitatem consequi*, and *indultum* ^q *nostrae majestatis oraculum*, and the like.

But concerning the use of this in the empire, some scruple hath been made upon a passage in Trebellius Pollio his lives of the Galliens. Speaking there of Valerian; *quis alius*, saith he, *potuit esse Valerianus nisi Gallieni frater? constat de genere, non satis tamen constat de dignitate, vel, ut coeperunt alii loqui, de majestate*; meaning that it was agreed of what stock or alliance Valerian was, but it was a doubt whether he had been emperor or Caesar (or prince) or designed successor only, which he expresses by saying, *non constat de dignitate*, or, as others then began to speak, *de majestate*, as if the name of majesty had then first began to be used in designation both of the emperors. and of the rest of the greater dignities in the empire. (¹²⁸) But it is clear that it was thus used in devotions to the emperor long before that time; as appears by the inscriptions before remembered. Neither is there testimony enough

to prove that it became now to be applied to the rest of the greater dignities, as some learned men would have it. But rather, it is to be understood, that in this age of Trebellius, the name of majesty began to be applied as well to the dignity of the Caesar as of the emperor, whereas before it was in this kind of sense proper to the emperor only: as if he had said, *non constat utrum dignitas, vel, ut coeperunt alii loqui, majestas ejus Caesariana fuerit duntaxat an augustalis seu imperialis*. The nearest, in what is published, to the just interpretation of Trebellius, is that of the learned Claudius Salmasius upon him; who yet (as far as I conceive him) hath slipped over the full clearing of this passage.

From the use of majesty thus applied, came the name of *crimen majestatis*, to denote that offence which was committed against either the dignity of the state of Rome, or against the emperor. *Majestatis crimen* (saith ^r *Ulpian*) *illud est quod adversus pop. Rom. vel adversus securitatem ejus committitur*: and ^t *Cicero*; *Intentio est, majestatem minuisse quod tribunum plebis de templo deduxisti*. (¹²⁹) But also, of the emperor and state together. *Lex Julia majestatis* (saith ^u *Justinian*) *in eos qui contra imperatorem vel rempublicam aliquid moliti sunt, suum vigorem extendit*. And for this offence the word *majestas* singly is used by Pliny in his panegyric to Trajan; *hujus tu metum* (saith he, meaning *criminis majestatis metum*, or the fear of too frequent question upon that crime) *penitus susulisti, contentus magnitudine qua nulli magis caruere quam qui sibi majestatem vindicabant*.

This expression of the emperors by the abstract *majestas* (wherewith *numen* also was commonly joined in inscriptions) became, it seems, the example by which the ensuing times brought in the frequency of those other abstracts, which designed the emperors as well in the first as the second and third person: as *perennitas*, ^v *aeternitas*, *tranquillitas nostra*, *serenitas*, and the like, which are most obvious in the rescripts of the old emperors, that remain yet in the two codes of Theodosius, and Justinian, (¹³⁰) besides what is of the same kind in the novels, the last book of the epistles of Symmachus and divers such more testimonies. For before the empire was reduced under one, it was not come into fashion to use appellations of honour or otherwise to any person, by the abstract, but in the concrete only; howsoever there be passages in some old authors that have some taste of such a kind of expression. As in Homer, ¹ τὸ τελεμαχέῳ occurs for brave Telemachus, that is, Telemachus his strength; and ² Ἡρακλῆος βίη, the force of Hercules, for strong Hercules; and

Virtus Scipiadæ & mitis sapientia Laeli,

for virtuous Scipio and wise Laelius, in Horace; which denoted them no otherwise in the

¹ In legation. in foed. Aetolorum.

^m Gruter. inscript. pag. 246, n. 3.

ⁿ C. ubi & apud quem l. cum scimus 3.

^o C. de

quadriennii praescript. l. bene a Zenone.

^p C. de silentiis l. 1. de iurisdictione.

^q C. de cohortalib. l. 11. si quis ex grege. vide si

placet, Jul. Caes. Bullinger. de imperat. Rom. lib. 1. cap. 34.

^r ff. ad leg. Jul. majest. l. 1. §. 1.

^t ff. ad leg. Jul. majest. l. 1. §. 1.

^u De inventione lib. 2. §. 20.

& part. orat. §. 50.

^v Instit. tit. de public. judic. §. 3.

^w De qua vide Juret, miscellan. ad Symmach. lib. 1. epist. 89.

abstract,

abstract, than *appietas* and *lentulus* did *Appius* and *Lentulus* in * *Cicero*; ⁽¹³¹⁾ or as *stupor* did a dull fellow so unworthy of such a mistress in *Catullus* his

Talis iste meus stupor nil videt nil audit.

But this kind of language was very rare, and it was far from a received fashion in any kind to use it, before *numen* and *majestas* came thus into custom; after which it became very frequent also to express other persons of dignity by such kind of abstracts, as the *praefecti praetorio*, *proconsuls*, and such more by *sublimitas tua*, *excellencia tua*, *celsitudo tua*, and the like, which are often met with in both the codes and the novels, *Cassiodore* his formulary, and other old testimonies. And in the same way came also *beatitudo tua*, *sanctitas tua* egregia, *dignatio tua*, *praestantia tua*, *serenitas tua*, and such more in letters to men of special quality either in the church or commonwealth, as we see in divers epistles among those of S. *Augustine*, S. *Hierome*, in *Cassiodor's* formulary, *Symmachus*, and others both of the antient and later times to this day: whence also that scornful letter of *Philip le beau* of France to pope *Boniface VIII.* hath instead of *sciat sanctitas tua*, *sciat tua maxima fatuitas nos in temporalibus alicui non subesse.* ⁽¹³²⁾ So *nostra gratia*, *nostra pontificalis dignitas*, and such like in the first person have been used among bishops, for which *Crantzius* taxed them, where he speaks of *Leuderick* bishop of *Breme* (about the year *MCCCXL.*) his being noted for a proud man, because he used *γ* to title himself *custos* and *pastor Bremensis ecclesiae.* Vide, saith ^a *Crantzius*, *temporum simplicitatem quod non paterentur pastoris vocabulum. Quid facerent si ritum nostrae aetatis ambitiosum cernerent, ubi ex ore episcopi insonare audirent, nostra gratia, nostra pontificalis dignitas, & reliqua his etiam gloriosiora?* But of this kind of use of abstracts in the expressions of subordinate dignities, more in the second part.

This attribute of *majesty*, in the Greek empire was denoted by their word βασιλεία. And the emperor had it with addition of ἁγία, as ἁγία βασιλεία or *sacred majesty*, and sometimes ^a with παρρηλικῶς βασιλεία or *serenissima majestas*. But also it was communicated to those three *Constantinopolitan* dignities, the *despots*, the *sebastocrators*, and the *Caesars* (of whom more about the beginning of the second part) and their *majesty*, in speaking to them, was distinguished from the emperors by the omission of *sacred*. But the emperor had that addition only in the second and third person, for in the first he used only ἡ βασιλεία μου, that is, *my majesty*. And that of *sacred majesty* is frequent in use to this day both in the empire and other kingdoms of *Europe*. But the *Latin* translation of *Codinus*, out of whom the use of βασιλεία is especially observable, hath *regnum* for βασιλεία in this sense; as also in some passages of the history of *Paulus*

Diaconus, turned out of Greek, *imperium* occurs for βασιλεία used in the eastern empire in the like sense. But that was the mistaking of the translators, who knew indeed that βασιλεία in the antient and purest interpretation is *regnum* or *imperium*, which could not express this meaning of it unless also those two words should be taken in *Latin* to denote (as if you should say) *kingship* or *emperorship* in that notion, as we say, *your lordship*, *vestra dominatio* or *vostra signoria* in common appellation, or as θεῖος or *deitas* is and was antiently (as *numen*) used for the *godhead*, or as if you should say, *godship*. And since the end of the Greek empire swallowed up into the *Turkish*, the *Greeks* in their letters to the kings of *Europe* use this βασιλεία for *majesty*, as I have seen in letters from *Germanus* patriarch of *Jerusalem* to our *Henry VIII.* for succour to the distressed christians of those parts: ἐκ ἐκλείψωμεν ἀδιαλείπτως προσκυνεῖν ὑμῶν τῇ οὐκ ἐπιλοχρεῖται ἡ ἐκείνης βασιλείας, that is, *we will incessantly pray for your most christian and religious majesty.* Neither indeed have the *Grecians* any fit word to express *majesty* as the *Latin* doth. For the *Latin* (whence other tongues have it) makes it from the comparative *major*, as if in *English*, from *greater*, we should say *greaterness*. But the nearest to it in Greek is μεγαλειότης, which is not properly *majestas*, but *magnitudo* only; howsoever in some old glossaries it be turned as well by the one as the other, and in a passage of S. *Peter* ^b also it be in some later translations expressed by *majesty*, the vulgar there turning the full sense in *magnitudo*. But also as the *Latins*, so the *Greeks*, had their like abstracts of expression, as μεγαλειότης ἡμετέρα, for *serenitas nostra*, and such more, as is before remembered and appears obviously in the constitutions or rescripts of the Greek emperors; which also was used to them, and, by the *Grecians* of later times, to other supreme princes.

This of *majesty* is every where known at this day as an abstract, attributed to kings and emperors and their empresses and queens, and it is distinguished by *caesarea* or *keiserlich* for the emperor, as by *catholica* for the king of *Spain*; howsoever some have ignorantly enough given that title to the *grand signior* in letters to him, as I have seen in some few examples. But the Duke of *Venice*, who acknowledges no superior, uses it not, but only *highness*, or *altezza*, or *celsitudo*. When it began to be of use in every particular ^c kingdom, I know not. Neither can I agree with some learned men, who deliver that it came into use in *England* in the time of *Henry VIII.* unless they understand, that in his time it was of more ordinary use in designing the king under those words of *his majesty* or *the king's majesty*. For indeed in the most usual expressions before (as appears through the parliament-rolls) *our lord the king* in the third person denoted our sovereigns. But it is clear that the kings of the elder times here were often saluted by *majestas tua* in letters to them, as I have

* Fam. epist. lib. 3. epist. 7.

^a Adam. Bremens. hist. eccles. cap. 20.

^b Metrop. Sax. lib. 1. cap. 32.

^c Vide Codin.

^d 2201. & Mearnum in glossar. Graecobarb. verb. βασιλεία.

^e Epist. 2. D. Petri, cap. 1. coun. 16.

^f Vide I. Filescum in eccles.

Gallicanæ querela. pag. 11.

seen, not only in letters to Henry IV. Edw. I.^d and others, but also in the epistles of John of Salisbury to Henry II. (1133) and such like that infallibly justify it; and in a letter of ^e pope John XXII. to Edward II. or the third, about Ireland, *magnitudo tua* is instead of it. Neither are we without examples of these kind of abstracts used in the first person by our kings, as they were by the emperors. In the charter of creation ^f of Humfrey earl of Buckingham into the title of duke of Buckingham, *consideravit nostra celsitudo regalis* (saith Henry VI.) inter caeteros *nobiles & principes* nostrae serenitati *subiectos*, &c. and king Edward IV. in his creation of Thomas Grey earl of Huntingdon (afterward marquis of Dorset) begins ^g with *Sciatis quod cum nostra majestas regia ab immortalis Deo post maximas de inimicis nostris partes victorias ad regni culmen & solium hereditarium sublimata existat*, &c. But for that of *sacred majesty*, it is true, I think, that in our memory or the memory of our fathers, the use of it first began in England. Neither is it at all to be regarded, that some would make it a usurpation of the attribute of *majesty*, while emperors ^h or kings have it; as if it were proper only to God. They might as well deny *wisdom*, *power*, *clemency*, or any other quality to be attributed to men, because those also, as all else which is *great* or *good*, are primarily in him. The like might be said perhaps in full answer to them who quarrel ⁱ at *nostra divinitas*, *nostrum numen*, *coeleste oraculum*, *sacrum oraculum*, *adorandum rescriptum*, and such more, attributed to the old emperors, and that to Theodosius, Valentinian, and other who were christian, both in the first and third person as the matter required; frequent examples of them occur in both the codes. Why *divinitas*, and the like, may not be as well applied to them as *divi* or *dii*, I understand not. Of that matter, something ^k before is noted. And I add here that of the *Lacedaemonians* most ordinary expression when they admired a man: *οὐκ ἔστιν ἀνὴρ*, that is, *he is a divine man*: and it was proverbial (as ^l Aristotle shews) among them in Greece, that *ὅς ἐστιν ἀνδρῶν γινώσκων θεοὶ δι' ἀρετῆς (ἡρωικῆς) καὶ ἐξ ὧν ὁδῶν*, *men became to be reputed or called Gods from the excellency of their heroick virtues*; and these virtues and themselves also were (as he says) called divine by way of some similitude, or by reason of participation, with the deity, being all goodness and excellency, as the contrary quality, that is, inhumanity or barbarousness, is named *δειρότης* or *feritas*, because it is most like to what is bestial. So that as he who affirms that a barbarous or inhumane fellow, *δειρόνδης* or *bestial*, makes but a high expression of his ill, not at all supposing him to be really a beast; so on the other side *divinus*, or *divinitas*, or the like, expresses only an admiration of excellency which hath its highest and first example in the deity, and is by some similitude or participation in the person to whom it is attributed. And to-

ward the same sense also ^m Aquinas; *Antiquitus rectores reipublicae divini vocabantur, quasi divinae providentiae ministri*. Some other abstracts, antiently used to kings, but since made more peculiar to subordinate dignities, I refer to the second part.

IV. But also, as in the Roman empire it was a solemn custom to give the emperor the titles of *pius* and *felix* (which were the most usual) and *clemens*, *tranquillus*, *sanctissimus*, and many other such more, denoting their quality or that which should be their quality, by way of honorary, but arbitrary, addition, with *pater patriae* also which was the best of this kind; so in the later times, both in the empire and in other kingdoms, a like custom is and hath been observed, and that for the most part with superlative attributes given to supreme princes (and sometimes, as other, communicated to subordinate, whereof more in the next part) in the second or third person, as *clementissimus*, *excellentissimus*, *invictissimus*, *illustrissimus*, *serenissimus*, *gloriosissimus*, *potentissimus*, *sacratissimus*, *celsissimus*, and such more as we see every where both in inscriptions and letters and relations that concern them. *Paulo inusitator* (saith ⁿ Adam Contzen) *fuit titulus τὸ ὄνομα & ἰσχυρότης*, seu celsitudinis. *Nunc vero inter christianos principes usitatissimus*. *Sumptus vero est ex apostolo ad Rom. xiiij. ver. 1. ubi vocantur θεοὶ καὶ ἀνθρώποι, ποτεσται supereminentes*. *Hoc enim celsitudinis vocabulo indicatur*. Neither of this kind is there any so fixed and common, as that of *most high* and *mighty*, *tres-haut* & *tres-puissant*, *muy alto* & *poderoso*, or *serenissimus* & *potentissimus*, as it is most frequently used in *Latin*. But for the use of several ages that may concern this kind of expression by attributes; the variety is such as that it would be a large volume in a collection, and hardly worth the observation being collected. If any man's curiosity seek it, he may, for the elder ages of christianity, turn over the epistles of S. Gregory, S. Leo, S. Ambrose, Symmachus, and some others, that are obvious in the volumes of that time, where he shall meet with those kind of attributes variously given to the emperors. For the middle ages of christianity; the epistles of popes to kings, extant in the later editions of the councils, some epistles of Boniface archbishop of Mentz, written to some antient kings, especially of England, and those in Hincmar, Petrus Blesensis, Anselm, with such more, afford examples here for the styles of that time. And in those ages is that especial attribute of ^o *servus apostolorum* found to be taken by the emperor Otto III. And as unusual is that which Alfonso II. of Spain gave himself in a charter to the church of Braga, in the year of our Saviour MCCCLXXX. *Ego servus omnium servorum dei Adefonsus rex Froylani regis filius*; as out of the records of that church, Prudentio de Sandoval hath transcribed it: where that which is now and long since hath been taken as singular to the pope, is

^d Regist. Peckham (in archivis Cant. ecclesiae) fol. 45, &c.

^e Cart. 11 Ed. IV. membr. 5. num. 12.

^f Marc. Anon. Surgens Neapoli. illustrat. lib. 1. cap. 19.

^g Chap. 4. §. 3.

^h Ethic. 7. c. 1.

ⁱ supra pag. 219. & vol. epist. Gereberti Rheim. pag. 73.

^m Bullar. tom. 1. pag. 159.

ⁿ Cart. 23 Hen. VI. membr. 32.

^o Jo. Filescius de

^p Politic. lib. 7. cap. 5.

^q Vid.

used by a king, as it was also, I remember, by *S. Augustine* in some of his epistles. But in the examples of those middle times, all attributes of this kind in the second and third person to supreme princes were uncertain and much more arbitrary (according to the fancies of secretaries) than in the later times, as appears in the later uses of several states.

And first for the court of *Rome*; in the middle times, as also in the more antient both in that court and elsewhere, *excellentissimus*, *gloriosus*, *gloriosissimus*, *religiosissimus*, and such other attributes were indifferently used, as appears obviously in the letters of those times. But from about *cccc* years since, the more ordinary use of *Rome* became thus, that the emperors were designed with *semper augustus*. Other supreme kings (and oft-times such also as being kings, were yet conceived to be subordinate to the empire) were called *illustres* in the popes letters to them. But after such time as those titles of *christianissimus* and *catholicus* were fixed as peculiar to the kings of *France* and *Spain*, *illustres* gave place to them, and was omitted: as also it was when *fidei defensor* was added to the king of *England's* title, as you see ^r before in the bull that gave it. Therefore the stile of the court of *Rome*, since the fixing of those titles, hath been in this form, as it was transcribed by a friend there for *Marcus Antonius Surgens*, who thus delivers it.

In brevium, faith he, Romana secretaria, tituli isti leguntur, a fido amico transmissi. Charissimo in Christo filio nostro Carolo, Romanorum imperatori semper augusto.

Charissimo in Christo filio nostro Philippo Hispaniarum regi catholico.

Charissimis in Christo filiis nostris Philippo regi & Mariae reginae Angliae illustribus.

Where observe the pope's omitting the title of *defender of the faith* to queen *Mary*, because (as I conceive) he supposed it was taken away by the ^r bull of pope *Paul III.* which so thundered against *Henry VIII.* upon his beginning of the dissolution of Monasteries.

Charissimo in Christo filio nostro Henrico, Francorum regi christianissimo.

Charissimae in Christo filiae nostrae Catharinae Francorum reginae christianissimae.

And it is a vanity that some pretend for a reason of the dignity of their kings, because they find generally in the later ages *illustres* given to them before those other titles fixed on them. Plainly it was the most common attribute given at *Rome* to all kings in the later ages, before those singular titles fixed on some of them.

But this of *illustres* was not conceived to be enough for the kings of *England*, in their subjects letters to them. For commonly (as appears every where in letters of *significavit*, of proxies, of certificate, and other such written legally by the bishops of *England*) our kings

have had the title of *excellentissimo principi* or *regi* or *serenissimo ac excellentissimo*, with *illustres* often at the end of the direction. Neither have the kings of *England* in the later age used to salute supreme princes with that bare attribute of *illustres*, though according to the old stile of *Rome*, it were antiently often in their letters, as we see in the rolls which preserve them. But the later stile of the *English* court is and hath been most usually, according to that of king *James* his inscription to his premonition to all christian princes and states (which is the fullest example to this purpose) where the emperor is expressed by *sacratissimo atque invictissimo principi ac domino Rudolpho secundo Romanorum imperatori semper augusto*. Other kings and free princes and states, thus, *serenissimis atque potentissimis christiani orbis monarchis ac regibus, illustrissimis celsissimisque principibus, rebuspublicis, atque ordinibus, fratribus, consanguineis, affinis atque amicis carissimis*: the *English* being, to the most sacred and invincible, for the emperor; for the rest, and to all other right high and mighty, and right excellent free princes and states of *Christendom*, our loving brethren, cousins, allies, confederates and friends. And for that of *sacratissimus*, which is the most unusual of any of the rest; it is an antient attribute of the emperors, as also *sanctissimus*. It occurs in some inscriptions of the more flourishing time of the empire, and the subscription of the authenticks, is *finis novellarum domini Justiniani sacratissimi principis*: which title is likewise given him before the beginning of every book of his code and of his institutions, as also in the front of the digests. Other testimonies are of it.

The like attributes for the most part were given to supreme princes by the kings of *Naples*, as appears in their stiles of the former age collected by *Scipione Mazzella* out of the memoirs of that kingdom. But some fancies have been, that *illustres* is the highest and fittest attribute of a king, and *superillustres* (such a word they have made) for the emperor. *Cum in jure nostro* (faith that great ^x lawyer *Alciat* to this purpose) *ex recentiorum traditione quatuor sunt dignitatum gradus, superillustres, illustres, spectabiles, clarissimi*; in his ita distingui solet, ut *Romanus pontifex, itemque augustus ipse imperator, superillustres habeantur*; quo in numero *Francorum regem collocandum censeo cum imperatoris fastigium aequet, eique in regno suo observantiam nullam praestet. Caeteri vero reges illustres sint, quo in gradu eos duces constituendos arbitror, qui regali potestate praeferuntur legibus soluti sunt, nec ex facto Caesaris potentiam reformidant, ut Mediolanensis, Austriacus, Burgundus, Britannus, qui & Brito est. But (that we may omit here what is spoken of dukes which belongs to the second part) plainly in this sense of *Alciat*, every king at this day acknowledging no superior, as the king of *England* and *Spain*, as well as the*

^a Vide d. August. epist. 107.

^b Neapoli illustrata lib. 1. cap. 19. §. 12.

^c Napoli pag. 488.

^d De singulari certamine cap. 32. vide D D. ad l. 1. ff. de offic. ejus cui mandat, est jurisdicção, & vide Lancet.

^e lot. Conradum, de duello concl. 77.

^f Vide d. August. epist. 107.

^g Laertius Cherubinus bullar. tom. 1. pag. 619. & seqq.

^h Chap. 5. §. 4.

ⁱ Nella descrizione di regno di

French king, might equally challenge the title of *superillustris* in their kingdoms being as supreme as the emperor is or ever was in his empire: upon which reason also *M. Antonius Surgens* will have it belong to the king of *Naples*. But *Alciat* dealt more discreetly when he delivered (as he had reason) that in truth there was no such title as *superillustris* extant, save only by the invention of some barbarous lawyers.

For *France*; there is an old formulary, *ou protocole pour les notaires & secretaires du roy*, or a *guidon des secretaires*, divers times printed in *France*, and written (as it seems) under *Charles VII.* near 60 years since, where for the emperor, the stile which the king uses, is thus, *sanctissimo & excellentissimo principi Sigismundo Dei gratia regi semper augusto, Hungariae, Dalmatiae regi fratri nostro, Karolus eadem gratia Francorum rex.* To the king of *Spain*. *A haut & puissant prince Iean par la grace de Dieu roy d'Espagne nostre trescher & tresame, Charles, &c.* The like stile he gives there to the kings of *Arragon* and *Scotland*, with the addition of cousin. And (for what concerns this matter) there is a note or two in that formulary not unworthy observation. *Nota* (saith the author) *que le roy parle par nous a toutes gentes & met les roys, a qui il est escrit, en test & titre devant luy; et se met le dernier pour le courtesie.* But in some editions of it, after those words *toutes gentes*, the pope is excepted by *for au pape.* *Nota* (saith it also) *que le roy ne salut point au commencement les roys de son sangue comme il faict les autres roys; mais vient apres son titre a sa narration; an example whereof he hath to the king of Jerusalem and Sicily, thus; Charles, &c. trescher & tresame frere.* But it seems he understands brothers, by kings of the blood here, or some very nearly allied. For those of *Arragon* and *Scotland* the king salutes otherwise there, and calls them cousins. And there is another old direction for the court stile, joined with this formulary, in a book called *meslanges historiques* some few years since printed at *Troyes*, where after the forms of writing the king's name in letters to the pope, cardinals, bishops and others, this is added for his stile to the emperor and other supreme princes. *Imperatori vero & caeteris regibus, rex non ponit se nec supra nec subius, sed in prima linea primo scilicet nominando imperatorem vel alium regem cui scribit ut sic, illustrissimo principi Carolo Dei gratia Romanorum imperatori semper augusto, Carolus eadem gratia Francorum rex salutem & successuum felicitum incrementa, vel uni alii regi, serenissimo principi Henrico Dei gratia Castellae & Legionum regi, Carolus eadem gratia Francorum rex salutem & votivis successuionibus prosperari. Et sic scribitur imperatori & omnibus regibus. In hoc tamen non comprehenditur rex Navarrae quia est sub-*

ditus regis, & ei scribitur scilicet in clausula cum cauda, dicendo infra literam, supra in margine, de par le roy. Et postea incipiendo literam dicitur tres-cher & tres-ame frere nous avons entendue, &c. Et extra in cauda, a nostre trescher & tresame frere le roy de Navarre.

But at this day, the like attributes generally are given in the *French* court as are used in the stile of the *English*; and so likewise in other courts of christian kings. And in the *new* *vollkommen cantzlen unnd titelbuch*, that is, a new perfect chancery-stile and book of titles, printed at *Frankfort*, for a formulary of the stile of the empire, in 1590, the emperor is designed thus, *dem allerdurchleuchtigsten, grossmachtigsten, unuberwindlichsten fursten und hernu, herrn Rudolphen Romischen keyser, zu allen zeiten meherer deß reichs in Germanien, &c. konig, &c. ertzherzhog, &c. meinem oder unserm allergnadigsten herrn*, that is, *To the most illustrious, most mighty, and most invincible prince and lord, the lord Rodolph, emperor of Rome, always * an increaser of his kingdoms, of Germany, &c. king and archduke, &c. my or our gracious lord*, the word *unuberwindlichsten* or *invincible* being sometimes omitted. The empress's stile there being *der durchleuchtigsten furstin unnd frauen M. Romischen keylerin, meherin deß reichs, &c. meiner allergnadigsten frauen und keyserinne*, that is, *To the most illustrious princess and lady, the lady N. empress of Rome, semper augusta, or increaser of her kingdoms, &c. my most gracious lady and empress.* Other kings, as of *Spain*, *France*, *Poland*, *Denmark*, *Swetland*, and the rest, are, in directions to them, stiled there *most illustrious and most mighty princes and lords*, with the conclusion of *gnadigsten herrn* or *very gracious lord*.

But for the stile of *Spain*, between the king and his subjects; in the year MDXLIX. a book was published to this purpose, called *estilo de escriber cartas mensengeras cortesaneamente, a diversos fines y conceptos con los titulos y cortesias que se usan*, the author being *Gaspar de Texeda*. In this, the direction is that in letters to the king of *Spain* (being then the emperor *Charles V.*) the superscription should be *a la sacra cesarea catholica magestad, el emperador, rey nuestro senor*, and that in letters to the king of *Portugal* he should be called *muy alto & muy poderoso principe rey y senor*; and that the same should be used in the inscription of letters to him, *el serenissimo rey de Portugal* being added: and the like there is for the queens of *Portugal* and *France*, with particular forms for the subscription. But their *cortesias* and giving of titles grew at length (through the affectation of heaping great attributes on their princes) to such an insufferable form, that a remedy was provided against it by the *pragmatica de los titulos y cortesias* ^b published the

^a Neapol. ill. lib. 1. c. 19. §. 10.

^b Disputat. lib. 3. cap. 4.

^c *Meslanges historiques au Troyes, 1619. pag. 48. b.* ^d *Semper augustus.* ^e *Antonio de Herrera part. 3. de la historia general. libro 2. cap. 9. And see the general history of Spain in English l. 31. pag. 1234. where this Pragmatica is at large translated. It is in Spanish at large in the second part. ch. 4. §. 10. See that also of 1493. printed in the year following at Madrid, and another of 1600. made by king Philip the third, which is but the same in substance, and is inserted in the quaderno de lo anadido a la nueva recopilacion, printed at Madrid 1610. fol. 53. b.*

VIII. of October in MDLXXXVI. of our Saviour, by Philip the third. Therein it is ordained that from thenceforth on the top of all letters written to the king of Spain, there should be no other title than *señor* or lord, nor at the end of the letter any thing more than *guarde Dios la catolica persona de vuestra magestad*, without other subscription than the bare name of him that writes it. That the superscription should be *al rey nuestro señor*. That a like form should be used to the queens of Spain. And that the secretaries in signing should use in stead of *su magestad*, *el rey nuestra señor*, which are the particulars in it concerning the attributes of the king and queen; there being besides in it very many other touching princes of the blood, the infantas, dukes and the rest of inferior dignities, whereof in the second part. And a book was since written by one *Juan Vicent Peliger*, and published 1607. at Carogoa for direction to write according to this *pragmatica*.

Hitherto of such attributes, as having short, but full, expressions of power or dignity in them, are usually joined with other titles of the kings of Christendom, in the second or third person, with some examples of the elder times in the first, which are long since wholly omitted. But I conceive it not untimely to note here also something of those most exorbitant and swelling attributes, with which the *Mahumedan* princes (especially they of the east, and some others also) most commonly load both themselves and sometimes also other princes to whom they write. In the letters of *Achmet* the late *grand signior*, to *Henry IV.* of France, for confirmation of a league made between them in MDCIV. he is stiled thus, as the French is translated out of Turkish, and printed with the Turkish at Paris MDCXV.

Moy, qui suis par les infinites graces du juste grande & tout-puissant createur, & par l'abondance des miracles du chef de ses prophetes, empereur des victorieux empereurs, distributeur des couronnes aux plus grand princes de la terre, serviteur de deux tres-sacres et tres-augustes villes *Meque* et *Medine*, protecteur et gouverneur de la sainte *Jerusalem*, seigneur de l'*Europe*, *Asie* et *Afrique*, conquises avec nostre victorieuse espee, et espouvantable lance; asçavoir de pays et royaumes de la Grece, de *Themisuar*, de *Bossena*, de *Seguetuar*, des pays et royaumes de l'*Asie*, de la *Natolie*, de *Caramannie*, d'*Imadic*, d'*Egypte*, et de tout le pays des *Parthes*, de *Cars*, des *Georgiens*, de la port de *Ferr*, de *Tiflis*, de *Sirvan*, et de pays du prince des *Tartars*, nommez *Cerim*, et de la compagne nommee *Dest*, *Cipebac*, de *Chipre*, de *Zeulcaderie*, de *Chereseul*, de *Diarbequier*, d'*Alep*, de *Rom*, de *Babylone* demeure des princes, de *Cioufe*, de *Basera*, d'*Egypte*, de l'*Arabie* heureuse, d'*Abs*, d'*Aden*, de *Thunis*, la *Goulette*, *Tripoli*, de *Barbarie*, de plusieurs autres pays, villes et seigneuries conquises avec

nostre puissance imperial, seigneur des mers blanche et noire, et de l'inepugnable forteresse d'*Aigria*, de tant d'autres divers pays, isles, destroits, passages, peuples, familles, generations, et de tant de cent milliers de victorieux gens de guerre qui reposent soubz l'obeyssance et justice de moy qui suis l'empereur * *Amat* filz de l'empereur *Mebemet*, de l'empereur *Amorat*, de l'empereur *Selim*, de l'empereur *Saliman*, de l'empereur *Selim*, de l'empereur *Bajazet*, de l'empereur *Mebemet*, de l'empereur *Amorat*, &c. par la grace de Dieu recours des grands princes du monde et refuge des honorables empereurs, au plus glorieux magnanime et grand seigneur de la creance de *Jesus*, esleu entre les princes de la nation de *Messie*, mediateur des differens que surviennent entre le peuple chrestien, seigneur de grandeur, majeste et richesses, glorieuse guide de plus grands, *Henrie III.* empereur de France, que la fin de ses jours soit heureuse.

These attributes both to himself and to the French king, are such as are ordinarily given, or at least equalled by other like, in most of the letters of him or his ancestors that occur either in the memories of elder times or of this day. For the elder times you may see that example of the *Soldan* of *Babylon* to pope *Innocent IV.* as we have it in Latin, turned out of Arabick by a Cardinal in *Matthew Paris*.

*Praesentiae papae subscriptio; nobilis magni spiritualis, affectuosi, sancti, tertii decimi * apostolorum, universalis loquelae christianorum, manutinentis adoratores crucis, judicis populi christiani, ductoris filiorum baptismatis, summi pontificis christianorum (confirmet eum Deus & det sibi foelicitatem) a Soldano potentissimo regnante super colla nationum, continente duas virtutes gladii & calami, possidente duo praecellentia, scilicet doctrinam & judicium, rege duorum marium, dominatore austri & septentrionis, rege regionis Aegypti & Syriac, &c.*

And for the later ages, there is store enough of the like in leagues and letters extant in the Turkish relations. But to avoid this troublesome stile, it was agreed among other things, in a league of MDCVI. between the emperor *Rodulph II.* and the *grand signior Achmet*,^d that in all letters and instruments between them they should not be stiled by any other additions than by the names of *well-beloved father* and *son*; the emperor calling the *sultan*, his *son*, and the *sultan* the emperor (in regard of his years) his *father*. And that in the beginning of their letters they might both indifferently take upon them the name of emperor.

But also even in the eldest memories we have of the titles used by the eastern princes, and that before *Mahumedism*, the like attributes are used by them, as appears at large in *Theophylactus Symocatta* especially, and *Menander*,

* The same with Achmet.

* This title was given also to Clement VIII. by Gabriel Patriarch of Alexandria, in his letters to him, with quinto Evangelitar, also: see Baronius tom. 6. fol. 962. edit. Antwerp.

† In excerptis de legationibus, pag. 283.

^d Mercur. Gallobelgic. tom. 5. lib. 4.

^e Et videtis Sim. Mayol. diar. canicular. tom. 5. colloq. 5.

^f Hist. Mauric. lib. 4. cap. 8.

both which have noted the many insolent additions by which the kings of *Persia* expressed themselves about many years since to the emperors of *Rome*. Of the same kind also are the solemn titles of the king of *Æthiopia* or the *Abassens* (that is, of him we commonly call *Prefter John*) as the examples are in *Damianus a Goes*. And both in the elder and declining state of the *Greek* empire, some of the emperors there were much taken with this disease of affecting such a vanity in expressing their names, as we see in the front of that edict of ^f *Justin* touching the *Trinity*, in an example before ^g cited, and in that of ^h *Emanuel Comnenus* to *Frederick Barbarossa*. *Manuel in Christo Deo fidelis imperator porphyrogenetus, divinitus coronatus, regnator potens, excelsus & semper augustus & moderator Romanorum magnificus, nobilissimo & gloriosissimo regi Alemannorum & imperatori ac dilecto fratri imperii nostri salutem*. And sometimes he styled himself (beside those more ordinary titles, and his surnames from countries according to the antienter course of the empire) ⁱ *Θεοκράτωρ*, *κλεινός*, *τὸ στέμμα*, *τὸ μέγα*, *Κωνσταντῖνος*, *ὑπερβαλὼν*, *πάντα τὰ τέτα διέκτα*, that is, *governed by God, heir of the crown of Constantine the great, and observing all his laws*.

The *Maurish* kings had antiently much of the same kind in their titles and to this day use it, but not so frequently or to that swelling store, as the *grand signior* or *Prefter John*. In a charter of *Alboacen Ibn Mahumet* king of *Coimbra*, given in the year MCCXXXIV. of our saviour for the benefit of christians in his territory, he ^k styles himself *Alboacen Ibn Mahumet, Alhamar Ibn Tarif, bellator fortis, vincitor Hispaniarum, dominator Cantabrie Gothorum, & magnae litis Roderici*. For a later example, you may see that of *Mully Hamet* translated into *Spanish* and published in the *English* ^l voyages. And in that inestimable store of Sir *Robert Cotton*, I find one of *Abdelmelech Ibn Mabomet*, written to queen *Elizabeth*, with a superscription over it in letters of gold and in *Arabic* comprehending that solemn beginning of the *Mahumedans*, *in the name of the merciful God, &c.* beside something of *Mahumed*: the words of the letter itself ^m following, thus; *del siervo de Dios que tiene su confianza y en todo se remite a su divin voluntad, el mir almunimin Abdehmelech, il ijo de Mahamet, xeq de buena memoria, xarif el Hageni, emperador de Maruccos, rey de Fesse, de Sus, &c.* *A la muy alta y muy poderosa senhora donna Elizabeth Reyna de Inglaterra, de Francia, de Irlanda, de Scotia, &c.* *Salud y ensalcamiento de vuestro muy poderosa y real estado, &c.* But of all these kinds both for *Mahumedan* and *Christian* princes, the most various store is in the paper-chamber at *Whitehall*, where the greatest curiosity this way may be fully satisfied. The attributes given to those *Mahumedan* princes and the like (by christian princes) are usually those

augustissime, potentissime, invictissime, and such more.

CHAP. VIII.

- I. Of anointing of kings and emperors; and the use of it in several kingdoms.
- II. The use of crowns, as of ensigns of royal dignity. Of the diadem of antient time; and how crowns of gold came into use among christian kings.
- III. Of a scepter, and the globe with the cross infixed on it.
- IV. The inauguration of some supreme princes that use no crowns.
- V. Some ceremonials of coronation.
- VI. A corollary touching precedence between supreme princes.

IT rests only, for so much as concerns the order of this first part, that here follow the ceremonies of inauguration of supreme princes, which also comprehend the peculiar ensigns of their dignity. The chief ceremonies, for most of christian princes, being supreme kings, are the anointing, the putting on the crown and receiving the scepter and the globe with the cross infixed on it. How these are done and with what solemnities, is both easier and more fully to be learned out of particular ceremonials of coronations (some of which, as I could furnish myself with them, and with warrant insert them, are here anon transcribed) than it can be otherwise delivered. The formal part therefore being referred wholly to those ceremonials, we first observe here the beginnings and progress of the use of oil, of a crown, a scepter and the globe, as ensigns of royal dignity, together with a touch of the inauguration and royal ensigns of some princes that use no crowns. And these ceremonials being at length dispatched, we conclude here with a corollary touching the matter of precedence between supreme princes.

I. For the use of oil or unction at coronations; to omit that ⁽¹³⁴⁾ which may be drawn from the making even inanimate things sacred by pouring oil on them both among the *Gentiles* and *Jews*, whereof there is large testimony as well in ⁿ holy as prophane writers; it will be plain, that anointing of kings was of such known use in the eldest times, that solemnly to declare one to be king, and to anoint a king, in the eastern parts, were but synonymies. So is it denoted in *Jotham's* speech to the *Israelites*, long before any example of anointing is elsewhere remembered. Upon the choice of *Abimelech* to be king, *Jotham* (so it is in the ^o holy story) makes a speech in an apologue to them, with these passages in it *הָיוּ הָעֵצִים לְמַשֵּׁחַ עָלֵיהֶם מֶלֶךְ* that is, *the trees went to anoint them a king, and* (as it follows) *said to the olive, reign thou over us: and again to the bramble, come*

^f Evagri. lib. 5. cap. 4. & Nicephor. Callist. lib. 17. cap. 35.

^g Chap. 2. §. 4.

^h Albertus Stadenfis in chron. ann. 1179.

ⁱ Ex Camerario apud Henric. Meibomium ad auream Andronici bullam, pag. 9.

^k Prudent. de Sandoval in notis de rege Favila, pag. 87.

^l Hackluit. tom. 2. part. 2. pag. 118.

^m Videlicet Casaubon. ad Baron. annal. exercit. 14. ann. 32.

ⁿ Dat. 10 Julii 1577. Marocci.

^o Judic. cap. 9.

thou and reign over us, but the bramble answered, *למך עליכם אם נאמר אחם משחם אותי*, if in truth you anoint me for your king, come (as the word goes on) and trust to my shadow. In some Greek copies also, that of the same story, *אֲנִימֶלֶךְ לְמֶלֶךְ וַיֵּלְכוּ וַיִּשְׁמְרוּ אֹהֶל אֱבֶרֶת* that is, they went to make Abimelech king, is rendered thus, *ἔπαρδυσαν τὸ χεῖρσιν ἃ Ἀβιμελὲς εἰς βασιλείαν*, which is, they went to anoint Abimelech king. And this was about cc years before the beginning of their kingdom in Saul, who with his successors were anointed, as also was the king of Syria, Hazael: and Cyrus king of Persia, in the holy prophecy * is called the Lord's anointed, which is a frequent expression of kings in the scripture. With what oil the kings of the Jews (in their established kingdom) were anointed, is disputed among divines: some conceiving that the kings of David's posterity were anointed with the holy oil which was consecrated for the priests; others, that with common oil. But the first is the more confirmed opinion, in which also it is conceived that though, by the command of the law, none might be anointed with the holy oil beside the priests, yet by some dispensation with the law, manifested by the prophets, it was afterward communicated to David and his posterity. And the rabbins deliver as much for a constant cabbal among them, grounding it especially ^p upon that of Zadok the priest his taking a horn of oil out of the tabernacle and anointing Salomon. They say also (as Genebrard ^q relates out of them) *unctionem factam forma χ Graecorum, sive crucis Burgundiae & decussatae. Solus R. Selomo (saith he) excipit reges. Nam eos tradit inauguratos non εὐσεβεῖς, sed in modum coronae.* And they say too, ^r that, by miracle, the holy oil which was consecrated in Moses's time and used in this unction, continued without diminution until the captivity, which is about pcccc years. But the anointing of the Jewish kings and other ceremonies of their inauguration you may see more especially in ^t Pineda, ^u Serarius, ^v Salianus, Genebrard in the place before cited, ^x Fortunatus Scacchus, and above all, in the learned ^y Scikartus, who more largely handle them. Only for that of Genebrard's, *solus R. Selomo excipit reges, &c.* as if only rabbi Salomon Iarchi (for him he means) were of opinion that the kings of the Jews were anointed round their heads, in the form of a crown described upon them; it is certain that the received traditions of the rabbins (and not his opinion only) is that their king (when he was anointed) was anointed *על ראשו כמין נזיר* in the form of a crown round his head; and that the high-priest (for of the priests, only he, and the *משיח המלחמה* or the priest anointed for the war according to Deuteron. xx. 2. were anointed) had the form of a Greek *chi* χ or *בני יוניר*, as they call it, that is a very cross, made by one line drawn by the oil running downward on his forehead, and another by a-

nointing him cross *בין דינים* or between the eyebrows, which plainly describe a rectangular cross, though the Greek χ (as now we use it) be like that of St. Andrew's, and of oblique angles. This of the rabbins, as well for the king as the priest, you may see in *Talmud Babylon. tit. 9. cerithoth*, or of the punishments of being cut off, cap. 1. rabbi Moses Ben Maimon ad tit. *keli hamikdash* or of the vessels of the temple, cap. 1. R. Simeon Keiara, in *halacoth gedaloth*, fol. 136. col. 4. R. Obadiab Mearbartenora ad tit. *cerithoth*, cap. 1. with divers more. Nor, for the priests, do they that say the figure of their anointment was like a Greek *z*, mean otherwise than they that make it like to a *chi*. Both those letters have good resemblance of what they do describe. Thence is it that R. David Kimchi ^z says it was *כמן כף יוניר* like a Greek *caph* or *cappa*. Neither is it a fault to be corrected in him as Scikartus would have it. For even R. Moses Ben Maimon himself, who in his *jad chazeka*, before cited, makes it like a *chi*, in his *pirush mishnaioth*, upon the title *cerithoth*, cap. 1. says it was like a *cappa*, meaning in both to express but a cross, which the rabbins, it seems, had more mind to describe so than expressly to name.

But from those examples in the holy story, the kings of Christendom took their custom of being anointed; touching which in general, and for what hath been conceived to be understood by it, *inunguntur reges* (saith Thomas Becket ^a archbishop of Canterbury) *in capite, etiam pectore & brachiis, quod significat gloriam, sanctitatem & fortitudinem.* ⁽¹³⁶⁾ And king Henry III. of England, being desirous to know what was wrought in a king by his unction, consulted by letter about it with that great scholar of the age ^b Robert Grossetest bishop of Lincoln, who answered him almost as if his mind had been only on the unction and ceremony used in the church of Rome in confirmation. *Quod autem in fine literae vestrae nobis mandastis, videlicet quod intimaremus quid unctionis sacramentum videatur adiacere regiae dignitati, cum multi sint reges qui nullatenus unctionis munere decorentur, non est nostrae modicitatis complere hoc. Tamen non ignoramus quod regalis inunctio signum est praerogativae susceptionis septiformis doni sacratissimi pneumatis, quo septiformi munere tenetur rex inunctus praeeminentius non unctis regibus omnes regias & regiminis sui actiones dirigere, ut videlicet non communiter sed eminenter & heroice dono timoris se primo, & deinceps, quantum in ipso est, suo regimini subiectos, ab omni cobibeat illicito; dono pietatis defendat subveniat & subvenire faciat viduae, pupillo, & generaliter omni oppresso; dono scientiae leges justas ad regnum juste regendum ponat, positas observet & observari faciat, erroneas destruat; dono fortitudinis omnia regno adversantia repellat, & pro salute reipublicae mortem non ti-*

* Esaiæ cap. 45. comm. 1.

^p Videtis Aben-Ezram ad Exod. cap. 30. & 1 Reg. cap. 1. comm. 39.

^q Comment. ad Psal. 88.

com. 21. ^r Seder Kodaishim, tract. Keritot, & vide Lyr. ad 3 Reg. cap. 1.

^s De rebus Salomonis, lib. 2. cap. 6.

cap. 9. & 1 Regum cap. 10. ^t Annal. Ecclesiast. tom. 3. ann. m. 1562. §. 79 & 80.

cap. 53. ^u De jure regio Ebraeorum, cap. 1. theor. 4. ^v Ad Psal. 133. vide nunc Restaur. Castill. de imperatore quaest. 23.

^x In epist. ad Hen. II. apud Matth. Paris. Sed videtis extr. de sacra unct. c. 1. §. unde. & D. Thom. de regim. principum lib. 2. cap. 12.

^y Robert. Lincol. epist. 127. ms.

meat. *Ad praedicta autem praeclenter agenda dono confilii decoratur, quo artificialiter & scientificae ordo hujus mundi sensibilis edocetur; deinde dono intellectus, quo coetus angelici ordo dinoscitur. Tandem vero dono sapientiae; quo ad dilucidam cognitionem Dei pertingitur, ut ad exemplar ordinis mundi & ordinis angelici secundum leges aeternas in aeterna Dei ratione descriptas, quibus regit universitatem creaturae, rempublicam sibi subjectam ordinabiliter regat tandem & ipse. Adjicit igitur regiae dignitati unctionis sacramentum quodrex unctus prae caeteris in suo genere debet, ut praetactum est, ex septiformi spiritus munere, in omnibus suis regiminis actibus, virtutibus divinis & heroicis pollere.* And some other have conceived this anointing of such efficacy, that, as in baptism all former sins are washed away, so also by this unction; as we see in that of *Polyuctus* patriarch of *Constantinople*, who doubted not but that the emperor *John Tzimiskes* was cleared, before Heaven, of the death of *Phocas*, through his being anointed emperor. So is it related in some copies of *Balsamon* upon the *Ancyran* council. What others, as divines, obviously dispute touching this matter of unction, I omit here. But for that of *Grossetest*, cum multi sint reges qui nullatenus unctionis munere decorantur; it is true that we have it very obvious among the lawyers, that there were antiently but four^d anointed beside the emperors, that is, the kings of *Hierusalem*, of *France*, of *England*, and of *Sicily*. And thus they have out of the old *provinciale Romanum*, the written copies whereof, are various in the enumeration of the kings that were supposed to be not anointed (among which are accounted some of those petty ones of *Ireland*, who were clearly subjects to the kings of *England*) but they are for the most part constant to the four, for the kings anointed. In my copy it is thus;

De regibus catholicorum & christianorum.

Et sunt quidam coronandi & quidam non. Tamen illi qui coronantur debent inungi; & tales habent privilegium ab antiquo & de consuetudine; alio modo non debent coronari nec inungi sine istis; & si faciunt ipsi, abutuntur indebite. Et sic incipiunt nomina regum christianorum fidelium hoc modo.

Rex *Hierosolymitanus* coronatur & inungitur.

Rex *Francorum* christianissimus coronatur & inungitur.

Rex *Anglorum* coronatur et inungitur.

Rex *Siciliae* coronatur et inungitur. (¹³⁶)

Then follows a catalogue of divers other with *non* at the end of every name. But there is an imperfect edition of this provincial, that hath no more than only the kings of *France* and *England* with *inunguntur* added to them, as I find in *e Symphorianus Champerius*. And others

publish it with a reckoning up of christian kings (but in another order) without any mention of anointing or coronation as it is in *f Rebuffus*. (¹³⁷) And in such an old *provinciale* published at the end of *Cosmas Gnimier's* gloss upon the *pragmatica sanctio* of *France*, printed 1621, at *Paris*, the king of *Sicily* is not named with them that are to be anointed, nor indeed with the rest of which there are good store added. *De regibus etiam christianis* (so are the words, & after the patriarchs and bishops) *pauca dicenda sunt. Horum enim quidam coronandi, & quidam non. Illi autem qui sunt coronandi prius sunt inungendi, & habent privilegium ab antiquo. Rex Hierosolymitanus coronatur & inungitur. Rex Francorum coronatur & inungitur. Rex Angliae coronatur & inungitur. Omnes autem alii, nec coronantur nec inunguntur.* Others also^h reckon only the king of *Hierusalem* (whom they make the same with the king of *Cyprus*) the king of *France*, and the king of *Sicily*, excluding all others from anointment; grossly mistaking, no doubt, by their using some corrupted copies of the *provinciale*. But in that old formulary, titled *formulare* and *Teutich rhetoric*, printed at *Strasbourg* in 1519. the division of supreme princes is quadripartite; into the emperor, the king of *Romans*, the *vier gefalt kunig* and *gmein kunig*, that is, the four anointed kings and other ordinary kings; as if those four anointed had been so singularly known by this general designation of them, that no reader could have doubted who the author had meant by them. But whatsoever the custom antiently were, the use of unction is now become general to the kings of Christendom, and of so long time since to some other of them, that the credit of the provincial of *Rome*, and of them that follow it, is no other than as the testimonies of several kingdoms will stand with it.

In the empire (as it is conceived by some) it began first at *Constantinople*, and that about *Justinian's* or his successor *Justin's* time. So the mostⁱ learned *Onuphrius*. *Constantinopoli*, saith he, *vel sub Justiniano vel post ejus statim obitum, electioni imperatoris additum, ut quum primum imperator renuntiatus esset, a patriarcha Constantinopolitano in magna Bizantii basilica oleo unctus diademate aureo redimere-tur.* And the fashion there was to make a cross with the oil on the emperor's head, the patriarch crying aloud in the doing of it^k *αγιον*, that is, (¹³⁸) *holy*, and the people following him with the same word in their acclamations. So was the fashion in the later times of that empire. But I believe it will not appear that this anointing was very antient there. Nor find I warrant enough for any such thing in *Justin's* time. They that suppose it so antient there, draw the use^l of it from thence into the western empire, where it began in *Charles the great*, although before his being emperor, it were used to

^c Vide supplementum ad Balsam. p. 1125. edit. Paris. 1620. & Filescac. de idololatr. politic. cap. 9. p. 73.

^d Alberic. ad tit. de statu. hom. l. 1. Restaurus Castaldus de imp. quaest. 18. & 19. Anton. Corfet. de potestate regia. part. 4. §. 16. Alvaroz. ad feud. c. quis dicitur dux. Lancelot. Conrad. templ. judic. lib. 1. cap. 2. §. 3. num. 7. M. Ant. Surgens in Neapol. illustrat. lib. 1. cap. 22. vide Hostiens. sum. tit. de sacra unctione & Azor. moral. instit. part. 2. lib. 10. cap. 5.

^e In praxi beneficior. pag. 441. ^f Pag. 1066. ^h Felix Malleolus, dialog. de nobilit. & rusticitate, cap. 14. ⁱ De comitis imperatoris, cap. 2. ^k Cantacruzen, histor. lib. 1. cap. 41. & Georg. Codinus *mei oppor.* p. 185. ^l Videlicet Onuphr. de comit. imperat. c. 5.

some

some kings of the western parts. Pope Leo III. anointed him, when he was created emperor. So are the testimonies of *Siffridus*, of *Anastasi- us*, of *Manasses* and divers other of the antients, though many of them omit the anointing when they speak of his coronation. But the words of *Manasses*, an author of the eastern empire, are more especially observable. *Leo*, saith he, crowned *Charles* the great,

—ὡς οἱ Ῥωμαίων νόμοι.

Ὁμοίω ἀλλὰ, χρῆζάμεν ὁ δὲ νόμοις Ἰουδαίων,

Ἐκ κεφαλῆς μέχρι ποδῶν ἐλάφ' ἑαυτὸν χεῖρ.

Ὁμοῖα δὲ τὰ λαογραφίᾳ ἢ πολιτείας ἔπαινοι.

that is, as the custom of the Romans required. But also following the custom of the Jews, he anointed him with oil from ^m head to foot. But what his reason or fancy was in doing so, I know not. It might with reason enough be conceived that he spake here of anointing, as of a thing that was not so familiarly known to him to be used at coronations even in his time, which falls under *Emanuel Commenus*, or *mcxl*, of our Saviour; for he dedicates his annals to the lady *Irene* wife to *Andronicus* who was brother to *Emanuel*. And perhaps there will not be testimony enough to prove that, before the age wherein he lived, any use of it was at *Constantinople*. At least if there had been any such antient use, why should he speak, being a courtier and no stranger to their customs, of it in this place with such an expression of wonder, and with relation to the use of the *Jews*? But indeed in that age of *Manasses* there is memory of anointing ⁿ of those eastern emperors. I remember none before. Neither take I that to be of moment here, which occurs in *Nicephorus Gregoras* touching the prerogative of anointing the eastern emperor, where he ^o says that the archbishop of *Bulgaria* anointed *Theodorus Angelus* (this was about *mcxcv*.) and that the emperor *Justinian*, who lived almost *m*. years since, had honoured that province, being the country where he was born, with the name of *Justiniana prima*, and with perpetual privilege of supremacy or freedom from the patriarchat of *Constantinople*, πᾶσι ἐξ' ὧν ἡ βασιλεύς χρῆσθ' Ῥωμαίων τῷ τοῦ δ' ἄλλοις ἐφεῖται παρὰ τῶν νόμων, that is, but not that the anointing of the emperors should belong to it, which was a prerogative elsewhere already by the law settled, meaning in the patriarchs of *Constantinople*; as if the anointing had been a thing excepted in *Justinian's* grant. There is no such ^p thing either excepted or granted in those privileges of that church or in any other of that age. Nor will this careless passage of *Nicephorus* (a *Grecian* of the later times) justify any thing for the antient use of unction in that empire. But in the western, it hath continued down from *Charles the great* till this day: and it was particularly remembered long since ^q by the emperor *Lewes II.* in an e-

pistle to *Basilus* the eastern emperor, to justify his own name of emperor at which *Basilus* had quarrelled.

The *French* have a vulgar tradition of their holy oil and a viol ^r of it that a dove brought from heaven to anoint their king *Chlovis* the first about the *n*. year of our Saviour, and that *Remigius* or *Remy* then archbishop of *Rheims* anointed him king with it; neither hath it, they say, yet wasted, but remains still at *Rheims*, and is the same with which the *French* kings are now and ever since have been anointed. For the continuance of it without wasting; they have indeed an example in the *Jews* tradition of their holy oil, which they kept undiminished from *Aaron's* time till the captivity. But the truth is, they have not warrant enough to prove, that either any oil came from heaven for king *Chlovis*; or if it did, that it was employed about anointing him king. Divers good authors of the antients that speak of him, tell us that he was baptized by *Remigius*, without a word of any oil sent him. And ⁱ *Aimoinus*, ^t *Hincmar*, and whosoever else speak of the viol of oil, refer it only to his baptism (in which it was used according to the ceremony of the time) and not at all to his inauguration. Yet too many of the *French* (and some of the more curious) begin their regal unction in him. Nor is the device in some coins of the beginning of this *Lewes XIII.* other than with a relation to the holy oil, where a viol held by a hand out of heaven is circumscribed with *Francis data munera coeli*. And ^u *Baronius* himself; *Ampullam chrismatis columbae ore coelitus advenientis allatam esse, quatum fons ipse, more solito, tum etiam rex Clodoveus sacratus est, cujus exemplo reliqui omnes successores Francorum reges consueverunt inungi*. To the like purpose before him, *Thomas* ^x *Aquinas*, *Antoninus* ^y and divers others (beside the *French*) of other nations. But the later ages have bred this fancy. Nor was it thought of as a truth fit to be used for an argument (and had it been true, it had doubtless been a special one) in the time of king *Lewes* the *gross*, who reigned about *v*. years since, when the controversy was between the churches of *Rheims* and of *Seins* about his coronation. The relation of that controversy is at large extant both in the ^z stories of that time, and in *Ivo* ^a a bishop of *Chartres*, who, as a suffragan of the province, assisted *Dainbert* archbishop of *Seins* at the coronation, and the reasons on both sides were urged, but not a syllable of the sending any holy oil to *St. Remigius*, or of his anointing *Chlovis* king: yet even at that time there was a light opinion of it in *France*, as we see in ^b *Guillermus Brito* that wrote in the same age, and somewhat before *Lewes* the *gross* came to the crown. He, speaking of the coronation of king *Philip* the first, tells us, that

^m So also Landulphus Sagax historiarum lib. 23.

ⁿ Nicetas Choniates in Manuele, & in Alexio. ^o Lib. 2. hist. pag. 18.

^p Videfis

Auth. 131. c. 3. per tempus. ^q Reimpert. apud Baron. annal. 10. an. 871. ^r Choppin. de dominio lib. 3. tit. 8. §. 1. Hieron. Bignon. de l'excellence des roys liv. 4. Gualter. chron. §. 5. p. 369. Carolus Grassalius, Ferhault, Genebrardus, &c. ^s De gestis Francorum lib. 1. cap. 16. ^t Vita S. Remigii apud Surium viit. SS. 13. januar. feu tom. 1. p. 195. ^u Annal. tom. 6. ann. 499. ^x De regimine principum l. 2. c. 16. ^y Hist. part. 2. cap. 2. tit. 11. §. 7. Azor. instit. moral. part. 2. lib. 10. cap. 5. Contzen. politic. lib. 7. cap. 3. &c. ^z Aimoin. de gest. reg. Franc. l. 5. c. 50. ^a Epist. 70. edit. 1610. ^b Phillipidos, lib. 1.

— *ſcep trifero fulſit redimitus honore
Magnanimus ſacro rex delibutus olivo,
Quo Deus angelicis manibus virtute parato
Divina, noſtris conceſſit regibus uti.
Ut ſacrentur eo ſoli ſpecialiter illi
Qui ſucceſſive Francorum ſceptra capeſſunt.
Quo major noſtri patet excellencia regni,
Dignior ut vere rex noſter rege ſit omni,
Quem ſacrare ſuis Remorum metropolites
Cum compraeſulibus habet illo chrifmate ſacro
Hoc ad opus ſolum quod coelica fudit oliva.*⁽¹³⁹⁾

Here he will have it, you ſee, that the oil with which the French kings uſed to be anointed, came from heaven. And for the manner how it came; he ſays, that the Devil brake the viol of oil which S. Remigius held in his hand ready to uſe it in the baptiſm of king Chlovis, and that, the oil being fo ſpilt, he obtained by prayer a ſupply of it from heaven,

*Quo rex ſacratus fuit idem primus, & omnes
Poſt ipſum reges Francorum ad ſceptra vocati,
Quando coronantur, oleo ſacrantur eodem.*

And a little after,

*Sic regem noſtrum ſibi rex coeleſtis amicat;
Sic ſuper exaltat terrae prae regibus illum,
Quem facit ut ſolum ſacra conſecret unctio coeli
Unguine cum reliqui ſacrentur materiali.*

But ſome of their moſt learned men^c confeſs (as they have reaſon) that they believe it not. The firſt teſtimony indeed that is worthy of credit for any unction of their kings, is that which theſtories have of king Pipin. He about the year DCCL. was anointed king at Soiſſons by Boniface archbiſhop of Mentz. So ſay Regino, Sigebert, Siffriſus, and enough others of the antients: and about three years after, both he and his ſons Charles and Carolomann were anointed at Rome by pope Stephen III. in reges Francorum, as the pope^d himſelf and the emperor Lewis the firſt, that lived in the ſame age, witneſs in their letters yet extant of it. So that none of the firſt or Merovingian line of the kings of that nation (it ſeems) were ever anointed kings, but the beginning of that uſe, was in the Carolin ſtock, and hath ſo perpetually continued. It is true indeed that in the laſt will of St. Remigius archbiſhop of Rhemes, who chriftened king Chlovis, there is, as it is publiſhed, a paſſage that may perhaps ſeem to evince the anointing of a king, as well as the uſe of the oil at his chriftening, or chrifm at his confirmation. After divers legacies and canons put together concerning that church, and his greater comminations againſt ſuch perſons as ſhould ſlight his preſcribed government there, *generi tantummodo regio, ſaith^e he, quod ad honorem S. eccleſiae & deſenſionem pauperum una cum fratribus meis & coepiſcopis omnibus Germaniae, Galliae, atque Neuftriae, in regiae majeſtatis cultum perpetuo regnaturum ſtatuens elegi, bap-*

tizavi, a fonte ſacro ſuſcepi, donoque ſeptiformis ſpiritus conſignavi, & per ejusdem ſacri chrifmatis unctionem ordinato in regem parcens ſtatuo, ut ſi aliquando genus illud regium per benedictionem meam totiens domino conſecratum, mala pro bonis reddens, ſhould oppoſe the church, that then princeps ille, quicunque fuerit, moneatur, and that ſeven times, after which, if he continued diſobedient, they ſhould excommunicate him. Si vero dominus meus Jeſus Chriſtus (ſaith he) vocem orationis meae quam quotidie pro genere illo in conſpectu divinae majeſtatis ſpecialiter fundo, audire dignatus fuerit, ut ſicut a me accepit, ita in diſpoſitione regni & ordinatione ſanctae Dei eccleſiae perſequeret, benedictionibus quas ſpiritus ſanctus per manum meam peccatricem ſuper caput ejus infudit, plurimae ſuper caput^{} illius per eundem ſpiritum ſuperaddantur, & ex ipſo reges & imperatores procedant, &c.* But what import thoſe words, & per ejusdem ſacri chrifmatis unctionem ordinato in regem, &c? Is the context, generi regio quod, &c. dono ſeptiformis ſpiritus conſignavi & per ejusdem ſacri chrifmatis unctionem ordinato in regem parcens ſtatuo, to be engliſhed, for the royal family or ſtock which, &c. I have ſealed with the gift of the ſevenfold ſpirit and for him that by the anointment of the holy oil of the ſame (ſpirit) was made king, I ſparingly decree, &c? or is it thus, for the royal ſtock which &c. I have ſealed with the gift of the ſevenfold ſpirit, and which is ordained (taking ordinatus for conſecratus, or one advanced to the dignity of a chriſtian, and confirmed in it, or one that divo conſecratur inſignitus unguine, as Flodoardus ſaith of Chlovis his being chriftened) by the anointment of the oil of the ſame (ſpirit) being ſparing or tender againſt a king (or kings) I decree? Some ſuch ſenſe as this laſt is, I preſume Aubertus Miraeus had of it when he thus pointed^h it — & per ejusdem ſacri chrifmatis unctionem ordinato, in regem, parcens, ſtatuo: as if he would not have it ordinato in regem, or being made king. Or are not thoſe words; & per ejusdem ſacri chrifmatis unctionem ordinato in regem of a later time, and (as it often happens) thruſt into the text, out of the margin of ſome copy or otherwiſe, by a tranſcriber? plainly they ſo diſturb the fair and even reſt of the context, that we may well ſuſpect ſo. For the original of it is not extant. And the beſt copies (which are in the records of the church of Rhemes) ſhew it imperfect in that it is dared die & conſule ſupradicto; there being neither day nor year any where elſe mentioned in it. And in truth, for the firſt ſenſe of theſe words; though they might grammatically bear it, yet the ſtory of the time and the matter endure it not. Neither indeed doth the matter endure that any mention ſhould be here of any one king ſingularly, or that in regem ſhould there denote otherwiſe than collectively againſt princes

^c Du Haillan des aff. de la France liv. 1. Till. de rebus Gallicis, lib. 2. pag. 100. & videſis Valdeſ. de dignit. reg. Hiſp. cap. 14. §. 22.

^d Epift. Steph. II. apud Reginonem ſub anno 753. ita Aimoin. lib. 4. cap. 62. & epift. Ludovic. apud Baronium annal. tom. 9. ann. 754.

^e Apud Flodoard. hiſt. eccleſ. Rhemenſ. lib. 1. cap. 18. & Barnab. Briſſon. formular. lib. 7. ^f Legitur illuſtris, ſed male, apud Aub.

Miraecum in cod. donat. piarum cap. 1. pag. 12.

^g Hiſt. Rhemenſ. eccleſ. lib. 1. cap. 13.

^h Pag. 11.

or kings, or a king generally, much less that it should have any relation to king *Chlovis*. For plainly king *Chlovis* succeeded as heir to his father king *Childerick* in 485. or thereabouts, and continued a pagan king about fourteen years, or till his return with victory out of Germany, when he was baptized. So that there was no reason that he that was so long time before king, should now be said to be *ordinatus in regem*, at the time of his baptism. Neither lived he beyond the year 514. Now *S. Remigius* survived him some think thirty years, none under ten years. And it is not likely but he made this will or recognized it, but little before his death, and recognized it especially for matters concerning the kingdom itself, according as they stood at his death; at which time *Chlovis* his sons, *Theodorick*, *Childebert*, and *Clothar*, were kings, and without question were the *gens regum* here meant. So that *ordinatus* (if the text be true) must have relation to them three, and *caput ejus* in the latter words, must collectively denote their heads as they were also anointed in baptism and confirmation; and in *regem parcens statuo* must be, *I sparingly or tenderly against a king decree*. But I submit it to better judgment.

For this island of Great Britain; there is some testimony of kings being anointed in it, far antienter than those which remain either of the empire or of France. *Gildas* in his epistle de excidio Britanniae, speaking of the errors in religion and wickedness of the old Britons, hath this passage of the British kings of that age. *Ungebantur reges* (saith he) *non per Deum, sed qui caeteris crudeliores extarent, & paulo post ab unctoribus, non pro veri examinatione, trucidabantur, aliis electis trucioribus.* (140) He lived about m. years since; and therefore could not deceive us herein by using the phrase of a later time, as perhaps it may be conceived, the monk of *Mahmsbury* doth in his mention of king *Egbert*, son and successor to *Offa* in the kingdom of *Mercia*, about the year dccc. *Dulci* (so are his words of king *Offa*) *vitam consumpsit otio & Egbertum filium, ante mortem suam, in regem inunctum, successorem dimisit.* But it hath been vulgarly taken that the first king anointed in England was *Alured*. He began to reign in dcccclxxii. of our Saviour; but his anointing is cast into the time of his father king *Ethelulph*, who, they say, sent *Alured*, being a child of five years old, to Rome about the year dccccliv. where pope *Leo IV.* anointed him for king. So are the words of *Afferius* that lived in his court as his tutor. *Infantem Alfredum oppido ordinans unxit in regem, & in filium adoptionis sibi met accipiens confirmavit.* To the same purpose *Ethelwerd*, *Mahmsbury*, *Florence* of *Worcester*, *Roger of Hoveden*, others. And in the old rhimes of *Robert of Glocester* in ms. it is thus expressed:

(nom,

Alfred this noblemon, as in the yer of grace, he
Egpyte hundred and fifty and twelve, the kingdom,

Art he adde at Rome ybe, and hoz is gret wisdom
The pope Leon him blessed, tho he thuder come,
And the o king is crowne of this lond, that in this
(lond put is :
And p eclede him to be king of Engeland, of all that
(there come,
That verif thus yeled was the pope of Rome,
And suthe other after him of the archebissop echon,
So that biwoze him, thur king was ther non.

But it is too hard, as it seems, to understand, why *Ethelulph* having three elder sons, *Ethelbald*, *Ethelbert*, and *Ethelred*, who were all elder than *Alured*, he alone should be anointed and at those years, and in his father's life-time, for a king. Therefore *Polydore* says, he was crowned at Rome by *Hadrian II.* And boldly, *quadrare non potest*, saith he, *ut a Leone IV. id decoris suscepit, sicut quidam, rationi temporis alte indormientes, falso prodiderunt.* But to maintain it, because it is received from those that lived in *Alured's* time, *Harpsfield* thinks pope *Leo* did it by way of *divination*, that he should be afterward king, although it were, at the time of the anointing, somewhat incredible that he should be so. *Regia unctione* (says he) *ut olim Davidem Samuel, delibatum honestavit, quasi provida & praeſaga mente quod futurum erat longe post, licet eo tempore parum credibile, divinans.* For my part (if there be room here for conjecture) I rather think that as the unction used in baptism of king *Chlovis*, was among the French made also, by tradition, to be anointing him for king; so here the use of chrism in confirmation (for it appears that at the same time pope *Leo* confirmed king *Alured*) was afterward (141) by mistaking accounted for regal unction. For all men know, that in confirmation the forehead was to be anointed with holy chrism, according to the antient ceremony of it. But howsoever the time when first unction began in the kings of England, may be uncertain; we have very antient testimony of the ceremonies of it, and that in the Saxon times. There remains in an old imperfect pontifical of the Saxon times, a piece of a ceremonial for the coronation of the kings and queens of England, or of the English-Saxons, of that age, written in a hand of about 90 years past, wherein, after divers prayers and benedictions, this follows for the anointing.

O Mnipotens sempiterne Deus, creator ac gubernator coeli & terrae, conditor & dispositor angelorum & hominum, rex regum, & dominus dominantium, qui *Habraham* fidelem famulum tuum de hostibus triumphare fecisti, *Moyſi* & *Josuae* populo tuo praelatis, multiplicem victoriam tribuisti; humilem quoque *David* puerum tuum regni fastigio sublimasti, eumque de ore leonis & de manu bestiae atque *Goliae*, sed & de gladio maligno *Saul* & omnium inimicorum ejus liberaſti, & *Salomonem* sapientiae pacisque ineffabili munere ditasti; re-

ⁱ Chronic. Paulo AEmilio subnexum, &c.

^k Videſis *Hadrian. Saravian* lib. 3. de imperandi autoritate cap. 10.

^l Videſis *Aub.*

^m *Miraum* ad cod. donationum piarum pag. 14. & *Syrmondi* concilia Gallican. eccles. tom. 1. pag. 204.

ⁿ Eadem ipsa vocabula citantur ex *Gilda*, a *Galfredo Monumeth.* lib. 9. cap. 3.

^o De gest. reg. Angliae, lib. 1. cap. 5.

^p *King's crown.*

^q *Oiled.*

spice propitius ad preces nostrae humilitatis & super hunc famulum tuum illum quem supplici devotione in regem *Anglorum* vel *Saxonum* pariter eligimus, benedictionum tuarum dona multiplica. Hunc dextra tuae potentiae semper ubique circumdanda, quatenus praedicti *Abrahae* fidelitate firmatus, *Moyse* mansuetudine fretus, *Iosuae* fortitudine munitus, *David* humilitate exaltatus, *Salomonis* sapientia decoratus, tibi in omnibus complaceat & per tramitem iustitiae inoffenso gressu semper incedat. Hic totius regni *Anglo-Saxonum* ecclesiarum deinceps cum plebibus sibi annexis ita enutriet ac doceat, muniat, & instruat, contraque omnes visibiles & invisibiles hostes idem potenter regaliterque tuae virtutis regimen administret, ut regale folium, videlicet *Anglorum* vel *Saxonum* * sceptro, non deferat, sed ad pristinae fidei pacisque concordiam eorum animos, te opitulante, reformet, ut populorum debita subjectione fultus condigno amore glorificatus per longum vitae spatium, paternae apicem gloriae, tua miseratione unita, stabilire & gubernare mereatur. Tuae quoque protectionis galea munitus & scuto insuperabili jugiter protectus, armisque coelestibus circumdatus, optabilis victoriae triumphum de hostibus foeliciter capiat, terroremque suae potentiae infidelibus inferat, & pacem tibi militantibus laetanter reportet. Virtutibus, *Christe*, hunc quibus praefatos fideles tuos decorasti, multiplici honoris benedictione conddecora, & in regimine regni sublimiter colloca, & oleo gratiae Spiritus Sancti perunge, per dominum, in unitate ejusdem.

The rubrick to this prayer is thus; *consecratio regis ab episcopo qui arcem tenuerit super eum dicenda*, which I understand for the archbishop. And after the prayer follows this rubrick. *Hic unguatur oleo & haec cantetur antiphona*: the anthem being thus:

Unxerunt Salomonem Sadoch sacerdos & Nathan propheta regem in Gion, & accedentes dixerunt; Vivat rex in aeternum.

Quam sequitur oratio.

Christe perunge hunc regem in regimen unde unxisti sacerdotes, reges & prophetas ac martyres qui per fidem vicerunt regna & operati sunt iustitiam atque adepti sunt repromissiones. Tua sacratissima unctio super caput ejus defluat, atque ad interiora descendat & cordis illius intima penetret, & promissionibus, quas adepti sunt victoriosissimi reges, gratia tua dignus efficiatur, quatenus & in praesenti seculo feliciter regnet & ad eorum consortium in coelesti regno perveniat per dominum.

Alia.

Deus electorum fortitudo & humilium celsitudo qui in primordio per effusionem diluvii, crimina mundi castigare voluisti & per columbarum ramum olivae portantem pacem terris redditam demonstraisti, iterumque *Aaron* famulum tuum perunctionem olei sacerdotem sancxisti, & postea per hujus unguenti infusionem ad regendum populum *Israeliticum* sacerdotes ac reges & prophetas praefecisti vultumque ecclesiae :::::

There the copy is defective; nor hath it more that concerns anointing the king. But after the ceremonies that belong to the whole coronation of the king, follows the form of the crowning the queens also of that age, who were likewise anointed.

Sequitur consecratio reginae quae propter honorificentiam (so are the words of the rubrick) *ab episcopo sacri unguinis oleo super verticem perfundenda est & in ecclesia coram optimatibus cum condigno honore & regia celsitudine in regalis thori consortium benedicenda & consecrandae est quae etiam annulo pro integritate fidei & corona pro aeternitatis gloria decoranda est.*

The words used at their anointing were,

In nomine patris, & filii, & spiritus sancti, prosit tibi haec unctio olei in honorem & confirmationem aeternam in secula seculorum. Amen.

These are the same that are preserved in the later ceremonials of *England* (which are in divers hands ms.) for the coronations. But most of the prayers in the later, and divers other parts of the ceremonies, are different from what remains in this old one.

In the later ages we have memory of a tradition (as good as that of the holy viol at *Rheims*) of holy or heavenly oil given to anoint some of our kings. The blessed virgin (they say; and I have met it related both by ⁹ it self as a single story, and remembered in very good ^r authors) gave to *Thomas* archbishop of *Canterbury* (being in banishment under our *Henry II.*) a golden eagle full of precious oil, inclosed in a stone vessel, commanding him to preserve it, and foretelling him *quod reges Anglorum qui ungerentur hoc unguento, pugiles essent ecclesiae, & benigni, & terram amissam a parentibus pacifice recuperarent, donec aquilam cum ampulla haberent.* He for safety of it (so goes the story) left it in a monastery at *Poitiers*, where *Henry* the first duke of *Lancaster*, under *Edward III.* in the wars of *France*, received it from a holy man (they say) that found it by revelation, the duke gave it the *black prince*. He sent it to the Tower, there to be safely kept in a chest strongly hooped with iron, where *Richard II.* son to the *black prince*, in searching for his father's jewels, got it and much desired to be anointed with it. But the archbishop then, answered him, *sibi sufficere quod semel per manus suas sacram suscepit in coronatione pristina unctionem, quae habere non debuit iterationem.* The king notwithstanding carried it afterward with him into *Ireland*, purposing, perhaps, there to have been anointed with it. But, in his return, at *Chester* he delivered it to archbishop *Courtney*, confessing, that he doubted not but that it was decreed, he should not be anointed with it: and so indeed it fell out. For, he was deposed, and *Henry* the IV. was honoured with it in his coronation. ⁽¹⁴²⁾ I examine not the truth of it; let every man's faith in these things be, for me, at his own pleasure.

* Sceptum. ⁹ Anonym. ms. in biblioth. Cotton. ^r Thom. Walsingham in init. Hen. IV. p. 401. Hist. ms. incipiens sub. 43 Hen. III. in biblioth. Bodleiana in Hen. IV.

The like may be said of *Scotland*, where if you believe *Adamannus* in the life of *S. Colme* or *Columba*; (*Columba* lived there about *M* years past, and *Adamann* in the next age) a ceremonial for regal benediction or ordination in that country was delivered to *S. Colme* by an angel, who according to the prescript of it (they called it *vitreus ordinationis regum liber*) consecrated king *Aidan*, but whether with oil or no, it appears not in the express words of the story. Yet because it belongs to the matter of inauguration of kings there, and may be interpreted for anointing among the rest, it is transcribed here. *Alio in tempore* (saith *Adamann* ^c of *S. Colme*) *cum vir praedicabilis in Himbria commoraretur insula, quadam nocte in extasi mentis angelum Domini ad se missum vidit, qui in manu vitreum ordinationis regum habebat librum, quem cum vir venerandus de manu angeli accepisset, ab eo jussus legere coepit. Qui cum secundum quod ei in libro erat commendatum, Aidanum in regem ordinare recusaret; quia magis Jogenanum fratrem ejus diligeret; subito angelus extendens manum, sanctum percussit flagello: cujus livorosis in ejus latere vestigium omnibus suae diebus permansit vitae; hocque intulit verbum: Pro certo scias, inquit, quia ad te a Deo missus sum, cum vitreo libro, ut juxta verba, quae in eo legisti, Aidanum in regnum ordines; quod si obsecundare huic nolueris jussioni, percutiam te iterato.*

*Hic itaque angelus Domini cum per tres continuas noctes eundem in manu vitreum habens codicem apparuisset, eademque domini jussa de regis ejusdem ordinatione commendasset; sanctus verbo obsecutus domini ad * Iovam transnavigavit insulam, ibidemque Aidanum iisdem adventantem diebus ad regem, sicut jussus erat, ordinavit, & inter ordinationis verba de filiis & nepotibus, pronepotibusque ejus futura prophetizavit; imponensque manum super caput ejus ordinans benedixit. Cum tunc Albus in libro quem de virtutibus sancti Columbae scripsit, sic dixit, quod sanctus Columba de Aidano, & de posteris ejus, & de regno suo prophetare coepit dicens. Indubitanter credo O Aidane, quod nullus adversariorum tuorum tibi poterit resistere; donec prius fraudulentiam agas in me, & in posteris meos. Propterea ergo tu filiis commenda, ut & ipsi filiis, & nepotibus & posteris suis commendant, ne per consilia mala eorum sceptrum regni hujus de manibus suis perdant. In quocunque enim tempore malum adversum me, aut adversum cognatos meos, qui sunt in Hibernia fecerint, flagellum, quod causa tui ab angelo sustinui, per manum Dei super eos in magnum flagitium vertetur, & cor viro- rum auferetur ab eis, & inimici eorum vehementer super eos confortabuntur. Hoc autem vaticinium temporibus nostris completum est in Belloroth Domnallo Brecco nepote Aidani, sine causa vastante provinciam Domnail nepotis Amureg. Et a die illa usque hodie in proclivo sunt ab extraneis quod suspiria doloris pectori*

incutit. For other testimonies touching regal unction in that kingdom, see *Hector Boethus* and *Buchanan* in king *Aidan*, John Major de *gestis Scotorum*, lib. 4. cap. 11. James Gordon in *chronolog.* tom. 2. pag. 190. *Hosienfis summae tit. de sacra unctione*, §. 8. *Azor. moral. instit. part. 2. lib. 10. cap. 5.* with a letter of pope *Innocent IV.* to our *Henry III.* touching the anointing of king *Alexander III.* of *Scotland* (for so it must be, doubtless, understood) in a volume of bulls and other instruments of that time, kept in the receipt of the exchequer fol. 42. b.

In *Spain* the first anointed king falls in the year of Christ *DCLXXXIII.* Then was king *Wamba* or *Bamba* (of the west *Gothick* race) anointed by *Quirigo* archbishop of *Toledo*. *Ad urbem Toleti perducunt: ibique per Quiricum archiepiscopum unctus & coronatus est*, saith *Rodericus Santius*, and others ^a that follow him. And in the *xii* council of *Toledo* held about *DCLXXX.* under *Ervigius* successor to *Wamba*, express mention also is of anointing this successor. *Etenim sub qua parte vel ordine serenissimus Ervigius, princeps regni, conscenderit culmen, regnandique per sacrosanctam* (so the words are) *unctionem suscepit potestatem, ostensa nos scripturarum evidentia edocet:* and *Wamba* appointed *Ervigius* (so says the council) *post se regnaturum & sacerdotali benedictione ungentum.* And to that age the *Spanish* writers with others refer the beginning of regal unction in the kings of *Spain*. But for *Arragon*; that of cardinal *Hosienfis*, ^x the great canonist, is observable. *Si quis rex inungi nova consuetudine velit, usus & mos obtinuit ut id a Romano pontifice petat sicut fecit rex Arragonum.* He wrote about the year *MCCCLX.* More of anointing there, you may see in *Valdesius* ^y, *Majolus* ^z, and *Azorius* ^a, beside the *Spanish* histories of the succeeding times.

For anointing the kings of *Hungary*; there is example in the coronation of *Vladislaus II.* reported by ^b *Bonsinius*. He was king also of *Bohemia*, and under that name anointed. For in the golden bull of the emperor *Charles IV.* given about *MCCCL.* touching the electors, the chief place is confirmed to the king of *Bobeme*, *cum sit princeps & coronatus & unctus*, as the words of the *Latin* are, which some say in the *Dutch* copy is ^d *wann er ein gesalbter und gekronter konig ist*, that is, if he be an anointed and crowned king. But I find a very great lawyer of the empire ^e make the *Dutch* copy agree with the *Latin* thus, *diuweil er ein gekronter un gesalbter konig ist*, because, or in regard he is an anointed and crowned king. The king of *Poland* also, though he be elective, is anointed; *unctus inter scapulas*, between the shoulders, saith ^f *Cromer*. For although antiently in the anointing of kings, the head had a part (as in the example of the kings of *Israel*) yet in some later ages especially of Christianity, some of them have had it only on other parts, as appears in

^c D. S. Columba Scoto confessore l. 3. c. 5.

^{*} l. Ionam.

^a Vide Roderic. Toletan. l. 3. c. 1. Marian. de reb. Hispan. l. 6.

c. 12, &c.

^x In summ. tit. de sacra unctione §. 8.

^y De dignit. reg. Hisp. c. 14.

^z Dieb. canicul. tom. 5. colloq. 5. p. 1175.

^a Instit. moral. part. 2. lib. 10. cap. 5.

politic. lib. 7. cap. 3.

^e Martin. Rumelin, ad aur. bull. Carol. iv. differt. 4. §. 5.

^f Poloniae. lib. 2.

^d Adam Contzen.

that of pope *Innocent* 3. III. to the patriarch of *Constantinople*, where he says, that after such time as our Saviour was anointed *oleo pietatis prae confortibus suis* (qui secundum apostolum est caput ecclesiae quae est corpus ipsius) principis unctio, a capite ad brachium est translata, ut princeps ex tunc non ungetur in capite, sed in brachio sive humero vel armo, in quibus principatus congrue designatur; juxta illud quod legitur factus est principatus super humerum ejus. But for that matter, the ceremonials of several states (whereof some anon succeed here) are to be looked in. And by singular custom (notwithstanding this rule of the pope) the kings of *England* and *France* also have been anointed on their heads: so expressly cardinal *Hofstiensis* who lived about *ccclx* years since. *Qualiter rex inungatur*, saith ⁱ he, *per librum pontificalem seu ordinarium poteris edoceri. Sed & consuetudo antiqua circa hoc observatur. Nam regum Franciae & Angliae capita inunguntur. And, of anointing hitherto.* (¹⁴³)

II. For royal and imperial crowns or diadems; however those names have been from ancient time confounded; yet the diadem strictly was a very different thing from what a crown now is or was. And it was no other than only a fillet of silk, linnen, or some such thing. Nor appears it that any other kind of crown was used for a royal ensign, except only in some kingdoms of *Asia*, but this kind of fillet, until the beginning of Christianity in the *Roman* empire. Neither is it to be regarded that some learned men take king *Latinus* his crown or helm radiant in ^k *Virgil* for a note of his being a king;

—ingenti mole Latinus
Quadrifido vehitur curru, cui tempora circum
Aurati bis sex radii fulgentia cingunt,
Solis avi specimen.

Plainly this was a note of his descent or family, not of his royal dignity. For as in the elder times of the flourishing *Roman* empire, the crown radiant or radiatum caput (whereof more presently) was a character of being accounted as a god, so in the heroick times it was a note of a descent from a god, or rather especially from *Phoebus*, who, in the more real divinity of the *Gentiles*, included almost all the gods. And thence is it that *Virgil* calls this radiant crown solis avi specimen, *Latinus* being son to *Circe*, that was daughter to *Phoebus*. And the same wearing was accounted peculiar to *Phoebus* and his posterity; as we see in that spoken to him by the lady ^l *Philology*, at her wedding of *Mercury*.

—radiisque sacratum
Bis senis perhibent caput aurea lumina ferre
Quot totidem menses, totidem quot conficis horas.

Of this just number of the rays also, ^m *Artemidorus* gives us testimony. And upon the self-same reason is it that in those *Argonauticks* at-

tributed to *Orpheus*, it is said of *Aetes* king of *Colchis*;

—Στεφάνῳ ἔχε χρυσαυδέαν
Ἀκτίων φλογέας—

that he had on his head a radiant crown or helm: for so στεφάνῳ in *Greek*, as also corona in *Latin*, indifferently signified among the ancients. He had it not, as a distinguishing note of royal dignity, but as he was son to *Phoebus*: and other passages of like nature are so to be interpreted. The eldest time whereto we find a royal crown or diadem attributed, is the age of that king *Pharaoh* to whom *Moses* being an infant was brought by his daughter *Thermutis*. *Pharaoh* (says ⁿ *Josephus*, I think out of *Manetho*) put his diadem upon the child's head, and the child cast it to the ground and spurned it from him. Of what it was made we cannot be sure, nor have we more than that bare relation of it. But the antientest mention of a royal crown is in the holy story, in that of the *Amalekites* bringing *Saul's* crown to *David*: where it is called ^o *nezzer*, being the same word by which the crown of the high priest is denoted ^p in *Moses*. Some of the *Greek* have it turned by βασιλικόν, as if you should say the royal ensign: in others διάδημα diadema, renders it: the same word being used also in the vulgar. But *Josephus* ^q calls it βασιλικὸν στέφανον and στέφανον absolutely. What kind of thing it was, cannot be learned from that text. And if we should conjecture only by the use of other kings of those parts of *Asia* (in the ages that are much later than *Saul*) we might as well think it had been the fillet only as any other of metal, in regard both kinds were in use in those parts, as we presently shew, and both equally called diademata. But if also what occurs afterward in the holy story touching *David's* crown, may persuade us that this of *Saul* was of the same nature; it must follow that it was of gold and stones. For it appears that *David* out of the spoils of the *Ammonites* had such a crown. The words are ^r, as they are commonly turned in the later translations, and he took their king's crown from his head (which weighed a talent of gold, with precious stones) and it was set on *David's* head: the same relation being in another passage ^t of scripture, and almost in the same syllables in those translations which disagree not from the original: and to the same purpose *Josephus*; whose ^u interpreter yet renders him not where he says, that *David* capite gestare solitus est hanc coronam. *Josephus* saith only that ἐφόρε γ' αὐτὸν ἐπὶ τῇ κεφαλῇ, he bare it on his head, not that he used to wear it. For, the weight of it being an *Hebrew* talent of gold (which is of our money near 4500 l. and about 120 lb. weight) it was impossible he could use to wear it. And therefore some will have it that the setting of it on his head was but by holding it over or near his head, as if it had been by himself clearly insupportable. But then why had

⁸ Extr. de sacra unct. §. unde.

unctione. §. 8.

^o 2 Sam. cap. 1. com. 10.

com. 30.

^h Aeneid. 12.

ⁱ Mart. Capella de nuptiis, &c. l. 2.

^p Exod. cap. 29. com. 6.

^q Archaeolog. lib. 6. cap. ult. & lib. 7. cap. 1.

^r 1 Paralip. cap. 20. com. 2.

^t Archaeolog. lib. 7. cap. 7.

^h Eay cap. 9. 6. de quo loco videfis Tertull. advers. Judaeos cap. 70.

^m Onirocritic. lib. 4. c. 51.

ⁿ Onirocritic. lib. 4. c. 51.

^o Archaeolog. lib. 6. cap. ult. & lib. 7. cap. 1.

^p Archaeolog. lib. 7. cap. 7.

^u Summ. tit. de sacra

^u Archaeolog. l. 2. c. 5.

^v 2 Sam. cap. 12.

the king of *Ammon* such a crown? and how did he wear it? Some most learned men^a take the holy story otherwise, and conceive that it was not the crown of that *Hannu Ben Nabas* king of *Ammon* (whom *David* conquered) but of the *Ammonites* idol *Melchom* or *Molchom* (the same with *Moloch*) from the head of whose statue this crown might be then taken; and that the crown which *David* put on his head, was one made out of it. And indeed the syllables of the text are מלכּוֹ מֵעֵרֶת מֵאֵשׁ וַיִּקַּח אֶת עֲטֻרַת מֶלֶכְוֹ וַיִּבְרַח וַיֵּלֶךְ *waia-cak eth-etereth Melchom meail rosho*, that is (or may be understood to be so) and he took the crown of *Melchom* or *Malchom* from his head. For that word, which as an appellative, signifies *their king*, as a proper name denotes their idol, as we see also in other passages of the holy story. Neither do some of the copies of the *Greek* translation otherwise give us this place than by using the word *Melchom*, and besides interpreting it as an appellative by τῷ βασιλεὺς αὐτῶν. And the vulgar also in one of these passages, *tulit David coronam Melchom de capite ejus* & *invenit in ea auri pondo talentum* & *pretiosissimas gemmas*. And for justification of their conceits who think he wore it not, but made him one out of the richness of it; the words expressly follow *fecitque sibi inde diadema*, the *Hebrew* being וְהָיָה עֲטֻרַת דָּוִד וַיִּבְרַח וַיֵּלֶךְ & *fuit super caput David*, which yet in that place *Munster* turns *ordinataque est pro capite David*. But however, it shews that this crown, which *David* used here, was of gold and set with jewels. And *Clemens Alexandrinus* says generally of the royal crowns used by the kings of *Juda* and *Israel*, that they were so: ἵδα δὲ (so are his words) καὶ χρυσὸν καὶ λίθους τιμὰς τὰς παλαιὰς τοῦ Ἑβραίων ἀναδεδεμένους βασιλεῖς, *I know that the ancient kings of the Ebrews had their diadem of gold and rich stones*. And this was set on their heads by some inaugurations by γ the high priest who also anointed them. They used it till the captivity, after which, about cccc lxxx years no governor in that nation wore it, until ^z *Arifobulus* began again to use it about c years before Christ, whence it continued on their kings till it ended in *Agrippa* about *Vespasian's* time. But *Iustus Tiberienfis*, that wrote a chronicle of the *Jews* down to this *Agrippa*, and lived in *Agrippa's* time, titled it, ἱερατικὴ βασιλείων τῶν ἐν τοῖς ἐξέμμεσι, or, *of the Jewish kings that were crowned*. *Photius* remembers him; for his book is not extant.

Touching other of the antientest kingdoms whereof we have testimonies left to this purpose; in some of them the kings had crowns of gold and also their fillets; in others, only fillets. Of the first kind, were the *Persian* kings whose fillets circled their heads upon a *tiara*, which was a long cap of such a kind as that every man there wore one, as we do hats. But none might wear it upright save only the king, or by some extraordinary indulgence of honour

from him. In others, it^a bended forward. The antients are full of passages that shew this of the diadem or fillet, and the *tiara* or *cidaris*. But it is to be observed, that oft-times while they speak of the *Persian* kings with special relation to their royal dignity, the word *cidaris* or *citaris* is absolutely taken for the *regium Persarum insigne* (so *Curtius*, *Plutarch*, *Arrian*, *Agathias*, and some others) as if they plainly included in it both the *tiara* and the diadem together, no otherwise than as we ordinarily, by some general word, shortly denote an individual which we suppose known to all men; as when by the name of the crown generally, or of the purse generally, or of the seal generally, we mean the king's crown, the purse with the great seal, and the great seal of *England*. And sometimes it is with a little more addition, called^b *tiara recta* only, or ἡ καλῶς λεγόμενη κίτταρος ἰσθμῆς, as^c *Plutarch's* words are, signifying the same thing. With such a royal ensign, the queens also were honoured in *Persia*, if at least in the holy story (where both *Vashti* and *Esther* are crowned) כֶּתֶר מַלְכוּת *keter malcuth*, that is, the crown or diadem or ensign of the kingdom, denote this of the *citaris* and fillet on it. Both the *septuagint* and the vulgar turn those words *diadema*, and the *Septuagint* in one place by τὸ διαδῆμα τὸ γυναικῶν or the *foemine diadem*. And some will have כֶּתֶר *ceter*^d here in *Esther*, be but the same word from whence *citaris* was first made. But the diadem it self (as it is to be distinguished from their *citaris*) or the fillet, was in *Persia* chiefly of purple varied with white. *Darius* his was *purpureum diadema distinctum albo*, as *Curtius*^e says in one place; (though he make it *caerulea fascia albo distincta*, in another, where some learned men have^f thought it should be *coccinia fascia*) and in the holy story of *Mordechai*, as it is in the *Greek* text, his diadem royal (for king *Abasbwerosh* honoured him with one) is purple and of silk; διαδῆμα βύσσινον πορφύρεον, as the words are. Where^g also it appears in express words, that he had (among the ensigns royal that were put on him) a gold crown also: χρυσόν ἔχων χρυσὸν καὶ διαδῆμα, &c. that is, *having a crown of gold, and a diadem*, &c. The *Hebrew* indeed makes no such division. But the *Hebrew*, compared with this and with the testimonies of profane writers, justifies clearly that there was a crown of gold as well as a fillet for a royal ensign in *Persia*. For the holy text of that story of *Mordechai* among his royal ensigns, reckons such a crown for one, and calls it וְהָיָה נִדְרָה עֲטֻרָה that is, *a great crown of gold*, which in a passage before,^h where it is appointed for him, is named כֶּתֶר מַלְכוּת *cether malcuth*, or the crown of the kingdom also as that of *Vashti* and *Esther* is, though that of *Esther* be taken for the diadem or fillet only by the most learnedⁱ *Briffon*. But however, it will, from the testimonies of the holy story, compared with profane writers, ap-

^a Vide *Jos. Salian. annal. ecclesiast. tom. 3. anno 2999. n. 33. & 34. & Baron. tom. 3. ann. 337. p. 407. edit. Antwerp. 1593.* ^b *Pædagog. l. 2. c. 8.* ^c *Reg. cap. 11. comm. 12.* ^d *Joseph. Archaeolog. l. 13. c. 19.* ^e *Clitarchus apud scholiast. in Aristophanis Aves, & Hefychius in Tlæx.* ^f *Senec. de Benef. lib. 6. cap. 31.* ^g *In Artaxerxe.* ^h *Druf. observat. lib. 12. cap. 12.* ⁱ *Histor. 3. & 6.* ^j *Videlicet Lipsium ad Taciti annal. 6. num. 87.* ^k *Esther cap. 8. com. 15.* ^l *Ibid. cap. 6. comm. 8.* ^m *De regno Persico lib. 1.*

pear fully enough that there was in *Persia* as well a crown of gold for a royal ensign of the head as a fillet or diadem; and out of this of *Mordechai* also, that כתר מלכות (which some would have denote the diadem) is the crown of gold, and that most plainly; though I dare not deny but the word might also denote generally any thing that was the distinguishing note of royal dignity for the head only. And perhaps in the greater solemnities, the crown of gold was used, and the fillet (as being not so troublesome) in their ordinary wearing. And with this distinction is that passage (I think) of *Marcellinus* to be understood, where he tells us also of the fashion of the *Persian* gold crown worn by king *Sapor* in triumph. *Insidens equo ante alios* (so are ^k his words) *celsius ipse praeibat agminibus cunctis aureum capitis arietini figmentum interfectum lapillis pro diademate gestans, multiplici vertice dignitatum & gentium diversarum comitatu sublimis.*

In other the antienter kingdoms either of *Asia* or elsewhere, I remember no such use of both those kinds of crowns. But the diadem or the fillet alone is obviously in good authors given to the kings of *Pontus*, *Armenia*, *Parthia*, *Lydia*, *Phrygia*, and others of those parts, where the tying on of it was the chief part of the inauguration. So *Vologeses* king of *Parthia* designing his brother *Teridates* king of *Armenia*, *diademate caput evinxit*, as *Tacitus* ¹ says. And for that of an old coin of *Philetaerus* king of *Pergamo* inscribed with ΦΙΛΕΤΑΙΡΟΥ ΒΑΣΙΛΕΩΣ and a head circled with a crown of leaves on one side of it, which *Joseph* ^m *Scaliger* remembers; I conceive the head rather to be of some deity than of *Philetaerus*. For it was even in the antientest use among the *Grecians* (as we see in *Goltzius* his coins) to stamp with the head of some god or goddess (in crowns of leaves proper to them) together with such names of kings or magistrates as were otherwise, by their institutions of state, necessary to be seen there. But also *Strabo* ⁿ denies that *Philetaerus* was at all king. For he saith that *Attalus*, the third governor there from *Philetaerus*, was the first of that race which had the title of king of *Pergamo*. So that thence also the credit of the coin might be doubted. But *Scaliger* takes the head to be *Philetaerus*, and observes that *diadema non habet sed coronam frondeam, tanquam regis nomen assumere vereretur.*

In *Africk* also this diadem or fillet was the only royal ensign of the head. King ^o *Syphax*, at his entertainment of *Scipio*,

*Induitur chlamidem, regnique insigne vetusti
Gestat laeva decus; cinguntur tempora vitta
Albente,*

And, at the unlucky sacrifice between them,

*Vittaque, majorum decoramen, fronte sine ullo
Delapsa attactu nudavit tempora regis.*

The like we find in the ensigns of divers old kings of *Europe*. The coins of the old kings of *Sicily*, as of *Gelo*, *Hiero*, and *Agathocles*, have their heads circled with this fillet or diadem. For example, one of *Gelo* is copied here. And



the *Greek* kings had their fillets or diadems, or *vincula*, as in *Seneca*'s tragedies they are sometimes called. Neither was *Alexander*'s using of a diadem by that name singly, taken to be at all strange to his *Macedonians*, but the using of just such a one as the *Persian* kings had, and the wearing it upon his *causia* or *Macedonian* cap in such fashion as it was like the *Persian* *cidaris*. So must ^p *Justin* be understood, where he says *habitu regum Persarum & diadema insolitum ante regibus Macedonicis, velut in leges eorum quos vicerat transfret, assumit.* The diadem he wore was *insolitum*, because it was of purple varied with white, and worn upon his *causia* as the *Persian* kings wore theirs upon the *cidaris*. For otherwise, it is clear, that not only in other parts of *Europe*, but in *Macedon* also, the diadem (being commonly white) was worn before *Alexander*'s time by kings upon their bare heads. For other parts of *Europe*; the coins of those kings of *Sicily* are testimonies enough together with ^q *Lucian*, taking the *πανία λευκή* ^r *τῶν μετώπων*, or the *white fillet on the forehead*, to be generally the royal ensign of the head, besides more such passages collected by ^r *Brissou*, *Bullinger* and others. And for *Macedon*, the coins of *Philip* father to *Alexander* justify as much in this form. Neither indeed is *Alexander* stamped



in any that remains of him, with any other diadem than this fillet on his bare head without any *causia*, and as his father and his successors; as we see in *Goltzius*. And *Lucian* ^t makes *Dionogenes* tell *Alexander* of his being *διαδεμένῳ* ^u *πανία λευκῇ τῷ κεφαλῷ*, tied about the head with a *white fillet*. But for that in *Constantine* ^v *Porphyrogenetus*, where he tells us that the kings of *Macedon* *ἀντὶ πανίας ἢ σέμματῳ*, instead of the fillet or crown used the skin of a lion's head, and to that purpose brings the testimony of one

^k Amm. Marcellin. lib. 19. §. 1.

^l Silius Italicus lib. 16.

^m Canon. Ifagog. lib. 3. pag. 321.

ⁿ Geograph. lib. 13.

^o Silius Italicus lib. 16.

^p Annal. 15 & videbis Sueton. lib. 6. cap. 13.

^q Canon. Ifagog. lib. 3. pag. 321.

^r Geograph. lib. 13.

^s Silius Italicus lib. 16.

^t Annal. 15 & videbis Sueton. lib. 6. cap. 13.

^u Canon. Ifagog. lib. 3. pag. 321.

^v Geograph. lib. 13.

^w Silius Italicus lib. 16.

^x Annal. 15 & videbis Sueton. lib. 6. cap. 13.

¹ Annal. 15 & videbis Sueton. lib. 6. cap. 13. ^m Canon. Ifagog. lib. 3. pag. 321. ⁿ Geograph. lib. 13. ^o Silius Italicus lib. 16. Neque n. aurea qua donatus est Mafanilla corona apud Livium dec. 3. lib. 10. regium erat insigne, sed honorarium pop. Rom. duntaxat donum: & plane in ea re fallitur Jacobus Bosius de cruce triumphanti lib. 1. cap. 14. uti etiam in aureae coronae quae regum nunc insigne est, initiis Hieronymus Balbus de coronatione. cap. 5. ^p Hist. 12. ^q In navigio pag. 945. ^r Vide de hac re Brissou. de regno Persico lib. 1. Bullinger. de imperio Romano lib. 2. cap. 3. & c. ^s Dialog. Alex. & Diog. Themar. lib. 2. & vide ibid. Fred. Morellum pag. 131. qui tamen rem minime satis explicat.

^t Dialog. Alex.

^u Hist. 12.

^v In navigio pag. 945.

^w Silius Italicus lib. 16.

^x Annal. 15 & videbis Sueton. lib. 6. cap. 13.

^y Canon. Ifagog. lib. 3. pag. 321.

^z Geograph. lib. 13.

^{aa} Silius Italicus lib. 16.

^{ab} Annal. 15 & videbis Sueton. lib. 6. cap. 13.

^{ac} Canon. Ifagog. lib. 3. pag. 321.

^{ad} Geograph. lib. 13.

^{ae} Silius Italicus lib. 16.

^{af} Annal. 15 & videbis Sueton. lib. 6. cap. 13.

^{ag} Canon. Ifagog. lib. 3. pag. 321.

^{ah} Geograph. lib. 13.

^{ai} Silius Italicus lib. 16.

^{aj} Annal. 15 & videbis Sueton. lib. 6. cap. 13.

^{ak} Canon. Ifagog. lib. 3. pag. 321.

^{al} Geograph. lib. 13.

^{am} Silius Italicus lib. 16.

^{an} Annal. 15 & videbis Sueton. lib. 6. cap. 13.

^{ao} Canon. Ifagog. lib. 3. pag. 321.

^{ap} Geograph. lib. 13.

^{aq} Silius Italicus lib. 16.

^{ar} Annal. 15 & videbis Sueton. lib. 6. cap. 13.

^{as} Canon. Ifagog. lib. 3. pag. 321.

^{at} Geograph. lib. 13.

^{au} Silius Italicus lib. 16.

^{av} Annal. 15 & videbis Sueton. lib. 6. cap. 13.

^{aw} Canon. Ifagog. lib. 3. pag. 321.

^{ax} Geograph. lib. 13.

^{ay} Silius Italicus lib. 16.

^{az} Annal. 15 & videbis Sueton. lib. 6. cap. 13.

^{ba} Canon. Ifagog. lib. 3. pag. 321.

^{bb} Geograph. lib. 13.

^{bc} Silius Italicus lib. 16.

^{bd} Annal. 15 & videbis Sueton. lib. 6. cap. 13.

^{be} Canon. Ifagog. lib. 3. pag. 321.

^{bf} Geograph. lib. 13.

^{bg} Silius Italicus lib. 16.

^{bh} Annal. 15 & videbis Sueton. lib. 6. cap. 13.

^{bi} Canon. Ifagog. lib. 3. pag. 321.

^{bj} Geograph. lib. 13.

^{bk} Silius Italicus lib. 16.

^{bl} Annal. 15 & videbis Sueton. lib. 6. cap. 13.

^{bm} Canon. Ifagog. lib. 3. pag. 321.

^{bn} Geograph. lib. 13.

^{bo} Silius Italicus lib. 16.

^{bp} Annal. 15 & videbis Sueton. lib. 6. cap. 13.

^{bq} Canon. Ifagog. lib. 3. pag. 321.

^{br} Geograph. lib. 13.

^{bs} Silius Italicus lib. 16.

^{bt} Annal. 15 & videbis Sueton. lib. 6. cap. 13.

^{bu} Canon. Ifagog. lib. 3. pag. 321.

^{bv} Geograph. lib. 13.

^{bw} Silius Italicus lib. 16.

^{bx} Annal. 15 & videbis Sueton. lib. 6. cap. 13.

^{by} Canon. Ifagog. lib. 3. pag. 321.

^{bz} Geograph. lib. 13.

^{ca} Silius Italicus lib. 16.

^{cb} Annal. 15 & videbis Sueton. lib. 6. cap. 13.

^{cc} Canon. Ifagog. lib. 3. pag. 321.

^{cd} Geograph. lib. 13.

^{ce} Silius Italicus lib. 16.

^{cf} Annal. 15 & videbis Sueton. lib. 6. cap. 13.

^{cg} Canon. Ifagog. lib. 3. pag. 321.

^{ch} Geograph. lib. 13.

^{ci} Silius Italicus lib. 16.

^{cj} Annal. 15 & videbis Sueton. lib. 6. cap. 13.

^{ck} Canon. Ifagog. lib. 3. pag. 321.

^{cl} Geograph. lib. 13.

^{cm} Silius Italicus lib. 16.

^{cn} Annal. 15 & videbis Sueton. lib. 6. cap. 13.

^{co} Canon. Ifagog. lib. 3. pag. 321.

^{cp} Geograph. lib. 13.

^{cq} Silius Italicus lib. 16.

^{cr} Annal. 15 & videbis Sueton. lib. 6. cap. 13.

^{cs} Canon. Ifagog. lib. 3. pag. 321.

^{ct} Geograph. lib. 13.

^{cu} Silius Italicus lib. 16.

^{cv} Annal. 15 & videbis Sueton. lib. 6. cap. 13.

^{cw} Canon. Ifagog. lib. 3. pag. 321.

^{cx} Geograph. lib. 13.

^{cy} Silius Italicus lib. 16.

^{cz} Annal. 15 & videbis Sueton. lib. 6. cap. 13.

^{da} Canon. Ifagog. lib. 3. pag. 321.

^{db} Geograph. lib. 13.

^{dc} Silius Italicus lib. 16.

^{dd} Annal. 15 & videbis Sueton. lib. 6. cap. 13.

^{de} Canon. Ifagog. lib. 3. pag. 321.

^{df} Geograph. lib. 13.

^{dg} Silius Italicus lib. 16.

^{dh} Annal. 15 & videbis Sueton. lib. 6. cap. 13.

^{di} Canon. Ifagog. lib. 3. pag. 321.

^{dj} Geograph. lib. 13.

^{dk} Silius Italicus lib. 16.

^{dl} Annal. 15 & videbis Sueton. lib. 6. cap. 13.

^{dm} Canon. Ifagog. lib. 3. pag. 321.

^{dn} Geograph. lib. 13.

^{do} Silius Italicus lib. 16.

^{dp} Annal. 15 & videbis Sueton. lib. 6. cap. 13.

^{dq} Canon. Ifagog. lib. 3. pag. 321.

^{dr} Geograph. lib. 13.

^{ds} Silius Italicus lib. 16.

^{dt} Annal. 15 & videbis Sueton. lib. 6. cap. 13.

^{du} Canon. Ifagog. lib. 3. pag. 321.

^{dv} Geograph. lib. 13.

^{dw} Silius Italicus lib. 16.

^{dx} Annal. 15 & videbis Sueton. lib. 6. cap. 13.

^{dy} Canon. Ifagog. lib. 3. pag. 321.

^{dz} Geograph. lib. 13.

^{ea} Silius Italicus lib. 16.

^{eb} Annal. 15 & videbis Sueton. lib. 6. cap. 13.

^{ec} Canon. Ifagog. lib. 3. pag. 321.

^{ed} Geograph. lib. 13.

^{ee} Silius Italicus lib. 16.

^{ef} Annal. 15 & videbis Sueton. lib. 6. cap. 13.

^{eg} Canon. Ifagog. lib. 3. pag. 321.

^{eh} Geograph. lib. 13.

^{ei} Silius Italicus lib. 16.

^{ej} Annal. 15 & videbis Sueton. lib. 6. cap. 13.

^{ek} Canon. Ifagog. lib. 3. pag. 321.

^{el} Geograph. lib. 13.

^{em} Silius Italicus lib. 16.

^{en} Annal. 15 & videbis Sueton. lib. 6. cap. 13.

^{eo} Canon. Ifagog. lib. 3. pag. 321.

^{ep} Geograph. lib. 13.

^{eq} Silius Italicus lib. 16.

^{er} Annal. 15 & videbis Sueton. lib. 6. cap. 13.

^{es} Canon. Ifagog. lib. 3. pag. 321.

^{et} Geograph. lib. 13.

^{eu} Silius Italicus lib. 16.

^{ev} Annal. 15 & videbis Sueton. lib. 6. cap. 13.

^{ew} Canon. Ifagog. lib. 3. pag. 321.

^{ex} Geograph. lib. 13.

^{ey} Silius Italicus lib. 16.

^{ez} Annal. 15 & videbis Sueton. lib. 6. cap. 13.

^{fa} Canon. Ifagog. lib. 3. pag. 321.

^{fb} Geograph. lib. 13.

^{fc} Silius Italicus lib. 16.

^{fd} Annal. 15 & videbis Sueton. lib. 6. cap. 13.

^{fe} Canon. Ifagog. lib. 3. pag. 321.

^{ff} Geograph. lib. 13.

^{fg} Silius Italicus lib. 16.

^{fh} Annal. 15 & videbis Sueton. lib. 6. cap. 13.

of *Alexander's* coins upon it that shews such a wearing on his head; plainly he was deceived in taking it to be in stead of the diadem. It is clear they used a diadem for their note of royal majesty. And this of the lion's skin was only a badge of their family, because they were descended from *Hercules*. And others of them had the like wearing in that respect also, as you may see in *Goltzius*.

What other kings of *Europe* were in those more antient times, fully enough appears not. It is a tolerable conjecture that they used the fillet as the rest. And *Pliny* supposes the diadem to be as antient as *Bacchus* for a general ensign of kings. For he ^u says that he invented *diadema regum insigne*. Nor are the testimonies clear enough in credit, that tell us ^x *Dunvallo Mulmutius* king of our old *Britons*, and the old kings of *Scotland* even from *Fergus* the first, used a gold crown. But it seems by the old *British* monies that the diadem or fillet perhaps

of pearl also was worn by king *Cunobelin*. One kind of them was of this form.

In the memories that remain of the many ensigns of dignity received into *Rome* by *Tarquinius Priscus* upon his conquest

of the *Tuscans*, the fillet is not mentioned, though at that time *omnia decora & insignia* (as *Florus* says) *quibus imperii dignitas eminent*, came into the state. Among them, *Dionysius* ^y *Halicarnassensis* indeed reckons a gold crown. But as the rest of those ensigns were given to civil magistrates or to generals in the field as honorary notes of subordinate dignity; so was this of the gold crown and of the laurel also: the use of them being then chiefly in a general's triumph, but not in distinguishing a king. *Triumphales coronae* (so *Festus*) *sunt quae imperatori victori* (he means general of the field) *aureae praeferuntur, quae temporibus antiquis propter paupertatem laureae fuerunt*. Other crowns also as of oak, grass, myrtle, ivy, roses, and divers more were in frequent use in their giving honorary rewards, in sacrifices, feasts, marriages, funerals, wooings and otherwise, and that as well in the old states of *Greece* as of *Italy*; which is also (if no other were) a good argument that all crowns under that name and as distinguished from the diadem or fillet, were far from being taken as royal ensigns among them. Therefore so much as concerns the several crowns used in those countries, and is in full store delivered by *Athenaeus*, *Agellius*, *Tertullian*, *Clemens* and such more, and in the later times by *Alexander ab Alexandro*, *Paschalius*, *Bullinger* and others, is excluded here as not belonging to the subject. But I note as most observable to the present purpose; that whereas ^z *Virgil* puts in *Evander's* mouth

*Ipsae oratores ad me regnique coronam
Cum sceptro misit, mandatque insignia Tarchon,*

as if the *Tuscans* had used a crown for a royal ensign; *Servius Honoratus* being curious in matter of antient customs, learnedly admonishes that *corona* signifies there *insigne* generally, *non revera coronam* (saith he) *quam Tusci reges nunquam habuerunt: ergo species est pro genere*. He takes, I presume, *corona* for a crown as it is distinct from a diadem: and then he agrees fully (for so much at least as concerns the *Tuscan* kings) with the excluding of crowns from being notes, in that age, of royal dignity. But though the common story written of the times of the *Roman* kings, shews us not that they used fillets; yet in other testimonies they have them. In some monies inscribed with ^a *CN. PISO PROQ.* (he is taken to be the same that was vice-admiral to *Pompey* in the *Piratic* war) *Numa's* head hath a fillet on it, and in the fillet his name stamped. *Ancus Martius* hath his fillet also in a piece of the same age. Others have those two kings together filleted in one stamp. But they were all coined about 10 year after the end of the *Roman* kings, and therefore are no infallible testimony to this purpose. Nevertheless, among other testimonies, they shew that the *Romans* at that time conceived (as other nations) this diadem or fillet to be the proper ensign of a king, and therefore endured not the use of it while they hated the name of king. They endured not the use of it when there might be any colour to take it for an affectation of regal supremacy. For otherwise a fillet, and a white one, was not only endured, but by institution of the state used in the habits of their priests, as it was also an ornament of the ^b *Nomophylaces* or the chancellors and fiscal judges in *Athens*. But in those it was no more suspected for regal, than a crown with us is on our kings of heralds. The priests and those *Nomophylaces* had their authority subordinate under the state, as these officers under the king. So the priests among the *Jews* also had a crown as well as the king. And the *Roman* women (as our's at this day) had their diadems also or fillets varied at their own fancies. But in old *Rome*, in whomsoever any suspicion of power was, in him also and in every attribute to him, the diadem was suspected. Thence is it that he that put a white ^c fillet or diadem upon the laurel of *Julius Caesar's* statue, was commanded to prison (by the tribunes *Flavius* and *Marullus*) as one that thereby derogated from the publick liberty in giving him that which was proper to a king. And that of *Pompey* is of the same kind. *Ei candida fascia crus alligatum* (saith ^d *Valerius*) *habenti, Favonius, non refert, inquit, qua in parte corporis sit diadema; exigui panni cavillatione regias ejus vires exponens*. By reason of this suspicion of the diadem, and for that the name of king was so hateful among them (although they were in no less

^u Nat. Hist. lib. 7. cap. 56.

^x Galfred. Monumeth. lib. 1. & Heft. Boet. lib. 2. & 10.

^y Archaeolog. 3.

^z Aeneid. 8.

^a Fulv. Ursin. famil. Rom. in Calpurnia, p. 47. & in Marcia, pag. 152 & 154.

^b Pollux lib. 8. cap. 12.

^c Sueton. in Julio

^d Lib. 6. cap. 1. §. 7.

fervitude to their emperors even in the beginning of the empire, than any other nation to their kings) the emperors at first abstained from meddling with any diadem. ⁽¹⁴²⁾ *Caligula* indeed ventured to put it on, but durst not use it. *Insigne regni* (says *Aurelius Victor*) *capiti necere tentaverat*. And *Eutropius*, of him, *primus diademate imposito, dominum se appellari jussit*. None afterward for about cclxxx years openly affected it. That passage in *Sulpitius* & *Severus* of *Vespasian's* wearing one at the siege of *Jerusalem*, is but a mistaking through his application of the custom of his own age to the time of his story. Nor is that suspicion of *Titus* for wearing one in an *Ægyptian* sacrifice to be valued here. But *Helicababalus* at length wore one with rich stones on it; yet in his house only. *Vult* (saith *Lampridius*) *uti & diademate gemmato quia pulchrior fieret & magis ad foeminarum vultum aptus, quo & usus est domi*. The first of them afterward that wore it, and sometime perhaps publickly, was *Aurelian*. So I understand those words both in *Aurelius Victor* and in *Paulus Diaconus*. *Primus* (*Aurelianus*) *apud Romanos capiti suo diadema iniecit*. But hitherto no constant or continual wearing of it was come into fashion with the emperors; nor had they yet any other ensign of dignity for & their heads beside the laurel and the radiant crown, which was used also for the most part only in pictures or statues; rarely otherwise. But neither of these were proper to them as ensigns of their monarchick empire, which as yet had nothing singular in what was worn, besides the purple robe or *chlamis purpurea*, as *Eutropius* expressly and his paraphrast *Paeanius* observe in *Diocletian*. *Adorari se jussit* (saith ^h *Eutropius* of *Diocletian*) *cum ante eum cuncti imperatores, ut judices, salutarentur*. *Ornamentum gemmarum vestibus, calciamentisque indidit*. *Nam prius imperii insigne in chlamyde purpurea tantum erat, reliquaque communia*. And *Paeanius*; *πρὸ τοῦ διαδόου δὲ βασιλέως ἐπελθόντος ἀπὸ τοῦ ἀδελφοῦ τοῦ μὲν πρῶτος, before Diocletian, there was nothing singular as an ensign of the monarchick empire but the purple robe only: whence purpuram sumere was in use to take the empire, and purpura indui to be made emperor*. But another and an antient (though of the middle times) that plays the paraphrast too upon *Eutropius* in this place, is either exceedingly deceived, or his copies are corrupted. That passage he ⁱ makes thus, *Adorari se ut deum praecepit & gemmas vestibus calciamentisque inseruit; diademataque in capite ante eum omnes cum chlamyde tantum purpurea ut a privatis discernentur habebant, & ut judices caeteri salutabantur*, as if all before *Diocletian* had used diadems; when clearly none did ^k otherwise than is before noted. But for the laurel and radiant crown; the laurel

was triumphal only, and borne by them as they had the name of *imperatores*, in the signification which that word had in the free time, or with relation to the triumphs used by those that were generals of the state. Thence is it that so frequently their heads have laurels upon them in their old coins. And the radiant crown or *radiatum caput*, which is so frequently seen on the heads of emperors long before *Aurelian*, was a particular note of flattery which supposed them as gods. For that kind of crown was then principally for no other use. And thence is it that in divers of the heads of *Julius* and *Augustus's* coins (after their consecration into deities) we ^l find radiant crowns: and in the following times also it occurs in the coins of divers other, and that while some of them lived too, because the name or dignity of a god was attributed to them. But withal oftentimes the *radiatum caput* is met with upon coins that were of elder time than the monarchick empire. But in those it is always the *sun* or *Phoebus* his head: examples of it are obvious in *Fulvius Ursinus* his *familiae Romanae*. And of this radiant crown, learnedly *Paschalius* ^m but more accurately ⁿ *Filescus*. Both largely enough.

But soon after *Aurelian*, the diadem grew to be a principal ensign of the empire. *Eusebius* expressly of *Constantius* father to *Constantine the great* (speaking of the emperors that were before joined with him and of their leaving all to him) *μὲν οὖν ὁ δὲ λατὴν Κωνσταντῖου πρῶτον, αὐγαστον, ὃν σεβαστὸς ἀντιγόρευσε, τὸ μὲν κεπαρχὰς τῆς αὐτοκρατορίας καίσαρον διαδέχεται λαμπρύνοντος, ὃν τῶν ἀπὸ τῆς αὐτοκρατορίας πρῶτον, &c.* only *Constantius was now styled the chief augustus, and sebastos, having been at first honoured with the diadem belonging to the emperors Caesars, and having had also chief place among them*. And in that *Constantine*, his son, it became to be a continual wearing. *Habitum regium gemmis & caput exornavit perpetuo diademate*, says *Victor* or his epitomator: to the same purpose *Cedrenus*, *ὅτι αὐτὸν πρῶτον πάντων τῶν βασιλέων διαδέχεται χρῆσας ἢ μαρμαρίταις ἢ ἀλλοῖς λίθοις ἐπελθόντος κοσμηθῆναι, they say that he first of all the emperors used a diadem, and was more curious in wearing of pearls and other stones*. And the author of the chronicle of *Alexandria*; *Constantine* first used a diadem, *διὰ μαρμαρίταις ἢ ἀλλοῖς τιμωλὸν λίθων, of pearls and rich stones*. But (as others) he had in the beginning of his empire his laurels, and his crown radiant too on some of his coins, as also afterward, while he was a christian, on his most eminent statue, as the same *p* author says; though some take ^q the statue there spoken of, to have been rather *Apollo's* with *Constantine's* name on it, whereof we dispute not. The diadem that he so used, is the same, it seems, which the later *Grecians* ^r conceived to have been sent him

^c Sac. Hist. lib. 2.

^f Sueton. in Tito cap. 5.

^g Vide, si placet, Jac. Gretser. de cruce tom. 3. l. 1. p. 1833.

^h Hist. lib. 10.

ⁱ Jorgandes de regnorum success. in Diocletiano.

^k Grotius Viterbiensis also, as ignorantly, refers the beginning of the use of stones in

the imperial diadem to Julius Caesar, chron. part. 19. p. 534.

^l Vide Goltz. ad numism. imp. p. 48.

^m De coronis, l. 9. c. 13.

ⁿ Select. lib. 1. cap. 5.

^o De vita Constantini, l. 1. c. 12.

^p Vide chron. Alex. p. 664.

^q Vide Zonar. tom. 5. Filescum loco

jam dicto, & Gillium topograph. Constant. l. 3. c. 3.

^r Constantin. Porphyrog. de adm. Rom. imperio, c. 12.

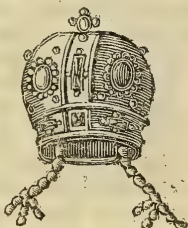


from heaven. It is thus expressed in his coins. And though the work of his diadems were not always in this one form, yet they perpetually thus bind the head with plates of gold and jewels on them. His use of wearing this kind of

diadem, and his leaving the triumphal laurel, by turning it into gold and rich stones on a fillet, is taken ^t by some to have been in him a pious declining the use of what was sacred to idols, and an ensign of Gentilism in the empire as the laurel was, and for that cause had been long before inveighed at by *Tertullian* in his *de corona militis*. Nor was it so fit for him any longer to wear the laurel, that had so demolished the temples of *Apollo* to whom it is known so sacred. Therefore to imitate rather the fashion of the kings of the *Jews* (some of which were types of that great King for whose service *Constantine* had at length professed his name) he took the diadem of gold and stones, and was the first that thus used any of that kind. This was that which was meant by *regia corona* in ^t the acts of pope *Sylvester*, where it appears that the author of them supposed that the emperor usually wore it. But of the faith of those I here inquire not; no more than I do of that of *Constantine's* donation, where it is called (as the ^u Latin is) *diadema videlicet corona capitis nostri*, and given to pope *Sylvester* to wear; and in the Greek ^x διαδημα ἡμῶν ἢ στεφάνῳ ᾧ παραδίδωμεν αὐτῷ ἐκ κεφαλῆς ἡμῶν, ἐκ χρυσῆς καὶ θάλασσης ἢ ὀβριανταρίων ἀπαιήτων, the diadem or crown which we have given him from our head, consisting of pure gold and pearls invaluable.

After *Constantine*, this kind of diadem was in common use, but so that his nearer successors did not so scrupulously always reject the laurel as he had done: at least in their coins it is not always omitted. But the fashion of their diadems (as far as I have observed) continued most usually the same with that of *Constantine*. And thence is it that *S. Hierom* ^y speaks of *ardentes diadematum gemmas regum* in his time. And the form of a chain or bracelet which we see in it, is sufficiently manifested in that of the standard-bearers chain with which *Julian* was crowned when he was proclaimed emperor after his victory against king *Bodomar* upon the *Rhine*. *Cumque corona deesset imperialis* (saith *Paulus* ^z *Aquilegiensis*) *unus signa portantium torquem quem habebat in collo sumens Juliano capiti circumposuit*. But afterward the imperial diadem became to be ordinarily increased with additions of other parts that went from ear to ear over the crown of the head; and at length over a gold helm on a cap which made it somewhat like the close crowns of later time worn upon caps. And of the helm together with the diadem, was the close crown of the eastern empire (as I think)

since composed. And indeed *Constantine* ^a in some of his coins hath his diadem on his helm, which makes it look almost like a kind of close crown. But the frequent joining of the helm or cap to the diadem, I observe not till about the younger *Theodosius*. And whereas the tying was usually behind in the simpler diadems; those of this later fashion were either then tied at both ears as we may guess by the labels or fillets that hang on both sides of their heads in their monies, or else the caps or helms had labels only as bishops mitres have. And in divers of them, the fashion is so frequently varied, that you might think they had as much change in their diadems as ladies in their dressings; yet so also, that sometimes, even in those elder ages, the same form almost was in their crowns as of later time is used in the empire. For towards such, is that of *Heraclius* both largely and elegantly expressed in a medal of him done off in *Lipsius de Cruce*, where divers other of the emperors heads of that age are with their crowns or diadems. It is easier for any man to satisfy himself by seeing them there together with those which are in ^b *Gretser*, in ^c *Opmerus*, sometime in *Baronius* and other such more, but especially in *Goltzius*, than for me either to describe them or to give direction for cutting them. Yet for the fashion used by the later *Constantinopolitan* emperors, I have here represented it out of *Crusius's Turco-graecia*. You see it is of a most differing shape from that of the western empire used at this day. Of both of them, ^d *Marcellus Corcyrensis* and ^e *Paschalius* especially, more at large.



But although the ordinary use of the royal crown or diadem (as the words are confounded) were as antient in the empire as *Constantine*, and though it were, after him, borne by his successors, and put on at their taking the empire, as the crown, at this day, at the inauguration of christian kings; yet this difference appears, that until the emperor *Justin* the younger (unless we rely upon such authority as hath not ground enough to justify it self) the solemn putting on the diadem was done only either by the imperial guard, or such as had power to supply them in their usual way of making emperors, or else by the preceding emperor in designing his successor, or crowning his empress. And the first that appears infallibly to be crowned by the patriarch of *Constantinople* (for the coronation there was his antient office, as it belongs in *England* to the see of *Canterbury*, in *Spain* to *Toledo*, in *France* to *Rheims*, in *Swethland* to *Upsalia*) was *Justin* the younger that succeeded *Justinian*. To this purpose, we see that when *Julian the apostata* (who began some xxv years after *Constantine's* death) was chosen emperor and raised on a shield by the soldiers, ἐπὶ δεσφῶν (as the words of ^f *Zosimus* are) σὺν ἑξ ἑκ τῶ διαδῆμα

^t Baron. annal. tom. 3. ann. 337. & vide tom. eund. ann. 351.

^z Apud Balsamon. in Photii nomocanonis tit. 8. c. 1.

^y Epist. ad Laetam.

^u Tom. 1. de cruce Christi lib. 2. & tom. 3. lib. 1.

^x Chronol. lib. 2. ubi nonnullae imp. veterum effigies, sed minus accurate depictae.

^a Sacr. caeremon. lib. 1. sect. 5.

^b Apud Baron. tom. 3. ann. 324.

^c Hist. miscellan. lib. 11.

^d Vide Numism. apud

^e De coronis l. 9. c. 17. & c.

^f Historiar. l. 3.

Diff. 96. c. 14. & c.

^z Vide Numism. apud

^y Hist. miscellan. lib. 11.

^u Tom. 1. de cruce Christi lib. 2. & tom. 3. lib. 1.

^x Chronol. lib. 2. ubi nonnullae imp. veterum effigies, sed minus accurate depictae.

^a Sacr. caeremon. lib. 1. sect. 5.

תָּי נִקְדָּאֵר, they put the diadem on his head by force, as if it had been a known thing since Constantine, that by this means an emperor was to be created: and in Marcellinus the relation is more particular and most observable. Augustus (saith he) *renuntiatus jubebatur diadema proferre*, as if they had not doubted but that he had a diadem ready, as what was known now to be necessary at the making of an emperor: he denying that ever he had any, they would have took one from his wife's neck or her head-tire, that might have served for the present; but he pretending that it was not honourable for him to take his first inauguration from any part of a woman's habit, *equi phalera quaerebatur* (as his words are) *uti coronatus speciem saltem obscuram superioris praetenderet potestatis*. This also he disliked, as too mean a thing to be turned to a diadem. But then a Moor, that stood by, snatched off his own collar (which he wore as he had the office of carrying one of the ensigns of the dragon) & *capiti Juliani imposuit confidenter*. So in the creation of Jovinian. Joviniانو (says Eutropius) *infulas imperatoris imponunt*. The like hath Zosimus of him, and of Maximus that was slain by Gratian. And in the chronicle of Alexandria, Theodosius the first *ἐξελείβετο βασιλέα, crowned for emperor* his son Honorius: and the lady Verina makes her brother Basiliscus emperor *ἐψάσα, crowning him*. The same author, that Basiliscus crowned his son Marcus. And that the imperial guard, together with the multitude, crowned Justin the elder. And Cedren says, he crowned his wife Lupicia. ⁽¹⁴³⁾ The like testimonies are of others of them down to Justinian, who denotes the beginning of his empire by the time ^h *quo vultu divino imperiales suscepimus infulas*. But he received the diadem from his uncle's hands, as both Zonaras, Cedren and others tell us. Neither was any of them yet (for so much as I can find in good authors of credit for this point) crowned by the patriarch. I know Theodorus: Anagnostes hath a short and perhaps imperfect passage of the Constantinopolitan patriarch Proclus his crowning of Theodosius the younger. And I know that some others say that pope John the first, when he went to Constantinople about the Arian hereticks, crowned Justin the elder also. *De ejus manibus* (are the words of ^k Anastasius) *cum gloria coronatus est Justinus augustus*. And some of later ^l time take this of Justin the elder for an undoubted truth; especially Baronius, who thinks as clearly that this Justin had been crowned before by John patriarch of Constantinople. *Licet enim* (so ^m Baronius) *simul ac electus est in imperatorem a Joanne ejus civitatis episcopo fuerit diademate insignitus, tamen & illud ipsum ab ipso Romano pontifice, suo voluit, pietatis ergo, capiti superimponi*. But I remember not that any else either of the antienter or middle times affirm so much either of Theodosius or

this Justin. But in the next Justin that was successor to Justinian and began in DLXV, we have infallible testimony of his being crowned by the patriarch of Constantinople. And the learned Onuphrius ⁿ also professes he could never observe any such coronation in the empire of an elder time. The best author that delivers this of Justin, is Corippus that lived in the same age with him. He says that he was first, after the old fashion, taken up on a shield, and so by acclamations chosen emperor, and then crowned by the patriarch,

Postquam cuncta videt ritu perfecta priorum Pontificum summus plenaque aetate venustus, Adstantem benedixit eum, coelique potentem Exorans dominum, sacro diademate jussit Augustum o sancire caput, summoque ꝑ coronam

Imponens apici, &c.

This patriarch was John, not Eutychius, as Paulus Diaconus mistakes. For Eutychius was thrust out of his patriarchat by Justinian, and not restored till some years after Justin's beginning. And so expressly hath Cedren and others delivered. From that time of Justin, this kind of coronation, for the most part, continued in his successors till the end of the eastern empire. But some say also that Leo successor to Martinus, in 461 of our Saviour was crowned by the patriarch of Constantinople, and was the first that was crowned emperor. So Rabbi David Ben Salomon a Jew of Poland. His words are ^q

לְאוֹן הַקֵּיסָר הֵנּוּ סֶלֶךְ בְּקוֹסְטַנְטִינָא בְּשָׁנָה רַבִּית וְנִתְּקִים עַל וְיוֹהֵאֲשָׁן אֲשֶׁר שָׁם בְּנִתְּנָה כְּתָר מְלָכוֹת בְּרָאשׁוֹ וְיוֹהֵאֲשָׁן הַקּוֹסָר הָאֲשָׁן הֵנִיכְרָ בְּכָתָר מְלָכוֹת Leo the three and fiftieth emperor reigned in Constantinople in the year 4221 (that is 461 of our Saviour) and his imperial dignity was confirmed by the patriarch there, by putting the imperial crown on his head. And this emperor was the first that was crowned with an imperial crown.

In the western empire, the use of coronation began in Charles the great. And, saith the same ^r Rabbi הקִינֵר הָאֲשָׁן שִׁקְרָ כְּתָר מְלָכוֹת מִדְּאִפְיֹר וְשָׁם אֹחֻזָּה לְרוֹק עַד הַיּוֹם הַזֶּה this emperor was the first that received the imperial crown from the pope. And there (at Rome) it is received till this day. And as the patriarch of Constantinople crowned them of the east, so the pope those of the west. But, the pope regularly crowned them only with their third crown which is given them at Rome. For the emperor was wont after his coronation performed by the archbishop of Cologne at Aken in S. Mary's church (where his throne or chair is the same that Charles the great used) to be crowned at Millain in S. Ambrose's church by the archbishop there, or else at Monza some few miles distant from Millain in S. John's church: and then to go to Rome and receive a third coronation from the pope or the cardinal of Hostia

^a Amm. Marcellin. lib. 20. §. 4.

^b C. tit. de quadrienn. praescript. l. 3. bene e Zenone.

^c Collectan. 2.

^d In vit. pontificis 54.

^e Vide Bernard. Saccum Ticinens. hist. l. 8. c. 2.

^f Annal. tom. 7. ann. 525. p. 106. edit. Antwerp.

^g De comitiis imperat. c. 5. &c.

^h Legit Th. Dempsterus *vincire*. Sed priorem lectionem libentius teneo. *Sancire n. est sacramentum facere*.

ⁱ Vide, de hac re, praeter

Cedrenum, hist. miscell. l. 16. de augustae Sophiae coronatione, Zonar. tom. 3. pag. 57.

^j Tzemach David, part 2. fol. 40. b.

^k Ibid. fol. 53 & 54.

(as his vicar) at *S. Maurice's* altar in *S. Peter's*. Their first coronation at *Acken* is ordinary. But that second hath not had many examples. The first, as the diligent and learned *Onuphrius* observes, was in that of the emperor *Henry VII.* in the year *MCCCXI.* Some others since him also had this second coronation there. But also some of them have in stead of it, received a particular coronation elsewhere for that which should have been otherwise at *Millain*: as *Frederick III.* was twice crowned at *Rome*, to supply this of *Millain*, and *Charles V.* twice at *Bologna* to supply both that of *Rome* and this together. That at *Acken* is taken for the emperor's being king of *Germany*; that at *Millain*, for his being king of *Italy*; and that of *Rome*, for his being emperor. But whereas commonly the crown taken at *Acken* is said to be of *silver*, and that at *Millain* of *iron*; it is to be understood that their metals are not such, but for some other reason (which as yet I have not sufficiently learned) they are only called so, and are of gold as well as that taken at *Rome*. This is the sum of such truth as the best authors (I think) deliver of them. But there are many and most differing passages of them in lawyers, historians, and others; which I had rather thus design only, than either transcribe hither any more variety of their fancies, or in any particular give my own judgment further on them. You may see (beside *Onuphrius de comitiis imperatoris cap. 10* & *11*, whom I prefer here before the rest) *Sigonius de regno Italiae lib. 1. 3. 4.* & *7.* *Krantzius Saxoniae lib. 4. cap. 37.* *Lancelotus Conradus in templo omnium judicum, lib. 1. cap. 1. §. 1.* *Restaurus Castaldus de imperatore quaest. 33. 34. & 35.* *Hieronymus Balbus de coronatione a Carolum V. cap. 6.* & *32.* *Gunter. lib. 1. & Spiegelius* upon him, *Henricus Bebelius de prerogativa imperatoris Germanici*, *Barth. Chaffan. catalog. glor. mundi part. 5. conf. 27.* and such more.

The use of crowns and coronations thus deduced from *Constantine the great*, was an example which the rest of the kings of *Europe* followed. The kings of *France* had crowns in their inaugurations before the beginning of the western empire: so we read in the stories of *Charles* and *Carolomann*, the sons of king *Pipin*, in *DCCLXVIII.* of our Saviour. *Carolus Noviomii* (saith *Sigebert*) *regiam accepit coronam, Carolomannus vero in urbe Sueffionica.* And it is likely enough that this use of a crown there, was antienter and equal with their use of royal unction. Among the *English* kings, *Geffrey of Monmouth* says, that king *Athelstan* first used it. But, besides that of king *Alured's* being crowned and anointed by pope *Leo IV.* (whereof before) *Ethelwerd* a writer of the *Saxon* times speaking of king *Edward*, next predecessor to *Athelstan*, uses these words of him. *Coronatur ipse stemmate regali a primatis electus, &c.* (144) But of the crowns of the *English* kings, and their coronations more presently. The traditions of *Scotland* are ^u that until king *Achatus* (a-

bout *DCCC.* years of Christ) their kings used a crown of gold even from their first king *Fergus*, and that it was *militaris valli forma* or a plain circle of plate, and that *Achatus* added to that plainness, four *fleurs de lis* and four crosses, *quatuor lilia aurea, quatuor cum salutiferae crucis aureis signis paribus intervallis discretis, liliis paulo eminentioribus*, as *Boetius* his words are. (145) And for the *Westgothick* kings in *Spain*, it is delivered ^x that the first of them that had it among the ensigns of royalty, was king *Lewigild* about *DLXXX.* of our Saviour. *Nam ante eum* (saith *Isidore*) *habitus & confectus communis ut genti ita & regibus erat.* (146) And, I remember, I have ^y read that the first crown used in the kingdom of *Lombardy* was about *DXC.* and that it was made by queen *Theodelinda*, and the same which is since called the emperors iron crown, and kept at *Millain* or *Monza*. In other christian kingdoms of *Europe* that have later beginning, their crowns (I think) and coronations have been equal to their first erection into that title.

But the forms of the royal crowns used in most (if not in all) those nations are different.



The Empire.



England.



France.



Spain.

That of *Spain*, somewhat from the *English*; both these from the *French*; and the *French* and *Spanish* and *English* severally differing much from that of the empire. The circle of the *French* is raised only into *flowers de lis* and arches, and hath a *flower de lis* on the top; whereas the king of *England's*, of *Spain's*, and the emperor's, have a globe and a cross in that place: as also the crowns of *Denmark* and *Swethland*. But this may not untimely be observed here that the arched or close crown (commonly in use at this day) or that which is called imperial (for so are the arched or close crowns called, and belong only, they say, ^z to supreme kings) is not of very antient use save only in the empire. The antient crowns that remain in the coins of the *French* kings are usually raised round, into *flowers de lis*. And for them you

ⁱ In this chapter §. 1.
Hisp. lib. 5. cap. 13.

^u Lib. 4. cap. 4.
^v Vide Sigon. de regno Italiae lib. 1.

^w Hecstor Boet. lib. 2. & 10.

^x Roderic. Tolet. lib. 2. cap. 14. & Marian. de reb. ^z Videlicet Paschal. lib. 9. de coronis cap. 17.

may see the *French monies* published by themselves, where I find not any diadem or crown otherwise than fleurie only till *Francis* the first.

But for the christian kings of this territory of *England*; it seems that in the elder times of the *Saxons* (to omit here as a vanity that of king *Arthur's* crown which ^a *Leland* says he saw in his seal) they had at first, after the common fashion of other nations, which perhaps had been antient with them also, the ordinary plain



fillet or diadem, as we see in the head of *Aldulph* king of the *East-Angles*, who began his reign in the year DCLXIV. and that afterward they had their diadems of pearl or other such matter, as *Constantine* and his near successors used. For *Offa* king of *Mercland* in DCCXLIII. of our Saviour, is thus presented in his coins. And so, of his successors, *Berthulf*, *Burghred*, *Kenulf*. But king *Egbert*, who about DCCC. of our Saviour, became monarch of the heptarchy, had, as it seems by his coins, a radiant crown, the rays being much shorter than those on the old emperors. But again, if the stamp deceive not, king *Alfred's* head in his coins (whence this is taken here) is circled with a simple diadem ^b after the common and antientest fashion, as most of his successors also were till *Edward the confessor*. Only, if I mistake not, king *Edred* and king *Edmund ironside* have crowns somewhat like the coronets of our earls, pointed and pearled on the points which are raised higher than commonly those in our earls coronets, but are not so many. And king *Hardicnut* hath a dia-

dem of pearls like others. The rest, either some diadem on their bare heads or on helmets. But *Edward* the confessor in some of his coins hath an ordinary crown of gold raised into *flowers de lis*, though in his picture which his great seal presents his head have a cap and a crown on it in this form, which is a strange one; unless perhaps the cutter of the stamp meant it for such a one as you see presently of *William* the conqueror's. And indeed though the coins of the *Saxon* times, shew us but ‡ what is here delivered, yet there are exant some volumes written under king *Edgar* and by his command, touching the reforma-

tion or restitution of the monastick life in *England*, wherein he is pictured, and in a draught of his own time, with a crown fleurie also rudely drawn: and, whence soever it proceeded, the crowns that are put on the heads of most antient kings in pictures of the holy story of *Genesis* ^a translated into *Saxon* in those times, and in such draughts as designed the holy stories belonging to the *Psalms* of near or about M. years since, are no otherwise than *fleurie de lis*. But after the confessor, *Harold* returns again in some of his monies to the diadem of pearls, and bears it on a helm. And this on a helm, I conceive to be properly that which they called *Cynehelme*, as the diadem without the helm, that which was their *Cynebæns* or *royal fillet*. For those two words with the *Saxons* denoted a royal ensign of the head. Our first king *William*, in his great seal wears on a cap a crown both fleurie, as that on the confessor's monies, and raised with points that have crosses on them. But on his coins, it seems he hath the pearled diadem having labels at each ear, and something like an arch that goes cross the head, as it is frequently seen in those of the eastern emperors. His son and successor *William Rufus* is crowned in his great seal with no other fashioned crown than what is now with us an earl's coronet.



But in his coins, the same shape is presented which his father also bears upon his monies. That of *Henry* the first both in his great seal and coins is only *fleurie de lis*, and the flowers are raised but little; and in that of his coins two labels of pearl, or some such thing, hang at each ear. King *Stephen* also in both, hath only a like crown fleurie, which is exactly too the form that both *Maud* the empress and *Henry II.* have in their great seals. But this *Henry* in his coins is crowned like *Henry* the first. The son of *Henry* the second (which by some was called *Henry III.* ^b whence our ordinary *Henry III.* is also sometimes *Henry IV.*) being crowned in his father's life, as also *Richard I.* have exactly the same form in their great seals. But king *John's* crown (as his great seal shews it) is only pointed with short rays instead of flowers. His son, king *Henry* the third wears in his first seal a crown fleurie pointed or rayed; and the points or rays are raised, but not high, between the flowers. His second seal hath the like, save only in that the points or rays are wanting, as they are also in that which is on his tomb-statue of brass at *Westminster*. But in *Matthew Paris* we read that *Henry* the third was at first crowned with a *circulus aureus*. The like to this last of *Henry III.* is that of king *Edward* the first as well on his coins as in his seal. So hath his wife queen *Eleanor* on her tomb-statue in brass at *Westmin-*

^a Affert. Arth. pag. 12.

^b See before pag. 249.

[†] Mss. in bibl. Paris. pag. 163.

[‡] In biblioth. Cotton, ms. ubi etiam archetypa servantur unde jam efficta heic vide Mauth. Paris, pag. 163.

ster. So hath his son *Edward II.* So *Edward III.* both in his coins, and as well in his seal made at the beginning of his reign, as in that which he used after he had the title of *France*. The fashion of king *Richard the second's*, *Henry the fourth's*, *Henry the fifth's*, is not otherwise, although I have read somewhere, (as I remember, in a book of the institution of the garter written under *Henry VIII.*) that *Henry the fifth* first made him an imperial crown. Some others^c have attributed the first use of it to king *Edward III.* At least they say, that over his arms it was first painted; and they give a reason for it; because he was made vicar-general^d through the empire by the emperor *Lewis of Baviere*. But neither doth king *Henry the sixth's* in his great seal differ from that of *Henry V.* But in some of his coins, it is both fleurie and arched with a globe and cross on the arch, almost like the imperial crown of *England* worn at this day. The like form is



on *Edward the fourth* in his great seal, saving that pearly rays rise between the flowers under the arch: yet also some of his coins have three crowns, one over another, (but not on his head) which are fleurie

with crosses between the flowers, and not arched. The three were for his three dominions, *England*, *France*, and *Ireland*. King *Edward V.* and *Richard III.* in their great seals are both crowned with crowns fleurie, having crosses between the flowers and arched, as the wearing is at this day, with the globe and cross on the arch, which form hath ever since continued. But I have seen several copies of the *ordo coronationis* of the kings and queens of *England*, written much antienter than *Henry the sixth*, and in them the king sitting in his throne, and crowned with the crown fleurie, not without an arch, having a globe or mound with the cross on the top of it. And the draughts seem as old as the copies. For the more exact fashion of those old fleurie crowns without arches, worn by the kings and queens of *England* in some of the former ages, you may easily and best observe it on their statues both in *Westminster-hall* and on the front of it. They were set there, under *Richard II.* Those upon the kings that are fixed on the walls of *Henry the seventh's* chapel at *Westminster*, were, according to the fancy of the workman, made (as I think) all alike, and only fleurie with crosses. And though the arched crown were then in use; yet, it seems, the arches were purposely omitted as being too troublesome, and not of necessity requisite. And the cutter there chose rather to make them handsomely and alike, than such as were proper for every king. As we have such old testimonies for the crowns of our kings, so also, for the form of their coronations, we have a ceremonial (which the injury of time hath not permitted to remain perfect) of the *Saxon* times and then written: I mean the same out of which something is before transcribed touching unction. The hand is about 20 years old: and

some leaves being lost after that of the unction of the king, the end of the monition given in those times to him at his taking of the sword, thus begins the next page in that which remains.

..... & cunctos sanctae Dei ecclesiae adversarios regnumque tibi commissum tutari atque protegere castra Dei, per auxilium invictissimi triumphatoris Domini nostri Ihesu Christi, qui cum Patre in unitate Spiritus Sancti vivit & regnat.

Then it goes on thus,

Oratio post datum gladium.

DEUS qui providentia tua coelestia simul & terrena moderaris, propitiare christianissimo regi nostro, ut omnis hostium suorum fortitudo, virtute gladii spiritualis, frangatur ac te pro illo pugnante penitus conteratur per &c.

Hic coronetur rex, eique dicatur.

Coronet te Deus corona gloriae atque iustitiae honore & opere fortitudinis, ut per officium benedictionis cum fide recta & multiplici bonorum operum fructu, ad coronam pervenias regni perpetui, ipso largiente cujus regnum permanet in secula seculorum. Amen.

Oratio super regem postquam corona fuerit imposita super caput ejus.

DEUS perpetuitatis, dux virtutum, cunctorum hostium victor, benedic hunc famulum tuum N. tibi caput suum humiliter inclinantem & proluxa sanitate & prospera felicitate eum conserva, ut ubicunque vel pro quibuscunque auxilium tuum invocaverit cito adfuis & protegas ac defendas. Tribue ei, quaesumus, domine divitias gratiae tuae; comple in bonis desiderium ejus; corona eum in misericordia tua ut tibi domine pia devotione famuletur per &c.

Which are the same almost to a syllable that in the later ceremonials of the *English* coronation, are appointed for the particular time of the putting on the crown.

By the same old ceremonial also, the queen after her unction and receiving the ring, is to be crowned with these words, which are also in the later forms.

Accipe coronam gloriae & honorem jocunditatis ut splendida fulgeas & eterna exultatione coroneris per &c.

Alia.

OMNIUM Domine fons bonorum & cunctorum dator profectum, tribue famulae tuae N. adeptam bene regere dignitatem & a te sibi praestitam in ea bonis operibus corroborare gloriam, per dominum nostrum, &c.

Some other parts of that *Saxon* ceremonial come in their place in the next paragraph. But those of the later time, which concern *England*, I shall wholly omit, both because the many copies of them agree not among themselves, and for that none of them which I have seen, (as far as I know) are allowed for the present by any

^c Fr. Thinne in ms. diatriba de insigniis Rob. comiti Sarisbur. olim dicata. 1338.

^d Videfis Thom. Walsingham in Edw. III. ann.

publick authority. But for some other kings; the ceremonials of their coronations out of authentic copies are at large here anon transcribed, beside directions to what is publick in story, for the formal part of coronation of the kings of England. And for diadems and crowns, thus much.

III. Next here follow the *scepter* and the *globe* with the *cross* infixed, or the *mound*. For the *scepter*; some testimonies make it an antienter ensign of a king than the crown or diadem is. *Iustin* (or rather *Trogus* ^c *Pompeius*) seems to deny that the old kings of *Rome* had any diadems; but that instead of them they carried scepters. So I conceive him in those words spoken of the age of those kings. *Per ea adhuc tempora reges hastas pro diademate habebant, quas Graeci sceptrum dixere.* For their diadems, enough already. But it is most clear that both in prophane and holy writers the scepter is much antienter (as it was attributed to a king) than either crown or diadem. In *Homer* we have *σκηπτέροι βασιλεις* or *kings with scepters*, but none with crowns. And in his deriving the kingdom to *Agamemnon*, he says, he had the scepter ^t from *Thyestes*, *Thyestes* from *Atrous*, *Atrous* from *Pelops*, *Pelops* from *Mercury*, *Mercury* from *Jove*, *Jove* from *Vulcan*, as if the eldest and most eminent character of a king or kingdom were the scepter only. And *Thyestes* left it to *Agamemnon*,

Πολύβοι νόστοι δὲ Ἄργεϊ παντὶ ἀνάσσειν.

to rule both the territory of *Peloponnesus* and the isles belonging to it. ⁽¹⁴⁷⁾ Thence was it that the old *AEgyptians* in their hieroglyphick expressions, understood *Osiris* ⁽¹⁴⁸⁾ by the shape of a scepter with an eye on it; *significantes* (says ^s *Macrobius*) *hunc deum solem esse, regaliq; potestate sublimem cuncta despicere; quia solem Jovis oculum appellat antiquitas.* And *Fulgentius* understands *Mercury's caduceus* to consist of a scepter and snakes, *quod mercatoribus* (as his words are) *det aliquando regnum ut sceptri, & vulnus ut serpentium.* ⁽¹⁴⁹⁾ Testimonies enough of the like kind (for the scepter being most antient as an ensign of power) are in that of the gods bearing scepters to denote ^h their empires; whereof more especially the scholiast upon *Aristophanes* his comedy of *birds*. To these may be added that of *Aristotle*, where he ⁱ says that in the heroick times, some kings were sworn, others not. But the oath of them that were sworn, was τὸ σκηπτέρος ἐπανάσσειν, or the lifting up of the scepter, which was called therefore ὀρκιον σκηπτέρον or the oath-scepter: and therefore also doth *Homer* make *Achilles* swear by his scepter,

Ναὶ μὲν τὸ δὲ σκηπτέρον ———.

by this scepter, and ^k calls it μέγαν ὀρκον the great oath. The Scepter being indeed also a singular symbol among the antients of *Jove* himself, as of the greatest king, if we believe *Servi-*

us Honoratus ^l upon *Virgil*. For where in that league sworn between *Aeneas* and *Latinus*, *Virgil* makes *Latinus* hold a scepter in his hand, *Servius* notes that the antient fashion, in swearing to leagues, was to have statues of *Jupiter* solemnly brought to the place where the oath was taken. And indeed all solemn oaths were supposed to be made in the presence of *Jupiter*. *Juratumque Jovi foedus*, is in *Syllus Italicus*. But, afterward (says *Servius*) this course growing too troublesome, especially when the oaths were taken in far remote nations, it came into use that one as a *pater patratus*, or king of heralds, should be by, holding in his hand a scepter which supplied the statue of *Jupiter*. *Sceptrum n.* (saith he) *ipsum est imperium: unde nunc tenet sceptrum Latinus non quasi rex; sed quasi pater patratus: that is, he held not his scepter (which was supposed Jupiter's) as a supreme king, though he were one, but as a king of heralds that brought it to the ceremony.* And as *Achilles* in *Homer*, so *Alexander the great* is made swear by his scepter in an epigram that I found among others written at the end of an old barbarous ms. history of him. I remember it not elsewhere extant, therefore I give it here.

Magnus Alexander bellum mandarat Athenis: Infestus populo totius urbis erat.

Ibat Aristoteles caute temptare tyrannum,

Si prece vir tantus flectere posset eum.

Quem procul intuitus, sceptrum capitisque salutem

Testans; non faciam, si qua rogabis, ait.

Mutat Aristoteles causam subtiliter; urbem

Obsideas, frangas, maenia Marte petas.

Poenituit jurasse ducem, bellumque roganti

Dat pacem, lusus calliditate viri. ⁽¹⁵⁰⁾

But for ought I remember, the author is deceived in the story. For it was *Anaximenes* that used some such trick ^m to *Alexander* to save the *Lamp-facens*; not *Aristotle*, I think, in behalf of the *Athenians*. ⁽¹⁵¹⁾ The most eminent antient and sacred use of a royal scepter in prophane writers is thus plain enough. But it is of far elder memory, as a word denoting a king or supreme governor in the holy text. *The scepter shall not depart from Judah, &c. until Shiloh come,* ⁽¹⁵²⁾ saith *Jacob*: that is, a king or supreme governor; as it is commonly interpreted, especially by the rabbins; and so, that the very word שבט *shebet* which *Jacob* uses there for a scepter, is taken properly enough to signify a king or such supreme governor as a king is. Therefore also in the Greek it is turned ἐν ἐνδεύσει ἀρχων, there shall not fail a supreme governor or king, &c. whence it is that in the holy prophecy of *Amos* רִמְרָם שֶׁבֶט *thomac shebet*, which signifies one that holds a scepter ⁿ, is used absolutely for a king. And the use of the scepter in the *Persian* empire need not be further remembered here. The holy story of *Esther* hath enough of it. And enough here of the scepter in general.

In that imperfect ceremonial of the *Saxon*,

^c Histo. lib. 43.
lib. 3. cap. 20.
comm. 5.

^f Iliad. β.
^g Iliad. α.

^g Saturnal. lib. 1. cap. 21.
^h Ad Aeneid. 12. us sceptrum hoc, &c.

^h Vide Jerem. in epist. Baruch subnex. com. 13.
^m Pausanias in Eliac. 2.

ⁱ Politic.
ⁿ A mos cap. 1.

times (out of which we have before taken some parts that concern the anointing and the putting on the crown) next after that benediction which belongs to the crowning, follows,

Hic detur regi sceptrum eique dicatur.

Accipe sceptrum regiae potestatis infigne, virgam scilicet regni rectam, virgam virtutis, qua te ipsum bene regas, & sanctam ecclesiam populumque videlicet christianum tibi a Deo commissum regia virtute ab improbis defendas. Pravos corrigas, rectos pacifices, & ut viam rectam tenere possint, tuo juvamine dirigas, quatenus de temporali regno ad aeternum regnum pervenias. Ipso adjuvante cujus regnum, & imperium sine fine permanet in saecula saeculorum. Amen.

Oratio super regem postquam datum fuerit ei sceptrum.

Omnium Domine fons bonorum, cunctorumque dominus institutor profectuum, tribue quaeso famulo tuo *illi*, adeptam bene regere dignitatem, & a te sibi concessum honorem dignare corroborare. Honorifica eum prae cunctis regibus *Britanniae*, uberi eum benedictione locupleta, & in folio regni firma stabilitate consolida, visita eum in fobole, & praesta ei prolixitatem vitae. In diebus ejus superioratur justitia, ut cum jocunditate & laetitia aeterno gloriatur in regno per &c.

*Hic regi virga * detur eique dicatur.*

Accipe † *virgam* virtutis atque aequitatis, qua intelligas mulcere pios & terrefcere reprobos. Errantes viam doce, lapsisque manum porrige, perdasque superbos, & relevas humiles, ut aperiat tibi ostium Jhesus Christus Dominus noster, qui de seipso ait, *ego sum ostium, per me si quis introierit salvabitur*, & ipse qui est clavis *David* & sceptrum domus *Israel* qui aperit & nemo claudit, claudit & nemo aperit. Sit tibi adjutor qui educit vincitum de domo carceris, sedentem in tenebris & umbra mortis, ut in omnibus sequi merearis eum de quo propheta *David* cecinit, *Dominus in saeculum saeculi, virga recta est virga regni tui*. Imitare ipsum qui dicit, *diligas justitiam & odio habeas iniquitatem*: propterea unxit te Dominus Deus tuus oleo laetitiae ad exemplum illius quem ante saecula unxerat prae participibus suis, Jhesum Christum Dominum nostrum.

Benedictio ad regem.

Extendat omnipotens Dominus dextram suae benedictionis, & effundat super te donum suae protectionis, sanctae *Mariae*, ac beati *Petri* Apostolorum principis, sanctique *Gregorii* Anglorum apostolici, atque omnium sanctorum intercedentibus meritis. Amen.

Indulgeat tibi Dominus omnia mala quae gestisti, & tribuat tibi gratiam & misericordiam quam humiliter ab eo deposcis, ut liberet te ab

adversitatibus cunctis, & ab omnibus visibilium & invisibilium inimicorum insidiis. Amen.

Angelos suos bonos semper & ubique qui te praecedant, comitentur, & subsequantur, ad custodiam tui ponat, & a peccato seu gladio, & ab omnium periculorum discrimine sua te potentia liberet. Amen.

Inimicos tuos ad pacis caritatisque benignitatem convertat, & bonis omnibus te gratiosum, & amabilem faciat, pertinaces quoque in tui infestatione & odio, confusione salutari induat, super te autem sanctificatio sempiterna floreat.

Victoriosum te atque triumphatorem de invisibilibus atque visibilibus hostibus semper efficiat, & sancti nominis sui timorem pariter & amorem continuum cordi tuo infundat, & in fide recta ac bonis operibus perseverabilem reddat, & pace in diebus tuis concessa, cum palma victoriae te ad perpetuum regnum perducatur. Amen.

Et qui te voluit super populum suum constituere regem, & in praesenti saeculo foelicem, & aeternae foelicitatis tribuat esse consortem. Quod ipse praestare, &c.

Alia.

Benedic Domine hunc praelectum principem qui regna omnium regum a saeculo moderaris. Amen.

Et tali eum benedictione glorifica, ut *Davidica* teneat sublimitate sceptrum salutis, & sanctificae propitiationis munere reperiat locupletatus. Amen.

Da ei a tuo spiramine regere populum sicut *Salomonem* fecisti regnum optinere pacificum. Amen. Quod ipse praestare, &c.

Designatio status regis.

† Sta & retine amodo statum, quem hucusque paterna suggestionem tenuisti haereditario jure tibi delegatum per autoritatem Dei omnipotentis & per praesentem traditionem nostram, omnium scilicet episcoporum, caeterorumque Dei servorum; & quanto clerum sacris altaribus propinquiores prospicis, tanto ei potius in locis congruis honorem impendere memineris, quatenus mediator Dei & hominum, te mediatorem cleri & plebis in hoc regni folio confirmet & in regno aeterno secum regnare faciat Jhesus Christus Dominus noster, rex regum & dominus dominantium, qui cum Deo Patre & Spiritu Sancto, &c.

Sequitur Oratio.

Omnipotens Deus det tibi de rore coeli & de pinguedine terrae abundantiam frumenti & vini & olei, serviant tibi populi, & adorent te tribus. Esto dominus fratrum tuorum, & incurventur ante te filii matris tuae, & qui benedixerit tibi benedictionibus repleatur, & Deus erit adjutor tuus. Omnipotens benedicat tibi benedictionibus coeli desuper & in montibus, & in collibus, benedictionibus abyssi jacentis deorsum, benedictionibus uberum & vulvae, benedictionibus varum pomorumque. Benedictiones patrum antiquorum, *Abraham, Isaac, & Jacob* confortatae sint super te, per &c.

* This was given into the left hand, as the scepter into the right. See Matth. Paris p. 206. edit. Londina. † This is in the old ritual called Ordo Romanus.

† This is almost the same in the old ritual called Ordo Romanus.

Alia Oratio.

Benedic Domine fortitudinem hujus principis, & opera manuum illius suscipe, & benedictione tua terra ejus de pomis repleatur, de fructu coeli, & rore atque abyssi subjacentis, de fructu folis, & lunae, de vertice antiquorum montium, de pomis aeternorum collum, & de frugibus terrae & plenitudine ejus.

Benedictio illius qui apparuit in rubo veniat super caput ejus *illius*, & plena sit benedictio domini in filiis ejus, & tingat in oleo pedem suum.

Cornua rinocerotis cornua illius: in ipsis ventilabit gentes usque ad terminos terrae, & ascensor coeli auxiliator suus in sempiternum fiat, per Dominum, &c.

As the *scepter* is the ornament of the right hand, so in the left, the *globe* or *mound* with the *cross* infixed, in statues and pictures (and in some coronations) of kings, is a singular ensign of royal dignity. The several times wherein this solemn use of this in several kingdoms began, is not so easily found: nor perhaps worth the enquiry. It shall suffice here to shew how it began in the empire, whence the use of it was by example taken into all or most of other kingdoms of christendom. That which we name a globe or mound here, is also sometimes called an apple, (153) sometimes a ball. And it is observed by learned men, that it was frequent in the state of *Rome* before the emperors were christian, to have both among their ensigns in the field and in their monies, the ball or globe, the beginning whereof *Isidore* also refers to *Augustus*. *Pilam* (saith he) *in signa constituisse fertur Augustus, propter nationes sibi in cuncto orbe subiectas ut malus figuram orbis ostenderet*: thus some copies have it, and not *magis figuram*, &c. as we usually read there. But *Lipsius* reads *malis* out of some mss. and *Theodorus Douza*, & imagine in that of *Isidore*. However it seems that to this purpose *pila* and *malus* or a ball and an *apple* are as synonymies, and denoted the figure of the earth as well in the field on a lance as on their coins, sometimes in the hand of victory, sometimes of fortune or otherwise. But afterward when the holy cross came into estimation, and was received with such reverence by the emperors into their ensigns, it was added also to this globe or apple held in the hands of their pictures or statues; sometimes the left, sometimes the right. There is authority that *Constantine* first caused this globe and cross to be so joined and put in the right hand of his great statue at *Constantinople*. So says *Nicephorus Callistus*. *In columna statuum suam* (as his words are in Latin) *ex aere factam collocavit quae dextra manu ingens aureum malum continet. Atque ipsi malo veneranda crux ab eo infixa*. But take this upon the credit only of *Nicephorus*. For though it be obvious, that *Constantine* used in his ensigns both the apple or globe

and the cross; yet I find not any sufficient testimony either in the stories written near his age or in any other infallible proof of his time, that he so joined them together. The first figure of it that I see is in some monies of *Theodosius* the elder; (154) that on the reverse have victory sitting, with a lance or scepter in the left hand, and the globe with the infixed cross in the right, in this form.

Other of his coins have the like figure of the globe and cross otherwise, but some-



times also the globe only with no cross. And in the coins of the succeeding emperors it is often found also. But the first that had it in his statue (if *Constantine* had it not; at least, the first of whom the surest testimony occurs) was *Justinian*. In that great statue of him at *Constantinople*, his left hand had it: so writes *Procopius*; *ἡ φέρει τὴν χεὶρ τῇ λαμπρῶν* (not *ωρίων* as in the printed copies) *he had in his left hand a globe, and αὐτοῦ ἐπὶ τὸ πᾶν ἐπὶ τῇ αὐτῇ, a cross was set upon the globe*. And *Procopius* also says, that globe denoted both sea and land (which make one globe) to be under his empire. Of the same statue also *Suidas*, *τῇ μὲν ἀριστερῇ χεὶρ φέρει σφαῖραν ἐμπειρησμένην τῷ σταυρῷ ἐν αὐτῇ ἡσυχασμένοι* *ὡς, διὰ τὸ εἰς τὸν σταυρὸν πίστεως, τὸ γὰρ ἐκστατικὸν γέγονε*. *Σφαῖρα μὲν γὰρ ἡ γῆ διὰ τὸ σφαῖρα δὲ τῷ αὐτῷ σχήματι*. *Πίσις δὲ ὁ σταυρὸς διὰ τὸν ἐν αὐτῇ σταυρὸν περιελθόντα Θεόν*. In his left hand he held a globe with a cross infixed on it, which shewed that, by faith in the cross, he was emperor of the earth. For the globe denotes the earth which is of like form, and the cross denotes faith, because God in the flesh was nailed to it. (155) Since *Justinian*, it hath been more commonly used in the eastern empire, and was called *ἡ βασιλικὴ σταυρὸς* or the imperial cross; and they conceive it to be the same which *Curopalates* and *Cantacuzen* call a cross generally, and put it, for a solemn bearing, in the emperor's right hand at his coronation. But I think, that was rather a rod with a cross on it only, without any ball or mound, as it seems also by the picture of their crowned emperor which is anon presented here.

By those examples in the eastern empire, it came into use, it seems, in the western. Yet I have not observed it in any old authority antienter in the western than the time of the emperor *Henry II.* which falls in *MXIII.* of our Saviour; although some seem to refer it to the time of *Charles the great*. But there is a passage of it in *Glaber Rodulphus*, as if it had been invented for an imperial ensign in the west by pope *Benedict VIII.* The published copies of *Glaber* are plainly corrupted in the year where they speak of it: and for *anno Dominicae incarnationis septingentesimo decimo*, we must read *mil-*

^o Videsis *Lipsum* de militia Romana l. 4. dialog. 5.

^p Origin. l. 18. c. 3.

^q In not. ad *Georg. Logothet.* p. 70.

^r Hist. eccles.

lib. 7. c. 49. & videsis praefat. ejus ad Andronicum imp.

^s Lib. *ἑξ* *ἑξισμῶν*. *Ἰσίδωρ*. *λογ.* a. p. 6. depravatum, puto, *Procopii* ex-

emplar sefellit *Gillium* topograph. *Constant.* l. 2. c. 17. ubi de hac statua.

^t In verbo *Justinianus*: & videsis *G. de Budenfel* in *hodae-*

^u *Theod. Douz.* ad *Georg. Logoth.* p. 70.

^x *Isid.* *ἑξισμῶν*.

^y *Histor.* l. 1. c. 41.

^z Videsis *Onuphr.* de comitiis imper. cap. 5.

lesimo decimo tertio, as the matter related sufficiently demonstrates, and ^a *Baronius* also hath already observed. The year thus rectified, the author goes on thus; ^b *licet insigne illud imperiale* (having before said that none should be emperor but he to whom the pope should commit *insigne imperiale*) *diversis speciebus prius figuratum fuisset, venerabili tamen papae Benedicto sedis apostolicae fieri * jussum est admodum intellectu speciei. Idem insigne praecepit fabricari quasi aureum pomum atque circumdari per quadrum preciosissimis quibusque gemmis ac desuper auream crucem inseri.* Then also he tells us the meaning of the fashion of it. *Erat autem* (saith he) *instar speciei hujus mundanae * molis quae videlicet in quadam rotunditate circumfere perhibetur, ut dum siquidem illud respiceret princeps terreni imperii foret ei documentum, non aliter debere imperare vel militare in mundo, quam ut dignus haberetur vivificae crucis † tueri vexillo.* This the pope gave to the emperor at his meeting him, which the emperor most thankfully took, and sent it afterward for a present to the monks of *Clugny*. But by example of it, the emperors of the west afterward had one among their imperial ensigns. And of it, *Gothofredus Viterbiensis* an author that lived above cccc years since, and was chaplain to the emperors *Conrad III. Frederick Barbarossa*, and *Henry VI.* thus in his riming verses. And first of the globe alone, given to the emperor at his coronation in this ensign.

*Aureus ille globus pomum vel * palla vocatur
Unde figuratum mundum gestare putatur.*

Quando coronatur, palla ferenda datur.

*Significat mundum forma perhibere rotundum;
Intus habet plenum terrestri pondere fundum;
Quem tenet arcanum palla ferenda manu.*

*Haec fuit ex terris mundi collecta quaternis
Ut foret imperii manibus gestanda supernis.*

Hac tulit imperium † Julius arte suum.

Taliter hunc mundum gestat manus una rotundum

*Regius includit sic omnia climata pugnus
Taliter omne quod est regia pompa tenet.*

And then he tells us also,

*Quid significat crux posita super
aureum pomum.*

Crux superest pomo coeli super insita dono.

*Suscipe corde bono, rex, quae tibi mystica dono,
Teque sedente throno, prospice quid sit homo.*

*Crux & palla simul pariter connexa tenentur;
Haec magis illa minus † parte reverenda videntur.*

*Haec ferit, haec sanat, haec perit, illa manet.
Si mundana cupis pugno concludere regna,
Significata crucis tibi sint reverenter habenda.
Servulus esto Dei qui tua sceptrā regit.*

It is at this day to be carried by the counts palatine of the *Rhine* at the coronation of the em-

peror, by the name of *pomum imperiale*. In the bull of *Charles IV. comes † palatinus Rheni* *pomum imperiale portat a latere dextro*, as the duke of *Saxe* bears the sword, and the marquis of *Brandenburg* the scepter. And of later time (by the grant of *Charles 5 V.*) the palsgaves of the *Rhine* bear it in a scutcheon pendant to their own coat and that of *Baviere*.

In *England*, almost all the kings, down from *Edward the confessor* inclusively to this day, have it in their left hands on their seals or coins: and we see the like every where in their statues and pictures, that shew the form of their coronations, or preparation for burials. But I have at the end of an old ms. *ordo coronationis*, the form of a preparation for the burial of a king, where I have the shape of him in his royal robes, crowned and holding a scepter in his right hand, and this globe with the cross in the left. But the direction that is written with this shape puts it in the right. *In dexteram manu sua ponetur pila rotunda deaurata, in qua virga deaurata erit fixa a manu ipsius protensa, in cujus virgae summitate erit signum dominicae crucis, quod super pectus ejusdem principis honeste debet collocari.* But if we might trust to the credit of that attributed to king *Arthur*, which *Leland* says ^h he saw in *Westminster* church, we should find it as antient in the hands of the kings of this land almost as of the old emperors. ⁽¹⁵³⁾ He says king *Arthur* in that seal had in his right hand a scepter *fleurie de lis* on the top, and in his left hand *orbem cruce insignitum*. I believe *Leland* saw it. But I am not so forward to give credit to the seal, as to rely on his judgment for the truth of it. And the great seal of *Edward the confessor* shews the globe only in his left hand, without any cross fixed on it, though in his coins there be one upon the globe ⁽¹⁵⁴⁾.

The kings of *Denmark* also have it given into their left hands at their coronations: and it is thus interpreted by one that wrote in verse the coronation of *Frederick II.*

*Tandem etiam malum, cui crux infixā nitebat
Aurea, laeva caput regis, praesente sacrorum
Praeside, quod faciem effigiabat totius orbis;
Ut discat quae jam latissima regna capebat,
Esse sibi gestanda manu quasi, durior olim
Si qua premit miseris sors regni forte colonos:
Imperiumque uni, quem crux designat, Iesu
Acceptum referat, solus qui temperet orbem
Arbitrio, & nutu coelestem torqueat axem.*

Touching the globe and cross, you may see more in *Gretzer*, tom. 1. *de sancta cruce lib. 2. cap. 54. & tom. 3. lib. 1. cap. 14.* Divers other imperial ensigns were in old *Rome*, that have been many ages since obsolete. And some other also of the later time are of less note both in the eastern and western empires, and also in other kingdoms where crowns have been used. For those of the elder times in the empire, as the fortune of gold, fire carried before the emperor,

^a Tom. 11. ann. 1013.

^b Glaber. Rodolph. hist. l. 1. c. 5.

^{*} Visum est.

^{*} Ita legendum non malisque, ut in exempl. excusis.

[†] Passive. ^{*} A Ball. [†] As if Julius Caesar had borne this ensign of the globe. [‡] Lego per te. [§] Aurea Bull. Caroli IV. c. 22. [¶] Marq.

Fcher. orig. palat. l. 1. cap. 15.

^h Affect. Arthurii pag. 12. b.

the purple robe, shoes with eagles on them, the *labarum* or holy standard, and such more, they may be easly learned by any out of the collections of *Julius Caesar Bullinger de imperatore & imperio Romano*, *Lipsius*, *Gretzer*, *Bosius*, that write of *cruce*, *Baronius* and such others, than they could be here more particularly delivered. And for those other ensigns of the later use; you may observe the ceremonials anon here transcribed, and other directions there also given to find them.

IV. In the parts of division of this chapter, the next is that of inauguration of some princes which use no crowns. ⁽¹⁵⁵⁾ The *grand signior* is one, whose habit is richer than the rest, and his tulipant varied from theirs by the price and glory of jewels, and the greatness or height of the fashion; as in proportion, the tulipants of his ⁱ *basas*, *chiauses*, and of others in that empire are. And *Bodin* (though the reason that moved him, perhaps were false) writes truly, ^k that *nul-li principes musulmani coronam capiti suo imponunt; tametsi antea Asiae & Africae regibus id usitatum fuisset*. But neither did the old *Mahumedan chaliphs*, it seems, use crowns or royal diadems, but only the *cydaris* or tulipant as at this day. For of one of them, ⁽¹⁵⁶⁾ says *Benjamin* ^l *Ben-Jona*, as he is turned by *Arius Montanus*; *Vehitur ille Mula* (it was *Mustetzi*, as I think, who was *chaliph* about 1180. of our Saviour) *regis vestimentis ex auro & argento contextis indutus, caput cydari ornatus incomparabilis pretii lapidibus splendenti. Super cydarim vero nigrum sudarium gestat, quo gestamine saeculi hujus verecundiam profite-tur*. ⁽¹⁵⁷⁾ And of the first of the *Othomanick* race also; *Leunclavius*, that ^m he lies buried at *Prusa* (the chief city of *Bithynia*) having on his tomb *extrinsecus superimpositum tulipantum vetus, non admodum magnum, quodque spiras subtilius & majori artificio circumvolutas habet quam in iis tulipantis videamus quae Turci suis nunc gestare capitibus solent*. ⁽¹⁵⁸⁾ But in that of the *Mahumedan* and *Othomanick* emperors taken out of *Abraham Zaccuth* by ⁿ *Joseph Scaliger*, the *insignia regni* in the beginning of the *Othomanick* reign are *vexillum, ensis & indumenta*.

In *AEgypt*, the *Greek sultans* used a ^o tulipant made of threecore or more ells of thin stuff diversly folded, so that six wreaths like horns stood out of it, whereof four were about a span's length, and the other two between them about a cubit long. ⁽¹⁵⁹⁾ But this was not proper to the *great sultans*. Their chiefest and nearest princes wore the like. So that the inauguration of the *Mahumedan* princes, is rather by solemn acclamations and placing them in the imperial throne, than in putting on any habit; though the richness of the predecessor and honour of the place must of necessity make the habit singular. *Leunclavius* shews us how *Selim II.* was

inaugurated after the death of his father *Soliman*. Upon the day appointed.

Deductus, says p he, in *Saraium*, folio confedit imperatorio illius cubiculi, quod solis est sultanis *Osmanidarum* gente prognatis occupare permisum. Inde per urbem, proclamationes more majorum factae, quibus, vota primum concipiebantur ut anima *Solimanis* in paradiso foelix aevum ageret, ac in perpetua gloria quiesceret; deinde multos ut annos viveret sultanus *Selimes Chan*, prosperique status incremento continuo frueretur.

Nor is the course much different when the father declares his son there ^q for *grand signior*. But though the emperors there have not either crown or diadem, the empresses or sultaneses, it seems, have a diadem after the antient form, but enriched with stones and tied on, as in the eldest times both on the kings of *Asia*, *Africk*, and *Europe*. *Ne sultanac quidem* (says *Leunclavius*) *ipforum calyptra coronave regibus nostris usitata caput ornant; sed verataenia sive fascia sive diademate variis & exquisiti pretii gemmis distincto, quod ad sinciput colligatur*.

The king or emperor of *Russia* also (for so he is called, and truly is so, though often he be titled only great duke) uses no crown. But the royal ensign of his head is a rich cap ^r of purple. ⁽¹⁶⁰⁾ And his inauguration is thus described by one ^t that was employed thither by queen *Elizabeth*.

The solemnities used at the *Russic* emperor's coronation, are in this manner. In the great church of *Precheste* (or our lady) within the emperor's castle, is erected a stage, whereon standeth a screen that beareth upon it the imperial cap and robe of very rich stuff. When the day of the inauguration is come, there resort thither, first, the patriarch with the metropolitanans, archbishops, bishops, abbots, and priors, all richly clad in their pontificalibus. Then enter the deacons with the quire of singers. Who so soon as the emperor setteth foot into the church, begin to sing: Many years may live noble *Theodore Juanowich*, &c. whereunto the patriarch and metropolitane, with the rest of the clergy, answer with a certain hymn in form of a prayer, singing it altogether with a great noise. The hymn being ended, the patriarch with the emperor mount up the stage where standeth a seat ready for the emperor. Whereupon the patriarch willet him to sit down; and then placing himself by him upon another seat provided for that purpose, boweth down his head towards the ground, and saith this prayer: O Lord God King of Kings, Lord of Lords, which by thy prophet *Samuel* didst choose thy servant *David*, and anoint him for king over thy people *Israel*, hear now our prayers, and look from thy sanctuary upon this thy servant

ⁱ Videfis Cotovic, lib. 4. itinerar. Hierosolym. cap. 18.

^k De repub. l. 1. c. 9.

^l In itinerario. ^m Indice libitinario.

ⁿ Canon. ^o Pet. Martyr, legat. Babylon. l. 3. & Mart. a Baumgart. peregrin. 1. c. 17. ^p Supplement. annal. Turc. ann. Christi 1566. ^q Idem pandect. Turcic. c. 199. ^r Paul. Oderborn in vita Theodor. l. & videfis Sigism. lib. in reb. Moscoviticis. ^t Fletcher in his Russian commonwealth, c. 6.

Theodore, whom thou hast chosen, and exalted for king over these thy holy nations; anoint him with the oil of gladness, protect him by thy power, put upon his head a crown of gold and precious stones, give him length of days, place him in the fear of justice, strengthen his arm, make subject unto him all the barbarous nations. Let thy fear be in his whole heart, turn him from an evil faith, and from all error, and shew him the salvation of thy holy and universal church, that he may judge thy people with justice, and protect the children of the poor, and finally attain everlasting life. *This prayer he speaketh with a low voice, and then pronounceth aloud*: All praise and power to God the Father, the Son, and the Holy Ghost. *The prayer being ended, he commandeth certain abbots to reach the imperial robe, and cap: which is done very decently, and with great solemnity, the patriarch withal pronouncing aloud*: Peace be unto all. *And so he beginneth another prayer to this effect*: Bow your selves together with us, and pray to him that reigneth over all. Preserve him (O Lord) under thy holy protection, keep him that he may do good and holy things. Let Justice shine forth in his days, that we may live quietly without strife and malice. *This is pronounced somewhat softly by the patriarch, whereto he addeth again aloud*: Thou art the king of the whole world, and the Saviour of our souls; to thee the Father, Son, and Holy Ghost, be all praise for ever and ever. Amen. *Then putting on the robe and the cap, he blesseth the emperor with the sign of the cross: saying withal, In the name of the Father, the Son, and the Holy Ghost. The like is done by the metropolitans, archbishops, and bishops: who all in their order come to the chair, and one after another blest the emperor with their two fore-fingers. Then is said by the patriarch another prayer, that beginneth*: O most holy virgin mother of God, &c. *After which a deacon pronounceth with an high loud voice*: Many years to noble *Theodore*, good, honourable, beloved of God, great duke of *Volodemer*, of *Mosko*, emperor and monarch of all *Russia*, &c. *whereto the other priests and deacons, that stand somewhat far off by the altar or table, answer singing, Many years, many years to the noble Theodore. The same note is taken up by the priests and deacons that are placed at the right and left side of the church, and then altogether they chaunt and thunder out, singing*: Many years to the noble *Theodore*, good, honourable, beloved of God, great duke of *Volodemer*, *Mosko*, emperor of all *Russia*, &c. *These solemnities being ended, first cometh the patriarch with the metropolitans, archbishops, and bishops, then the nobility and the whole company in their order, to do homage to the emperor, bending down their heads, and knocking them at his feet to the very ground.*

The stile wherewith he is invested at his coronation, runneth after this manner.

Theodore Juanowich, by the grace of god

^v Hist. Dan. lib. 1.

great lord and emperor of all *Russia*, great duke of *Volodemer*, *Mosko*, and *Novograd*, king of *Cazan*, king of *Astracan*, lord of *Plesko*, and great duke of *Smolensko*, of *Twerria*, *Toughoria*, *Permia*, *Vadska*, *Bulghoria*, and others; lord and great duke of *Novograd* of the low country, of *Chernigo*, *Rezan*, *Polotskoy*, *Rostove*, *Taruslaveley*, *Bealozera*, *Liesland*, *Oudoria*, *Obdoria*, and *Condensa*, commander of all *Siberia*, and of the north parts, and lord of many other countries, &c.

*This stile (saith the author) containeth in it all the emperor's provinces, and setteth forth his greatness. And therefore they have a great delight and pride in it, forcing not only their own people, but also strangers (that have any matter to deliver to the emperor by speech or writing) to repeat the whole form from the beginning to the end. Which breedeth much cavil, and sometime quarrel between them and the Tartar and Poland ambassadors; who refuse to call him Czar, that is, emperor, and to repeat the other parts of his long stile. My self when I had audience of the emperor, thought good to salute him only with thus much, viz. Emperor of all *Russia*, great duke of *Volodemer*, *Mosko*, and *Novograd*, king of *Cazan*, king of *Astracan*. The rest I omitted of purpose, because I knew they gloried to have their stile appear to be of a larger volume than the queens of England. But this was taken in so ill part, that the chancellor (who then attended the emperor with the rest of the nobility) with a loud chafing voice called still out upon me to say out the rest. Whereto I answered, that the emperor's stile was very long, and could not be so well remembered by strangers; that I had repeated so much of it, as might shew that I gave honour to the rest, &c. But all would not serve till I commanded my interpreter to say it all out.*

The antient form likewise of inauguration of some kings in the northern parts, by setting them on a stone only with acclamations of noises of success to them, is remembered in *Saxo Grammaticus* and others that write of those parts.

V. The other ensigns and ceremonies used (beside anointing, the crown, scepter, and globe and cross) at the inauguration of supreme princes of christendom that are crowned, may best be known out of the ceremonials peculiar to every kingdom. But of them I see but few extant with the stamp of publick authority on them. Nor have I met with any other of that kind than those which the old *ordo Romanus* and the *Pontificale* shew us, beside the *French* ceremonial of coronation. For though we have divers copies for *England*, and that very antient: yet they both vary often among themselves, and I find not one that I dare confidently publish as having been allowed for all times by publick authority in this kingdom. The want of it with us, for some times and in some things, is supplied in the coronations of our kings related in some of our old stories. *Roger of Hoveden* hath an *ordo coronationis* of king *Richard* the first, with

most of the particulars of that time, fol. 374. in the *London* edition, and fol. 656. in that of *Frankfort*. The same also, but not so fully, is in *Matthew Paris*, fol. 205. in the *London* edition of him. And he hath also something of the ceremonies of the first coronation of *Henry* the third, pag. 386. and of the coronation of his queen *Æleanor*, fol. 563. which is more fully related also in the red book of the exchequer. Others in the beginnings of some of our following kings have something of this nature. And to these, join that of *Robert Holkot* in *lib. sapientiae* lēst. 75. where I see he meant the coronation of the kings of *England* by the *accipe armillas*, &c. which I have not observed in any other. But I omit all those particulars, both because they are easily found in these authors, and for that they are not warrant enough to collect any part of a ceremonial to shew the general use. The like may be said of other kingdoms, except those whose ceremonials we shall here insert. But also with them I shall join the ceremonies of coronation heretofore used in the eastern empire. For though we have not any ceremonial (to such purpose) among the many volumes that specially belong to the *Greek* church, or otherwise, that hath any sufficient character in it of publick authority given by the emperor or state there; yet both in *Georgius Codinus* and in *Joannes Cantacuzenus* (who was also an emperor himself of that empire) we have the particulars of their eastern coronation, for the later ages, so declared, that a sufficient supply of a *Greek* ceremonial or coronation may be gained out of them. These two in their narrations do not so much disagree. But the one is sometimes fuller than the other. Therefore I transcribe one of them, and give short notes only out of the other; so, both to shew enough how they differ, and to give a whole ceremonial out of them. I rather chuse *Cantacuzenus*, as well because he was emperor himself, and might best know the ceremonies of their coronation, as for that his history (out of which I take it) is not, I think, so obvious, as that of *Codinus*. *Cantacuzenus*, speaking of the coronation of the emperor *Andronicus* the younger, takes occasion to tell us of the whole form that had been in use in *S. Sophies* at *Constantinople* as with us in *S. Peter* at *Westminster*. His *Greek* is not publick. But, as it is translated into *Latin* out of the ms. remaining in the duke of *Baviera's* library, by *Pontanus* a jesuit, that hath deserved very well of the oriental story, it is thus. And the ceremonies as well for the coronation, when a preceding emperor would crown his successor, as when a successor was crowned after the death of his predecessor, and how an empress, are together related.

Instante die praefinita, qua constitutum est sacro unguento imperatorem inungere, omnes qui aliqua dignitate funguntur, & proceres & mi-

lites, quinetiam ad sacrae ecclesiae hujus novae Romae, gubernacula sedentes, populum insuper universum oriente luce ad palatium convenire oportet. Sub horam porro diei maxime secundam, imperatore inungendo super scutum * elevato, imperator *parens renuntiati imperatoris*, si superest, & *patriarcha* anteriora scuti apprehendentes, latera autem, & posteriora, qui dignitate antistant *despotae* † & *sebastocratores*, si sunt, alioqui principum nobilissimi; ipsumque cum scuto in altum quantum possunt tollentes, undique circumfuso populo ostentant. Post faustum, ac laetam acclamationem eum deponunt, atque in ‡ templum, in quo sollemni ritu coronandus est, deducunt: ubi parvula domus, ad hunc usum, e ligno praeparata, in quam introducitur novus imperator. Ibi eum * purpura, & diademate prius per episcopos consecratis induunt. Capiti mos non est quidquam, nisi † coronam imponi, aut aliud quod videtur. His actis sacrosancta ‡ mystagogia, seu missa habetur. Proxima domunculam jam dictam anabathra, id est, ascensus, seu tabulatum, seu pulpitum aequae ligno paratur, quod undique velis, seu tapetibus sericis rubris circumdatur, & consternitur. Super illo throni collocantur aurei, pro imperatorum * numero: non quales alii eorum throni sunt: sed excelsi admodum, cum quatuor, aut quinque gradibus, quos domicilio egressi imperatores, si plures fuerint, conscendunt, & in iis consistunt. Ascendunt tabulatum simul *imperatorices*, & suos item thronos occupant, quae prius coronatae fuerant, insigne † suum in capite gestantes: coronanda autem aliam quampiam ‡ coronam, sive sertum ferens. Jam vero antequam divinus *trisagii* hymnus decantetur, ex adytis egrediens patriarcha, ambonem, sive sacrum suggestum ascendit, cum illustrioribus ecclesiae principibus, qui & ipsi sacris stolis cooperiti sunt, quos ad imperatores accersendos mittit. Illi confestim e solii surgentes, ad ambonem vadunt. Populus universus altum quietissime fileat. Patriarcha preces ad imperatorem *unctionem* compositas, alias submissa, alias clara voce, omnibus audientibus ordine recitat: ac Deum, ei qui ungendus est, propitiatur. Tum novus imperator tegmen capitis, quodcumque fuerit, deponit, & quotquot in templo adsunt, sollemni more nudatis verticibus astant. Patriarcha in formam crucis verticem imperatoris *sacro unguento* perlinat, & elata voce addit, * SANCTUS: quam expientes, qui in ambone stant, ter pronunciant: quod deinde populus similiter facit. Postea diaconi sacris amicti stolis, *coronam* quam in adytis tenent (non enim, ut quidam aiunt, super mensam sacram reponitur) ad ambonem portant. Quod si adest imperator antea coronatus, tum patriarcha novo imperatori *coronam* imponit, & exclamat patriarcha, † DIGNUS. Idem tertium exclamant qui in ambone sunt, & post eos populus, perinde, ut post *unctionem* fiebat. Tum rursus patriarcha preces recitat, descenditque ex

* Cantacuzen. hist. l. i. c. 41.

† Before this (in Codinus) he makes a profession of his christian faith, and causes money to be cast among the people. And so, at the end here it is remembered by Cantacuzenus.

† Of these dignities in the second part. † S. Sophies church.

* Codinus uses the σάκκον for this purple. See Meursi. gloss. Graecobarb. in σάκκον.

† Τε λαῖται ἢ ἀσπασία. † Τὸ ἐκ τῶν σέμμε, Codinus; or an imperial crown. † Σίγαρον.

Codinus.

* Αἰο.

† Αἰο.

ambone imperator, non qua parte ascenderat, sed versus * soleam. Si forte illo tempore caruerit uxore, recta conscenso throno, iterum sedet: si habet, omnino & illam *corona* insignire necesse est. E throno † itaque surgentem duo e propinquissimis dextra, laevaue eam prensantes, aut si illi desint, eunuchi de anabathra seu ascensu deducunt, & ante soleam constituunt. Tum descendit de ambone imperator, & paratam illi † *coronam* a propinquis, aut eunuchis, eam similiter tenentibus, accipiens, uxoris capiti imponit: quae maritum imperatorem adorans, ita se illi subiectam proficitur. Patriarcha vero ad soleam consistens, pro imperatore, imperatrice, & eorum populis preces pronunciat. Hoc igitur modo imperator conjugem suam *coronat*. Si antea *corona* ipse indutus fuit, inter sacra nuptiarum * id facit. Coronati ambo, qua dictum est caeremonia, denuo anabathram ascendentes, in thronis resident. Dum reliquum † missae absolvitur, & *trisagion* cantatur, aut † de apostolicis literis, sacrilve scripturis aliquid recitatur, & ipsi assurgunt. Ex utraque vero templi parte, super lignis anabathris, seu ponticulis ad hoc ipsum comparatis, stantes protopsaltes, & qui domestici vocantur, & caeteri ordinis ecclesiastici qui cantare norunt (quos in talibus sacris *κράτας*, id est, *clamatōres* appellari mos est) cantica quaedam de industria ad huius diei festi celebritatem confecta modulantur. Quando autem in sacri mystagogia jam tempus est, ut instituat in templum supplicatio, sive processio, qua panis, & vinum consecranda in sancta sanctorum, sive in tabernaculum ad altare primum inferantur, quae *μεγάλη εἰσόδος* appellatur, honoratioris ecclesiae diaconi accedentes, imperatorem vocant, & is cum illis ad propositionem, quae dicitur, ubi * sancta sunt posita, accedit. Stans autem adhuc foris, *mandyam aureum* supra *diadema*, & *purpuram* induit: ac dextra quidem gestat *crucem*, quam gestare solet, quamdiu *coronam* gestat: sinistrae † ferulam tradunt, † ut ordinem seu locum ecclesiasticum teneat ejus, qui deputatus appellatur. Haec manibus tenens, toto incessu, seu pompa sacra praecedit. Ad utrumque latus *Barangi* * cum securibus, & claro sanguine juvenes armati, aut etiam inermes, circiter centum compositae sequuntur, rectaque post ipsum linea diaconi, & sacerdotes ordine incedunt, sacra vasa, & instrumenta cum reliquiis & omnium *sanctissima* (eucharistiam) inferentes. Templo de more circumto, ubi ad soleam veniunt, alii quidem omnes foris manent, imperator solus ingressus, patriarcham ad sanctas fores stantem invenit. Postquam consalutarunt, patriarcha intus, imperator foris inclinatis capitibus, stantes expectant. Protinus qui pone imperatorem alios diaconos † antecedit,

dextra tenens thuribulum, sinistra humerale † patriarchae, quod dicitur, accedens imperatore, thure vaporat. Quo caput inclinante, diaconus sublata voce inquit, * *memor sit Dominus Deus potentiae imperii vestri, in regno suo ubique, nunc & semper, & in saecula saeculorum*, addens, *Amen*. Deinceps & reliqui diaconi, ac sacerdotes adeuntes, idem comprecantur. Hoc perfecto, imperator, rursus salutato patriarcha, *mandyam*, seu penulam deponit (quam, pro consuetudine, ecclesiae referendarius aufert) denuoque anabathram ascendens, in throno confidet, sub symbolo fidei, oratione dominica, & elevatione dominici, & sacri corporis exsurgens. Facta elevatione, imperator si ad sacram communionem paratus non est, usque ad finem sacrae mystagogiae in throno sedet. Si paratus, venientes diaconi eum rursus accerunt: quibuscum statim in adyta ingreditur, traditque sibi thuribulo, sacrae mensae sultum facit, † primum quidem ad orientem, tum ad septentrionem, post ad occidentem, & tandem ad meridiem respiciens. Dumque iterum ad orientem thuris fumum spargit, in ipsum quoque patriarcham id facit: qui imperatorem salutans, deque ejus manu thuribulum capiens, illum vicissim sultu honorat. Post haec *coronam* de capite suo auferens imperator, diaconis tradit: cui patriarcha in manum dat partem corporis dominici: factusque ejus particeps, etiam de sanguine vivifico communicat; non quomodo vulgus e vasculo, sed ipso cratere, seu calice, sacerdotum more.

Corona in caput reposita, ex adytis progreditur. Mystagogia finita, distributae populo † sanctificationis rursus particeps effectus, & a patriarcha, praesentibusque episcopis benedictione impertitus, & dextras eorum apprehensas osculatus, in locum, qui * *catechumena* vocatur, ascendit, ut ab omnibus repente conspectus, faultis acclamationibus excipiat. Hoc etiam consummato, descendit, ipseque & *angusta* soli equis insidentes, caeteris omnibus pone ambulantibus, in palatium portantur: ibi instructa mensa, *magno domestico*, aut si ille non est, *despota* ministrante, coronati epulantur. Per dies item consequentes, ponit minus decem (neque enim numerus dierum festorum lege praescribitur, sed in arbitrio imperatoris est) *diademate*, † *corona*, & *purpura* in regio vestiariorum depositis, pretioso nihilominus, & regali cultu splendide ferias agunt. Prandiis sumptuose apparatus, proceres omnes coram imperatoribus convivunt, ipsis quoque separatim, praefecto regiae mensae ministrante accumbentibus. Magnus domesticus locum sibi convenientem tenens, cum iisdem init epulas.

Sed memorabile est in hac caeremonia (*saith* Cantacuzenus) quod omisimus. Die quo impe-

* Towards the quire. Σάλα ea pars templi quae solem spectat. Fr. Junius in notis ad Europat. † If the empress-mother were then living with her husband, she stood crowned holding a scepter of gold (βασιλῆος χρυσίου) set richly with pearls and other stones. But if she were a widow, she held her scepter, standing or sitting in a habit of mourning. And I take that ἐνδυμα μέλαν & μανδύαν ὄρν, to be in Codinus literally a black robe and a purple or red hood. † But her crown was of another form than the emperor's. Codinus. * De ea re videbis Theophylact. Symmoccatae hist. Mauric. l. i. c. 10. † Τῆς αὐτῆς ἀλλης μυσταγωγίας, προερχόμενος. Codinus. † Τὸν ἀποδοκίμων ὑπερῶν, Codinus. † Ἐπειὶ γὰρ οὐκ ἔστι τὰ ἐν ἑλληνοφασίαν τῶν καλῶν τῶν δὲ πῶς ἴτα Codinus; & nihil de deputato, hoc in loco. * The emperor's nearest guard, and of the English nation. Vide Codinum, p. 114. & ad eum Jun. & Camden. Brit. p. 110. † Ὁ δευτέρου ὁ δὲ διακόνου, Codinus. † Ὡμοροβον, Codinus. * Μνησθῆναι κλέει δὲ τοῦ τῶν καλῶν τῶν βασιλέων οὐκ ἐν τῇ βασιλείᾳ αὐτῇ, παντοίῃ, οὐκ ἀπὸ τοῦ καλῶν τῶν αἰώνων ἀπὸ αἰώνων. Codinus: where I would rather turn τῶν καλῶν τῶν βασιλέων οὐκ ἐν τῇ βασιλείᾳ αὐτῇ, majesty, than by potentia imperii vestri, as Pontanus doth. † Σταυροῦ ἰδῶς in the form of a cross. Codinus. † That which was distributed they called ἀντίδοτον. It was holy bread given after the mass ended. Vide Meurs. voce ἀντίδοτον. * The peculiar place where those, that were to be catechised, stood. There he had an hymn sung to him. Codinus. † This of corona, I conceive, hath reference to that of the empress only.

rator unctus e templo exit, ab aliquo ejus optimatum, quem ad hoc delegerit, in populum jaciuntur, quae vocant * *epicombia*. Sunt autem fasciculi, segmentis linteis illigata, habentes numismata aurea imperatoria tria, totidem argentea, aut plura, & obolos aereos totidem. Sparguntur hujusmodi fasciculi circiter decies mille, in vestibulo templi praecipue. Sub ipsum vero diem in palatio, populo toto congregato, ab eodem ex optimatibus tot, pluresve jaciuntur fasciculi. Postero die de populo adest nemo; adest autem quicquid est militum, & famulorum, seu ministrorum aulicorum imperatoris. Tum in atrium palatii descendens, astante quaestore suo, gerenteque laciniam vestis plenam imperatoria pecunia, eaque aurea, manu plena fumens, in orbem dispergit. Qua rota dispersa, quaestor laciniam iterum, & tertium, & quartum, & saepius implet. Causa hujus distributionis auri haec est, quod imperator de suo sumptum faciens, omnes secum laetari, unaque festum diem celebrare cupit. Ritus igitur in coronatione imperatorum servari solitus talis est: & servatus est etiam in *Andronico* juniore imperatore, indictione octava, ineunte mense *Februario*.

This is of the time of MCCCXXX. of our Saviour, and is the best † authority for the rites of coronation in that *Greek* empire while it stood. Something of a more antient fashion there, you may see in *Leunclavius* his *Turkish pandects*, cap. 119. And this was the shape of the emperor in his crown and robes of coronation.



But for the western empire; there is in the old ritual or *ordo Romanus* (which is common to be had among the other antient treatises *de divinis officiis*) a ceremonial for the coronation of the emperor at *Rome*. Wherein (beside some prayers) there is no observable action of solemnity remembered, saying what bishops must say the first and second prayers, and the bishop of *Hosia*'s anointing him on the right arm and *inter scapulas*, and the pope's crowning him. Most of the rest of the particulars being referred to the preceding ceremonial in the same volume, for the coronation of a king, which, because it is obvious enough (and the later *pontificales* of *Rome* have a larger that shall anon follow here) I transcribe not. Only this I observe of it out of *Sigonius*, that the coronation of the emperor as king of *Italy* at *Millain* or *Monza* (performed by the archbishop of *Millain*) ‡ was to be done according to that ceremonial. *Ea res*, saith * he, *maxima fieri caeremonia consuevit quae in rituali antiquissimo continetur qui ordo Romanus vocatur*. And the very syllables of much of that *ordo* or ritual are fitted to the coronations of our antient kings in the same *pontificale* out of which some pieces are before inserted. You may easily enough compare the *ordo Romanus* with those pieces. But the ceremonies belonging to the coronation of the emperor of the west (especially to his first coronation) are best and easiest known out of the particular narrations of the coronations of some emperors; as those written by *Antonius Flaminius*, *Georgius Sabinus*, *Hartmannus Maurus*, *Cornelius Agrippa*, *Gaspar Ens*, beside such other, that shew at large the rites used at the coronations of *Charles V. Maximilian I.* and *II. Matthias*, the present *Ferdinand*, with more of that kind, all which are the most part severally published; and, for the most part also, collected together by *Melchior Goldastus* in his *Politica imperialia*, and may be there easily seen. And with them might be reckoned *Marcellus † Corcyrensis*. But the chief matter in him concerning this, is transcribed also in *Goldastus*. But also with these directions for the rites and ensigns used in the imperial coronations, observe (to make the store fuller) *Aventin. annal. Bojorum, lib. 5.* of the old ensigns that are kept at *Norimberg*, *Gretser's syntagma de S. R. imperii sacrosanctis reliquiis & regalibus monumentis*, and *Onuphrins de comitiis imperatoriis*. And I have a short form of the coronation of the emperor printed in 1558. in *Italian*, where, after the coronation ended in *Rome*, the emperor (says the author) is not to stay above one night in the city, and at his going out he is to go up to the top of a hill called *monte Mauro* (some two miles from the walls) and there with his hands lifted to heaven, pronounce with a high and distinct voice these words,

Tutte le cose che videmo son nostre, & per tengono alli nostri commandamenti.

But we insert at large here that ceremonial for coronation of a king with his queen (in an e-

* *Emicombia* de quibus consule porro *Meursium* in glossario, eodem vocabulo, fore p. 262.

* De regno Italiae l. 4.

† Sacrar. cerem. lib. 1. sect. 13.

‡ Vide item *Cantacuzen. hist. l. 4. c. 4.*

‡ See beo

lective kingdom; for so the words of it often import) that occurs in the *pontificale* of Rome, which is affirmed by pope Clement VIII. in his bull upon it, to have been so accurately composed and published, *ut nihil ab antiquis pontificalium codicibus, qui tum in clarioribus urbis ecclesiis tum in nostra Vaticana bibliotheca, ac denique in quibusdam aliis insignibus locis asservantur, alienum aut discrepans irrepserit.* We insert it so here, both because of the authority and antiquity of it, as also because the *pontificale* it self is but in very few hands. And after it, we add one for the use of France (being an hereditary kingdom) allowed under the hand of one of the French kings.

* De benedictione, & coronatione regis.

Cum rex est coronandus, episcopi regni ad civitatem ubi coronatio fieri debet, convocantur. Rex triduanum jejunium devote peragit, per hebdomadam praecedentem, videlicet quarta, & sexta feria, & sabbato. Dominica vero proxima sequenti coronatur, qua ipse rex se ad communionem parat. Ecclesia vero ipsa metropolitana, sive cathedralis, ubi solemnitas celebrabitur, paretur & ornatur, quo melius fieri poterit. Ad altare majus parantur ea, quae consueverunt parari, pontifice celebrante; & credentia juxta altare cum rebus opportunis. Super altare ponitur gladius, corona, & sceptrum regi danda, & oleum catechumenorum; bombyx ad ligandum, & extergendum brachium regis & inter scapulas post unctionem; fascia ad ligandum bombycem in brachio. Paratur in ecclesia, in loco competenti thalamus, sive suggestum pro rege, in quo sit regalis sedes ornata, & thalamus ipse sit ornatus pannis sericeis, & aulaeis. Sed advertendum est, quod altitudo thalami non sit major quam gradus supremus altaris. Paratur etiam, in loco convenienti tentorium, sive papilio, sub quo rex vestes regales, pro regni consuetudine, quae ibidem pro eo parantur, suo tempore recipit. Et si regina etiam simul est coronanda, paratur pro ea alius thalamus, non longe a regio, sed illo aliquantulum humilior; & ita sunt situandi thalami, ut inde possint videri altare, & pontifex celebrans. Parantur etiam ante altare hinc & inde sedes, pro numero episcoporum coronationi interessentium.

Die autem dominica, qua rex benedicendus & coronandus est, omnes episcopi conveniunt mane in ecclesia, in qua hoc fieri debet; & metropolitanus, sive pontifex, ad quem spectat, parat se solemniter cum ministris, missam celebraturus, paramentis temporis convenientibus. Episcopi vero induuntur supra rochetum (vel supra superpellicem, si sint religiosi) amictu, stola, pluviali albo, & mitra simplici. Quibus omnibus paratis, metropolitanus in faldistorio ante medium altaris posito sedet cum mitra, & episcopi parati hinc & inde super sedibus pro eis paratis, quasi in modum coronae sedentes, sibi assistunt. Interim, rex vestibus militaribus indutus, cum suis praelatis domesticis non pa-

ratis, ac baronibus, nobilibus, & aliis, venit ad ecclesiam; & cum fuerit prope presbyterium, duo priores episcopi ex paratis veniunt ei obviam, & cum mitris capita illi aliquantulum inclinantes, ipsum inter se medium, birreto depositum, usque ante metropolitanum deducunt, cui rex caput inclinans, humilem reverentiam exhibet; qua facta, prior episcoporum deducendum stans, detecto capite, versus ad metropolitanum, dicit intelligibili voce.

Reverendissime pater, postulat sancta mater ecclesia catholica, ut praesentem egregium militem ad dignitatem regiam sublevetis.

Interrogat metropolitanus.

Scitis illum esse dignum, & utilem ad hanc dignitatem?

Ille respondet.

Et novimus, & credimus eum esse dignum & utilem ecclesiae dei, & ad regimen hujus regni.

Metropolitanus dicit.

Deo gratias.

Tunc sedet rex medius inter duos episcopos deducentes, congruenti spatio a metropolitano, ita ut illi faciem vertat; ipsi etiam deducentes episcopi, senior ad dexteram, alius ad sinistram regis se collocant, ut & ipsi ad alterutrum facies vertant. Quibus sic sedentibus, postquam aliquantulum quieverint, metropolitanus coronandum regem admonet, dicens.

CUM hodie per manus nostras, optime princeps, qui Christi salvatoris nostri vice in hac re fungimur (quamvis indigni) *sacram unctionem, & regni insignia* sis susceptorus; bene est ut te prius de onere ad quod destinarius moneamus. Regiam hodie suscipis dignitatem, & regendi fideles populos tibi commissos curam sumis. Praeclarum sane inter mortales locum, sed discriminis, laboris, atque anxietatis plenum; verum, si consideraveris, quod omnis potestas a Domino Deo est per quem reges regnant, & regum conditores iusta decernunt, tu quoque de grege tibi commissio ipsi Deo rationem es redditurus. Primum, pietatem servabis, *Domine Deum* tuum tota mente, ac puro corde coles. Christianam religionem, ac fidem catholicam, quam ab incunabulis professus es, ad finem usque inviolatam retinebis, eamque contra omnes adversantes pro viribus defendes. Ecclesiarum praelatis, ac reliquis sacerdotibus condignam reverentiam exhibebis. Ecclesiasticam libertatem non conculcabis. Iustitiam, sine qua nulla societas diu consistere potest, erga omnes inconcussae administrabis, bonis praemia, noxiis debitas poenas retribuendo. Viduas, pupillos, pauperes, ac debiles ab omni oppressione defendes. Omnibus te aduentibus benignum, mansuetum, atque affabilem, pro regia tua dignitate te praebabis. Et ita te geres, ut non ad tuam, sed totius populi utilitatem regnare, praemiumque benefactorum tuorum non in terris, sed in coelo expectare videaris. Quod ipse praestare dignetur, qui vivit, & regnat Deus, in saecula saeculorum.

Resp. Amen.

* Pontifical. Romanum. Romae 1611. fol 161.

Rex electus accedit ad metropolitanum, & coram eo, detecto capite, genuflexus, facit hanc professionem, dicens.

Ego N. Deo annuente, futurus rex N. profiteor, & promitto coram Deo, & angelis ejus deinceps legem, justitiam & pacem ecclesiae Dei, populoque mihi subiecto pro posse, & nosse facere, ac fervare, salvo condigno misericordiae Dei respectu, sicut in consilio fidelium meorum melius potero invenire. Pontificibus quoque ecclesiarum Dei condignum, & canonicum honorem exhibere; atque ea quae ab imperatoribus, & regibus, ecclesiis collata, & reddita sunt, inviolabiliter observare. Abbatibus, comitibus, & vassallis meis congruum honorem, secundum consilium fidelium meorum praestare.

Deinde ambabus manibus tangit librum evangeliorum, quem metropolitanus ante se apertum tenet, dicens.

Sic me Deus adjuvet, & haec sancta Dei evangelia.

Postea rex electus metropolitani manum reverenter osculatur.

His expeditis, illo genuflexo manente, metropolitanus deposita mitra, surgit, & stans versus ad ipsum coronandum, dicit competentem voce sequentem orationem, quam etiam dicunt omnes pontifices parati, similiter sine mitris stantes; dicunt etiam omnia alia benedictionem, & coronationem ipsam concernentia, voce submissa, metropolitanum tamen in omnibus observantes, & imitantes.

* Oremus.

Omnipotens sempiterna Deus, creator omnium, imperator angelorum, rex regum, & dominus dominantium, qui Abraham fidelem servum tuum de hostibus triumphare fecisti, Moysi, & Josue, populo tuo praelatis multiplicem victoriam tribuisti, humilemque David puerum regni fastigio sublimasti, & Salomonem sapientiae, pacisque ineffabili munere ditasti; respice, quaesumus, domine, ad preces humilitatis nostrae, & super hunc famulum tuum N. quem supplici devotione in regem eligimus, bene dictionum tuarum dona multiplica, eumque dexterarum tuarum potentia semper, & ubique circumda; quatenus praedicti Abrahae fidelitate firmatus, Moysi mansuetudine fretus, Josuae fortitudine munitus, David humilitate exaltatus, Salomonis sapientia decoratus, tibi in omnibus complacet & per tramitem justitiae inoffenso gressu semper incedat; tuae quoque protectionis galea munitus, & scuto insuperabili jugiter protectus, armatus coelestibus circumdatus, optabilis de hostibus sanctae crucis Christi victoriae triumphum foeliciter capiat, terroremque suae potentiae illis inferat, & pacem tibi militantibus laetanter reportet. Per Christum dominum nostrum, qui virtute sanctae crucis tartara destruxit, regnoque diaboli superato, ad coelos victor ascendit, in quo potestas omnis, regnique consistit victoria, qui est gloria humilium, & vita salusque

populorum, qui tecum vivit, & regnat in unitate Spiritus Sancti Deus, per omnia saecula saeculorum.

Resp. Amen.

Posthaec metropolitanus cum mitra procumbit supra faldistorium. Rex vero ad ejus sinistram in terram prostrat, aliis praelatis paratis ante sedes suas similiter procumbentibus. Tunc cantores incipiunt, & prosequantur litaniae, choro respondente. Cum dictum fuerit.

Ut omnibus fidelibus, &c.

Resp. Te rogamus audi nos.

Metropolitanus surgit, & accepto baculo pastoralis in sinistram manum, super electum regem prostratum, dicit.

Ut hunc electum in regem coronandum bene dicere digneris.

Resp. Te rogamus audi nos.

Secundo dicit.

Ut hunc electum in regem coronandum bene dicere & con. sequare digneris.

Resp. Te rogamus audi nos.

Producendo semper super eum signum crucis. Idem dicunt, & faciunt episcopi parati, genuflexi tamen permanentes. Quo dicto, metropolitanus redit ad accubitum, cantoribus resumentibus, & perficientibus litaniae. Quibus finitis, metropolitanus, deposita mitra, surgit, illo prostrato, atque episcopis, deposita mitra, genuflexis manentibus, versus ad coronandum, dicit.

Pater noster.

Vers. Et ne nos inducas in tentationem.

Resp. Sed libera nos a malo.

Vers. Salvum fac servum tuum Domine.

Resp. Deus meus sperantem in te.

Vers. Esto ei, Domine, turris fortitudinis.

Resp. A facie inimici.

Vers. Nihil proficiat inimicus in eo.

Resp. Et filius iniquitatis non apponat nocere ei.

Vers. Domine, exaudi orationem meam.

Resp. Et clamor meus ad te veniat.

Vers. Dominus vobiscum.

Resp. Et cum spiritu tuo.

Oremus.

Praetende, Domine, huic famulo tuo dexteram coelestis auxilii; ut te toto corde perquirat, & quae digne postulat, consequi mereatur.

Actiones nostras, quaesumus, Domine, aspi-rando praeveni, & adjuvando prosequere; ut cuncta nostra oratio, & operatio a te semper incipiat, & per te coepta finiatur. Per Christum Dominum nostrum.

Resp. Amen.

Posthaec metropolitanus sedet, accipit mitram, & electus rex coram eo genuflectit, & circumstantibus praelatis paratis, cum suis mitris in modum coronae, metropolitanus intingit pollicem dexterarum manus in oleum cathecumenorum, & inungit in modum crucis illius brachium

* A Prayer for the elected king almost in the same syllables with that in the ordo Romanus, beginning Omnipotens aeternae Deus, which is scarce differing also from that before taken out of the Saxon pontifical. † Videlicet Innoc. III. in extr. tit. de sacra unctione, c. 1. But in the old ordo Romanus, the head is to be anointed. And see before p. 245.

dexterum,

dexterum, inter juncturam manus, & juncturam cubiti, atque inter scapulas, dicens hanc orationem.

Deus, Dei filius, Jhesus Christus Dominus noster, qui a patre oleo exultationis unctus est, prae participibus suis; ipse per praesentem sanctae unctionis infusionem spiritus paracleti super caput tuum bene & dictionem infundat, eandemque usque ad interiora cordis tui penetrare faciat, quatenus hoc visibili & tractabili oleo, dona invisibilia percipere, & temporalis regno iusto moderationibus executo, aeternaliter cum eo regnare merearis, qui solus sine peccato, rex regum vivit, & gloriatur cum Deo patre in unitate Spiritus Sancti Deus, per omnia saecula saeculorum.

Resp. Amen.

Oremus.

Omnipotens sempiternae Deus, qui *Azabel* super *Syriam*, & *Jehu* super *Israel* per *Eliam*, *David* quoque & *Saulem* per *Samuelem* prophetam in reges inungi fecisti, tribue, quaesumus, manibus nostris opem tuae benedictionis, & huic famulo tuo *N.* quem hodie, licet indigni, in regem sacra unctione delinimus, dignam delibutionis hujus efficaciam, & virtutem concede; constituere, Domine, principatum super humerum ejus, ut sit fortis, justus, fidelis, providus, & indefessus regni hujus, & populi tui gubernator, infidelium expugnator, justitiae cultor, meritum, & demeritorum remunerator, ecclesiae tuae sanctae, & fidei christianae defensor, ad decus, & laudem tui nominis gloriosi. Per Dominum nostrum *Jhesum Christum* filium tuum, qui tecum vivit, & regnat in unitate Spiritus Sancti Deus, per omnia saecula saeculorum.

Resp. Amen.

Quo facto, metropolitanus lavat, & abstergit manus, surgit cum mitra, descendit ante altare, ubi deposita mitra, stans, cum suis ministris facit confessionem. Rex vero electus ad partem se retrahit, & genuflexus cum suis praelatis domesticis idem facit. Similiter, & episcopi parati sine mitris stantes, bini, & bini, confessionem dicunt. Finita confessione, metropolitanus ascendit ad altare, & procedit in missa, more solito usque ad alleluja, sive ultimum versum tractus, vel sequentiae exclusivae, praelatis paratis juxta suas sedes stantibus vel sedentibus, prout tempus requirit. Interim, schola inchoat introitum, & prosequitur in missa; & rex a suis ducitur in sacristiam, vel sub papilione ad hoc parato, ubi inter scapulas & brachium inunctum bombyce bene abstergitur, & induitur regalibus indumentis, & more regni. Paratus itaque rex, & ornatus, procedit cum suis praelatis, baronibus, & aliis ad eminentem & ornatum thalamum, in ecclesia sibi praeparatum, & ibi super aliquo faldistorio ornato genuflexus incumbens, audit missam, quam praelati sui non parati circumstantes etiam genuflexi legunt usque ad alleluja, sive ultimum versum tractus, vel sequentiae exclusivae. Missa dicitur de die, & cum oratione diei, dicitur pro ip-

so electo rege, sub uno pet Dominum, haec oratio.

Quaesumus, omnipotens Deus, ut famulus tuus N. rex noster, qui tua miseratione suscepit regni gubernacula, virtutum etiam omnium percipiat incrementa, quibus decenter ornatus, & vitiorum monstra devitare, & ad te, qui via, veritas, & vita es, gloriosus valeat pervenire. Per Dominum nostrum Jhesum Christum filium tuum, qui tecum vivit & regnat in unitate Spiritus Sancti Deus, per omnia saecula saeculorum.

Resp. Amen.

Graduali cantato, metropolitanus sedet ante altare cum mitra in faldistorio; & rex a suis associatus medius inter priores praelatos paratos ad metropolitanum reducitur, cui facta reverentia, ut prius, genuflectit coram eo. Tunc metropolitanus accipit gladium, quem unus ministrorum sibi porrigit de altari, & illum evaginatum tradit in manus regis; dicens.

** Accipe gladium de altari sumptum per nostras manus, licet indignas, vice tamen, & auctoritate sanctorum apostolorum consecratas, tibi regaliter concessum, nostraeque bene & dictionis officio, in defensionem sanctae Dei ecclesiae divinitus ordinatum; & memor esto ejus, de quo Psalmista prophetavit, dicens, accingere gladio tuo super femur tuum potentissime; ut in hoc per eundem vim aequitatis exerceas, molem iniquitatis potenter destruas, & sanctam Dei ecclesiam, ejusque fideles propugnes, ac protegas; nec minus sub fide falsos, quam christiani nominis hostes execres ac dispergas; viduas, & pupillos clementer adjuves, ac defendas; desolata restaures, restaurata conserves; ulciscaris injusta, confirmes bene disposita; quatenus haec agendo, virtutum triumpho gloriosus, justitiaeque cultor egregius, cum mundi salvatore sine fine regnare merearis. Qui cum Deo Patre, & Spiritu Sancto vivit & regnat Deus, per omnia saecula saeculorum.*

Resp. Amen.

His expeditis, ensis a ministris in vaginam reponitur, & metropolitanus accingit ense regem dicens.

Accingere gladio tuo super femur tuum potentissime; & attende, quod sancti non in gladio, sed per fidem vicerunt regna.

Et mox rex accinctus surgit, & eximit enssem de vagina, illumque viriliter vibrat, deinde super brachium sinistrum tergit, & in vaginam reponit; atque iterum coram metropolitanano genuflectit. Tunc ei corona imponitur, quam omnes praelati parati, qui adsunt, de altari per metropolitanum sumptam manibus tenent, ipso metropolitanano illam regente, capiti illius imponente, ac dicente.

Accipe coronam regni, quae, licet ab indignis, episcoporum tamen, manibus, capiti tuo imponitur. In nomine Patris, & Filii, & Spiritus Sancti, quam sanctitatis gloriam & honorem, & opus fortitudinis, significare intelligas, & per hanc te participem ministerii nostri non ignores. Ita, ut sicut nos in interioribus pastores, rectorisque animarum intelligimur, ita & tu in exterioribus verus Dei cultor, strenuusque contra om-

** This is almost agreeing with the prayer in the old ordo Romanus at the delivery of the sword.*

nes adversitates ecclesiae Christi defensor assistas, regnique tibi a Deo dati, & per officium nostrae benedictionis, in vice apostolorum, omniumque sanctorum, regimini tuo commissi utilis executor, proficiusque regnator semper appareas, ut inter gloriosos athletas, virtutum gemmis ornatus, & praemio sempiternae felicitatis coronatus cum redemptore, ac salvatore nostro Jesu Christo, cuius nomen, vicemque gestare crederis, sine fine glorieris. Qui vivit, & imperat *Deus* cum Patre, & Spiritu Sancto in saecula saeculorum.

Resp. Amen.

Postea metropolitanus dat ei adhuc genuflexo sceptrum, dicens.

* Accipe virgam virtutis, ac veritatis, qua intelligas te obnoxium mulcere pios, terrere improbos, errantes viam docere, lapsis manum porrigere, disperdere superbos, & relevare humiles, & aperiat tibi ostium *Iesus Christus* Dominus noster, qui de semetipso ait, *ego sum ostium, per me si quis introierit, salvabitur*, qui est clavis *David*, & sceptrum domus *Israel*, qui aperit, & nemo claudit, claudit, & nemo aperit. Sitque tibi ductor qui educit vincitum de domo carceris, sedentem in tenebris, & umbra mortis; & in omnibus sequi merearis eum, de quo *David* propheta cecinit, *sedes tua, Deus, in saeculum saeculi: virga directionis, virga regni tui*, & imitando ipsum, diligas iustitiam, & odio habeas iniquitatem, qui propterea unxit te *Deus, Deus* tuus, ad exemplum illius, quem ante saecula unxerat oleo exultationis, prae participibus suis, *Iesum Christum* Dominum nostrum, qui cum eo vivit, & regnat *Deus*, per omnia saecula saeculorum.

Resp. Amen.

Tunc regi surgenti discingitur ensis, & in vagina datur alicui, qui eum ante regem immediate portat. Et metropolitanus cum aliis praelatis paratis deducit regem sceptrum in manu, & coronam in capite ferentem, medium inter se a dexteris, & digniorem praelatum paratum a sinistris regis incedentem ad solium supra thalamum, & adjuvante eum digniore praelato praedicto, intronizat regem in solio, dicens.

† Sta, & retine amodo locum tibi a Deo delegatum, per auctoritatem omnipotentis Dei, & per praesentem traditionem nostram, omnium scilicet episcoporum, caeterorumque fervorum; & quanto clerum sacris altaribus propinquiorem perspicias, tanto ei potius in locis congruis honorem impendere memineris; quatenus mediator Dei, & hominum, te mediatorem cleri, & plebis permanere faciat.

Deinde metropolitanus deposita mitra, stans versus ad altare inchoat, scholaprosequente, hymnum.

Te Deum laudamus.

Qui totus dicitur: quo incepto, metropolitanus accedit ad dexteram regis, ibi continuo manens, usque ad finem hymni; & eo finito, metropolitanus stans, ut prius, ad dexteram regis sine mitra, dicit super illum versus.

Firmetur manus tua, & exaltetur dextera tua.

Resp. Iustitia, & iudicium praeparatio sedis tuae.

Vers. Domine exaudi orationem meam.

Resp. Et clamor meus ad te veniat.

Vers. Dominus vobiscum.

Resp. Et cum Spiritu tuo.

Oremus.

DEUS, qui victrices *Moyse* manus in oratione firmasti, qui quamvis aetate languesceret, infatigabili sanctitate pugnabat, ut dum *Amalech* iniquus vincitur, dum prophanus nationum populus subjugatur, exterminatis alienigenis, haereditati tuae possessio copiosa ferviret; opus manuum tuarum pia nostrae orationis exauditione confirma; habemus & nos apud te, sancte Pater, *Dominum* salvatorem, qui pro nobis manus suas extendit in cruce, per quem etiam precamur, altissime, ut, tua potentia suffragante, univerforum hostium frangatur impietas, populusque tuus, cessante formidine, te solum timere condiscat, per eundem Christum Dominum nostrum.

Resp. Amen.

Oremus.

DEUS, inenarrabilis auctor mundi, conditor generis humani, confirmator regni, qui ex utero fidelis amici tui patriarchae nostri *Abrahae* praelegisti regem saeculis profuturum, tu praesentem insignem regem hunc, cum exercitu suo per intercessionem beatae *Mariae* semper virginis, & omnium sanctorum uberi benedictione locupleta; & in solium regni firma stabilitate connecte: visita eum sicut visitasti *Moysem* in rubo, *Iosue* in praelio, *Gedeonem* in agro, *Samuelem* in templo, & illa eum fiderea benedictione, ac sapientiae tuae rore perfunde, quam beatus *David* in psalterio, *Salomon* filius ejus, te remunerante, percepit de coelo. Sis ei contra acies inimicorum lorica, in adversis galea, in prosperis sapientia, in protectione clypeus sempiternus. Et praesta, ut gentes illi teneant fidem, procures sui habeant pacem, diligant caritatem, abstineant se a cupiditate, loquantur iustitiam, custodiant veritatem, & ita populus iste sub ejus imperio pullulet, coalitus benedictione aeternitatis; ut semper tripudiantes maneant in pace, ac victores. Quod ipse praestare dignetur qui tecum vivit, & regnat in unitate Spiritus Sancti *Deus*, per omnia saecula saeculorum.

Resp. Amen.

Quibus finitis, metropolitanus cum praelatis paratis redit ad sedem suam, vel faldistorium prope altare, & (nisi sit coronanda regina) dicitur alleluja, sive ultimus versus tractus, vel sequentiae, evangelium, & alia usque ad offertorium inclusive. Quo dicto, metropolitanus residet in faldistorio suo ante medium altaris cum mitra, & rex a suis praelatis & baronibus associatus venit ante metropolitanum, coram quo genuflexus, detecto capite, offert ei aurum, quantum sibi placet, & manum metropolitani recipientis osculatur.

* The same prayer is almost in the same syllables in the old ordo Romanus at the delivery of the scepter. nus being made for an hereditary kingdom, is, Sta & retine amodo locum quem hucque paterna successione tenuisti, haereditario jure tibi delegatum per auctoritatem, &c. as it follows here. So in the old Saxon Pontifical. see before pag. 272.

† This in the old ordo Roma-

Deinde ad solium suum revertitur. Metropolitani lavat manus, surgensque accedit ad altare, & prosequitur missam usque ad communionem. Cum secreta diei dicitur pro rege, sub uno, per Dominum nostrum.

Secreta.

Munera, quaesumus, Domine, oblata sanctifica, ut, & nobis unigeniti tui corpus & sanguis fiant; & regi nostro ad obtinendam animae, corporisque salutem, & ad peragendum injunctum officium, te largiente, usquequaque proficiant. Per eundem Dominum nostrum Jesum Christum filium tuum, qui tecum vivit, & regnat in unitate Spiritus Sancti Deus, per omnia saecula saeculorum.

Resp. Amen.

Pax datur regi per primum ex praelatis paratis, cum instrumento ad hoc ordinato. Postquam metropolitanus se de corpore, & sanguine, quem totum sumere debet, communicaverit, rex, detecto capite, de thalamo suo accedit ad altare, coram quo, in supremo gradu genuflectit, & metropolitanus conversus ad regem, ipsum communicat. Rex, priusquam communionem sumat, osculatur manum dexteram metropolitani, & sumpta communionem, ex calice de manu metropolitani se purificat, & purificatus ad thalamum suum revertitur. Metropolitanus vero ablutionem sumit, & accepta mitra, lavat manus, & perficit missam.

Cum postcommunionem diei dicitur pro rege, sub uno, per Dominum, &c.

Postcommunio.

Haec, Domine, oblatio salutaris famulum tuum N. regem nostrum ab omnibus tueatur adversis, quatenus ecclesiasticae pacis obtineat tranquillitatem, & post istius temporis decursum ad aeternam perveniat haereditatem. Per Dominum nostrum Jesum Christum filium tuum, qui tecum vivit, & regnat in unitate Spiritus Sancti Deus, per omnia saecula saeculorum.

Resp. Amen.

In fine metropolitanus dat benedictionem solemnem, ut supra; qua data, singuli ad sua revertuntur.

De benedictione & coronatione REGINAE.

Si vero tunc regina benedicenda sit, & coronanda, quamprimum ipso rege intronizato, & orationibus expletis, metropolitanus cum praelatis paratis ad altare reversus in faldistorio fedit.

Rex de solio suo surgens, cum comitiva sua, coronam in capite, & sceptrum in manu gestans ante altare ad metropolitanum proficiscitur, & facta ei reverentia, stans, detecto capite, petit reginam benedici, & coronari, sub his verbis.

Reverendissime pater postulamus, ut confortem nostram nobis a Deo conjunctam benedicere, & corona reginali decorare dignemini, ad laudem, & gloriam salvatoris nostri Jesu Christi.

Deinde ad solium suum revertitur.

Tunc regina, quae in aliquo loco ad partem in ecclesia principio steterat, a duobus episcopis paratis, non his, qui regem deduxerunt, sed primis post eos, crine soluto, & capite velato, in vestibus suis communibus ad metropolitanum ante altare deducitur & facta metropolitano reverentia, coram illo genuflectit, & ejus manum osculatur.

Tunc surgit metropolitanus cum mitra, & in faldistorio procumbit. Regina vero ad ejus sinistram in terram se prosternit; & inchoantur, ac perficiuntur Litaniae, ut supra: quibus finitis, metropolitanus, deposita mitra, surgit, & stans versus ad illam ante se genuflexam, dicit sequentem orationem intelligibili voce; quam etiam, & alia sequentia astantes praelati parati submissa voce dicunt.

Oremus.

Omnipotens sempiterne Deus, hanc famulam tuam N. coelesti benedictione sanctifica, quam in adiutorium regni reginam eligimus, tua ubique sapientia doceat, & confortet, atque ecclesia tua fidelem famulam semper agnoscant. Per eundem Dominum nostrum Jesum Christum filium tuum, qui tecum vivit, & regnat in unitate Spiritus Sancti Deus.

Deinde, extensis manibus ante pectus, dicit.

* *Vers.* Per omnia saecula saeculorum.

Resp. Amen.

Vers. Dominus vobiscum.

Resp. Et cum Spiritu tuo.

Vers. Sursum corda.

Resp. Habemus ad Dominum.

Vers. Gratias agimus Domino Deo nostro.

Resp. Dignum & justum est.

Vere dignum & justum est, aequum, & salutare nos tibi semper, & ubique gratias agere, Domine sancte Pater omnipotens, aeternae Deus, honorum cunctorum auctor, ac distributor, benedictionumque omnium largus infusor, tribue super hanc famulam tuam reginam benedictionis tuae copiam; & quam humana electio sibi praeesse gaudet, tua supernae electionis, & benedictionis infusio accumulet. Concede ei, Domine, auctoritatem regimini, consilii magnitudinem, sapientiae, prudentiae, & intellectus abundantiam, religionis, ac pietatis custodiam; quatenus mereatur benedici, & augmentari in nomine, ut Sara; visitari, & foecundari, ut Rebecca; contra omnium muniri vitiorum monstra, ut Judith; in regimine regni, eligi, ut Esther; ut, quam humana nititur fragilitas benedicere, coelestis potius intimi roris repleat infusio. Et quae a nobis eligitur, & benedicatur in reginam, a te mereatur obtinere praemium aeternitatis perpetuae. Et sicut ab hominibus sublimatur in nomine, ita a te sublimetur fide, & operatione. Illo etiam sapientiae tuae eam rore perfunde, quem beatus David in repromissione, & filius ejus Salomon percepit in locupletatione. Sis ei Domine, contra cunctorum ictus inimicorum lorica; in ad-

* All from this place to sempiterno sine fine aeternis, is set in the Pontificale to be sung.

verfis galea ; in prosperis sapientia ; in protectione clypeus sempiternus. Sequatur pacem, diligat caritatem, abstineat se ab omni impietate ; loquatur justitiam, custodiat veritatem, sit cultrix justitiae, & pietatis, amatrix religionis, vigeatque praesenti benedictione in hoc aevo annis plurimis, & in sempiterno sine fine aeternis.

Quod sequitur, dicit plane legendo, ita tamen, quod a circumstantibus audiatur.

Per Dominum nostrum *Jesus Christum* filium tuum, qui tecum vivit, & regnat in unitate Spiritus Sancti *Deus*, per omnia saecula saeculorum.

Resp. Amen.

Qua praefatione expleta, sedet metropolitani, & accepta mitra, inungit in modum crucis cum oleo cathecumenorum illius brachium dexterum, inter juncturam manus, & juncturam cubiti, atque scapulas, dicens.

Deus Pater aeternae gloriae sit tibi adjutor, & omnipotens benedicat tibi, preces tuas exaudiat ; vitam tuam longitudine dierum adimpleat ; benedictionem tuam jugiter confirmet ; te cum omni populo in aeternum conservet ; inimicos tuos confusione induat ; & super te *Christi* sanctificatio, atque hujus olei infusio floreat ; ut, qui tibi in terris tribuit benedictionem, ipse in coelis conferat meritum angelorum ; ac benedicat te, & custodiat in vitam aeternam *Jesus Christus* Dominus noster, qui vivit, & regnat *Deus*, in saecula saeculorum.

Resp. Amen.

Quo facto, surgit regina, & a suis ducitur ad sacrificiam, seu papilionem, ubi rex regales vestes indutus est, ibi & ipsa induitur vestibus reginalibus, quibus induta reducit ad metropolitani ad huc cum mitra in faldistorio sedentem, qui imponit illi ante se genuflexae coronam, dicens.

Accipe coronam gloriae, ut scias te esse confor-tem regni, populoque *Dei* semper prospere consulas, & quanto plus exaltaris, tanto amplius humilitatem diligas, & custodias, in *Christo* *Jesus* Domino nostro.

Et mox dat ei sceptrum, dicens.

Accipe virgam virtutis, ac veritatis, & esto pauperibus misericors, & affabilis ; viduis, pupillis, & orphanis, diligentissimam curam exhibeas ; ut omnipotens *Deus* augeat tibi gratiam suam, qui vivit, & regnat in saecula saeculorum.

Resp. Amen.

Quo facto surgit regina, & episcopi parati, qui ipsam ad altare deduxerunt, eam associant usque ad suum thalamum, ubi sedet in solio suo, matronis ejus ipsam comitantibus ; deinde dicitur alleluja, sive ultimus versus tractus, vel sequentiae, evangelium, & offertorium. Quo dicto regina cum rege a suis tantum associati, vadunt ad offerendum metropolitano in faldistorio ante medium altaris sedenti, de auro, quantum volunt, & manum metropolitani recipientis osculantur ; deinde revertuntur ambo ad thalamum suum, & proceditur in missa usque ad communionem. Data pace regi, & reginae per

primum ex praelatis paratis, cum instrumento ad hoc ordinato.

Rex, & regina a suis tantum associati descendunt de thalamis, & veniunt ad altare, ubi in supremo gradu genuflectunt ; & percepta communionem, metropolitani ponit ambas hostias consecratas super patenam, & conversus ad regem, & reginam, eos communicat.

Rex, priusquam communionem sumat, osculatur manum dexteram metropolitani, tum simili modo communicat reginam, quae similiter ejus manum osculatur, & successive ambos ex calice suo purificat, qui purificati ad thalamos revertuntur, eo ordine, quo venerunt. Metropolitani vero ablutionem sumit ; & accepta mitra lavat manus, perficitque missam, & in fine dat benedictionem solemnem. Qua data, rex & regina vadunt ad palatium suum, & metropolitani, atque alii praelati omnes deponunt vestes sacras, & ad propria quisque revertitur.

De benedictione & coronatione reginae solius.

Si rege jam pridem coronato, regina sola, ut conjux illius, coronanda sit, parantur duo thalami, & alius locus, in quo regina a principio officii usque ad tempus coronationis expectat. Vocantur omnes praelati regni, atque omnia alia fiunt, quae supra pro coronatione regis ordinata sunt. Die autem statuto, metropolitano, & praelatis in ecclesia constitutis, & se vestientibus, rex vestibus regalibus indutus cum corona in capite, & sceptro in manu, ense praecedente, a suis associatus venit ad ecclesiam, & ascendit thalamum suum ; & metropolitano, ac praelatis omnibus paratis, incipitur missa, more solito, & continuatur usque ad alleluja, sive ultimum versus tractus, vel sequentiae exclusivae. Tum rex coronam, & sceptrum ferens descendit de thalamo suo, & metropolitano in faldistorio ante altare cum mitra sedente, stans, detecto capite, petit ab eo reginam benedici, & coronari, sub his verbis.

Reverendissime pater, postulamus ut confortem nostram nobis a Deo conjunctam benedicere, & corona reginali decorare dignemini, ad laudem & gloriam salvatoris nostri *Jesus Christi*.

Deinde ad thalamum suum revertitur ; & regina, quae usque tunc in aliquo loco ad partem in ecclesia steterat, a duobus prioribus praelatis paratis, crine soluto, & capite velato, ducitur ad metropolitani ante altare sedentem ; & facta ei reverentia, coram eo genuflectit, & ejus manum osculatur. Tunc surgit metropolitani, & cum mitra procumbit supra faldistorium. Regina vero ad ejus sinistram se in terram prosternit, & inchoantur litaniae, & perficiuntur, atque omnia alia fiunt, quae supra in coronatione reginae dicta sunt, usque ad offertorium, ad quod poterit rex cum regina procedere, vel regina sola, prout regi placebit. Facta communionem per metropolitani, communicatur regina. Deinde perficitur missa, & in fine metropolitani dat benedictionem solemnem, &c.

De benedictione, & coronatione reginae, ut regni domina.

Si vero regina coronanda est ut regni domina, & absque rege, tunc paratur thalamus unus in ecclesia; vocantur praelati regni, & omnia alia similiter fiunt, quae supra pro coronatione regis ordinata sunt. Die statuto, conveniunt in ecclesia, in qua coronatio fieri debet; ubi metropolitanus, aut alius, ad quem spectat, cum episcopis aliis parat se, & sedent ante altare, ut supra dictum est. Interim regina consuetis vestibus induta, cum suis praelatis, baronibus, & matronis, atque aliis domesticis venit ad ecclesiam; & cum fuerit prope presbyterium, duo priores episcopi parati veniunt ei obviam, & cum mitris capita illi aliquantulum inclinantes, ipsam inter se mediam usque ad metropolitanum deducunt, cui regina caput inclinans, humilem reverentiam exhibet; qua facta, prior ipsorum deducunt, detecto capite, versus ad metropolitanum, dicit.

Reverendissime pater postulat sancta mater ecclesia catholica, ut praesentem circumspicam mulierem ad dignitatem reginalem sublevetis.

Tunc interrogat metropolitanus.

Scitis illam esse dignam, & utilem ad hanc dignitatem?

Ille respondet.

Et novimus, & credimus eam esse dignam & utilem ecclesiae Dei, & ad regimen hujus regni.

Metropolitanus dicit.

Deo gratias.

Tunc sedet regina medios inter ipsos episcopos deducentes, congruenti spatio a metropolitanano, ita ut illi faciem vertat; ipsi etiam deducentes episcopi, senior ad dexteram, alius ad sinistram reginae se collocant, ut & ipsi ad alterutrum facies vertant. Ipsi sic sedentibus, postquam aliquantulum quieverint, metropolitanus coronandam reginam admonet dicens.

Cum hodie per manus nostras, circumspecta mulier, qui Christi salvatoris nostri vice in hac re fungimur (quamvis indigni) sacram unctionem, & regni insignia sis susceptura; bene est, ut te prius de onere, ad quod destinaris, moneamus. Regiam hodie fuscipis dignitatem, & regendi fideles populos tibi commissos curam sumis. Praeclarum sane inter mortales locum, sed discriminis, laboris, atque anxietatis plenum. Verum si consideraveris, quod omnis potestas a Domino Deo est, per quem reges regnant, & legum conditores justa decernunt, tu quoque de grege tibi commisso ipsi Deo rationem es redditura. Primum, pietatem servabis, Dominum Deum tuum tota mente, ac puro corde colas. Christianam religionem, ac fidem catholicam, quam ab incunabulis professi es, ad finem usque inviolatam retinebis, eamque contra omnes adversantes pro viribus defendes. Ecclesiarum praelatis, ac reliquis sacerdotibus condignam reverentiam exhibebis. Ecclesiasticam libertatem non conculcabis. Iustitiam, sine qua nulla societas diu consistere potest, erga omnes inconvulsa administrabis, bonis praemia, noxiis debitas poenas retribuendo. Viduas, pupillos, pauperes, ac debiles ab omni op-

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pressionem defendes. Omnibus te adjuvantibus benignam, mansuetam, atque affabilem pro regia tua dignitate te praebebis. Et ita te geres, ut non ad tuam, sed totius populi utilitatem regnare, praemiumque benefactorum tuorum, non in terris sed in coelo expectare videaris. Quod ipse praestare dignetur, qui vivit & regnat Deus in saecula saeculorum.

Resp. Amen.

Regina electa accedit ad metropolitanum, & genuflexa facit hanc professionem, dicens.

Ego N. Deo annuente, futura regina N. profiteor, & promitto coram Deo, & angelis ejus deinceps legem, iustitiam, & pacem ecclesiae Dei, populoque mihi subiecto, pro posse & nosse, facere ac fervare, salvo condigno misericordiae Dei respectu, sicut in consilio fidelium meorum melius potero invenire. Pontificibus quoque ecclesiarum Dei condignum, & canonicum honorem exhibere; atque ea, quae ab imperatoribus & regibus ecclesiis collata, & reddita sunt, inviolabiliter observare. Abbatibus, comitibus, & vassallis meis congruum honorem, secundum consilium fidelium meorum, praestare.

Deinde ambabus manibus tangit librum evangeliorum, quem metropolitanus, coram ea super genibus apertum tenet, inferiori parte libri reginae versa, dicens.

Sic me Deus adjuvet, & haec sancta Dei evangelia.

Et post regina electa metropolitani manum reverenter osculatur. Quo facto, metropolitanus surgit, & cum mitra procumbit in faldistorio. Regina vero ad ejus sinistram in terram se prosternit.

Et cantores incipiunt, schola prosequente, litanias; in quibus cum dictum fuerit.

Ut omnibus fidelibus, &c.

Resp. Te rogamus audi nos.

Metropolitanus surgit, & accepto baculo pastoralis in sinistra, super illam dicit.

Ut hanc electam in reginam coronandam bene dicere digneris.

Resp. Te rogamus audi nos.

Secundo dicit.

Ut hanc electam in reginam coronandam bene dicere & consecrare digneris.

Resp. Te rogamus audi nos.

Producendo semper super reginam signum crucis. Idem dicunt, & faciunt episcopi parati, genuflexi tamen permanentes. Quo dicto, metropolitanus redit ad accubitus, cantoribus litanias resumentibus, & perficientibus. Quibus finitis, metropolitanus deposita mitra, surgit, regina prostrata manente, & dicit super eam intelligibili voce orationem sequentem, quam astantes episcopi, etiam sine mitris in locis suis stantes, submissa voce pronuntiant.

Oremus.

O Mnipotens sempiterna Deus, hanc famulam tuam coelesti benedictione sanctifica, quam in gubernationem regni reginam eligimus, tua ubique sapientia doceat, & confortet, atque ecclesia tua fidelem famulam semper agnoscat.

S f

Per

Per eundem Dominum nostrum *Iesum Christum* filium tuum, qui tecum vivit, & regnat in unitate Spiritus Sancti *Deus*.

Tunc surgit regina, & coram pontifice genuflectit. Deinde pontifex mediocri voce, extensis manibus ante pectus, dicit.

** Vers.* Per omnia saecula saeculorum.

Resp. Amen.

Vers. Dominus vobiscum.

Resp. Et cum spiritu tuo.

Vers. Sursum corda.

Resp. Habemus ad Dominum.

Vers. Gratias agamus Domino *Deo* nostro.

Resp. Dignum & iustum est.

Vere dignum & iustum est, aequum, & salutare nos tibi semper, & ubique gratias agere, *Domine* sancte Pater omnipotens, aeternae *Deus*, honorum cunctorum auctor, ac distributor, benedictionumque omnium largus infusor, tribue super hanc famulam tuam *reginam* benedictionis tuae copiam; & quam humana electio sibi praesse gaudet, tua supernae electionis, & benedictionis infusio accumulet. Concede ei, *Domine*, auctoritatem regiminis, consilii magnitudinem, sapientiae, prudentiae, & intellectus abundantiam, religionis, ac pietatis custodiam; quatenus mereatur benedici, & augmentari in nomine, ut *Sara*, visitari, & foecundari, ut *Rebecca*; contra omnium muniri vitiorum monstra, ut *Judith*; in regimine regni eligi, ut *Esther*; ut, quam humana nititur fragilitas benedicere, coelestis potius intimi roris repleat infusio. Et quae a nobis eligitur, & benedicitur in *reginam*, a te mereatur obtinere praemium aeternitatis perpetuae. Et sicut ab hominibus sublimatur in nomine, ita te sublimetur fide, & operatione. Illo etiam sapientiae tuae eam rore perfunde, quam beatus *David* in repromissione, & filius ejus *Salomon* percepit in locupletatione. Sis ei, *Domine*, contra cunctorum ictus inimicorum lorica; in adversis galea; in prosperis sapientia; in protectione clypeus sempiternus. Sequatur pacem, diligat caritatem, abstineat se ab omni impietate; loquatur iustitiam, custodiat veritatem, sit cultrix iustitiae, & pietatis, amatrix religionis, vigeatque praesenti benedictione in hoc aevo annis plurimis, & in sempiterno sine fine aeternis.

Deinde dicit plane legendo, ita tamen, quod a circumstantibus audiat.

Per Dominum nostrum *Iesum Christum* filium tuum, qui tecum vivit, & regnat in unitate Spiritus Sancti *Deus*, per omnia saecula saeculorum.

Resp. Amen.

Quibus dictis, sedet metropolitanus, & accepta mitra, intingit pollicem dexteræ manus in oleum cathemenorum: & innungit in modum crucis, brachium dexterum reginae inter juncturam cubiti, atque inter scapulas, dicens.

Deus pater aeternae gloriae sit tibi adjutor, & omnipotens benedicat tibi, preces tuas exaudiat; vitam tuam longitudine dierum adimpleat; benedictionem tuam jugiter confirmet; te cum omni populo in aeternum conservet; inimicos tuos

confusione induat; & super te *Christi* sanctificatio, atque hujus olei infusio floreat; ut, qui tibi in terris tribuit benedictionem, ipse in coelis conferat meritum angelorum; ac benedicat te, & custodiat in vitam aeternam *Iesus Christus* Dominus noster, qui vivit, & regnat *Deus*, in saecula saeculorum.

Resp. Amen.

Quo facto, surgit regina, & ad partem se retrahit, ubi praelati sui domestici ei assistunt. Metropolitanus vero lavat, & abstergit manus, deinde accedit ante altare, & deposita mitra, cum suis ministris facit confessionem. Idem faciunt episcopi parati iuxta sedes suas sine mitris stantes. Facta confessione metropolitanus ascendit ad altare, osculatur, incensat, & procedit in missa usque ad alleluja exclusive, sive ultimum versum tractus, vel sequentiae, si dicitur, more consueto. Regina vero ducitur a suis ad sacrificiam, vel papilionem, ubi accipit vestes reginales. Deinde redit cum illis ad thalamum, ubi manet usque ad dictum graduale: non tamen sedet in folio, sed super aliquod scabellum sibi paratum genuflexa procumbit audiens missam. Missa dicitur de die, & cum oratione diei, dicitur pro ipsa electa regina sub uno, per Dominum.

Oremus.

Quafumus, omnipotens *Deus*, ut famula tua *N. regina* nostra, quae tua miseratione suscepit regni gubernacula, virtutum etiam omnium percipiat incrementa, quibus decenter ornata, & vitiorum monstra devitare, & ad te, qui via, veritas & vita es, gratiosa valeat pervenire. Per Dominum nostrum *Iesum Christum* filium tuum, qui tecum vivit, & regnat in unitate Spiritus Sancti *Deus*, per omnia saecula saeculorum.

Resp. Amen.

Graduali cantato, metropolitanus sedet ante altare in faldistorio cum mitra, & regina a suis associata, media inter priores duos praelatos paratos ad metropolitanum reducit, cui facta reverentia, ut prius genuflectit coram eo. Tunc imponitur ei corona, quam omnes episcopi parati qui adsunt, de altari per metropolitanum sumptam manibus tenent, ipso metropolitano illam regente, & capiti illius imponente, ac dicente.

Accipe coronam regni, quae, licet ab indignis, episcoporum tamen manibus, capiti tuo imponitur. In nomine Patris, & Filii, & Spiritus Sancti, quam sanctitatis gloriam, & honorem, & opus fortitudinis, significare intelligas, & per hanc te participem ministerii nostri non ignores. Ita, ut sicut nos in interioribus pastores, rectoresque animarum intelligimus, ita & tu in exterioribus vera Dei cultrix, strenuaque contra omnes adversitates ecclesiae *Christi* defensatrix assistas, regniue tibi a Deo dati, & per officium nostrae benedictionis in vice apostolorum, omniumque sanctorum, regimini tuo commissi utilis executrix, proficuaque regnatricis semper appareas; ut inter gloriosos athletas, virtutum gemmis ornata, & praemio sempiternae foelicitatis

** All this in the Pontificale so in sempiterno sine fine aeternis, is set to be sung.*

coronata cum redemptore, ac salvatore nostro *Jesu Christo*, cujus nomen vicemque gestare crederis, sine fine glorieris. Qui vivit & imperat *Deus* cum Patre, & Spiritu Sancto in saecula saeculorum.

Resp. Amen.

Et mox dat ei sceptrum in manum, dicens.

Accipe virgam virtutis, ac veritatis, & esto pauperibus misericors, & affabilis; viduis, pupillis, & orphanis, diligentissimam curam exhibeas; ut omnipotens *Deus* augeat tibi gratiam suam, qui vivit & regnat in saecula saeculorum.

Resp. Amen.

Tum surgunt omnes, & metropolitanus cum omnibus episcopis paratis deducit reginam, coronam in capite, & sceptrum in manu ferentem, mediam inter se, & digniorem episcopum paratum supra solium, ubi stans cum mitra, una cum eodem digniore episcopo intronizat eam in solio, dicens.

Sta, & retine amodo locum tibi a *Deo* delegatum, per auctoritatem omnipotentis *Dei*, & per praesentem traditionem nostram, omnium scilicet episcoporum, caeterorumque *Dei* servorum; & quanto clerum sacris altaribus propinquiorem perspicis, tanto ei potius in locis congruis honorem impendere memineris; quatenus mediator *Dei*, & hominum, te mediatricem cleri, & plebis permanere faciat.

Deinde metropolitanus, deposita mitra, inchoat, schola sequente, hymnum,

Te Deum laudamus.

Qui totus dicitur; quo incepto, metropolitanus accedit ad dexteram reginae, ibi continuo manens, usque ad finem hymni. Finito hymno, metropolitanus, stans, ut prius, juxta reginam sine mitra, dicit super illam.

Vers. Firmetur manus tua, & exaltetur dextera tua.

Resp. Justitia, & judicium praeparatio sedis tuae.

Vers. Domine exaudi orationem meam.

Resp. Et clamor meus ad te veniat.

Vers. Dominus vobiscum.

Resp. Et cum spiritu tuo.

Oremus.

D*eus*, qui victrices *Moyse* manus in oratione firmasti, qui quamvis aetate languesceret, infatigabili sanctitate pugnabat, ut dum *Amalec* iniquus vincitur, dum prophanus nationum populus subjugatur, exterminatis alienigenis, haereditati tuae possessio copiosa serviret; opus manuum tuarum pia nostrae orationis exauditione confirma; habemus & nos apud te, sancte Pater, *Dominum* Salvatorem, qui pro nobis manus suas extendit in cruce, per quem etiam precamur, altissime, ut, tua potentia suffragante, universorum hostium frangatur impietas, populisque tuus, cessante formidine, te solum timere condiscat. Per eundem *Christum Dominum* nostrum.

Resp. Amen.

Quibus finitis, metropolitanus cum episcopis paratis revertitur ad sedem suam, vel ad falsistorium prope altare; & dicitur alleluja, sive

ultimus versus tractus, vel sequentiae, evangelium, & alia usque ad offertorium inclusive. Quo dicto, metropolitanus sedet in falsistorio ante medium altaris cum mitra, & regina a suis praelatis, magnatibus, & aliis associata venit ante metropolitanum, coram quo genuflexa, offert ei aurum, quantum sibi placet & manum metropolitani recipientis osculatur.

Deinde ad solium suum revertitur. Metropolitanus lavat manus, surgit, & accedit ad altare, & prosequitur missam usque ad communionem.

Cum secreta diei dicitur pro regina, sub uno, per Dominum.

Secreta.

Munera, quaecumque, *Domine*, oblata sanctifica; ut & nobis unigeniti tui corpus, & sanguis fiant, & reginae nostrae ad obtinendam animae, corporisque salutem, & ad peragendum injunctum officium, te largiente, ulquequaque proficiant. Per eundem *Dominum* nostrum *Jesum Christum* filium tuum, qui tecum vivit, & regnat in unitate Spiritus Sancti *Deus*, per omnia saecula saeculorum.

Resp. Amen.

Pax datur reginae per primum ex praelatis paratis cum instrumento ad hoc ordinato.

Postquam metropolitanus se communicaverit de corpore, & sanguine; regina sine corona, & sine sceptro, de thalamo suo a suis dumtaxat associata, accedit ad altare; genuflectit in supremo gradu altaris, & metropolitanus conversus ad reginam, eam communicat. Regina, antequam sumat sacramentum, osculatur manum dexteram metropolitani, & sumpta communione, ex calice de manu metropolitani se purificat, & purificata ad thalamum suum revertitur cum suis, ut venit. Metropolitanus vero ablutionem sumit, & accepta mitra, lavat manus, & perficit missam.

Cum postcommunione diei, dicitur pro regina sub uno, per dominum.

Postcommunio.

Haec, *Domine*, oblatio salutaris famulam tuam *N. reginam* nostram ab omnibus tueatur adversis, quatenus ecclesiasticae pacis obtineat tranquillitatem, & post istius temporis decursum ad aeternam perveniat haereditatem. Per *Dominum* nostrum *Jesum Christum* filium tuum, qui tecum vivit, & regnat in unitate Spiritus Sancti *Deus*, per omnia saecula saeculorum.

Resp. Amen.

In fine metropolitanus dat benedictionem solemnem; qua data, omnes vadunt in pace.

De benedictione, & coronatione regis in confortem electi.

C*UM* autem regina jampridem, ut regni domina, benedicta, & coronata, deinde confortem sibi elegerit, quem postea statuerit coronari, ad diem ordinatam vocantur omnes praelati regni; parantur duo thalami, atque omnia

omnia alia ordinantur, prout supra in coronatione regis posita sunt. Die autem statuto, metropolitano, & praelatis in ecclesia constitutis, & se vestientibus, regina reginalibus vestibus induta cum corona in capite, & sceptro in manu, a suis associata venit ad ecclesiam, & ascendit thalamum suum. Illis autem paratis, & suo ordine sedentibus, ut supra in coronatione regis ordinatum est, regina de thalamo suo descendens cum corona in capite, & sceptro in manu venit coram metropolitano, a quo, facta ei reverentia, petit regem consortem suum benedici, & coronari, sub his verbis.

Reverendissime pater, postulamur ut confortem nostrum a Deo nobis conjunctum benedicere, & corona regali decorare dignemini, ad laudem & gloriam salvatoris nostri Jesu Christi.

Deinde ad thalamum suum revertitur. Interim rex vestibus militaribus indutus venit ad ecclesiam a suis praelatis domesticis non paratis, & comitibus, magnatibus regni, & aliis associatis. Qui cum venerit prope presbyterium, duo priores episcopi ex paratis, ei obviam veniunt, & cum mitris capita illi aliquantulum inclinantes, ipsum, birreto deposito, usque ante metropolitani deducunt; coram quo rex caput inclinans, humilem ei reverentiam exhibet. Qua facta, prior episcoporum deducunt flans, detecto capite, versus ad metropolitani, voce intelligibili dicit.

Reverendissime pater, postulat sancta mater ecclesia catholica, ut praesentem egregium militem ad dignitatem regiam sublevetis.

And then follows only this direction; that the rest of the ceremony is no otherwise than what is before delivered for the coronation of a king. But we see no ring here, nor other rod than the scepter (both which are commonly in the ms. rituals of the English and French fashion) nor the globe and cross which is in the coronation of the emperor and of some other kings. Neither, though the empire be elective, is the solemnity there in the coronation of the emperor (asking of Germany) after the order of this pontificale, as we see more especially in the coronations (performed in Germany) of Charles V. of the Maximilians, and of Matthias. No more are the rites of the other coronations of the emperors. The ceremonies are very different in the relations of the coronation of Frederick III. at ^a Rome, and of Charles V. at ^b Bologna, which supplied both that at Rome and at Monza.

But there is a ritual or ordo ad consecrandum & coronandum regem Franciae, published in Laurentius ^c Bochellus, a French lawyer, which, if I had not the use of a more authentick copy, I would insert here as transcribed from him; both because his volume is not so obvious, as also in regard that this place is proper for all store of such ceremonials as appear to me warrantable enough for the rites of coronation. But in that

most rich library of the most noble sir Robert Cotton, I find a copy of this ritual of France, titled ordo ad inungendum & coronandum regem (comprehending also the rites of crowning the queen) very fairly written, authorised and corrected in the year MCCCXLV. or in the first year of Charles V. king of France, and that by his special warrant, and subscribed by himself, thus,

Ce livre du sacre des roys de France est a nous Charles le V. de nostre nom roy de France; & le fimes corriger, orderier, escrier & istorier l'an MCCCXLV. Charles.

This I thought rather to deserve place here, than that in Bochellus, because the authority of it is so singular. And how it differs (for much it differs not from that of Bochellus) shall be diligently noted in the margin. But however it came to pass, the next prayer that precedes the unction in it, was not only without question taken out of some Saxon ceremonial, and is almost the same that is before shewed out of the Saxon Pontificale; but also it retains still here the very syllables that denote the English Saxon kings by the names of their own territories; as of Mercia, of Northumberland, of the Saxons. The negligence or forgetfulness that left those names in it, were almost incredible, if we saw it not.

Ordo ad inungendum, & coronandum regem.

Primo paratur solium in modum eschafaudi aliquantulum emineus contiguum, exterius choro ^{*} ecclesiae inter utrumque chorum positum in medio, in quo per gradus ascenditur. Et in quo possint pares regni, & aliqui, si necesse fuerit, cum eo consistere. Rex autem die quo ad coronandum venerit, debet processionaliter recipi, tam a canonicis quam a caeteris ecclesiis conventualibus. Sabbato praecedente diem dominicam in qua rex est consecrandus, & coronandus, post completorium expletum, committitur ecclesiae custodia custodibus a rege deputatis, cum propriis custodibus ecclesiae. Et debet rex intempestae noctis silentio venire in ecclesiam orationem facturus, & † ibidem in oratione aliquantulum, si voluerit, vigilaturus. Cum pulsatur autem ad matutinas debent esse parati custodes regis introitum ecclesiae observantes, qui aliis hostiis ecclesiae firmiter obseratis & munitis, canonici & clerici ecclesiae debent honorifice intrmittere ac diligenter quotienscunque opus fuerit eis. Matutinae more solito decantentur. Quibus expletis pulsatur ad primam, quae cantari debet in aurora diei, post primam cantata debet rex cum archiepiscopis, & episcopis, & baronibus & aliis quos intrmittere voluerit, in ecclesiam venire antequam fiat aqua benedicta, & debent esse sedes dispositae circa altare, hinc & inde, ubi archiepiscopi & episcopi honorifice sedeant. Episcopis ‡ paribus,

^a Marcell. Corcyr. sac. cerem. l. 1. c. 13.

^b Goldast. politic. imperial. part. 4. pag. 327.

^c Decret. eccles. Gallie. l. 5. tit. 2.

^{*} This was most ordinarily at Rheims, but at the king's pleasure, also in any other church, Peers, the bishops of Beauvais, Laon, Langres, Chaalons sur Marne, Noyon.

† Ibidem is not in Bochellus.

‡ Spiritual.

videlicet,

*videlicet, primo Landunenſi, poſtea Beluaceniſi, deinde Lingonenſi, poſtea Cathalanenſi, ultimum, Noviomenſi cum aliis episcopis * archiepiscopatus Remenſis ſedentibus ſeorſum inter altare & regem ab oppoſitis altaris non longe a rege, nec multis indecenter interpoſitis. Et debent canonici eccleſiae Remenſis proceſſionaliter cum duabus crucibus cereis, & thuribulo cum incenſo ire ad palatium archiepiscopale. Et episcopi Landunenſis & Beluacenſis, qui ſunt primi pares de episcopis, debent eſſe in praedicta proceſſione habentes ſanctorum reliquias collegendas. Et in camera magna debent reperire principem in regem conſecrandum ſedentem, & quaſi jacentem ſupra thalamum decenter ornatum. Et cum ad dicti principis praesentiam applicaverint, dicat Landunenſis episcopus hac orationem.*

Omnipotens ſempiternus Deus : qui famulum tuum N. faſtigio dignatus es ſublimare, tribue quaefumus ei, ut ita in hujus ſaeculi curſu multorum in commune ſalutem diſponat, quatenus a veritatis tuae tramite non recedat. † Per Dominum.

Qua oratione dicta, ſtatim ſuſcipiant eum duo praedicti episcopi dextera laevaque honorifice ; & ipſum reverenter ducant ad eccleſiam canentes hoc † reſp. cum canonicis praedictis.

Ecce mitto angelum meum qui praecedat te & cuſtodiat ſemper. Obſerva & audi vocem meam, & inimicus ero inimicis tuis, & affligentes te affligam, & praecedet te angelus meus.

Finis Reſp. cantetur || Verſ.

*Israel ſi me audieris, non erit in te Deus recens, neque adorabis Deum alienum, ego enim Dominus. Obſerva ***

Cunctoque eum populo ſequentem ad hoſtium eccleſiae clerus ſubſiſtat. Et alter episcopus ſcilicet Beluacenſis, ſi praesens fuerit, dicat hanc orationem quae ſequitur.

Deus qui ſcis humanum genus nulla virtute poſſe ſubſiſtere, concede propitius ut famulus tuus N. quem populo tuo voluisti praeferrere, ita tuo ſulciatur adjutorio † quatenus quibus potuit praeeſſe valeat, & prodeſſe. Per Dominum.

Introeuntes autem eccleſiam praecedentes canonici dicant uſque ad introitum chori hanc antiphonam.

Domine in virtute tua laetabitur rex.

*Finis antiphona metropolitani cui in eccleſia expectanti ante altare per praedictos episcopos, rex conſecrandus praesentabitur, † dicat hanc orationem ſequentem. * **

†† Omnipotens Deus, coeleſtium moderator, qui famulum tuum N. ad regni faſtigium dignatus es provehere, concede, quaefumus, ut a

cunctis adverſitatibus liberatus, & eccleſiaſticae pacis dono muniat, & ad aeternae pacis gaudia, te donante, pervenire mereatur. Per Dominum.

Qua oratione dicta ducant praedicti episcopi regem conſecrandum ad ſedendum in cathedra ſibi praeparata in conſpectu cathedrae archiepiscopi, & ibi ſedebit donec archiepiscopus veniat cum ſancta ampulla, cui venienti aſſurgat rex reverenter.

Quando ſacra †† ampulla debeat venire.

*Inter primam & tertiam debent venire monachi beati Remigii proceſſionaliter cum crucibus & cereis cum ſacroſancta ampulla quam debet abbas reverentiſſime deferre ſub cortina ſerica, quatuor partibus a quatuor monachis albis indutis ſublevata. Rex autem debet mittere de baronibus qui eam ſecure conducant, & cum venerit ad eccleſiam beati Dionyſii vel uſque ad majorem januam eccleſiae propter turbam comprimentem, debet archiepiscopus ſuper piliſto ſtola & capa ſollemni indutus cum mitra & baculo, paſtorali ſua cruce praecedente, cum caeteris archiepiscopis, & episcopis, baronibus necnon & canonicis, ſi fieri poteſt, occurrere ſanctae ampullae, & eam de manu abbatis recipere, cum pollicitatione de reddendo bona fide, * & ſic ad altare cum magna populi reverentia deferre, abbate & aliquibus de monachis pariter † cum comitantibus. Caeteri vero monachi debeant expectare in eccleſia beati Dionyſii vel in capella beati Nicholai, donec omnia peracta fuerint, & quoſque ſacra ampulla fuerit reportata.*

Quid ſuſcepta ampulla agendum ſit.

† Archiepiscopus ad miſſam ſe praeparat cum diaconibus & ſubdiaconibus veſtimentis inſignioribus, & pallio ** induendus, & in hunc modum indutus venit †† proceſſionaliter ad altare more ſolito, cui venienti, rex debet aſſurgere reverenter. Cum autem venerit archiepiscopus ad altare, debet pro omnibus eccleſiis ſibi ſubditis a rege haec petere.

Ammonitio ad regem dicendo ita.

A vobis perdonari petimus ut unicuique de nobis, & eccleſiis nobis commiſſis, canonicum privilegium, ac debitam legem atque juſtitiam conſervetis, & deſenſionem exhibeatis, ſicut rex in regno ſuo debet unicuique episcopo, & eccleſiae ſibi commiſſae.

Reſponſio regis ad episcopos.

Promitto vobis & perdono, †† quia unicuique de vobis, & eccleſiis vobis commiſſis, canoni-

* Iſtus arch. Bocheſ. † That is, Per Dominum N. Jeſum Chriſtum filium tuum qui tecum vivit & regnat in unitate S. S. Deus per omnia ſaecula ſaeculorum. For theſe words are ordinarily denoted by Per Dominum only. † Reſponſorium. †† Verſus. ** Et audi vocem meam & inimicus ero inimicis, &c. †† Quanto quibus Bocheſus. †† Reverenter dicat, Bocheſus. * Metropolitani ſuper regem orat ante altare, Bocheſus. †† In the margin of this place of that ritual ſubſcribed by king Charles, is added this prayer, Deus humilium viſitator qui nos S. S. illuſtratione conſolaris praetende ſuper hunc famulum tuum N. gratiam tuam ut per eum, tuum nobis adeſſe ſentiamus adventum. ††† Sancta, Bocheſus. * In Bocheſus theſe words are there inſerted in a different character (Abbas S. Dionyſii ſat ab dextram altaris ſervans ampullam). † So in the ms. perhaps it ſhould be concomitantibus, or eum comitantibus. But in Bocheſus that place is deſerere abbati & aliquibus de monachis pariter committendo. † In Bocheſus, after that Quod ſuſcepta ampulla agendum ſit, follows, In ſuſceptione ampullae ſacrae ad portam eccleſiae majoris cantatur antiphona. O pretioſum munus, o pretioſa gemma quae pro unctiōe Francorum regum miniſterio angelico coelitus eſt miſſa. Verſus. Inveni David ſervum meum, Reſp. Oleo ſancto meo unxi eum. Oremus. Omnipotens ſempiternus Deus qui pietatis tuae dono genus regum Francorum oleo perungi decreviſti, praefata quaefumus, ut famulus tuus rex noſter per unctum hac ſacra & praesenti unctiōe ſancto. Pontifice (ſo is it printed) Remigio miſſa divinitus & in tuo ſervitio ſemper dirigatur, & ab omni infirmitate miſericorditer liberetur, Per Dominum noſtrum. Dum cantatur tertia, facta aqua benedicta, archiepiscopus ad miſſam ſe praeparat cum diacono & ſubdiacono in ſacriſtia. This being as a title, next follow, Archiepiscopus dum cantatur tertia facta aqua benedicta ad miſſam, &c. as in this copy. * Et rationali ind. Bocheſus. †† E duobus ſuis ſuffraganeis aſſociatus proceſſ. Bocheſus. †† Quod, Bocheſus.

cum privilegium, & debitam legem atque iustitiam || conservabo, & defensionem quantum potuero exhibebo domino adjuvante sicut rex in suo regno unicuique episcopo, & ecclesiae sibi commissae per rectum exhibere debet.

Item haec dicit rex, & promittit & firmat
* juramento.

Haec populo christiano & mihi subdito, in Christi nomine, promitto. *In primis* ut ecclesiae Dei omnis populus christianus veram pacem nostro arbitrio in omni tempore servet [† & superioritatem, jura, & nobilitates coronae Franciae inviolabiliter custodiam, & illa nec transportabo nec alienabo.] *Item*, ut omnes rapacitates & omnes iniquitates omnibus gradibus interdican. *Item*, ut in omnibus judiciis aequitatem & misericordiam praecipiam ut mihi & vobis indulgeat per suam misericordiam clemens, & misericors Dominus. *Item*, de terra mea ac jurisdictione mihi subdita universos haereticos ab ecclesia denotatos pro viribus bona fide exterminare studebo. Haec omnia praedicta firmo juramento.

Tunc manum apponat libro, & librum osculetur. His factis † processionibus, statim incipitur.

Te Deum laudamus.

*Sed secundum usum Romanum, & aliquorum regnorum, non dicitur, Te Deum, usque post intronizationem quae est post ** orationem, Sta, & retine, & videtur melius ibi dici quam hic. Et duo praedicti episcopi ducunt regem per manus ante altare, qui prostrernit se ante altare usque in finem, Te Deum.*

†† Postmodum surgit jam antea praeparatis, & positis super altare, corona regia, gladio in vagina incluso, calcaribus aureis, scepro deaurato, & virga ad mensuram unius cubiti vel amplius habente desuper manum eburneam. *Item* caligis sericis & †† jacinthis per totum intextis liliis aureis, & tunica ejusdem coloris & operis in modum tunicalis quo induuntur subdiaconi ad missam, necnon, & ** focco prorsus ejusdem coloris & operis, qui est factus fere in modum cappae sericae abique caperone quae omnia abbas beati Dionysii in Francia de monasterio suo debet Remis afferre, & stans ad altare custodire. *Tunc primo rex stans ante altare deponit vestes suas praeter tunicam sericam & camisam apertas profundius ante & retro in pectore videlicet & inter scapulas ††† aperitur, tunicae sibi invicem connexis ansulis argenteis, & tunc in primis dicatur ab archiepiscopo oratio sequens.*

Deus inenarrabilis auctor mundi, conditor generis humani, gubernator imperii, confirmator regni, qui ex utero fidelis amici tui patriarchae nostri Abrahae praelegisti regem saeculis futurum. Tu praesentem regem hunc *N.* cum exercitu suo per intercessionem omnium sanctorum, uberi benedictione locupleta, & in fo-

lium regni firma stabilitate ††† connecta. Visita cum sicut Moysen in rubro, Jesum Nave in praelio, Gedeon in agro, Samuelem in templo. Et illa cum benedictione fiderea ac sapientiae tuae rore perfunde, quam beatus David in psalterio, Salomon filius ejus, te remunerante, percepit e coelo.

Sis ei contra acies inimicorum lorica, in adversis galea, in prosperis patientia, in protectione clypeus sempiternus. Et praesta ut gentes illi teneant fidem, procures sui habeant pacem, diligant caritatem, abstineant se a cupiditate, loquantur iustitiam, custodiant veritatem. Et ita populus iste pululet coalitus benedictione aeternitatis, ut semper maneant tripudiantes in pace victores. Quod ipse praestare * &c.

Qua oratione dicta statim ibi a magno camerario Franciae, regi dictae caligae calciantur. Et postmodum a duce Burgundiae calcaria ejus pedibus astringuntur & statim tolluntur.

Benedictio super gladium.

Exaudi Domine quaecumque preces nostras & hunc gladium quo famulus tuus *N.* se accingi desiderat, majestatis tuae dextera † benedicere & dignare, quatenus defensio atque protectio possit esse ecclesiarum, viduarum, orphanorum, omniumque Deo servientium contra saevitiam paganorum, aliisque insidiantibus sit pavor, terror, & formido †.

*Postmodum rex, a solo archiepiscopo, gladio accingitur, quo accincto, statim idem gladius discingitur & e vagina ab archiepiscopo extrahitur, vagina super altare posita, & datur ei ab archiepiscopo in manibus cum ista oratione ** dicendo quem rex in manu sua teneat cuspide elevato donec †† A. Confortare &c. fuerit cantata & oratio sequens dicta per archiepiscopum.*

Accipe †† hunc gladium cum Dei ** benedictione tibi collatum in quo per virtutem Sancti Spiritus resistere & ejicere omnes inimicos tuos valeas, & cunctos sanctae Dei ecclesiae adversarios, regnumque tibi commissum tutari atque protegere castra Dei per auxilium invictissimi triumphatoris Domini nostri Jhesu Christi.

Accipe inquam hunc gladium per manus nostras, vice & autoritate sanctorum apostolorum consecratus tibi regaliter impositum nostraeque benedictionis officio in defensione sanctae Dei ecclesiae ordinatum divinitus. Et esto memor de quo psalmista prophetavit dicens, *accingere gladio tuo super femur tuum potentissime*, ut in hoc per eundem vim aequitatis exerceas, †† molam iniquitatis potenter destruas, & sanctam Dei ecclesiam, ejusque fideles propugnes & protegas, nec minus sub fide falsos quam christiani nominis hostes exercearis ac destruas, viduas, & pupillos clementer adjuves ac defendas, desolata restaures, restaurata conserves, ulciscaris injusta, confirmes bene disposita, quatenus haec in a-

Il Servabo. Bochel. * See Bodin. de repub. l. 1. c. 8. † The words between these [] are not in Bochellus. † Promissionibus. Bochellus. ** See before pag. 296. †† Here this title is inserted in Bochellus. Praeparatio insignium & ornamentorum regaliū. †† Sacinthis. Bochel. * Sacco. Bochel. ††† Apturis. Bochel. ††† Connecte. Bochel. * Praestare dignetur, qui tecum & cum Spiritu Sancto sine fine permanet in saecula saeculorum. Amen. Bochel. † Bene dicere. Bochel. † Per Christum. Bochel. ** So in Bochel. †† Antiphona. Bochel. †† As a title to this, in Bochellus, see read traditio gladii quem rex tenet erectum & nudum usque ad finem orationis sequentis antiphonam. * Bene dictione. Bochel. ††† So in Bochel. but it should be molem : that and some other passages are in that of the Roman pontificale.

gendo, virtutum triumpho gloriosus, iustitiaeque cultor egregius cum mundi salvatore cujus typum geris in nomine, sine fine merearis regnare, qui cum Patre, &c.*.

Hic cantatur ista antiphona.

Confortare, & esto vir, & observa custodias Domini Dei tui, ut ambules in viis ejus & custodias ceremonias ejus & praecepta ejus & testimonia & judicia † quocunque te verteris confirmet te Deus.

Cantata ista antiphona dicitur ista oratio post dationem gladii.

Deus qui providentia tua coelestia simul & terrena moderaris, propitiare christianissimo regi nostro, ut omnis hostium suorum fortitudo virtute gladii spiritualis frangatur, a ‡ te pro illo pugnante penitus conteratur, per Dominum.

*Gladium debet rex humiliter recipere de manu archiepiscopi, & devote flexis genibus de ferre ad altare, & statim genibus regis in terram positis resumere de manu archiepiscopi, & ** incontinenti dare seneschallo Franciae, si seneschallum habuerit: sin autem, cui voluerit de baronibus ad portandum ante se & in ecclesia usque in finem missae, et post missam usque ad palatium. Tradito per regem gladio, ut dictum est, dicat archiepiscopus hanc orationem.*

Prospice †† omnipotens Deus serenis obtutibus hunc gloriosum regem N. Et sicut benedixisti Abraham, Isaac, & Jacob, †† & sic illum largis benedictionibus spiritualis gratiae, cum omni plenitudine potentiae irrigare atque perfundere dignare. Tribue ei de rore coeli, & de pinguedine terrae, habundantiam frumenti, vini & olei, & omnium frugum opulentiam, ex largitate divini muneris longa per tempora, ut illo regnante sit sanitas corporum in patria, & pax inviolata sit in regno, & dignitas gloriosa regalis palatii maximo splendore regiae potestatis oculis omnium fulgeat, luce clarissima ** choruscare atque splendere, quasi splendidissima fulgura maximo perfusa lumine videatur. Tribue ei omnipotens Deus ut sit fortissimus protector patriae, & consolator ecclesiarum atque coenobiorum sanctorum maxima cum pietate regalis munificentiae, atque ut sit fortissimus regum, triumphator hostium ad opprimendas rebelles & ††† paganas nationes. Sitque suis inimicis satis terribilis praemaxima fortitudine regalis potentiae, optimatibus quoque atque praecelsis proceribus ac fidelibus sui regni sit munificus, & amabilis, & pius, ut ab omnibus timeatur atque diligatur. Reges quoque de lumbis ejus per successiones temporum futurorum egrediantur, regnum hoc regere totum. Et post gloriosa tempora atque faelicia praesentis vitae gaudia sempiterna in perpetua beatitudine habere mereatur. Quod ipse praestare ††† dignetur, &c.

Alia benedictio.

Benedic Domine quaesumus huic principem nostrum quem ad salutem populi nobis a te credimus esse concessum, fac eum esse annis multiplicem, vigenti atque salubri corporis robore vigentem, & ad senectutem optatam, atque devium ad finem pervenire faelicem. Sit nobis fiducia eam obtinere gratiam pro populo quam Aaron in tabernaculo, Helyseus in fluvio, Ezechias in lectulo, Zacharias vetulus impetravit in templo; sit illi regendi virtus atque auctoritas, qualem Josue suscepit in castris, Gedeon sumpsit in praeliis, Petrus accepit in clave, Paulus est usus in dogmate. Et ita pastorum cura tuum proficiat in ovile, sicut Isaac profecit in fruge & Jacob dilatatus est in grege. Quod ipse*, &c.

Oratio.

DEUS Pater aeternae gloriae sit adjutor tuus & protector, & omnipotens benedicat tibi, preces tuas in cunctis exaudiat, & vitam tuam longitudine dierum adimpleat, thronum regni tui jugiter firmet, & gentem populumque tuum in aeternum conserve, & inimicos tuos confusione induat, & super te sanctificatio Christi floreat, ut qui tibi tribuit in terris imperium ipse in coelis conferat praemium, qui vivit, &c.

Hucusque de gladio. Posthaec praeparatur unctio in hunc modum. Sed quamdiu ab archiepiscopo paratur incipit cantor.

Resp. Gentem Francorum inclytam,
Simul cum rege nobili,
Beatus Remigius sumpto,
Caelitus crismate, sacro,
Sanctificavit gurgite,
Atque Spiritus Sancti,
Plene ditavit munere.

Vers. Qui dono singularis gratiae in columba apparuit & divinum crisma caelitus pontifici ministravit.

Vers. Ora pro nobis beate Remigi.

Resp. Ut digni efficiantur promissionibus Christi.

O R A T I O.

Oremus.

DEUS, qui populo tuo aeternae salutis beatum Remigium ministrum tribuisti, praesta, quaesumus, ut quem doctorem vitae habuimus in terris, intercessorem habere mereamur in coelis per Christum†.

Chrisma in altari ponitur super patenam consecratam, & archiepiscopus sacramentam ampullam, quam abbas beati Remigii attulit super altare, debet aperire, & inde cum acu aurea, aliquantulum de oleo caelitus misso at-

* Patre & S. S. vivit & regnat Deus, per omnia saecula saeculorum. Amen. Bochel. † Judicia & quocunque. Bochel. ‡ Ac te pro illo. Bochel. ** Statim dare. Bochel. †† To this, the title is in Bohellus, super regem genuflexum with Oremus. †† Jacob, sic Bohell. *** Coruscante atque. Bochel. ††† Paganorum, idem. ††† Digneis qui cum unigenito filio tuo, &c. Bochel. * Praestat, &c. ut supra. † In that place in Bohellus, his copy hath this note; hic debet fieri missio de crismate & oleo caelitus misso.

trahere,

*trabere, & crispinati parato in patena diligentius cum digito immiscere adinungendum regem, qui solus inter universos reges terrae hoc glorioso praeferet privilegio; * ut oleo caelitus misso singulariter inungatur. Parata unctione qua rex debet inungi ab archiepiscopo, debent dissolvi ansulae aperturarum vestimentorum regis ante & retro, & genibus regis in terram positus, prostrato super faldistorium; archiepiscopo etiam consimiliter prostrato. Duo archiepiscopi vel episcopi incipiunt letaniam.*

In the copy, the next words that follow, are *quaere letaniam in fine hujus libri*, where indeed it is; but because it properly should follow here, I have so placed it.

Kyrie eleyson.
Christe eleyson.
Kyrie eleyson.
Christe audi nos.
Sancta Maria ora pro nobis.
Sancte Michael ora &c.
Sancte Gabriel ora.
Sancte Raphael ora.
Sancte chorus angelorum ora.
Sancte Johannes Baptista ora.
Sancte Petre ora.
Sancte Petre ora.
Sancte Paule ora.
Sancte Andrea ora.
Sancte Jacobe ora.
Sancte Joannes ora.
Sancte Thoma ora.
Sancte Philippe ora.
Sancte Jacobe ora.
Sancte Bartholomaeae ora.
Sancte Matthaeae ora.
Sancte Symon ora.
Sancte Thadaee ora.
Sancte Mathia ora.
Sancte Barnaba ora.
Sancte chorus apostolorum ora.
Sancte Stephane ora.
Sancte Clemens ora.
Sancte Calixte ora.
Sancte Marcelle ora.
Sancte Nichasi cum fociis † suis, ora.
Sancte Laurenti ora.
Sancte Dionysi cum fociis † suis, ora.
Sancte Maurici cum fociis ** suis, ora.
Sancte Gervasi ora.
Sancte Prothasi ora.
Sancte Timothee ora.
Sancte Apollinaris ora.
Sancte chorus martyrum ora.
Sancte Sylvester ora.
Sancte Remigi ora.

Bis & altiori voce cantetur.

Sancte Augustine ora.
Sancte Jeronyme ora.
Sancte Ambrosi ora.

Sancte Gregori ora.
Sancte Sixte ora.
Sancte †† Sinici ora.
Sancte Rigoberte ora.
Sancte Martine ora.
Sancte Maurili ora.
Sancte Nicolae ora.
Sancte chorus confessorum ora.
Sancta Maria Magdalena ora.
Sancta Maria Aegyptiaca ora.
Sancta Felicitas ora.
Sancta Perpetua ora.
Sancta Agatha ora.
Sancta Agnes ora.
Sancta Cecilia ora.
Sancta Eutropia ora.
Sancta Genovefa ora.
Sancta Columba ora.
Sancta Scolastica ora.
Sancta Petronilla ora.
Sancta Katherina ora.
Sancte chorus virginum ora.
Omnes sancti orate.
Propitius esto. Parce nobis Domine.
Propitius esto. Libera nos Domine.
Ab insidiis diaboli libera.
A damnatione perpetua libera.
Per mysterium sanctae incarnationis tuae, libera.
Per Passionem & crucem tuam, libera.
Per gratiam sancti Spiritus paracliti, libera.
In die judicii libera.
Peccatores te rogamus audi nos.
Ut pacem nobis dones te rogamus.
Ut misericordia, & pietas tua nos custodiat, te rogamus.
Ut gratiam sancti Spiritus cordibus nostris clementer infundere dignere, te rogamus.
Ut ecclesiam tuam regere, & defendere dignere, te rogamus.
Ut dompnum apostolicum, & omnes gradus ecclesiae in sancta religione conservare digneris, te rogamus.
Ut archiepiscopum nostrum N. cum omni grege sibi commisso in tuo sancto servicio confortare, & conservare digneris, te rogamus.

Et dicitur bis.

Ut obsequium servitutis nostrae rationabile facias, te rogamus.

Tunc archiepiscopus ab accubitu surgens, & ad regem consecrandum se volvens, baculum pastoralis cum sinistra tenens dicat hos versus, choro post eum quemlibet integre repetente.

Ut hunc praesentem famulum tuum N. in regem coronandum bene †dicere digneris.

Te rogamus audi nos.

Secundo dicit.

Bene †dicere & sublimare digneris, te rogamus.

Tertio dicit.

Bene †dicere, sub †limare, & consecrare digneris, te rogamus.

* Privilegio, ut chrisinate juxta cum oleo caelitus misso, modo alio, quam caeteri reges singulariter inunguntur. Alii enim reges inunguntur solum in humero, iste vero in capite & in aliis membris sicut inferius distinguetur. Parata, &c. *So it is in Bochartus. Buo whoever drew in this gloss, was vainly deceived. For the use in England, as well as France, was ancient, and so also (by the ordo Romanus) in other kingdoms, where anointing was allowed, to anoint the head, notwithstanding what we find otherwise in the popes canons, which princes obeyed at their pleasure. But for this matter see before, p. 248.*
†† Funci, Bochel. † Tuis, Bochel. ‡ Tuis. Bochel. ** Tuis. Bochel.

*Quo dicto, & a choro responso, redit ad acubitum, episcopis resumentibus & prosequenti-
bus letaniam.*

Ut regibus, & principibus christianis pacem
& concordiam donare digneris, te rogamus.

Ut cunctum populum christianum precioso
sanguine tuo redemptum conservare digneris, te
rogamus.

Ut cunctis fidelibus defunctis requiem aeter-
nam donare digneris, te rogamus.

Ut nos exaudire digneris, te rogamus.

Fili Dei, te rogamus.

Agnus Dei qui tollis peccata mundi, parce no-
bis Domine.

Agnus Dei qui tollis peccata mundi, exaudi
nos Domine.

Agnus Dei qui tollis peccata mundi, miserere
nobis.

Christe audi nos.

Kyrie eleyson.

Christe eleyson.

Kyrie eleyson.

*Letania finita, metropolitanus surgens, rege
& episcopis prostratis manentibus, annunciat.*

Pater noster. Et ne nos.

Salvum fac servum tuum.

Deus meus, sperantem in te.

Esto ei, Domine, turris fortitudinis.

A facie inimici.

Nihil proficiat inimicus in eo.

Et filius iniquitatis non opponat nocere ei.

Domine exaudi. Et clamor. Dominus vobis-
cum, & cum Spiritu tuo. Oremus.

Oratio.

PRetende quaesumus Domine huic famulo tuo
N. dexteram coelestis auxilii, ut te toto
corde perquirat, & quae digne postulat assequi
mereatur. Per Dom.

Resp. Amen.

In all this of the litany, *te rogamus, libera
nos*, and *ora*, are in this copy as they are here
transcribed. But they stand for, *te rogamus audi
nos Domine, libera nos Domine*, and *ora pro
nobis*.

Alia oratio.

ACtiones nostras, quaesumus, Domine aspi-
rando praeveni, & adjuvando prosequere,
ut cuncta nostra operatio & oratio, a te semper
incipiat, & per te coepta finiatur. Per Dom.

*Item archiepiscopus debet super regem dicere
has orationes, antequam eum inungat, & debet
sedere, sicut sedet quando consecrat episcopos.*

Te invocamus Domine, sancte Pater omni-
potens, aeternae Deus, ut hunc famulum tuum N.
quem tuae divinae dispensationis providentia in
primordio plasmatum usque in hunc praesentem
diem, juvenili flore laetantem crescere concessisti:
eum tuae pietatis dono ditatum, plerumque gra-
tia veritatis, de die in diem coram Deo & homi-

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nibus ad meliora semper proficere facias, ut sum-
mi regiminis solum, gratiae supernae largitate
gaudens suscipiat, & misericordiae tuae muro ab
hostium adversitate undique munitus, & plebem
sibi commissam cum pace propitiationis, & vir-
tute victoriae regere mereatur, per Dominum.

Alia oratio.

DEVS qui populis tuis virtute consulis &
amore dominaris, da huic famulo tuo spiri-
tum sapientiae tuae cum regimine disciplinae, ut
tibi toto corde devotus, in regni regimine sem-
per maneat idoneus, tuoque munere ipsius tem-
poribus securitas ecclesiae dirigatur, & in tran-
quillitate devotio ecclesiastica permaneat, ut in
bonis operibus perseverans, ad aeternum regnum
te duce valeat pervenire. Per.

Alia oratio.

IN diebus ejus oriatur omnibus aequitas & ju-
stitia, amicis adjutorium, inimicis obstaculum,
humilibus solatium, elatis correctio, divitibus do-
ctrina, pauperibus pietas, peregrinis pacificatio,
propriis in patria pax & securitas, unumquemque
secundum suam mensuram moderate gubernans,
seipsum sedulus discat, ut tua irrigatus compun-
ctione toto populo tibi placita praebere vitae
possit exempla, & per viam veritatis cum grege
gradiens sibi subdito opes frugales habundanter
acquirat, simulque ad salutem non solum corpo-
rum sed etiam cordium a te concessam, cuncta
accipiat. Sicque in te cogitatum animi consili-
umque omne componens, plebis gubernacula cum
pace simul & sapientia semper invenire videatur.
Teque auxiliante praesentis vitae prosperitatem
& prolixitatem percipiat, & per tempora bona
usque ad summam senectutem perveniat, hujusque
fragilitatis finem perfectum ab omnibus vitiorum
vinculis tuae pietatis largitate liberatus, & infi-
nitae prosperitatis praemia perpetua angelorum-
que aeterna commercia consequatur. Per Dom.

Consecratio regis.

Omnipotens sempiternae Deus creator ac gu-
bernator coeli & terrae, conditor & dispositor
angelorum & hominum, rex regum, & domi-
nus dominorum, qui Abraham fidelem famulum
tuum de hostibus triumphare fecisti, Moysi &
Josue populo tuo praeclatis multiplicem victori-
am tribuisti, humilem quoque puerum tuum
David regni fastigio sublimasti, eumque de ore
leonis, & de manu bestiae atque Goliae, sed &
de gladio maligno Saul & omnium inimicorum
ejus liberaisti, & Solomonem sapientiae pacisque
ineffabili munere ditasti; respice propitius ad
preces nostrae humilitatis, & super hunc famu-
lum tuum N. quem supplici devoti devotione in
hujus regni regem pariter eligimus, benedicti & o-
num tuarum dona multiplica, eumque dextera
potentiae tuae ubique circunda, quatenus prae-
dicti Abrahae fidelitate firmatus, Moysi man-
suetudine fretus, Josue fortitudine munitus, David
humilitate exaltatus, Solomonis sapientia deco-
ratus, tibi in omnibus complaceat, & per trami-

U u

tem

tem justitiae inoffenso gradu semper incedat, & totius regni ecclesiam deinceps cum plebibus sibi annexis ita enutriet ac doceat, muniat & instruat, contraque omnes visibiles & invisibiles hostes idem potenter regulariterque tuae virtutis regimen administret, ut regale solium videlicet * *Saxonum, Merciorum, Nordanchimbrorum* sceptrum non deferat, sed ad pristinae fidei pacisque concordiam eorum animos te opitulante reformet, ut utrorumque horum populorum debita subjectione fultus, cum digno amore glorificatus, per longum vitae spatium paternae apicem gloriae tua miseratione unitum stabilire & gubernare mereatur, tuae quoque protectionis galea munitus, & scuto insuperabili jugiter protectus, armisque coelestibus circumdatus; optabilis victoriae triumphum de hostibus foeliciter capiat, terroremque suae potentiae infidelibus inferat, & pacem militantibus laetanter reportet, virtutibus necnon quibus praefatos fideles tuos decorasti, multiplici honoris benedictione condecora, & in regimine regni sublimiter colloca, & oleo gratiae Spiritus sancti perunge. Per Dominum nostrum qui virtute crucis tartara destruxit, regnoque diaboli superato, ad coelos victor ascendit. In quo potestas omnis regnumque consistit & victoria, qui est gloria humilium & vita salusque populorum, qui tecum, &c.

Hic inungatur inunctione crismatis & olei de coelo missi prius ab archiepiscopo confecti in patena sicut in superius dictum est. Inungatur autem archiepiscopus cum primo in summitate capitis de dicta unctiōe, secundo in pectore, tertio inter scapulas, quarto in compagine brachiorum & dicat cuilibet unctiōi,

Ungo te in regem de oleo sanctificato in nomine Patris & Filii & Spiritus sancti.

Dicant omnes. Amen.

Dum haec unctio agitur contenti assistantes hanc antiphonam.

Unxerunt Solomonem Sadoch sacerdos, & Nathan propheta regem in Gyon, & accedentes laeti dixerunt, Vivat rex in aeternum.

Facta unctiōe & cantata antiphona dicat archiepiscopus hanc orationem.

Chris̄te perunge hunc regem in regimen unde unxisti sacerdotes, reges, ac prophetas, ac martyres qui per fidem vicerunt regna, operati sunt justitiam, atque adepti sunt promissiones. Tua sacratissima unctio super caput ejus defluat, atque ad interiora descendat, & cordis illius intima penetret & promissionibus quas adepti sunt victoriosissimi reges, tua gratia dignus efficiatur quatenus & in praesenti saeculo foeliciter regnet & ad eorum consortium in coelesti regno perveniat. Per Dominum nostrum *Jesum Christum* filium tuum, qui unctus est oleo laetitiae prae confortibus suis; & virtute crucis potestates aeras debellavit, tartara destruxit, regnumque diaboli superavit, & ad coelos victor ascendit, in cujus victoria † manu omnis gloria & potestas consi-

stunt; & tecum vivit & regnat in unitate Spiritus Sancti Deus per omnia saecula saeculorum. Amen.

Alia Oratio.

Deus electorum fortitudo & humilium celsitudo, qui in primordio per effusionem diluvii mundi crimina castigare voluisti, & per columbam ramum olivae portantem pacem terris redditam demonstraisti, iterumque sacerdotem *Aaron* famulum tuum per unctionem olei sacerdotem sanxisti, & postea per hujus unguenti infusionem ad regendum populum *Israeliticum* sacerdotes, reges, ac prophetas perfecisti, vultumque ecclesiae in oleo exhilarandum per prophetam famuli tui vocem *David*, esse praedixisti; ita quaesumus, omnipotens Deus Pater, ut per hujus creaturae pinguedinem hunc servum tuum sanctificare bene-dictione digneris, eumque in similitudinem columbae pacem simplicitatis populo sibi commissio praestare, & exempla *Aaron* in Dei servitio diligenter imitari, regni-que fastigia in consiliis scientiae, & aequitate iudicii semper assequi, vultumque hilaritatis per hanc olei unctionem, tuamque bene-dictionem te adjuvante toti plebi paratum habere facias. Per Dominum.

Alia Oratio.

Deus Dei filius Dominus noster *Jesus Christus*, qui a Patre oleo exaltationis unctus est prae participibus suis, ipse per praesentem sacri unguinis infusionem spiritus paracliti super caput tuum infundat bene-dictionem eandemque usque ad interiora cordis tui penetrare faciat, quatenus hoc visibili & tractabili dono invisibilia percipere, & temporali regno iustis moderaminibus exequo, aeternaliter cum eo regnare merearis. Qui solus sine peccato rex regum vivit, & gloriatur cum Deo Patre in unitate ejusdem Spiritus Sancti Deus. Per &c.

His dictis orationibus connectuntur ansulae aperturarum vestimenti regis ab archiepiscopo vel sacerdotibus vel diaconibus propter unctiōem.

|| *Benedictio cujuscunque regalis ornamenti.*

Deus rex regum, & dominus dominantium per quem reges regnant, & legum conditores jura decernunt, dignare propitius bene-dicere hoc regale ornamentum, & praesta ut famulus tuus rex noster qui illud portaturus est ornamento bonorum morum & sanctarum actionum in conspectu tuo fulgeat, & post temporalem vitam aeternam gloriam quae tempus non habet sine fine possideat, &c.

*Et tunc a camerario Franciae induitur tunica † jacinthina, & desuper socco ita quod dexteram manum habet liberam in ** apertura socci, & super soccum elevatum sicut elevatur casula sacerdoti. Tunc ab archiepiscopo unguantur sibi manus de praedicto oleo coelitus misso ut supra, & dicat archiepiscopus.*

* Plainly this prayer was first made for the English-Saxon kings. For what had ever any of the French kings to do with these people? But the wonder is most strange, that this place of the prayer (which might have been fitted for any king) is thus left here. In Bochart, Nordam, Cimbrorum, is for Nordanchimbrorum, which should have been doublets Nordanhumborum, for those beyond Humber. And it is plain, that the very syllables of the Saxon ceremonial are afterward used in this of the French.

|| This and the prayer following is not in Bochart.

† Hyacinthina.

** Copertura, Bochart.

Ungantur manus istae de oleo sanctificato unde uncti fuerunt reges, & prophetae, & sicut unxit *Samuel David in regem*, ut sis benedictus & constitutus rex in regno isto quem dominus Deus tuus dedit tibi ad regendum & gubernandum. Quod ipse praestare &c.

Deinde dicat archiepiscopus hanc orationem.

Deus qui es iustorum gloria & misericordia peccatorum, qui misisti filium tuum pretiosissimo sanguine suo genus humanum redimere, qui conteris bella, pugnator es in te sperantium, & sub cuius arbitrio omnium regnorum continetur potestas, te humiliter deprecamur ut praesentem famulum tuum *N.* in tua misericordia confidentem in praesenti fede regali benediccas eique propitius adesse digneris: ut qui tua expetit protectione defendi, omnibus hostibus sis fortior. Fac eum Domine beatum esse, & victorem de inimicis suis. Corona eum corona iustitiae & pietatis, ut ex toto corde, & tota mente in te credens tibi deserviat, sanctam ecclesiam tuam defendat & sublimet, populumque a te sibi commissum iuste regat & nullis insidiantibus malis eum iniustitia convertat. Accende, Domine, cor ejus ad amorem gratiae tuae, per hoc unctionis oleum, unde unxisti sacerdotes, reges & prophetas, quatenus iustitiam diligens per tramitem similiter incedens iustitiae, post peracta a te disposita, in regali excellentia annorum curricula pervenire ad aeterna gaudia mereatur. Per eundem, &c.

Facta autem manuum unctione, jungat rex ante pectus. Postea si voluerit rex cyrotecas subtiles induere sicut faciunt episcopi dum consecrantur, ob reverentiam sanctae unctionis ne manibus nudis aliquid tangant; primo ab archiepiscopo benedicentur cyrotecae in haec verba sequentia.

Oratio.

Omnipotens Creator qui homini ad imaginem tuam creato manus digitis discretionis insignitas tanquam organum intelligentem ad recte operandum dedisti, quas servari mundas praecepisti, ut in eis anima digna portaretur, & tua in eis digne contrectarentur mysteria, benedicere, & sanctificare digneris haec manuum tegumenta, ut quicumque reges hiis cum humilitate manus suas velare voluerint, tam cordis quam operis munditiam tua misericordia subministret. Per Christum.

Et aspergantur cyrotecae benedictae, deinde imponantur manibus regis per archiepiscopum dicentem.

Circunda Domine manus hujus famuli tui *N.* munditia novi hominis qui de coelo descendit, ut quemadmodum *Jacob dilectus tuus pelliculis* * edorum operitis manibus paternam benedictionem oblato patri cibo potuque gratissimo impetravit, sic & iste gratiae tuae benedictionem impetrare mereatur. Per eundem Dominum nostrum *Iesum Christum* qui in similitudinem carnis peccati tibi obtulit semetipsum. Amen.

Vel si rex maluerit cyrotecas non habere, tunc facta manuum unctione dictisque orationibus ad eam spectantibus episcopi assistentes cum cotone manus regis abstergant, & mica panis vel cum sale fricent, deinde lavent sibi manus, quibus lotis & manibus etiam archiepiscopi, benedicat archiepiscopus anulum sic dicens.

Oremus.

Oratio.

Deus totius creaturae principium & finis, creator & conservator humani generis, dator gratiae spiritualis, largitor aeternae salutis in quo clausa sunt omnia, tu Domine tuam emitte benedictionem super hunc anulum, ipsumque benedicere, & sanctificare dignare, ut qui per eum famulo tuo honoris insignia concedis, virtutum praemia largiaris, quo discretionis habitum semper retineat, & verae fidei fulgore praefulgeat, sanctae quoque Trinitatis armatus munimine miles inexpugnabilis acies diaboli constanter evincat, & sibi veram salutem mentis & corporis proficiat. Per Christum.

† *Benedictio annuli.*

Deus coelestium terrestriumque conditor creaturarum, atque humani generis benignissimus reparator, dator spiritualis gratiae, omniumque benedictionum largitor, qui iustitiam tuae legis in cordibus credentium digito tuo, id est, unigenito tuo scribis. Tui magi in Egipto resistere non valentes continuabant dicentes, *digitus Dei hic est*. Immitte spiritum sanctum tuum paraclitum de coelis super hunc anulum arte fabrilis decoratum, & sublimitatis tuae potentia ita eum emundare digneris, ac omni nequitia lividi venosique serpentis procul expulsa metallum a te bono conditore creatum || munimine a cunctis fordibus inimici maneat. Amen.

Alia Oratio.

Benedic Domine & sanctifica anulum istum, & mitte super eum septiformem spiritum tuum quo famulus tuus eo fruens annulo fidei subarratus, virtute altissimi sine peccato custodiatur, & omnes benedictiones quae in scripturis divinis reperiuntur super eum copiose descendant, ut quaecumque sanctificaverit sanctificata permanent, & quaecumque benedixerit, spirituali benedictione benedicantur. Per &c.

Deinde datur ei ab archiepiscopo sceptrum in manu dextera, & virga in sinistra, & in datione sceptri & virgae dicentur istae orationes. Sed notandum antequam dantur sceptrum & virga, datur annulus, & in datione annuli dicitur haec oratio. Hic detur annulus, & dicatur.

Accipe anulum signaculum videlicet fidei sanctae, soliditatem regni, augmentum potentiae per quae scias triumphali potentia hostes repellere, haereses destruere, subditos coadunare, & catholicae fidei perseverantiae connecti.

* Haedorum. † This, with the two prayers or benedictions following, is wanting in Bochart, and is written in the margin of the copy of King Charles, and directed to come in here. || L. immune.

Oratio post annulum.

Deus cujus est omnis potestas & dignitas da famulo prosperum suae dignitatis effectum, in qua te remunerante permaneat, semperque timeat, tibi què jugiter placere contendat. Per Dominum.

Dato annulo, statim post detur sceptrum in manu dextera, & dicatur haec oratio.

Accipe sceptrum regiae potestatis insigne, virgam scilicet regni, rectam virgam virtutis qua te ipsum bene regas, sanctam ecclesiam populumque videlicet christianum tibi a Deo commissum regia virtute ab improbis defendas, praevas corrigas, rectos pacifies, & ut viam rectam tenere possint tuo iuvamine dirigas, quatenus de temporali regno ad aeternum regnum pervenias, ipso adjuvante cujus regnum, imperium, sine fine permanet in saecula saeculorum.

Oratio post sceptrum datum.

Omnium Domine fons bonorum, cunctorum Deus institutor profectuum, tribue quaesumus famulo tuo N. adeptam bene regere dignitatem & a te sibi praestitum honorem dignare corroborare, honorifica eum prae cunctis regibus terrae, ubi eum * benedictione locupleta, & in folio regni firma stabilitate consolida, visita eum in fobole, praesta ei prolixitatem vitae, in diebus ejus oritur justitia, ut cum jocunditate, & laetitia aeterno gloriatur in regno. Per D.

Post statim datur ei † virga in manu sinistra, & dicitur.

Accipe virgam virtutis atque aequitatis qua intelligas mulcere pios, & terrere reprobos, errantibus viam dare, lapsisque manum porrigere, disperdasque superbos, & releves humiles, ut aperiat tibi hostium Jesus Christus dominus noster, qui de seipso ait. *Ego sum hostium per me si quis introierit salvabitur.* Et qui est clavis David, & sceptrum domus Israel, qui aperit & nemo claudit, claudit & nemo aperit. Sit tibi adjutor qui adduxit vincitum de domo carceris sedentem in tenebris & umbra mortis, ut in omnibus sequi merearis eum de quo propheta David cecinit, *Sedes tua Deus in saeculum saeculi, virga aequitatis, virga regni tui, & imiteris eum qui dixit, diligas justitiam, & odio habeas iniquitatem, propterea unxit te Deus, Deus tuus oleo laetitiae ad exemplum illius, quem ante saecula unxerat prae participibus suis Jesum Christum dominum nostrum.*

Benedictio coronae.

Deus † tuorum corona fidelium, qui in capitibus eorum ponis coronam de lapide precioso benedic, & sanctifica coronam istam quatenus sicut ipsa diversis preciosisque lapidibus a-

dornatur, sic famula tua largiente gratia repleatur. Per D.

*Post istam orationem convocantur pares || nomine suo a cancellario suo si praesens est. Sin autem, ab archiepiscopo: primo ** laici, postea clerici, quibus vocatis & circumstantibus archiepiscopus accipit de altari coronam regiam, & solus imponit eam capiti regis. Qua posita, omnes pares tam clerici quam laici manum apponunt †† coronam, & eam undique sustentant, & soli pares. Tunc archiepiscopus dicit istam orationem antequam coronam situet in capite, sed eam †† tenet satis alte ante caput regis.*

Oratio.

Coronet te Deus corona gloriae atque justitiae honore, & opere fortitudinis, ut per officium nostrae benedictionis, cum fide recta & multiplici bonorum operum fructu ad coronam pervenias regni perpetui, ipso largiente, cujus regnum & imperium permanet in saecula saeculorum.

*Qua oratione dicta ponendo coronam in capite *,*, dicat archiepiscopus.*

Accipe coronam regni in nomine Patris & Filii & Spiritus †† Sancti †, ut sperto antiquo hoste, spretisque contagiis vitiorum omnium, sic justitiam, misericordiam, & judicium diligas, & ita juste & misericorditer & pie vivas, ut ab ipso domino nostro Jesu Christo in consortio sanctorum aeterni regni coronam percipias. Accipe inquam coronam quam sanctitatis gloriam & honorem, & opus fortitudinis intelligas signare, & per hanc te participem ministerii nostri non ignores, ita ut sicut nos in interioribus pastores, rectoresque animarum intelligimur, †† ita ut contra omnes adversitates ecclesiae Christi defensor assistas, regni tibi a Deo dati, & per officium nostrae * benedictionis in vice apostolorum, omniumque sanctorum regimini tuo commissi utilis executor, perspicuusque regnator semper appareas, ut inter gloriosos athletas virtutum gemmis ornatus, & praemio sempiternae felicitatis coronatus, cum redemptore ac salvatore nostro Christo cujus nomen vicemque gestare crederis, sine fine glorieris; qui vivit, & imperat Deus cum Deo patre in saecula saeculorum. Amen.

Oratio post coronam.

Deus perpetuitatis, dux virtutum, cunctorum hostium victor, † benedic hunc famulum tuum tibi caput suum inclinantem, & prolixa sanitate, & prospera felicitate eum conserva, & ubicunque pro quibus auxilium tuum invocaverit, cito assis, & protegas ac defendas, tribue ei quaesumus Domine divitias gloriae tuae, comple in bonis desiderium ejus, corona eum in miseratione, & misericordia, tibi què Deo pia devotione jugiter famuletur. Per D.

* Benedictione, Bochellus.

† The giving him the rod or verge, which they now call, I think, la maine de justice.

† This is in

the margin of the Copy of king Charles, and directed in here, but not in Bochell.

|| Ex nomine a cancellario si &c. Bochell.

** Et vo-

cantur primo laici, postea clerici; & clerici vocantur eo ordine quo dictum est superius, de sedendo quibus &c. Bochell.

†† Coronae,

Bochell.

†† Tenet, Bochell. and after this presently follow these words, teneat metropolitanus coronam alte primo duabus manibus postea sinistra tantum quando benedicit.

, Quam semper tenet manu sinistra, Bochellus.

†† Sancti ut, Bochellus.

†† Ita

tu contra, Bochellus.

* Benedictionis, Bochellus.

† Benedic, Bochell.

Statim post istam orationem dicatur ista benedictio.

Extendat omnipotens Deus dexteram suae * benedictionis, & circumdet te muro foelicitatis ac custodia tua protectionis sanctae *Mariae* ac beati *Petri* apostolorum principis sanctique *Dionysii* † atque omnium sanctorum intercedentibus meritis. *Amen.*

Alia benedictio.

Indulgeat tibi Dominus omnia peccata quae gessisti, & tribuat tibi gratiam & misericordiam quam humiliter ab eo deposcis, & liberet te ab adversitatibus cunctis, & ab omnibus inimicorum omnium visibilium & invisibilium insidiis. *Amen.*

Alia benedictio.

Angelos suos bonos qui te semper & ubique praecedant, comitentur, & subsequantur ad custodiam tui ponat, & a peccato, sive gladio, & ab omnium periculorum discrimine sua potentia liberet. *Amen.*

Alia benedictio.

Inimicos tuos, ad pacis, caritatisque benignitatem convertat, ‡ & bonis omnibus te gratiosum, & amabilem faciat, pertinaces quoque in tui infectione & odio infusione salutari induat, super te autem participatio & sancti ✠ficatio sempiterna floreat. *Amen.*

Alia benedictio.

Victoriosum te atque triumphatorem de invisibilibus atque visibilibus hostibus semper efficiat, & sancti nominis sui timorem, pariter & amorem continuum cordi tuo infundat, & in fide recta ac bonis operibus perseverabilem reddat, & pace in diebus tuis concessa cum palma victoriae, te ad perpetuum regnum perducatur. *Amen.*

Alia benedictio.

Et qui te voluit super populum suum constituere regem, & in praesenti saeculo foelicem aeternae foelicitatis tribuat esse consortem. *Amen.* Quod ipse praestare &c.

Alia benedictio dicenda super eum ||.

Bene ✠dic ** Domine hunc regem nostrum qui regna omnium regum a saeculo moderaris. *Amen.*

Alia benedictio.

Et tali eum †† benedicti ✠one glorifica, ut *Davidica* tepeat sublimitate sceptrum salutis, & sanctificae propitiationis munere reperiat locupletatus. *Amen.*

Alia benedictio.

Da ei tuo spiramine cum mansuetudine ita regere populum sicut *Solomonem* fecisti regnum obtinere pacificum. *Amen.*

Alia benedictio.

Tibi cum timore sit subditus, tibi que militet cum quiete, sit tuo clypeo protectus, cum pro-

ceribus, & ubique gratia tua victor existat. *Amen.*

Alia benedictio.

Honorifica eum prae cunctis *regibus* gentium, foelix populis dominetur, & foeliciter eum nationes adornent, vivat inter gentium nationes magnanimus. *Amen.*

Alia benedictio.

Sit in judiciis aequitatis singularis, locupletet eum tua praedives dextera, frugiferam obtineat patriam, & ejus liberis tribuas profutura. *Amen.*

Alia benedictio.

Praesta ei prolixitatem vitae per tempora ut in diebus ejus oriatur iustitia, a te robustum teneat regiminis folium, & cum jocunditate & judicio aeterno gloriatur regno. Quod ipse praestare dignetur &c.

Alia oratio.

O Mnipotens Deus det tibi de rore caeli, & de pinguedine terrae habundantiam frumenti, vini, & olei, & serviant tibi populi, & adorent te tribus, esto Dominus fratrum tuorum, & incurventur ante te filii matris tuae, & qui benedixerit tibi benedictionibus repleatur, & Deus erit adjutor tuus.

Alia oratio.

O Mnipotens bene ✠dicat tibi benedictionibus coeli desuper in montibus, & collibus benedictionibus abyssi jacentis deorsum benedictionibus uberum, & uvarum pomorumque, benedictiones Patrum antiquorum *Abraham, Isaac, & Jacob*, confortatae sint super te per Dominum.

Alia oratio.

Benedic Domine fortitudinem principis, opera manuum illius suscipe, & benedictione tua terra ejus de pomis repleatur de fructu coeli & rore, atque abyssi subjacentis, de fructu solis & lunae, & de vertice antiquorum montium, de pomis aeternorum collium, & de frugibus terrae, & de plenitudine ejus; benedictio illius qui apparuit in rubo veniat super caput ejus, & plena sit benedictio Domini in filiis ejus, & tingat in oleo pedem suum, cornua *Rinoceruntis* cornua illius, in ipsis ventilabit gentes usque ad terminos terrae, quia ascensor coeli auxiliator suus in sempiternum fiat. Per D.

Deinde coronatus rex, & ducatur per manum ab archiepiscopo, concomitantibus paribus, tam praelatis quam laicis, de altari per chororum usque ad solium jam antea praeparatum. Et dum rex ad solium venerit, archiepiscopus ipsum colloct in sede. Et hic regis status designatur, & dicat archiepiscopus.

Sta, & retine amodo statum quem huc paterna successione tenuisti, haereditario jure tibi delega-

* Benedi ✠ctionis. *Bochel.* † Dionysii atque beati Remigii atque. *Bochel.* ‡ Bonis omnibus. *Bochel.* || Statim fiat ista secunda benedictio. *Bochel.* ** Benedic. *Bochel.* †† Benedictione. *Bochellus.*

tum per auctoritatem Dei omnipotentis, & per praesentem traditionem nostram, omnium scilicet episcoporum caeterorumque fervorum Dei. Et quanto clerum propinquiores sacris altaribus prospicis; tanto ei potiores in locis congruentibus honorem impendere memineris, quatenus mediator Dei, & hominum te mediatorem cleri & plebis.

Hic faciat eum sedere archiepiscopus tenendo eum per manum.

In hoc regni solio confirmet & in regno aeterno secum regnare faciat, *Iesus Christus Dominus noster rex regum, & Dominus Dominantium.* Qui cum Deo Patre &c.

*Secundum usum aliquorum, maxime secundum usum Romanorum post inthronizationem & non ante, Metropolitanus inchoat, canonicis prosequentibus; Te Deum laudamus. * Quo finito, dicit super regem.*

Vers. Firmetur manus tua & exaltetur dextera tua.

Resp. Iustitia & iudicium preparatio sedis tuae. Domine exaudi. Et clamor. Dominus vobiscum. Et cum Spiritu tuo.

Oremus.

Oratio.

DEUS qui victrices Moysi manus in oratione firmasti, qui quamvis aetate latesceret infatigabili sanctitate pugnabat, ut dum Amalech iniquus vincitur, dum prophanus nationum populus subjugatur, exterminatis alienigenis haereditati tuae possessio copiosa ferviret, opus manuum nostrarum pia mater orationis exauditione confirma. Habemus & nos apud te, sancte Pater, Dominum salvatorem qui pro nobis manus suas terendit in cruce per quem etiam precamur altissime, ut ejus potentia suffragante, universorum hostium frangatur impietas, populusque tuus cessante formidine te solum timere † consistat. Per eundem &c ‡.

His expletis archiepiscopus cum paribus coronam sustentantibus regem taliter insignitum & deductum in solium sibi praeparatum sericis stratum, & ornatum, ubi collocavit eum in sede eminenti, unde ab omnibus possit videri. Quem in sede sua taliter residentem, mox archiepiscopus mitra deposita osculatur eum dicens.

Vivat rex in aeternum.

*Et post eum episcopi & laici pares qui ejus coronam sustentant, hoc idem dicentes**.*

His expletis manebit rex sedens in suo solio, donec regina fuerit consecrata, qua consecrata & ad suam sedem reducta missa a cantore primo & succentore chorum servantibus inchoetur, & suo ordine decantetur.

Oratio pro rege.

Quaesumus omnipotens Deus, ut famulus tuus rex noster N. qui tua miseratione

regni suscepit gubernacula, virtutum etiam omnium percipiat incrementa, quibus decenter ornatus, & vitiorum monstra devitare, & hostes superare, & ad te qui via, veritas & vita es gratiosus valeat pervenire. Per Dominum.

Secreta.

Munera quaesumus Domine oblata sanctifica, & ut nobis unigeniti tui corpus & sanguis fiant, & N. regi nostro ad obtinendam animae corporisque salutem, & ad peragendum injunctum officium te largiente usquequaque proficiant. Per &c ††.

Postcommunio.

Haec Domine oratio salutaris famulum tuum N. regem nostrum ab omnibus tueatur adversis; quatenus & ecclesiasticae pacis obtineat tranquillitatem, & post illius temporis decursum ad aeternam perveniat haereditatem. Per Dominum &c.

Quando legitur evangelium, rex, & regina debent deponere coronas suas. Notandum quod lecto evangelio, major inier archiepiscopos & episcopos accipit librum evangelii, & desert domino regi ad deosculandum, & postea reginae, & postea domino archiepiscopo missam celebranti. Post offertorium pares deducunt regem ad altare, coronam ejus sustinentes. Rex autem debet offerre panem unum. Vinum in urceo argenteo. Tresdecem bisantos aureos, & regina similiter. In eundo autem & redeundo gladius nudus deferretur coram eo. Finita missa iterum pares adducunt regem coram altari, & communicat corpus & sanguinem Domini, de manu domini archiepiscopi missam celebrantis. Sed notandum est, quod ille qui dedit ei evangelium ad deosculandum debet post pax domini accipere pacem ab archiepiscopo missam celebrante & deferre regi cum oris osculo, & reginae †† in libro. Et post eum omnes archiepiscopi, & episcopi, unus post alium, dant osculum pacis regi in suo solio residenti. Missa finita deponit archiepiscopus coronam de capite regis, & expoliato rege de insignioribus vestimentis, & aliis indutis iterum imponit capiti suo archiepiscopus aliam coronam minorem, & sic vadit ad palatium nudo gladio praecedente. Et sciendum quod ejus camisia propter sanctam unctionem debet comburi.

De Ampullae reductione.

Sciendum quod rex debet accipere de baronibus suis nobilioribus & fortioribus in die coronationis suae in aurora diei * mittere apud sanctum Remigium pro sancta Ampulla, & illi debent jurare abbati & ecclesiae quod dictam sanctam Ampullam bona fide ducent & reducent ad sanctam ecclesiam beati Remigii. Abbas autem hoc facto, debet sanctam Ampullam asferre sicut superius est notatum. Finita consecratione & missa, debent iterum iidem barones reducere sanctam Ampullam usque ad san-

* Laudamus; non dicitur nisi post coronationem sequentem. Quo &c. Bochel. † Condiscat. Bochel. ‡ There follows; in Bochellus. In ordinario sancti Dionysii post inthronizationem regis ponitur professio ejus ante osculum parium. ** In Bochellus there follows. Hic incipiet archiepiscopus, te Deum, quo incepto recedat. †† Here the copy of Bochellus hath this note; Notandum antequam pax Domini sit semper vobiscum dicatur, archiepiscopus debet dicere hanc benedictionem super regem & super populum. And then follow both that benediction, and benedictio vexilli, or of the oriflamb, which are both at the end of this, anon added. †† Cum libro. Bochel.

*Etum Remigium honorifice & secure, & eam re-
stituere loco suo*.*

Ordo ad reginam benedicendam.

Quae debet consecrari statim post factam consecrationem regis, debet ei parari solum in modum solii regis. Debet tamen aliquantulum minus esse. Debet autem regina adduci a duobus episcopis in ecclesiam, & rex in suo solio sedere, in omnibus ornamentis suis regis sicut in solio residebat post inunctionem, & coronationem suam superius annotatam. Regina autem adducta in ecclesiam debet prosterni ante altare, & prostrata debet orare, qua elevata ab oratione ab episcopis, debet iterum caput inclinare, & archiepiscopus hanc orationem dicere.

Oratio.

Adesto Domine supplicationibus nostris, & quod humilitatis nostrae gerendum est mysterio tuae virtutis impleatur effectu. Per Dom. &c.

Deinde dicat archiepiscopus hanc orationem.

Omnipotens aeternae Deus fons & origo totius bonitatis, qui foeminei sexus fragilitatem nequaquam reprobando, potius adversaris sed dignanter comprobando, potius eligis. Et qui infirma mundi eligendo, fortia quaeque confundere decrevisti: quique etiam gloriae virtutisque tuae triumphum in manu *Judith* foeminae, olim *Judaicae* plebi de hoste saevissimo designare voluisti: respice quaesumus ad preces humilitatis nostrae. Et super hanc famulam tuam *N.* quam supplici devotione in reginam eligimus, benedictio \times num tuarum dona multiplica. Eamque dexterae tuae potentiae semper & ubique circumda, sitque bono muniminis tui undique firmiter protecta, quatenus visibilis, seu invisibilis hostis nequitias triumphaliter expugnare valeat. Et una cum *Sara* atque *Rebecca*, *Lya* & *Rachel*, beatis reverendisq. foeminabus, fructu uteri sui foecundari seu gratulari mereatur, ad totius decorem regni, statumque sanctae *Dei* ecclesiae regendum, necnon protegendum. Per *Christum* Dominum nostrum. Qui ex intemerato bearae *Mariae* virginis alvo nasci, visitare, ac renovare dignatus est mundum: Qui tecum vivit &c.

Alia oratio.

DEUS qui solus habes immortalitatem, lucemque inhabitas inaccessibilem, cujus providentia in sui dispositione non fallitur, qui fecisti quae futura sunt, & vocas ea quae non sunt, qui superbos aequo moderamine de principatu dejicis, atque humiles in sublime dignanter provehis. Ineffabilem misericordiam tuam supplices exoramus, ut sicut *Hester* reginam, *Israelis* causa salutis, de captivitatis suae compede solutam ad regis assueti thalamum, regniq. sui confortium transire fecisti. Ita hanc famulam tuam *N.* humilitatis nostrae benedicti \times one christianae plebis gratia salutis ad dignam sublimemque copulam regis nostri misericorditer transire conce-

das. Et ut in foedere conjugii semper manens pudica proximam virginitatis palmam continere queat; tibi quoque Deo vivo & vero in omnibus & super omnia jugiter placere desideret. Et te inspirante quae tibi placita sunt toto corde perficiat. Per Dominum nostrum &c.

Alia oratio.

Omnipotens sempiternae Deus hanc famulam tuam coelesti benedictione sancti \times fica, & quam in adjutorio regni reginam eligimus, tua ubique sapientia doceat atque confortet, & ecclesia tua fidelem famulam semper agnoscat. Per *Christum* Dominum nostrum.

Notandum quod tunica reginae, & camisia debent esse aperte usque ad corrigiam, & dominus archiepiscopus debet inungere eam oleo sancto in capite, & in pectore, & dicere dum inungit in qualibet unctione.

In nomine Patris, & Filii, & Spiritus sancti, profit tibi haec unctio olei in honorem & confirmationem aeternam in saecula saeculorum. Amen.

Facta unctione, dicat archiepiscopus.

Oremus.

Spiritus sancti gratia humilitatis nostrae officio in te copiosa descendat, ut sicut manibus nostris indignis oleo materiali oblita pinguescis exterius; ita ejus invisibili unguine delibuta impinguari mereare interius ejus spiritali unctione perfectissime semper imbuta, & illicita declinare tota mente, & spernere dicas seu valeas, & utilia animae tuae jugiter cogitare, optare, atque operari queas.

Alia oratio.

DEUS Pater aeternae gloriae sit tibi adjutor. Et omnipotens benedicat tibi, preces tuas exaudiat, vitam tuam longitudine dierum adimpleat, benedictionem tuam jugiter confirmet, te cum omni populo in aeternum conservet, inimicos tuos confusione induat, & super te *Christi* sanctificatio ex hujus olei infusio floreat. Ut qui tibi in terris tribuit benedictionem, ipse in coelis conferat meritum angelorum. Benedicat te, & custodiat in vitam aeternam Dominus noster *Jesus Christus*. Qui vivit, &c.

Tunc debet ab archiepiscopo annulus immitti digito, & dicere.

Accipe annulum fidei signaculum sanctae Trinitatis, quo possis omnes haereticas pravitates devitare, barbaras gentes virtute tibi praestita ad agnitionem veritatis advocare.

Sequitur oratio, Dominus vobiscum.

Oremus.

DEUS cujus est omnis potestas & dignitas, da famulae tuae signo tuae fidei prosperum suae dignitatis effectum in qua tibi semper firma maneat, tibi quoque jugiter placere contendat. Per Dominum &c.

* Thus far also that in Bocheilus. And here it is concluded with explicit consecratio & coronatio regis Franciae. But he hath not the ceremonial for the queen's coronation, which here follows.

Post istam orationem datur ab archiepiscopo sceptrum modicum alterius modi quam sceptrum regium, & virga consimilis virgae regiae. Et in tradendo dicat archiepiscopus.

Accipe *virgam* virtutis & aequitatis, & esto pauperibus misericors, & affabilis, viduis, pupillis, & orphanis diligentissimam curam exhibeas, ut omnipotens *Deus* augeat tibi gratiam suam. Qui vivit, & regnat.

Sequitur post dationem sceptri & virgae haec oratio.

Omnipotens sempiterne *Deus* affluentem spiritum tuae benedictionis super famulam tuam nobis orantibus propitiatus infunde, utque per manus nostrae impositionem hodie *regina* instituitur, sanctificatione tua digna, & electa permaneat, ut nunquam postmodum de tua gratia separetur indigna. Per Dominum.

Tunc debet ei imponi a solo archiepiscopo corona in capite ipsius, quam impositam sustentare debent undique barones. Archiepiscopus autem debet dicere in impositionem orationem.

Accipe *coronam* gloriae & regalis excellentiae, honorem jocunditatis, ut splendida fulgeas, & aeterna exultatione coroneris. Ut scias te esse consortem regni, populoque Dei semper prospere consulas, & quanto plus exaltaris, tanto amplius humilitatem diligas atque custodias. Unde sicut exterius auro & gemmis redimita enites, ita & interius auro sapientiae virtutumque gemmis decorari contendas, quatenus post occasum huius saeculi cum prudentibus virginibus sponso perhenni domino nostro *Iesu Christo* digne & laudabiliter occurrens, regiam coelestis aulae merearis ingredi januam, auxiliante domino nostro *Iesu Christo*, qui cum Patre, & Spiritu Sancto vivit, & regnat per infinita saecula saeculorum. Amen.

Post impositam coronam dicat archiepiscopus.

Omnium *Domine* fons bonorum, & cunctorum dator provectuum, tribue famulae tuae *N.* adeptam bene regere dignitatem, & a te sibi praestitam in ea bonis operibus corrobora gloriam. Per Dominum.

Domine sancte Pater omnipotens, aeternae *Deus*, honorum cunctorum auctor & distributor, benedictionumque omnium largus infusor, tribue super hanc famulam tuam *reginam* benedictionis gratiae tuae copiam, & quam humana sibi electio praeesse gaudet, tuae supernae electionis ac benedictionis infusio accumulet. Concede ei *Domine* auctoritatem regiminis, consilii magnitudinem, sapientiae, prudentiae, & intellectus habundantiam, religionis ac pietatis custodiam, quatenus mereatur benedici, & augmentari in nomine ut *Sara*, visitari, & foecundari ut *Rebecca*, contra omnium muniri monstra vitiorum ut *Judith*, in regni regimine eligi ut *Hester*. Ut quam humana nititur fragilitas benedicere, coelestis potius intimi roris & sacri olei repleat infusio. Et quae a nobis coronatur & benedicitur in *reginam*, a te mereatur obtinere in praemio aeternitatis perpetuae. Et sicut ab ho-

minibus sublimatur in nomine, ita a te sublimetur fide & operatione. Illo etiam sapientiae tuae * cum rore perfunde quem beatus *David* in re-promissione, & filius ejus *Solomon* percepit in locupletatione. Sisei domine contra cunctorum ictus inimicorum lorica, in adversis galea, in prosperis sapientia, in protectione clypeus sempiternus. Sequatur pacem, diligat caritatem, abstineat se ab omni impietate, loquatur iustitiam, custodiat veritatem. Sit cultrix iustitiae, & pietatis, amatrix religionis, vigeatque praesenti benedictione in hoc aevo annis plurimis, & in sempiterno sine fine aeternis. Praestante domino nostro *Iesu Christo*, qui cum Patre & Spiritu Sancto vivit, & regnat *Deus*. Per omnia saecula saeculorum. Amen.

Post istam orationem barones qui coronam ejus sustentant, deducunt eam ad solium ubi in sede parata collocatur circumstantibus eam baronibus & matronis nobilioribus in oblatione. In pace ferenda, in oblatione penitus est ordo regis superius annotatus observandus.

Notandum quod antequam archiepiscopus dicat, Pax Domini, &c. debet dicere hanc benedictionem super regem, & super populum. Sic. Benedicat tibi dominus, custodiatque te, & sicut voluit te super populum suum constituere regem, ita in praesenti saeculo foelicem, & aeternae foelicitati tribuat esse consortem. Amen.

Alia benedictio.

Clerum ac populum quem sua voluit opitulatione † tua sanctione congregari, tua dispensatione & tua administratione, per diuturna tempora facias foeliciter gubernari. Amen.

Alia benedictio.

Quatenus divinis monitis parentes adversitatibus omnibus carentes, bonis omnibus exuberantes, tuo ministerio fideli amore obsequentes, & in praesenti saeculo pacis tranquillitate fruuntur, & tecum aeternorum civium consortio potiri mereantur. Amen. Quod ipse parare dignetur cujus regnum & imperium sine fine permanet in saecula saeculorum. Amen. Et ‖ bene-dictio Dei omnipotentis Pa-tris & Fi-lii & Spiritus Sancti vos descendat & maneat semper. Amen.

Explicit ordo & officium in consecratione regis & reginae.

Then follows the benediction of the orisflamb, or the holy standard of *France*, which in *Bochellus* is inserted after the *secreta* in the same words.

Benedictio vexilli.

Inclina domine aurem tuam ad preces nostrae humilitatis, & per interventum beati *Michaelis* archangeli tui, omniumque coelestium virtutum, sed & beatorum martyrum *Dionysii, Rustici, & Eleutherii* omniumque sanctorum tuorum praesta nobis auxilium dexterae tuae, ut sicut benedixisti *Abraham* adversus quinque reges triumphantem atque *David* regem in tui nominis laude triumphales congressus exercentem, ita bene-

* L. eam.

† Et tua, *Bochell.*

‖ Benedictio, *Bochell.*

dicere, & sanctificare digneris hoc vexillum quod ob defensionem regni & sanctae ecclesiae contra hostilem rabiem defertur, quatenus in nomine tuo fideles & defensores populi Dei illud consequentes per virtutem sanctae crucis triumphum & victoriam se ex hostibus acquisisse laentur. Qui cum Patre &c.

And at the end of this copy of king *Charles*, after his subscription this is added in a later hand, which, because it belongs to the orisflamb also, follows here.

Cest le serement qui fait le chevalier a qui le roy baille a porter l'orisflambe.

VOUS jurez & promettez sur le precieux corps Jesu Christ sacre cy present & sur le corps de monsieur St. Denys, & ses companions, que cy sont que vous loyamment en vostre personne tendrez, & gouvernerez l'orisflambe du roy monsieur qui cy est, a l'honneur & profit de lui & de son royaume, & pour doubte de mort ne d'autre aventure qui puisse avenir ne la delairez. Et ferez par tout vostre devoir comme bon & loyal chevalier doit feire envers son souverain & droiturier seigneur.

And out of this ritual of coronation of the *French* king, hitherto. But for examples also of *French* coronations (which agree not exactly in every thing, neither with this so authorized by king *Charles*, nor with that in *Bochellus*; yet may give further light towards a fuller knowing of the ceremonies used in that state) I refer you to *le ceremonial de France*, collected by *Theodore Godefroy* an advocate in the parliament of *Paris*, and printed at *Paris* in 1619. There you have the coronation of queen *Claude* first wife to *Francis I.* and of *Eleanor of Austria* his second wife; as also of king *Henry II.* and his queen *Catharine de Medicis*, of queen *Elizabeth* wife to *Charles IX.* and also of *Henry IV.* which was written by monsieur *Nicholas de Thou* bishop of *Chartres* where this *Henry* was crowned. There is much in these examples, that shews their ceremonies, and that they are sometimes differing from the ritual. But they are particular examples only, and easily had in print. Therefore I wholly omit them.

V. The last promise to be performed in this first part, is that corollary touching precedence between supreme princes. Nor doth it improperly belong to the subject. For, to have precedence is also a relative title of honour, arising from a singularity of dignity founded in the title added to him that precedes. But I meddle not here with it in any such course as is used in the other parts of my division. I dispute not either way of it; much less conclude I on any part. Nor have I assurance that I might do so, but with much more offence than either satisfaction or discretion. For also, the store of testimonies which concern it, is not such that it gives often light enough at all to determine: indeed but very rarely, and in the behalf of very few. For most of the questions that have happened about it, have either been disputed only without end on

both sides by the ambassadors, agents or other subjects of each part, or compounded by mediation of some common friend, with a protestation of a saving of future right on each side, or some such transaction limited only to the present, whence no resolution of right can be drawn. And for the most part also, where decisions have been upon it, the princes against whom they stand given, have not been so satisfied, but that upon new occasion they have, with utter neglect of the decision, revived the question. Nor is it requisite, in regard merely of any power in them that decide it, that they should do otherwise. For who can be a judge with coactive power between two supreme princes? Neither befits it, I think, a private man upon a right, (for the maintenance whereof there is usually so much both jealousy and ambition as well in the possessor as pretender) to take on him the part either of judge or advocate with or against any of them, otherwise than as the justice of a supreme command might employ him. I have therefore chosen rather to design out only, (as by way of catalogue) the treaties, decisions, chief passages, questions, transactions, and what else occurs written of this subject, than at all to frame so much as any further context of my own out of them. I may so, as well deserve thanks, for the opened store, from him that would make a curious search in any question of it, as decline both the danger and envy that might follow my own conclusions in it. But as with that title of king which regularly denotes a supreme prince, or one that acknowledges no superior, we have a before joined the self-same, as it is found given to some subordinate princes; so, in the testimonies here collected, the examples also may be perhaps sometimes between such kings as are conceived to be subordinate. If so, yet they fully agree with the subject of this first part, wherein both kinds of this dignity are remembered. The designation thus follows. Nor is it well capable of other method than only enumeration as the testimonies occur.

I. *Tractatus de praecedentia hominis, autore D. Jo. Baptista Leonellio Bartholino I. C. P. In paterno Perusino gymnasio juris canonici professore ordinario.* It was printed at *Perusia*, 1601. and amongst divers general questions of precedence, in *quaest. 11. art. 6.* the author disputes, *an principes differant inter se ratione potentiae, & quomodo?* But he hath nothing of any particular prince.

II. *Apologia Henrici Bebelii Jusingensis Suevo, pro majestate & praecedentia imperatoris & imperii Germanorum contra Leonhartum Justinianum.* This was written above c. years since, and is in *Goldastus* his *politica imperalia part. 11. pag. 586.*

III. *Serenissimus Romanorum rex, & christianissimus Franciae rex; uter alterum praecedat?* disputed by *Antonius Quetta.* It is also in *Goldastus* his *politica imperalia part. 11. pag. 596.* and written in 1536. And with it see *Matthias Stephanus Pomeranus* in *synopsi*

utilissimae materiae jurisdictionis lib. 2. part. 1. cap. 2.

IV. Bernardi Zieritzii Brandenburgensis de principum inter ipsos dignitatis praerogativa commentatiuncula. Jenae 1612.

V. *Responsum oratorum Caroli IX. Francorum regis, die xxi Maii, a. d. 1563. ad protestationem oratoris Philippi II. Hispaniarum regis super praecedentia, quam adsebat sibi deberi proximam Ferdinandi Romanorum imperatoris ad concilium Tridentinum oratori.* It is printed at the end of that French ceremonial, published 1619. at Paris by Theodore Godefroy an advocate in the parliament there.

VI. *Inter principes* (saith Bodin de republica lib. 1. cap. 9.) *quaedam dignitatis praerogativa antiquioribus principibus ac rebus publicis deberi videtur, tametsi opibus ac potentia inferiores sint,* which agrees with that judgment of Jupiter in Lucian between Hercules and Aesculapius, upon their quarrel of precedence in heaven. Εἰς γὰρ οὐρανόν, says Jupiter, πορνεύει τὰ καλὰ ἵνα δὲ Ἰσχυρὸν, αὐτὸς δὲ πορνεύει τοὺς ἀποδιδόντας, *It is reason that Aesculapius should have precedence because he died first, or came first into heaven.* And in the same place Bodin hath more particulars to this purpose, especially for the dignity of the French king, to whom he was a subject.

VII. *Raisons & causes de prestance entre la France & l'Espagne, prepares par un nomme Augustin Caranato Romani pour l'Espagne & traduites d'Italien en Francois. Ensemble les responses & defenses pour la France a chacun d'icelles, par N. Vignier de Bar sur Seine historiographe du roy.* This was printed at Paris 1608.

VIII. *De l'excellence des roys du royaume de France traitant de la prestance, premier rang & praerogatives des roys de France par dessus les autres & des causes d'icelles,* at Paris 1610. The author is Hierome Bignon. And for the French king's place, see Matthew Paris his narration of the feast wherein he entertained our king Henry the third, and the king of Navarre in 1254. pag. 1200. edit. Londinensi.

IX. John Ferhault, and Carolus de Grassalis their treatises of the *jura & privilegia regum Franciae.*

X. *De dignitate regum regnorumque Hispaniae & honoratori loco eis seu eorum legatis a conciliis ac Romana sede jure debito, auctore doctore Jacobo Valdesio in cancellaria summoque praetorio Granatensi auditore regio, & in Pinthiana academia in prima juris canonici cathedra, jubilo donato.* This was printed at Granada 1602.

XI. See the council of Constance sess. 22. and 26. where some particulars are for the place of the ambassadors of the king of England, Castile, and others, with a protestation also for a general saving of right of precedence to all that had voice or place there. Such a protestation also, or decree to that purpose, is in the council of Basil, sess. 1. in that of Trent, and elsewhere. But there was printed at Lowvain in 1517. *nobilissima disputatio super dignitate & magnitudine*

regnorum Britannici & Gallici habita ab utriusque oratoribus & legatis in concilio Constantiensi, which was in the time of our Henry the fifth and Charles the sixth of France. It was taken out of the council of Constance remaining in the church there, and published by Sir Robert Wingfield, ambassador from king Henry VIII. to the emperor Maximilian I. with whom he being at Constance, took the opportunity of transcribing it. There is also an epistle before it to Sir Robert Wingfield, written from Richardus Lepidus Bartholinus, for the precedence of the kings of England. And some letters mss. that concern it, are in that inestimable treasury, Sir Robert Cotton's library, beside other good collections of late time for the precedence of England. And especially also he hath an antient ms. of the whole acts of the council of Constance, wherein some passages are touching their disputations which are not in the printed councils. Something that concerns this precedence of England is transcribed out of it by the most learned doctor Usher, bishop of Meath, in his epistle of the religion professed by the antient Irish, pag. 95.

XII. A disputation in the council of Basil between the ambassadors of John II. of Castile (Alonso Garcia, a doctor of the laws, and dean of Compostella, and Segovia, performing it for the part of Castile) and the ambassadors of Henry the sixth king of England, for precedence, is ms. with Sir Robert Cotton.

XIII. *Discorso sopra la precedenza tra Spagna & Francia,* ms. in the same library, written by Augusto Cavallis in Rome in February 1564. with some other particulars of the same subject. It was touching the controversy between France and Spain in the council of Trent, for which see also the history of that council, lib. 7. pag. 663. lib. 8. pag. 713, & 714, & 727, & seqq. in english. And Thuanus hist. lib. 32.

XIV. Pope Julius II. his giving the precedence between the ambassadors of England and Spain, is related out of Volateran by Philippus Honorius in his Praxis prudentiae politicae, pag. 76. edit. 1610.

XV. *De regis catholici praestantia, ejus regalibus, juribus & praerogativis, commentarii,* Camillo Borello J. C. equite aurato & palatino comite authore. This is inscribed to Philip the third of Spain, and printed at Millain, 1611.

XVI. For the dignity both of France and Spain, see Lancelotus Conradus his Templum omnium judicium, lib. 1. cap. 2. §. 3. num. 12, 13, & seq.

XVII. For the precedence of France, something is collected by Theodore Godefroy an advocate of the parliament of Paris, in his notes upon the history of Charles VI. written by Juvenal archbishop of Rheims. It was printed at Paris 1615.

XVIII. Josias Nolden de statu nobilium civilium synopticae tractationis, cap. 9, &c. where after his own opinion, he hath ranked the emperor and the other kings of Christendom. Giesae, 1623.

XIX. Upon pope Martin the fifth's appointing a general council at Papia, which was after-

* Who they were appears in their commission, which is printed in the notes to Eadmerus, pag. 214.

ward by reason of the plague there, translated to *Siena*, *Henry VI.* king of *England* and *France*, appoints de *avisamento consilii sui*, the bishop of *Chichester* (as I think, *Thomas Polden*) and *Bernard de Planbea* doctor of the canon law, and prior of *S. Mary's de Solaco* in *Guienne*, to be his procurators jointly and severally ad *petendum & obtinendum* (as the words are in the first person) *a sanctissimo in Christo patre domino Martino sacrosanctae Romanae ac universalis ecclesiae summo pontifice humillima ac debita concilia instantia, aliove sacri proximo futuri generalis concilii praesidente quocunque locum sive sessionem in eodem concilio nobis ratione coronae nostrae Franciae debitum ac debitam quem & quam progenitores nostri reges Franciae per se & suos ambassiatore tenere & occupare consueverunt temporibus retroactis, in & usque adventum ambassiatorum nostrorum quos ad concilium ipsum generale de avisamento consilii nostri praedicti in proximo mittere deliberavimus, ambassiatoribus ipsis nostro nomine vacuum & vacuum reservari & custodiri: & in eventu qua nobis denegetur (quod nollemus) de jure nostro protestando, & in ea parte appellando, ipsa saque protestationem & appellationem debite proseguendo necnon omnia alia & singula facienda & exercenda quae in hac parte necessaria fuerint seu quomodolibet opportuna.* It is dated 4 *Maii*, 1 *Hen. VI.* and enrolled *Rot. Franc. i* & 2 *Hen. VI. membran. 17.*

XX. The rank or enumeration of empires and kingdoms in the provincials of *Rome*, of which divers copies are mss. but not ordinarily agreeing. Some are printed also; but neither do they always agree together. In the *French sanctio pragmatica* also with the gloss of *Cosmas Guimier*, printed at *Paris*, 1621. (pag. 1066.) there is a rank of the christian kingdoms, as I think, out of that provincial. So in *Simplicianus Champierus mirabilium divinarum humanorumque vol. iv. pag. 24. b.* printed at *Lions* 1517, and in *Petrus Rebuffus his praxis beneficiorum part. iii. pag. 440.* the provincial is at large with the christian kings in it.

XXI. *Bartholomaeus Chassanaeus* in his *catalogus gloriae mundi, part. 5. conf. 27, 28, 29, 30, 31, 37, 38.* and *part. 12. conf. 56,* and 57. disputes of the precedence of all or the most of christian kings. And in *part. 5. conf. 29, & 40.* of queens. He hath also a rank of kingdoms out of the *Roman provincial of Rome, part. 5. confid. 31.* where he is much deceived with the corrupt editions ^a of the decretals, while he reckons a king of *Winchester* among them. Indeed *Tancredus rex Wincestriae* occurs in some copies of the decretals, which should plainly be *Richardus rex* ^b *Wilsigothorum*, as in the best editions it is also corrected. And such gross mistakings are not rare either in the old body or in the unpolished doctors of that law.

XXII. *Simonis Majoli episcopi Vultuariensis dierum canicularium tom. 5. colloq. 5. pag. 1151.* De dignitatibus & sessionum differentibus, where divers quotations are to this purpose for

divers kingdoms; and especially that between *Spain* and *France* is more largely handled.

XXIII. In the history of the council of *Trent*, is a difference between the ambassadors of *Hungary* and *Portugal*, touching the priority of reading their kings letters. For there could be none of place, by reason that the one was lay and the other ecclesiastical, and so they sat in several ranks. But the order of time in presenting the letter was only respected, and not the dignity of the prince, and so ended the controversy, *lib. 6. fol. 480.* in the *English* edition.

XXIV. *Excellencias de la monarchia y reyno de Espanna.* The author is *Gregorio Lopez Madera*, that was fiscal attorney to king *Philip II.* in the chancery of *Granada*. It was printed in *Valladolid* 1597. Neither is it impertinent here to see *Antonius a Gama* his first decision.

XXV. *Reftaurus Castaldus* an *Italian* doctor of both laws in *de imperatore.* See him in *quaest. 3.* and 18. §. 7, 8, and 9. *quaest. 53, 66, 67, 68, 94. §. 1.*

XXVI. *Antonius Corsetus*, professor of the canon laws at *Padua*, hath much that conduces to the points of precedence between supreme princes, in his *de potestate regia, part. 3.*

XXVII. *Martinus de Carazziis Laudensis* his *practicabilis tractatus de principibus, quaest. 17, &c.*

XXVIII. *Nicholaus Boerius* his treatise *de ordine & praecedentia graduum utriusque fori, part. 1. §. 12.* touching the emperor and *French* king.

XXIX. *Andreas Tiraguellus* disputes the question of precedence between two twins (in case they should succeed in a kingdom) where the priority of their birth could not be known, as also of other joint-kings or joint-emperors; as *Gratian*, *Valentinian*, and *Theodosius* were. This is in his *de jure primigeniorum, quaest. 19.*

XXX. The precedence also of the names of several kingdoms not dependent either on one another, or on any other, in the styles used by kings that have more than one, is here observable. For, without other regard to dignity, commonly in such cases, that kingdom is placed first in whose right the instrument is made that hath the stile prefixed to it. As our *Henry VI.* in his charters given (as king of *France*) wrote himself *roy de France & d'Angleterre*, as I see in an old transcript of a charter of that king, dated at *Shene* the xviii of *January* in the xix year of his reign, whereby he gives to his beloved and faithful cousin *John, viscount and seigneur de Beaumont*, the vicounty of *Beaumont* in *France*, forfeited to him (as he there says) by the rebellion of *John duke of Alençon*. The transcript was communicated to me by that most learned and truly worthy gentleman Mr. *John Beaumont* of *Grace Dieu*. So his Majesty, at this day in patents that pass the Seal of *Scotland*, is stiled *Scotiae, Angliae, &c. rex*, as he is with us *Angliae, Scotiae, &c.* And king *Philip II.*

^a Extr. de probat. c. 1. ex epistolis.

^b Patet ex B. Greg. lib. 7. epist. 122.

of Spain, that by marriage with our queen Mary was also king of England, placed, in his stile, Castile first, and, after some other of his kingdoms, England and France between Arragon and Navarre, thus: *Philippe por la gracia de Dios rey de Castella, de Leon, de Aragon, de Inglattierra, de Francia, de Navarra, de Napoles, de Sicilia, &c.* This stile occurs in his letters patents of 16. Decemb. 1557. by which he authorized the catechism or sum of christian religion that was printed in Latin, Dutch, French, and also in Spanish, at Antwerp the year following, *por mandamiento y autoridad d'el serenissimo rey d'Espauna, d'Inglattierra, Francia y Napoles*, as the title says. But in his stile with our queen Mary (after by the death of Charles V. he was king of Spain) England was placed first, and France after Spain, and Ireland after Naples, Sicily, and Jerusalem, thus: *Rex & regina Angliae, Hispaniarum, Francia, utriusque Siciliae, Jerusalem & Hiberniae, fidei defensores; archiduces Austriae, duces Burgundiae, &c.* while he was prince of Spain only, it being thus: *Rex & regina Angliae, Francia, Neapolis, Jerusalem & Hiberniae, fidei defensores, principes Hispaniarum & Siciliae, &c.*

XXXI. In other cases also we see that precedence hath been purposely given upon some particular cause of the present, without any regard to the dignity of several States or kingdoms. As when on the xx. of May 1604. Thomas earl of Dorset lord treasurer of England, the earl of Nottingham lord admiral, the earls of Devonshire and Northampton, and the lord Cecil principal secretary were appointed to treat with don Juan de Taxis Conde de Villa-Mediana the Spanish ambassador, and signior Alessandro Rovido a senator of Milan, commissioners for the king of Spain, and the count of Arrembergh, the president Richardot, and the audiencier Verreyken, authorised by the archdukes, for the concluding of a league between his majesty and those princes; all of them met in the council-chamber at Somers-et-house, where it was thought fit to give the said commissioners (as the words of the journal of the treaty are) *the place of the right hand at the table, in respect of the greater honour done to his majesty by the sending of the said commissioners to treat here within this realm.*

XXXII. It is observable, that, to decline the controversy of place between great princes, they are of purpose so promiscuously sometimes expressed together, that neither advantage nor prejudice may thence happen to any of them. As in the league between England and Spain in 1604. Art. 31. the enumeration of such as are comprehended within the league (of the part of his majesty of England) is such, that after the emperor, and the free cities, the dukes of Lorain, Savoy, Brunswick, Lunenburg, Meklenburg, and some other princes and states of the empire, the kings of France, Poland, Swedeland, and Denmark, are named with the duke and signiory of Venice, the duke of Holstein, and the great duke of Florence. And in art. 32. the like course is held

in those that are included on the king of Spain's part.

XXXIII. In the discourses *de jure publico*, vol. 2. discurs. 24. pag. 723. there is one written by George Gumpelzhaimer a lawyer of the empire, *de regibus*; and in sect. 112, 113, &c. divers particulars are touching the precedence of the king of Romans, the king of Bohemia, and other kings of Europe.

XXXIV. *Conference des prerogatives, d'anciennete & de noblesse de la monarchie, roys, royaumes, & maison royale de France, avec toutes les autres monarchies, roys, royaumes, & maisons royales, que sont en l'estendre de nostre Europe*, written by Claude de Rubis a counsellor in the presidial of Lyon, and there printed 1614.

XXXV. *Letters d'un François, sur certain discours fait pour la presence du roy d'Espagne &c.* Printed in the first volume of the *memoirs de la Ligue*, pag. 709.

XXXVI. For the controversy between France and Spain, see Pierre Matthieu in his history of France, liv. 1. narrat. 2. §. 7. where he hath the meeting of the ambassadors of both princes in the treaty at Vervins. And touching the precedence of the kings of England, he hath something liv. 7. narrat. 1. §. 13. &c.

XXXVII. Onuphrius towards the end of the life of Pius IV. hath a very observable passage touching that of France and Spain, as also Cicarella in the life of Sixtus Quintus at the canonization of S. Diego. And there is also an industrious collection made by Andrew Favyn an advocate in the parliament of Paris in his *Theatre d'honneur & de chevalerie* liv. 2. pag. 704, &c. where he inserts together divers other testimonies to the same purpose.

XXXVIII. In this enumeration of such testimonies as concern the precedence of supreme princes, I conceived that a place was due to that grant of Pedro I. king of Castile under his great seal to our king Edward III. and the black-prince, and to the kings and princes of England their successors; especially because it was never as yet published, nor so much, as I remember, as mentioned in the stories of either nation. When king Pedro for his cruel tyranny was thrust out of his kingdom in the year MCCCXLVI. by his brother Henry Conde of Trastamara or Henry II. of Castile, he fled for succour into Gascoigne to the black-prince, being then at Baion. The prince most nobly and magnificently entertained him. The deposed king, as well for a perpetual memory of his own acknowledgment of such singular favour, as for the greatest increase of honour that he was possibly able, out of his best hopes, to fancy for the prince and the crown of England, by charter under his great seal, granted to king Edward and the prince and to their heirs and successors, kings and princes of England, that whensoever it should please them to be in person in the wars with any king of Castile, against any king of Granada, or against any other enemy of the christian faith, they should have the first place in the vanguard above all other princes of christendom, and that

although

although neither of them were there in person, yet there should always be provided by the kings of *Castile*, and their successors, a standard of the arms of *England*, to be borne in the same place. Other privileges are in it both to the whole nation of the *English*, and to the people of *Guienne*.

PETRUS Dei gratia rex *Castellae & Legionis*, omnibus praesentibus pariter & futuris praesentes literas inspecturis lecturis & etiam audituris salutem, & fidem plenariam eisdem adhibere. Cum in largitione, donatione, & concessione privilegiorum, libertatum, franchiseiarum, ac honorum praerogativa, illis nos liberales & gratiosiores reddere debeamus a quibus multiplicia beneficia & honores nos recognoscimus recepisse; cumque illustrissimus rex *Angliae*, & *Edwardus* ejus primogenitus, princeps *Aquitaniae & Walliae*, consanguinei nostri nos & praedecessores nostros reges *Castellae* retroactis temporibus fuerint favorabiliter prosequuti, & specialiter cum nuper per *Henricum* quondam comitem de *Tressamare* qui facta cum quibusdam suis complicibus coadunatione regna nostra invasisit, usurpavit, & etiam occupavit more praedonico & hostili, & ea indebitum detinet occupata, de regno in regnum ac dominio in dominium & loco in locum ad mortem nos esset insequutus, a qua prosecutione per receptionem dicti domini principis in terra sua de nobis factam fuimus liberati, & per ipsum ac gentes suas confortati, ac honorabiliter recepti, & tractati; nos memores dicti accepti beneficii & aliqualem praemissorum recompensationem & alias de nostra certa scientia, speciali dono, ac regia donatione, & potestate damus & concedimus, pro nobis, haeredibus, & successoribus nostris regibus *Castellae* per praesentes, dicto illustrissimo regi *Angliae & Edwardo* ejus primogenito principi *Aquitaniae & Walliae* quod quandocunque idem rex, & ejus primogenitus qui nunc sunt, aut eorum haeredes, & successores reges *Angliae*, & eorum primogeniti qui pro tempore fuerint, voluerint venire in propria persona ad guerram quam nos habebimus aut haeredes nostri reges *Castellae* habebunt contra regem *Granatae*, aut alios fidei inimicos, quod iidem reges, & eorum primogeniti habeant primum bellum sive *la delanterre* ante omnes mundi christianos, & omni tempore, ita ramen quod nos possimus, & haeredes nostri reges *Castellae* si voluerimus ponere vexilla nostra in dicto bello pariter cum vexillis regis *Angliae* vel ipsius primogeniti. Item quod si contigerit dictos reges aut eorum primogenitos ad guerram quam nos, & haeredes nostri habebimus contra regem *Granatae*, aut alios fidei inimicos non venire, aut nolle vel non posse venire, volumus & concedimus quod unum vexillum de armis regis *Angliae*, sit omni tempore in dicta guerra in primo bello sive *en la delanterre* honorifice prout decet, nostris & successorum nostrorum *Castellae* regum propriis sumptibus & expensis. Item quia patria ejusdem nostri consanguinei plurima damna, & expensas innumerabiles sustinuit tempore quo ipse pro nostro succursu exercitus suos congregabat prout oculis propriis conspexi-

mus, licet flebiliter gereremus, in recompensationem praemissorum, privilegiamus, volumus, & concedimus quod omnes homines, incolae, nobiles, peregrini, cuiuscunque status, sexus, vel conditionis existant, regni, patriae, & domini *Angliae*, & principatus *Aquitaniae* sint immunes ab omni pedagio, leuda, costuma, maletota, seu aliis quibuscunque impositionibus, exactionibus in regnis nostris impositis seu imposterum imponendis. Ita quod dicti homines dictorum regni, patriae, & domini *Angliae*, & principatus *Aquitaniae* transiendo, morando, & redeundo per regna nostra per mare vel per terram, costumam, pedagium, leudam, maletotam, seu quamcunque aliam impositionem vel exactionem solvere minime teneantur nisi dicti homines causa mercimonii vel pro mercimoniando aliquid emerent. Super quo an causa mercimoniandi empti existant necne, per officarios nostros & receptorum dictorum pedagiorum stare volumus dictorum hominum juramento, de quibus rebus causa mercimoniandi emptis non compellantur solvere, nec aliquid ultra ab eis exigatur quam caeteri mercatores solvere consueverunt. Et juramus ad sancta dei evangelia a nobis corporaliter manu tacta, & in verbo promittimus regio concessiones, donationes, privilegia praedicta, & omnia & singula in praesentibus literis contenta tenere, complere, & inviolabiliter observare. In quorum & singulorum praemissorum testimonium, & ad ipsorum majorem firmitatem hiis praesentibus nos manu propria subscripsimus, & eisdem sigillum nostrum in pendenti duximus apponendum. Volentes, & concedentes ac etiam requirentes vos magistrum *Johannem de London*, publicum auctoritate apostolica notarium quatinus ad perpetuam omnium & singulorum praemissorum memoriam vos cum praesentibus testibus subscribatis, praesentisque literas signo vestro solito consignetis. Datum apud *Liborniam* diocesis *Burdegalenensis*, die vicesima tertia mensis *Septembris*, anno domini millesimo tricesimo sexagesimo sexto. Praesentibus praecarissimo consanguineo nostro domino *Johanne* duce *Lancastriae*, regis *Angliae* filio, ac fratre dicti principis, & reverendis in Christo patribus domino *Helia* archiepiscopo *Burdegalense*, domino *Bernardo* episcopo *Xancton*. *Johanne* electo *Bathoniens*. & *Wellens*. cancellario *Aquitaniae*, *Johanne Chandos* constabulario, & *Thoma* senescallo *Aquitaniae*, *Nigello de Loereyn* camerario dicti principis, *Baldoyno de Frevilla* senescallo *Xanctonen*. & aliis testibus ad praemissa.

Yo EL REY.

Et ego Johannes de London clericus Winton. diocesis publicus auctoritate apostolica notarius, undecima die mensis Februarii, anno domini supradicto, indictione quinta, pontificatus sanctissimi in Christo patris & domini nostri domini Urbani, divina providentia papae quinti anno quinto, infra castrum civitatis Bajone in capella ejusdem castri, una cum testibus infra scriptis fui praesens quando dictus dominus rex

Petrus praemissa omnia & singula innovavit, confirmavit, & juramento suo vallavit tangendo propriis manibus suis sancta Dei evangelia, & quando ipse rex propria manu sua se subscripsit, meque requisivit & mandavit ut praesentibus literis me subscriberem, & signum meum apponerem consuetum. Testes qui fuerunt praesentes ad ista una mecum sunt

dominus frater Martinus Lupi magister militiae domus de Alcantara ordinis Cistercien. Rogerius dominus de la Wara, Gomecius dicti domini regis magister, Paulus Gabrielis civis Ispalen. Johannes Gutterm. decanus ecclesiae Segobien. & magister Robertus Fregand notarius, cancellarius domini principis Aquitaniae & Walliae supradicti.



Upon this, the prince was drawn also to aid king *Piedro* in recovery of his kingdom; but not without a bond from the king, that he should disburse 550000 florins, *cogni de Florentia boni auri & legitimi ponderis*, for paying the prince's army. And in consideration also of this undertaking, on the same day it was agreed between them that the prince should have the castle of *Vermeo*, de la *Quet*, *Bilbo*, *Biscay*, and the castle of *Ordialls*, a tenir perpetuellement a li & a ses heires & successeurs, & pur doner la ou luy plerra, discharged of sovereignty and reftort, and as free as the king held it. All this was also confirmed under the great seal of *Casile*; both the originals and duplicates of them remaining with us in ^a *England* to this day, which shew also that to the seal the king's oath was added solemnly before the high altar in the church of *Burgos*. And through the virtue chiefly of the *English*, and to their singular glory, the prince soon restored him to his lost crown. But after his being thus as well the maker as the preserver of a *Spanish* king, instead of faith with requital, which he justly expected, he found nothing more than mere falshood and ingratitude.

XXXIX. The reasons for precedence for the ambassadors or commissioners of queen *Elizabeth* of *England*, before those of the king of

Spain, at the treaty of *Bologne*, in 1600, are summarily related in *Camden's* continuance of his annals, under the same year.

XL. The protestation of *Charles IX.* of *France*, against pope *Pius IV.* pro praeceminencia ac praecessione regis christianissimi ante regem catholicum, adversus papae iniquos & impios processus, & nullitatem concilii Tridentini, facta per oratores in concilio Tridentino, mense Septembri, MDLXIII. is printed in *Goldastus* his constitutiones imperiales, tom. 3. pag. 572.

XLI. Of the place of the emperor, of the *French* king and of other kings in general councils; *Ludovicus Servinus* in his *vindiciae secundum libertatem ecclesiae Gallicanae*, pag. 221. as it is printed in *Goldastus* his second tome de *jurisdictione imperiali & regia*.

XLII. Of the place of the king of *France*, *Michael Roussel* in *historiae pontificiae jurisdictionis* lib. 2. cap. 6. §. 1.

Divers other testimonies of less note concerning precedence of Emperors and kings, are remembered in many of these thus designed. And for the ways of argument in cases of precedence between these titles; the laws, treatises, and passages touching precedence, at the end of the second part, may also be sometimes here useful. And of those great titles hitherto.

^a In thef. regio apud Westm. & penes v. c. Robert. Cotton.

T I T L E S

O F

H O N O U R.

The Second P A R T.

C H A P. I.

- I. *Of the several titles that the heir or successor apparent of the empire hath had since the beginning of the Roman monarchy; and first of princeps juventutis.*
- II. *The beginning and continuance of the title of caesar by it self, for the heir apparent or successor of the empire.*
- III. *The creations and ensigns of the caesars that were successors apparent; and something of their power.*
- IV. *Of the titles or attributes of princeps juventutis, and nobilissimus given to those caesars.*
- V. *The several dignity of a nobilissimus, which was beneath a caesar.*
- VI. *Of the change of this title of caesar in the eastern empire; and of the titles of sebastocrator and despote there.*
- VII. *The titles of king of Italy, king of Germany, and king of the Romans, in the successors apparent of the western empire.*
- VIII. *The titles of comes and dux; and the ranks of the comites as they are honorary or officary or both in the elder empire.*
- IX. *A form of the letters of creation of a count of the first rank about D. year after our Saviour.*
- X. *A form of the letters of creation of a count of the first rank that was also consistorian.*
- XI. *The form of the letters of creation of a comes sacrarum largitionum.*
- XII. *Of a comes rerum privatarum.*
- XIII. *Of a comes patrimonii.*
- XIV. *Of a comes archiatrorum.*
- XV. *Of a count of a province.*
- XVI. *Of the count of Syracuse.*
- XVII. *Of the count of Naples.*
- XVIII. *Of a count of the second rank for government of Cities.*
- XIX. *Of the Gothick count for bearing and determining the causes of the Goths.*
- XX. *A form of the letters that made a duke of a province.*
- XXI. *Of the ensigns of dukes and counts of the old empire; and the officers that were either under them, or mixed with them, or superior to them in government. And especially the gar-risons, ensigns used, and government and officers imployed in the state of this Island of Britain, when it had two counts and a duke under the old Roman empire.*
- XXII. *The opinion of some that derive the dignities of comes and dux, out of the old customs of Germany.*
- XXIII. *Of the beginning of feuds; and how the dignity of count and duke came first to be feudal and hereditary in the empire.*
- XXIV. *Of*

- XXIV. Of feudal dukes in the empire, and of the special number of four in the dignities there
- XXV. Of the antient course of investiture of dukes and other princes of the empire by banners; and of scepters sometimes used in feudal dignities to ecclesiastical persons.
- XXVI. The form of creation or investiture of dukes instituted by pope Paul II.
- XXVII. Of ducal ensigns, especially their caps and coronets.
- XXVIII. The form of the letters of creation of the first duke of Austria.
- XXIX. The form of the letters of creation, by which Jacques de Croy bishop of Cambray, was made duke of Cambray by Maximilian the first, and of those by which Castruccio de Antelmellis was made duke of Lucca by Frederick the third.
- XXX. The title of archduke; and the coronet of the archduke of Austria.
- XXXI. Great duke; and the beginning of that in the dukes of Florence, by the bull of Pius V. with the ceremonies used at the first creation of it.
- XXXII. Of the several kinds of graves and counts; and first of the *schlecht graben*, or such as are commonly stiled graves or counts without addition.
- XXXIII. Of counts palatine: and first of the original of the title of palatine as it is feudal.
- XXXIV. Of the feudal title of palatine in the French and German empires.
- XXXV. Of the counts palatine of the Rhine.
- XXXVI. Of the personal title of count palatine; and first of such as assume the title by reason of XX years profession of the civil laws.
- XXXVII. Of such as are created personal counts palatine by patents. And first of the singular title of count palatine charged with service in the Lateran at the emperor's coronation at Rome.
- XXXVIII. Of the power that makes other personal counts palatine by patent, with so much of a bull of pope Paul III. as created the referendaries of the court of Rome into this title, besides other particulars of papal power herein exercised. And of the several stiles and names of such counts.
- XXXIX. The estates limited in such creations.
- XL. The various privileges usually inserted in such creations, with a whole form of a patent of creation of such a count palatine made by Rodolph II. and the restraints of the privileges of such counts by the bulls of Pius IV. and V.
- XLI. A doctor of philosophy and physick made by such a count palatine.
- XLII. The solemn giving the lawrel to poets, by such a count palatine.
- XLIII. The original of giving the crown of lawrel to poets, and of the use of it in the later ages.
- XLIV. Of public notaries made by such counts palatine, and an example of power delegated by one of them to the prior of Winchester to that purpose, and something of the estimation had of this personal title.
- XLV. The reason of the several deductions made of count palatine; and why the feudal title is derived out of the French empire, and the personal out of the old empire of Rome.
- XLVI. The title of *comes sacri imperii* generally given without relation to any feud or county.
- XLVII. The title of *marquess*, *marckgrave*, or *comes limitaneus*.
- XLVIII. *Landtgrave*, or *comes provincialis*.
- XLIX. *Burggrave*, or *comes castrensis*.
- L. *Uatvod*.
- LI. Of barons and their several names in the empire, as *temper-freyen*, *freyheern*, *freyen* and such more.
- LII. Of the origination of the word baron, *bannerbeet*.
- LIII. The various use of the title of prince or *furst*.
- LIV. *Churfurst*, or *elector*.
- LV. Of *capitanei* and *valvasores*.
- LVI. Of a *ritter geschlagen*, or a dubbed knight: and first of the persons, by the antient law, capable of that dignity.
- LVII. Of the privileges of such knights in the empire.
- LVIII. The origination of such knights.
- LIX. The various ceremonies used in giving this knighthood.

LX. The ceremonies used at the knighting of William earl of Holland, when he was chosen emperor.

LXI. The form of giving this order in the pontificale Romanum.

LXII. Of the persons that give this dignity.

LXIII. Armiger or wapener.

LXIV. Of titles under subordinate princes in the empire, had by sub-infeudation or otherwise.

LXV. A summary enumeration of the states of the empire.

THE titles appointed for this second part, we divide by the kingdoms wherein they are used. And the *Empire, England, France, Scotland, Ireland, and Spain*, are the chiefest in the frame of that division. We begin with the empire. And those titles of *Poland, Bohemia*, and some more adjoining or intermixed with the empire, follow by themselves after those which are under it. By the titles of the empire, we mean here such, as being of that kind which is reserved for this part, have their creation, or originally had it, either from the emperors or from the popes. The popes exercising^a imperial authority in creating some of them, and the derivation of that authority from the emperors, make them both of so like a nature, that we have not reason here to divide them. And such dignities as by subinfeudation, or the like, have their dependance on subordinate titles, shall be remembered together towards the end of those which are immediate here to the supreme.

Those titles of the empire are *Römischer konig*, or *king of the Romans*, as it denotes him that is designed for apparent successor, *archduke* or *erzherzog*, *great duke* or *grosse-herzog*, *herzog* or *duke*, *grave* or *count*, *count palatine* or *pfaltzgrave*, *landgrave*, *marchgrave* or *marquis*, *burggrave*, *prince* or *furst* and *churfurst* or *elector*, *vaivod*, *freyherrn*, *herrs* or *baron*, *ritter geschlagen* or *knight*, to which may be added that of *wapener* or *armiger*, though it be now (I think) out of use in the empire. And we shall conclude with a summary enumeration of the states of the empire, taken from good authority, wherein some persons are expressed to be equal to some of these titles, and yet bear them not.

I. From antient time the heir apparent or successor designed in the empire hath been called *king of the Romans*. But this title since the beginning of that monarchy hath been diversly varied. It was first *princeps juventutis*. Afterward the name of *caesar* expressed him; then was that changed in the eastern empire. And in the western of the *Franks* and *Germans*, *rex Italiae*, *rex Germaniae*, *rex Romanorum* or *king of the Romans* were his titles. That of *princeps juventutis* is first found in this sense, in the attributes of^b *Caius* and *Lucius* grandchildren to *Augustus*, and designed for heirs of the empire. (160) The title was antient, and in the free state denoted the chief or first of the *ordo^c equestris*, as *princeps senatus*, did of the

Senate. (161) But *Augustus* took the one to himself, and made the other to be thus given to those his young grandchildren; so inducing (as by other names of offices also which he wisely retained) and establishing in *Rome* a new servitude under old titles. When these two were dead, *Tiberius* was adopted as his heir, and had the same title. *Senatus populusque Romanus* (we read in a coin^d of that time) *caesari augusti F. pontifici, consuli designato, principi juventutis*. And *Tacitus^e* of *Nero* the designed successor of *Claudius*; *caesar adulationibus senatus libens cessit, ut vicesimo aetatis anno consulatum Nero iniret, atque interim designatus, proconsulare imperium extra urbem haberet, ac princeps juventutis appellaretur*. Neither are the coins of *Claudius* his time that followed, without that title given to *Nero*. *Domitian* also and divers others of the following heirs apparent in the elder times, have it in monies and inscriptions. And see more of it, where we speak anon of the attributes afterward given to the title of *caesar* in the successors apparent.

II. For afterward, that title of *caesar* as peculiar for this purpose was settled on them; (162) touching which, the beginning and continuance of the use of it in this sense, the creation and ensigns of the dignity, and the more solemn attributes of honour given antiently to it, are especially observable. The beginning of this was under the emperor *Adrian*. For whereas the name of *caesar* as well before *Nero* (in whom that family ended) as afterward was with the title of *Augustus*, used in the styles of the emperors, *Adrian* communicated that of *caesar* for the singular dignity of his designed successor *Aelius Verus*. And he was the first that had it so. And from that example it held long in the empire. The testimonies of this are without exception in *Spartian* and *Capitolinus*. *Aelius Verus* (saith *Spartian*) was adopted by *Adrian*, and *nihil habet in vita sua memorabile nisi quod tantum caesar est appellatus, non testamento ut antea solebat, neque eo modo quo Trajanus est adoptatus, sed eo prope genere quo nostris temporibus a vestra clementia* (he writes this to *Diocletian*) *Maximinianus atque Constantius caesares dicti sunt; quasi quidam principum filii viri & designati augustae majestatis haeredes*. And in another place, *primus tantum caesaris nomen accepit adoptione Adriani familiae principum adscriptus*. So *Capitolinus^f* speaking of him; *ab Adriano adoptatus primus caesar est dictus & in eadem statione constitutus*

^a Videffis *Matth. Stephani de iurisdic. lib. 3. part. 1. cap. 3. §. 60, &c.* ^b *Praeter Ancyranum monumentum apud Lipsium in auctario, Gruter. inscrip. pag. 231. Cafaubon. in Sueton. lib. 2. vide Tacit. annal. 1. & ib. Lips. num. 18. Cafaubon. ad Spartian. AELIUM VERUM, & Gruter. inscrip. pag. 234. numism. ap. Occoem in Octaviano, &c.*

^c *Vid. Lips. elect. lib. 2. cap. 1. Cafaubon. in Spartiani AELIUM VERUM; Bullinger de imperio Romano, lib. 5. cap. 7, &c.*

^d *Occo in Tiberio.*

^e *Annal. 12.*

^f *In Vero imp.*

perit. Yet I know that some learned men say ^e that *L. Piso* was designed a *caesar* by *Galba*, and *Titus Domitian* by *Vespasian*, *Trajan* by *Nerva*, and *Adrian* by *Trajan*, as if without question that name had been the title of the apparent successors before *Adrian*. And they have for their warrant, *Sulpitius Severus*, *Zonaras*, *Xiphilin*, and some such more. And it is clear indeed that *Domitian* especially was called *caesar* in *Vespasian's* time, not only by the testimonies of monies and inscriptions yet remaining, but also by the stories of *Suetonius* ^h and *Tacitus* ⁱ in express words. But notwithstanding all these, I conceive it without question, that the title of *caesar* in this sense ^k appropriated by excellence, as the *prince of Wales* in *England*, or the *dauphin* in *France*, to denote the apparent successor, began in that of *Aelius Verus*. And, of the times before him, touching this title, thus. While the family of the *caesars* continued, from *Julius* to the end of *Nero*, all that had it were called so only as they were a part of the stock by blood or adoption, even as those of the blood royal in *England*, were antiently named *plantagenests*. After *Nero*, *Galba* took it ^l to himself with the name of *augustus*; but at his designation of *L. Piso* for his successor, he says only that, by the example of *Octavian*, he did place him ^m in *proximo sibi fastigio*, and calls him his successor. *Vitellius* wholly ⁿ avoided it in his own stile, using, as in stead of it, *germanicus*; which only name he liked so well also that he called his young son by it, when the child was honoured, by his command, at *Lions*, as his apparent successor. *Universum exercitum* (saith *Tacitus*) *occurrere infanti filio jubet. Perlatum & paludamento opertum, sinu retinens. Germanicum appellavit, cinxitque cumctis fortunae principalis insignibus*. But *Otho* and *Vespasian* both used the title of *caesar*, and the sons of *Vespasian*, ^o *Titus* and *Domitian* in their father's life-time. But not otherwise than as sons, deriving it from their father, or as when the families of the first *caesars* reigned, *Germanicus*, *Drusus*, and such more did from their ancestors. As if whosoever were a son of him that was called *caesar augustus*, should have the name of *caesar*, to denote the honour and blood that such a father gave him. Neither (as I conceive) is that of *Domitian* his being saluted ^p *caesar*, other than only a congratulation, to that purpose, of his father's being emperor. The next designed successor was *Trajan*, whom *Nerva* adopted. That adoption gave him the like right to the name of *caesar* (as it was part of his father's name that had adopted him) as *Titus* and *Domitian* had to it being sons to *Vespasian*. After *Trajan*, there is not clear testimony enough to prove that *Adrian* succeeded by any adoption or other designation. But, that *Adrian* by the name of *caesar*, and as *caesar*

should singularly denote his apparent successor, adopted *Aelius Verus*, those two writers *Spartianus* and *Capitolinus*, who lived but about 60 years after *Adrian*, and were well acquainted with the records of the empire, make it manifest. And for those other historians, that suppose that kind of adoption and designation by this name, to be antienter; they deserve not credit here. They commit that common fault of expressing acts of the elder times in the phrase of their own age; being all of much later time than either *Spartian* or *Capitolinus*. And though *Xiphilin* in his epitome of *Dio*, say that *Piso* was made *caesar* by *Galba*, *Titus* and *Domitian* by *Vespasian*, and expressly also that *Trajan* was created *caesar* by *Nerva* in the senate (*ἐν τῷ συνέδριῳ καὶ αὐτῶν ἀντιθέσει*, saith he, which is his usual phrase to this purpose) yet, while we observe the stories of those emperors before *Trajan* in *Tacitus* and *Suetonius*, and the following times to *Adrian* in the more authentick authors of the *Roman* story, and find no such matter among them, there is not reason enough left why we should believe that *Dio* himself (whose own history of those times is lost) ever said any such thing, but that his expressions of designing a successor generally, were turned by *Xiphilin* (that lived above 900 years after *Dio*) into this of designing by the name of *caesar*. And *Dio* himself also perhaps was deceived in it. For in his time (he lived under *Alexander Severus*) the designed successor was and had long been called the *caesar*, and by that name ordained. So that he also, especially being a stranger, might err in misapplication of a later phrase to the times which had not use of it; a fault not unusual in some of the best writers. The same may be justly said of *Sulpitius Severus*, *Zonaras*, and such more. Nor is there warrant enough for that of *Aurelius Victor*, where he places the beginning of this distinct title of *caesar* in *Adrian's* being adopted by *Trajan*; it being indeed most uncertain whether he were at all adopted or designed successor by him. And some ^r expressly deny it.

Aelius Verus therefore had first the name of *caesar*, as it signifieth the heir apparent of the empire. And afterward it ceased to be used as a name of the family or blood of the emperors that assumed it and so gave it, and it became only honorary; in themselves joined with *augustus*; and, in their designed successors, single by itself. So was *Marcus Antoninus* created into the title of *caesar* by *Antoninus Pius*. *Quaestorem & consulem secum Pius Marcus designavit, & caesaris appellatione donavit*, saith *Capitolinus*. So was *Commodus* honoured by his father *Marcus Antoninus*. So *Albinus Clodius* by *Commodus*, and *Severus* also, though he refused it from *Commodus*. And *Severus* made his eldest son *Bassianus*, the *caesar* of the em-

^e Onuph. de comitis imperatoris, c. 3. Bullinger. de imp. Romano, l. 1. c. 4. vide item Salmas. ad Spartian. p. 62. alios recentiorum. Temere nimis de caesaris nomine pronuntiat baronius, tom. 1. ann. Christ. 33. num. 40. ^h In Domit. cap. 1. ⁱ Historiar. 3. in extremo.

^k Casaubon in notis ad Spartian. Aelium Verum & Rostin. antiq. Rom. l. 7. c. 13. ^l Videtis Sueton. in Galba, c. 10. & 11. ^m Tacit. histor. 1. ⁿ Sueton. in Vitell. c. 10. Tacit. histor. 2. ^o Videtis inscript. quae Romae habetur, apud Gruter. p. 244. num. 2. ^p Tacit. hist. 3. in extremo, & Sueton. in Domit. c. 1. ^q Vixit sub Constantino Duca imp. teste ipso in Augusto. ^r Videtis epit. Dionis, lib. 69.

pire, *ut fratrem suum Getam* (as *Spartian* says) *ab spe imperii quam ille conceperat, submoveret*; which was afterward confirmed by the senate, and imperial ensigns or ornaments (*imperatoria insignia*, as he calls them) were by decree allowed him, touching which more presently. And the examples are frequent in monies, inscriptions, the titles of rescripts in all the old codes, and in good authors of story that shew a continuance of this title until the time of *Alexius Comnenus*. How it was altered into other names in the eastern and western empires, is anon declared when we speak of the title of *despote*, and of *king of Italy*.

III. The creation and ensigns belonging to the title of *caesar* were various. They were created sometimes by the emperors verbal designation, either in adoption or otherwise, as the opportunity of place and time permitted; sometimes by the senate, sometimes by the letters and charters of the emperors. The memories of their creations occur very frequently in story, and with them sometimes the ensigns are noted also; as the use of a purple robe, the purple or scarlet tabard, and at length coronets also were given them, not without the holy office of the patriarch at their investitures. That of *Commodus* to *Clodius Albinus* gives good light here for the elder times. These were his letters by which he gave (or at least offered) the title of *caesar* to him, and designed also his ensigns or *caesarian* ornaments, which were the same that *Venus* had when he was made *caesar* by *Adrian*.

Imperator *Commodus Clodio Albino*. Alias ad te publice de successore atque honore tuo mihi: sed hanc familiarem & domesticam, omnem (ut vides) manu mea scriptam, epistolam dirigo, qua tibi do facultatem ut, si necessitas fuerit, ad milites prodeas & tibi *caesareum* nomen assumes. Audio enim & *Septimium Severum*, & *Nonium Murcum* male de me apud milites loqui, ut tibi parent stationis Augustae procuracionem. Habebis praeterea cum id feceris, dandi stipendii usque ad tres aureos liberam potestatem: & super hoc ad procuratores meos literas misi, quas ipse signatas excipies signo *Amazoniae*: & quum opus fuerit, rationalibus dabis, ne te non audiant quum de aerario volueris imperare. Sane ut tibi *insigne* aliquod *imperialis majestatis* accedat, habebis utendi *coccinei pallii* facultatem me praesente, & ad me, & quum mecum fueris, habiturus & *purpuram*, sed sine *auro*: quia ita & proavus meus *Venus*, qui puer vita functus est, ab *Adriano* qui eum adoptavit, accepit.

Here clearly the purple robes without gold are belonging to the *caesars* of those times, being the same with the *imperatoria insignia*, given to *Bassianus Caesar*. And they were called *imperatoria*, though they were rather and more properly *caesariana* only; the *caesar* being not *imperator* as it denoted supremacy. And his dignity is sometimes stiled *imperium*, and

caesarianum imperium. Neither was it merely titular and of expectation, but joined with an eminency of power, and for the most part such as wanted only a fulness of equality with the emperors. And the *caesar* was usually either *consul* with the emperor, or had consular or tribunitian power extraordinary, both which together gave him *imperii*, or command enough. Hence it is, that *ad imperii societatem adscribere*, and *ad imperium assumere*, or τὰ βασιλικὰ κοινωνῶν διαφαινεῖν κλήρος (as *Eusebius* his words are of *Constantine's* making his *caesars*) and such like, were phrases to make a *caesar*; there being another kind of taking a partner to the empire, by making another emperor that was in every degree equal with the first by the name of *augustus*, which began under *Antoninus Philosophus*, that took to himself his brother *L. Verus* for an equal partner in the empire by the name of *augustus caesar* and the emperor. They two are the *divi fratres*, so often occurring in the text of the civil law. And divers after *Antoninus* did the like; sometimes four or five emperors being together such partners: as also sometimes two *caesars* were ordained of equal dignity by such joint emperors, and sometimes more by one alone, as in that special example of *Constantine's* sons, who were at several times created, and had several parts of the empire designed them also for their government, and often were joined in rescripts with their father as other *caesars* also were with the emperors, touching which (beside what is known in *Justinian's* code) you may see most especial testimonies in the fragments of those of *Hermogenes* and *Gregory*. But the *caesars*, though such partners in government, were yet unequal in dignity and power, and only in *proximo fastigio collocati*, as *Galba* in *Tacitus* says of the ancient heirs apparent of the empire, and they were subject also to be degraded* from that title by imperial authority. The next testimony, most observable here, is that of *Constantius* his making *Julian* (afterward the *apostata* emperor) his *caesar*. After the death of *Gallus* that had been *caesar* (in whose life also described by *Marcellinus*, the practised power of the *caesars* is singularly manifested) *Constantius* was advised by those who grossly flattered him, that, although the empire were in danger to lose that fair part of it, which is now all *France*, the *Netherlands* and the nearer parts towards *Italy*, yet his own incomparable fortune and virtue, were rather alone to be trusted with the prevention of that loss, than that any other should be joined with him, especially as a *caesar*, because *Gallus* had been such an ill one. *Caveri debere caesaris nomen replicantes gesta sub Gallo*; as *Marcellinus* his words are. But he persisted notwithstanding in his resolution to make *Julian* (he was brother to *Gallus*, and cousin-german to *Constantius*) his *caesar*, and to that purpose, in his court at *Milan*, commanded those companies that were near to wait on him, and standing on an impe-

* Capitolin. in Albino, circa ann. Christi, cxc.

ann. 942.

* Videffis Lamprid, in Heliogabalo, ubi de Alexandro ejus caesare, & Landolph. Sagac. lib. 23. ubi de Nicephoro caesare, & opif. u in Caro.

u Vide diploma Romani imp. filiorum ex Joanne Monacho apud Baron. tom. 10.

rial throne encompassed with military ensigns, and holding *Julian* with his right hand, solemnly thus created him.

* Adfistimus apud vos, optimi (*so were his words*) reip. defensores, causae communi uno pene omnium spiritu vindicandae, quam acturus, tanquam apud aequos judices succinctus edocebo. Post interitum rebellium tyrannorum, quos ad haec tentanda quae movent, rabies egit & furor, velut impiis eorum manibus Romano sanguine parentantes, persultant barbari Gallias, rupta limitum pace, hac animati fiducia, quod nos per disjunctissimas terras arduae necessitates adstringunt. Huic igitur malo ultra apposita jam proserpenti, dum patitur tempus, si occurrerit nostri velstrique consulti suffragium, & colla superbaram gentium detumescant, & imperii fines erunt intacti. Restat ut rerum spem, quam gero, secundo robores effectum. *Julianum* hunc fratrem meum patruelem, ut nostis, verecundia, qua nobis ita ut necessitudine carus est, recte spectatum, jamque elucens industriae juvenem, in *caesaris* adhibere potestatem exopto, coeptis, si videantur utilia, etiam vestra consensione firmandis.

As he thus seemed to refer it to the will of them that were present, they all with a general voice of consent interrupted him, and he, after he had stood silent till they were silent also, went on with the creation.

Quia igitur vestrum quoque favorem adesse fremitus indicat latus, adolescens vigoris tranquill, cujus temperati mores imitandi sunt potius quam praedicandi, ad honorem properatum exfurgat, cujus praeclaram indolem bonis artibus institutam hoc ipso plene video exposuisse, quod elegi. Ego cum praesente nutu Dei coelestis amictu principali velabo.

At these words he put on him the imperial robe of purple (*avitam purpuram*, saith *Marcellinus*) and declared him *caesar*, which was seconded by public acclamation; and thus they committed to him the care of those parts of the empire that were in such danger, and concluded his oration.

Recepisti primaevus originis tuae splendidum florem, amantissime mihi omnium frater; aucta gloria mea, confiteor, qui justus in deferenda superiori potestate nobilitati mihi propinqua, quam ipsa potestate, videor esse sublimis. Adesto igitur laborum periculorumque particeps, & tutelam ministerii suscipe *Galliarum*; omni beneficentia partes levaturae afflictas; & si hostibus congregi sit necesse, fixo gradu consiste inter signiferos ipsos, audendi in tempore confideratus hortator, pugnantes accendens praecundo cautissime, turbatoque subsidii fulciens, modeste increpans desides, verissimus testis adfuturus industriis & ignavis. Pronide urgente rei magnitudine, perge vir fortis ducturus viros itidem fortes. Aderimus vobis vicissim amoris robusta

constantia, militabimus simul, una orbem pacatum (Deus modo velit quod oramus) pari moderatione pietateque recturi. Mecum ubique videberis praesens, & ego tibi quodcunque acturo non deero. Ad summa mihi propria sociis omnium votis, velut assignatam tibi ab ipsa republicae stationem cura pervigili defensusus.

This was presently confirmed by an exceeding noise that the soldiers made with striking their shields upon their knees; that being by custom their testimony of approbation, as on the other side, the striking of them against their lances was dissenting. *Caesaremque* (*Marcellinus* his words) admiratione digna suscipiebant imperatorii muricis fulgore flagentem. Some of the later *Grecians* (who frequently mistake) say that *Constantinus* crowned *Julian*, at this creation, with a crown proper to the *caesar*, or τὸ τῷ Καίσαρι εἰσέφ, as *Manasses* calls it; as if a crown or coronet had in those times been used at such creations. So he says also that the emperor *Justin II.* when he made *Tiberius* (afterward *Tiberius II.*) his *caesar*, crowned him with a *caesar's* crown, or,

—τὸ τῷ Καίσαρι κατὰ κοσμήσει στεφάνῳ

as his words are. But I rather think he is deceived in that of *Julian*. It was not, it seems, come into use, to create the *caesars* with coronets, but only with the purple robes; as we see expressly in *Theodosius* the younger his creation of *Valentinian* into the title of *caesar*, by sending *Helion*, his *magister officiorum*, to *Thessalonica* to him with the robe, as we read in *Olympiodorus*. But although we find not the use of creating a *caesar*, with any crown or diadem, in any writer of so ancient time; yet it is observable that *Crispus*, the first *caesar* to *Constantine the great*, hath a fillet on his head (expressing the ancient form of a diadem) in a coin that thus represents him. I conceive also that there is not authority enough to justify *Manasses*, in that of *Tiberius II.* Good authors that speak of him mention no coronet in his creation. *Manasses* indeed used the phrase of his own age (which was but about ccccxl years since) when it was known that from ancient time the *caesars* had coronets at their creations. But he was too careless in the distinction of times. It appears not in any good author, that any such use was until cc years after that *Justin* who died in dlxx of our Saviour. There is mention I know of coronations of sons^a under the emperors *Heraclius* and *Leo Iconomachus* especially, which fall in that space of time; but those were to make them joint emperors and *augusti*; not to create them *caesars*. But afterward in dclxviii.



* Ann. Christi, cccclvii. Arbetione & Lolliano, viii. id. Novemb. tom. 3. ann. 324. ^a Videfis chron. Alexandrin. pag. 880. Zonaram tom. 3. pag. 67. Landulph. Sagac. histor. 18. & 21. Cedrenum in Heraclio p. 335, &c.

⁷ Apud Phor. in myriobib. cod. 80.

⁸ Baron. annal.

tom. 3. ann. 324. ^a Videfis chron. Alexandrin. pag. 880. Zonaram tom. 3. pag. 67. Landulph. Sagac. histor. 18. & 21. Cedrenum

of Christ, or the xxviii. of *Constantine Copronymus*, it appears (and there I think it first appears by express mention, although perhaps some use of it might have been before) that the *caesars* had coronets in their creations. For that emperor together with his son *Leo*, whom he had crowned into the dignity of joint emperor, when he created his two younger sons *Christopher* and *Nicephorus* into the title of *caesars*, put on them their purple robes and their *caesarean* coronets; the patriarch of *Constantinople*, *Nicetas*, performing the holy office of solemn prayers at the creation. So I understand that out of ^b *Theophanes*, as we have it in *Latin*, among the acts of that year of *Copronymus*. *Kal. Aprilis*, are the words, *filios suos ex Eudoxia conjugē creatos, Christopherum scilicet & Nicephorum, postera die qua sanctum celebratum est pascha, caesares ordinavit; patriarcha orationem faciente, & imperatoribus chlamydes & caesareae* (or *caesaricias*, as it is in *Landulphus Sagax*) *imponentibus galeas*. These *caesareae galeae* were, perhaps, some close crowns proper to the *caesars*, or helms with crowns on them. But that they were ornaments of the head proper for the *caesars*, is most plain; as it is also that they were some kind of crowns or coronets, if we believe *Zonaras*, that says expressly that the *caesars* were crowned, *τὴν αὐτῶν βασιλικὴν ἐξέφερε*, saith he; *he crowned them two caesars*. Indeed *Cedrenus* speaking at once of the crowning his wife *Eudoxia* into the title of *augusta*, and of the making of these *caesars*, mentions no crown or coronet in their creation, but only says that *καίτοις ἐπιβύσας, τὸ πατριάρχης ποιήσας τὴν ἐκείνων, ἡμὰς ἐποίησε καίτοις*, *he made them caesars, the patriarch performing the solemnity of prayers*. But *Theophanes* and *Zonaras* together make it as clear that they were crowned also, as others with them do, that they were made *caesars*, which is grossly mistaken by some (^c who bear at this time great names, especially in the church story) while they deliver that these two sons of this *Constantine* and their youngest brother also *Nicetas* were at that creation made emperors, or *augusti renuntiati*, as their words are, which yet is not more absurd than that of the old author of the chronicle of *Alexandria*, where he says that *Constantine the great*, *Κωνσταντὸς τὸν υἱὸν αὐτοῦ αὐγεσθον ἀνέδειξε*, *declared his son Constans an augustus*, or *supreme emperor*, when he should have said *καίτοις* or *caesar*. But also *Nicetas* the youngest of the three sons of *Copronymus*, was created into a less title than *caesar*, which was called a *nobilissimus*, whereo more presently. And the passage which concerns this *Nicetas* in *Theophanes*, shews also somewhat more of the publick solemnities which concurred at the creation of those *caesars*, and therefore it deserves place here. *Pari modo* (so it is in *Sagax*) *& Nicetae novissimo fratri eorum, nobilissimo facto, superposuit ei chlamydem & auream coronam, & ita processerunt, iactantibus imperatoribus Hypatia, & Trimi-*

sia, & Hemisia, & Numismata nova usque ad magnam ecclesiam. Those *Hypatia* and the rest were monies of that time cast among the people, as the fashion was in such solemnities. And this form of creation with the *purple*, a *coronet*, and the solemnities of the patriarch's holy office continued down unto the eastern empire (for ought I have observed to the contrary) as long as the name of *caesar* designed the heir apparent. But whereas the *caesar's* purple robe, as it appears, by that to *Albinus*, was to be *sine auro*; it seems, in the later times it had borders of gold on it. For *Zosimus*, speaking of *Dalmatius* one of the *caesars* of *Constantine the great*, hath *ἐστὶν χρῶμα τοῦ κοκκοῦ αὐρεὶ ἐν περιεσσοῖς* *he used the purple with gold*. But by the way, as touching this *Dalmatius* or *Delmatius*, as he is called in the coins of that time; it is specially considerable, how he was a *caesar*, and whether in the same notion as the title then signified a coheir apparent of the empire. For if not, then in this singular example, *caesar* at that time was also another dignity; or at least another kind of the same dignity. That he was a *caesar*, is most clear by the testimonies not only of divers of the later *Greeks*, *Paulus Diaconus*, *Orosius* and such more, but of *Zosimus*^d also, and of some coins that stile him so; although *Eusebius*^e so particularly speaking of *Constantine's* three *caesars* severally designed in his *decennalia*, *vicensalia*, and *tricennalia* (being his three sons *Constantinus*, *Constantius*, and *Constans*) expressly excludes all others from that title as it denotes a successor or heir apparent. *Baronius*, to reconcile these, would have it that he was a *caesar* only in title, but not made so for participation of the empire, as a coheir with the rest. *Tres tantum*, saith^f he, *in successione atque administratione imperii creati caesares, fuerunt; Constantinus filius, atque ejus fratres Constantius & Constans*. *Delmatius vero titulo tenuis eam dignitatem est consecutus*. But this interpretation no more reconciles, than the bare assertion of one part of a contradiction reconciles both. For other writers (or good part of them) say expressly that he was one of the successors or coheirs also. *Orosius* directly; *Fuit inter successores Constantini & Dalmatius caesar*. So *Paulus Diaconus*; and *Zosimus* also, that he was a kind of partner of the empire with *Constantine* the son. I should have thought rather that he had been made a *caesar* only by^g *Constantine's* last will, which might have stood with that of *Eusebius*, whose oration (wherein he chiefly speaks of this) was made in his life-time. And in the description of his life (which he hath also) the will might either be unknown or neglected by him, and so *Dalmatius*, that way, omitted. Thus I should have rather thought, if the testimonies touching the time wherein he was made *caesar* were not so numerous and consenting. *Orosius*, *Paulus Aquilegiensis*, the author of the chronicle of *Alexandria*, divers other, place that in the *tricennalia* of *Constantine*, which

^b Ap. Landulph. Sagax. hist. 22. & Baron. tom. 9. ann. 768. *stant. lib. 4. cap. 40. & orat. de laudib. Constantini.*

^c Bzovius in epit. Baronii.

^f Tom. 3. ann. Christi 336.

^d Vide inf. §. 6.

^e De vita Con-

^g Videlicet Sigon. de occid. imperio,

were some three years before his death. But unless we give credit to them (being such as might be all deceived from some one mistaking, as it frequently happens) the knot remains still untied, and so I must leave it. But for the power and dignity of a *caesar*, and his difference from the emperor by his crown; this of *Corippus* is observable, as it occurs in *Calinicus* his speech to *Justin II.* who was made *caesar* by *Justinian*.

*Augustum, Justine, genus te principe dignum
Te dominum sacrae quis non praedixerit aulae?
Cum magni regeres divina palatia patris
Par extans curis, solo diademate dispar;
Ordine pro rerum vocitatus^h cura palatii,
Dispositu nam caesar eras, cum sceptrum teneres
Fortis adhuc senior, regni tu summa regebas
Consilio moderata gravi. Nil ille peregit
Te sine; magnanimus seu fortia bella moveret,
Foedera seu pacis cum victis victor iniret.*

And to those elder times is that of pope *Leo XV.* to be referred, where he speaks of *caesars*, and other secular dignities, as of the examples to the distinction of bishopricks. *Sicut omnis mundana potestas* (saithⁱ he) *his gradibus dignitatum a se invicem distat, id est, ut primus sit augustus vel imperator, deinde caesares, deinde reges, duces & comites atque tribuni, ita & ecclesiastica dignitas ordinata a sanctis patribus invenitur.* For these I take to be his own words, though he cite some antienter popes for the matter. And although he use the present tense (which to him was about M. of our Saviour) yet it is clear that the title of *caesar* in that age was not the title of the heirs apparent of the western empire, to which we must chiefly refer his expressions, as is anon shewed.

IV. The more solemn attributes of honour used as proper to the *caesars*, were especially two. That antient title of *princeps juventutis*, and *nobilissimus*. *Princeps juventutis* is usually given them. In a silver coin of *Marcus Antoninus*, his *caesar*, *Commodus*, is thus expressed. L. AURELIUS COMMODUS CAES. AUG. FIL. GERM. PRINC. JUVENT. So is *Maximus* the *caesar* of *Maximinus*, so *Philip* the *caesar* of *Philip*, so *Constantine* one of the *caesars* of *Constantine the great*, in the coins of their times. The like testimonies occur frequent in old inscriptions: and^k sometimes also (after that the name of *caesar* was in use for the apparent successor) the name of *caesar* in honorary inscriptions is omitted, and only *princeps juventutis* added with other common titles, as if that enough by itself denoted the *caesar*. For *nobilissimus*; sometimes it is joined with that of *princeps juventutis*, sometimes it is alone, as peculiar to that dignity given him. In the coins of *Constantine the great*, N. C. or NOB. C. or CAES. is added to his *caesars*, for *nobilissimus caesar*. So in those of *Constantius*, that have *Julian's* name. And *Severus* and *Maximinus*, that were *caesars*

to *Galerius*, and *Constantine* are expressed by NOBB. CC. for *nobilissimi caesares* in^l the code. So *Constantius* (or *Constantinus*, as some call him; but *Constantius* is the right name) and *Maximinian* the *caesars* of *Diocletian* and *Maximian* the emperors, were titled also, in rescripts wherein they joined^m with the emperors, thus; *Imperatores* *Diocletianus* & *Maximinus* AA. & *Constantius* & *Maximinianus* *nobilissimi caesares*. And I doubt not but that in those expressions, *iidem* AA. and CC. which are so frequent in the codes, for *iidem augusti* & *caesares* with relation to those two *caesars*, this of *nobilissimi* is understood for almost as due a title to the *caesars*, as *augusti* to the emperors. And in an inscription found in *Cumberland* near *Thoresby*,ⁿ and there now remaining, *Philip* the *caesar* of the emperor *Philip*, hath it.

IMP. CAES.

M. JUL.

PHILIPPO

PIO FELI

CI

AUG.

ET M. JUL. PHI

LIPPO NOBILIS

SIMO CAES.

TR. P. COS.

Others also occurring in *Gruter* shew it often, out of whose store I have taken this one that represents the solemn attributes of dignity given to the *caesar*. It was made by *M. Aurelius Valentinianus* lieutenant of the eastern part of *Spain*, to the honour of *Carinus*, *caesar* to *Carus* the emperor, and is yet extant at *St. Anne's* in *Tarragona*.

VICTORIOSISSIMO

PRINCIPI JUVENTUTIS

M. AUR. CARINO NOBIL.

CAES. CONS. PRO COS

M. AUR. VALENTINIANUS

V.C. PRAE. PROVINC. HISP.

CITE. LEGG. AUGG. DEV-

OTUS NUM. MAJES. Q. EJUS.

Here is also *numen* and *majestas* attributed to this *caesar*, which is very common in inscriptions made to the honour of the emperors, as isⁿ before noted. But not so to the *caesars*; as neither are *fortissimus*, *foelicissimus*, and such more, which yet are sometimes given to them. And though the empresses sometimes and their children had this attribute of *nobilissimae*, and oftentimes also it were put among the emperors titles, yet it was thus most peculiar to the *caesars*; whence also we have that in *Nazarius* his panegyrick to *Constantine*. *Nobilissimorum caesarum laudes exequi velle, studium quidem dulce, sed non cura mediocris est.* It was not by chance there given to the *caesars*, but out of the judgment of *Nazarius*, that knew how proper it was, and therefore here and elsewhere in the panegyrick so used it.

^h Vide infra, §. 33.
andro Hellogab. caesare.
den in Brigant. pag. 637.

ⁱ Epist. 4. tom. 3. concil. part. 2. ed. Bin. 1618.

^k C. tit. de feriis, epigraph. l. quoniam.

^l Pag. 221.

^m Vide his inscript. 8. apud Gruter. pag. 163. de Alex-
* C. tit. de juris & facti ignorantia l. 5. cum falsa, &c.

V. But as out of *caesar augustus* in the emperor's title, *caesar* was taken for the heir apparent, and thus stiled *caesar nobilissimus*; so afterward was *nobilissimus* also singled thence for the creation of another dignity, as you see in that example of *Nicetas* before cited out of *Theophanes*, with whom *Zonaras* agrees also saying that *Copronymus* τὸν Νικητὰν ἐξέτελε νοβελίσσιμον, crowned *Nicetas* into the dignity of a *nobilissimus*. The crown or coronet was of gold, but the fashion appears not. The dignity was next to the *caesar*, and a degree, it seems, that gave some expectation of the title of *caesar*, as *caesar* did of *augustus* or emperor. The first mention of it is in *Zosimus*. He says that *Constantine the great* created *Constantius* and *Annabalianus* into the titles of *nobilissimi*, and that they had robes of purple with gold. His words are, speaking of the emperors *Constans*, *Constantius* and *Constantine*, the sons of *Constantine the great*, Σωτήριον δὲ αὐτοῖς τρόπον τινα Δαλματίου καί τινος ὡς Κωνσταντίνου καταθέσθαι ἐπὶ τοῦ Κωνσταντίνου ἀδελφοῦ ὡν αὐτῶν, καὶ Ἀνναβαλλιανῶν ἐδῆνι ἡρώμενοι κοκκοβαφεῖ καὶ περιερύσσει, τῆς τοῦ λεγομένου ΝΟΒΕΛΙΣΣΙΜΟΥ παρ' αὐτοῦ Κωνσταντίνου τύχοντες ἀξίας, αἰδοῖ δὲ συγγενείας, That they had in a manner for partners with them in their empire, *Dalmatius* (whom *Constantine* had created a *caesar*) and also *Constantius* his brother and *Annaballianus* that used the purple robe with gold, and had by reason of the regard that *Constantine* bare to their blood, received of him the dignity of a *nobilissimus*. For so it is to be understood; and not as if this *Constantius* and *Annaballianus* had been made *caesars* as well as *Dalmatius*, as some have misconceived it. Others are as much deceived, that say *Annaballianus* was made a king by *Constantine*. In the following times we have other examples of this dignity. *Constantine*, that was made emperor in *Great Britain*, in the time of *Honorius*, having two sons, *Constans* and *Julian*, made *Constans* a *caesar*, and at the same time Ἰσλαβόν χήροτυν νοβελίσσιμον (saith *Olympiodorus*)^p or created him a *nobilissimus*. The same author of *Theodosius* the younger; that first he created *Valentinian* a *nobilissimus*, and afterward a *caesar*. So *Marcellinus Comes*; that *Justin* the first made *Justinian* first a *nobilissimus*; and after that, created him *caesar*. *Anno regiae urbis conditae* (saith he, meaning *Constantinople*) cxcvii. *Justinus imperator Justinianum ex sorore sua nepotem, jamdudum a se nobilissimum designatum, participem quoque regni sui successoremque creavit*. The distance of time between these creations was about ix years, as it is observed by the learned *Nicolaus Alemannus*^q who notes also that there was a title of *protonobilissimus*, which he finds given to *Eumathius* a greek author of the loves of *Nysminius* and *Nysminia*. Under *Leo* the son

of *Copronymus* there were three that had the title of *nobilissimi* together; *Nicetas* and *Anthimus* (both created by *Copronymus*) and *Eudoxius* created by this *Leo* being his brother. And *Alexius Comnenus* (afterward emperor) was made a *nobilissimus* by the emperor *Nicephorus Botoniates*. They had also among their so various titles in the eastern empire, besides a *protonobilissimus*, a πρωτονοβελίσσιμος πέρτατος, as if you should say *primo nobilissimo supremus*, as in the subscription to that case of *Alexius Capandrites* touching the marrying of two cousin germans.

VI. But afterward the title of *caesar* no longer denoted the successor apparent either in the eastern or western empire. In the eastern, when *Alexius Comnenus* the first about MLXXX. had, as he was bound by promise, created his brother-in-law *Nicephorus Melisenus*, into the title of *caesar*, meaning nevertheless that he should not be the successor in the empire, he created his own brother *Isaacius Comnenus* into the title of *sebastocrator*, as if you should say *august-imperator*, and in him made that title second from the crown, and *caesar* third. Ἐφημερίδα τοῦ (saith *Codinus*) τῷ ἀδελφῷ τὸ τῷ σεβαστοκράτορι ἵκνουσ, δούλερον διονεῖ βασιλέα τῶτον πεπονηκώς, καὶ ὑπεβίβασεν ταῦτ' ἑ καί τινος, he gave his brother the title of *sebastocrator*; making him as it were a second emperor, and put the *caesar* after him. To the same purpose the lady *Anne*,^u whose corrupted text may be well supplied by *Codinus*, where he speaks of this. And she also says that *Alexius* commanded that both the *sebastocrator* and the *caesar* should be publicly crowned, but with such crowns as were much inferior to the richness of his own crown; Οὐ μὲν ἀλλὰ (are her words to the same sense) καὶ ἐμέμασαν ἐν ταῖς πανηγύρεσι ἡμέραις αὐτῶν φερανέσθαι κοροπέτατε, τόν τε σεβαστοκράτορα καὶ τὸν καίσαρα κατὰ πολὺ διαφερέσει τῇ πολυτελείᾳ τῷ διαδήματι, ὃ αὐτὸ ἐφεράνωτο. But the common opinion is, that afterward the title of *despote* or ὁ δεσπότης (which is the same with *lord*, *sire*, or *monseur*) absolutely spoken, was made proper to the heir apparent, as the name of the prince, by excellence, is with us.⁽¹⁶³⁾ For the emperor's brothers, younger sons, and sons-in-law, and some other princes, are often *despotes* too, as the younger sons and brothers of kings and others of less dignity, are at this day called princes. But the *despote*, they say, by excellence signified the heir apparent there, as the prince in *England*, the *monseur* in *France*, when the heir apparent is a brother, and the like. So that after this of *despote* came thus into use, *caesar* (they say) was a fourth dignity from the emperor; *despote* and *sebastocrator* being between them. And the beginning of this change of the first dignity after the emperor into *despote*, is referred^w to the time of *Alexius Angelus Com-*

^o Chronic. Alexand. p. 668.

^p Apud Phot. in myriobib. cod. 80.

^q Not. ad Procop. hist. arcan. pag. 42.

^r Landulph.

Sagax, l. 23.

^s Zonaras, tom. 3. pag. 221.

^t Juris Graeco-Rom. l. 4. p. 288.

^u Anna Comnena, p. 59. Alexiad. 3. Zonar.

tom. 3. fol. 234. Glyc. part. 4. & Codinus pag. 7. edit. Grefferianae cuius commentar. ad Codin. vide l. 2. c. 7. Meurf. in glossar. verb. δεσπότης, σεβαστοκρ. &c.

^w Videtis Pontan. in explic. dignitat. prefix. Protovestiarior. p. 9, & 10. & Fr. Jun. ad Europalat. p. 262. in utroque plane *Alexius Comnenus* (primus scilicet) in *Alexium Angelum Comnenum*, ubi de hac re loquuntur, mutari debet. Confusio enim ibi manifesta ab oscitantia sive librorum sive auctorum, irrepit.

nus or *Alexius II.* who reigned about LXXX years after *Alexius I.* and created his son-in-law *Alexius Palaeologus*, that had married his eldest daughter the lady *Irene*, into this dignity. *Filiam natu grandiore* (saith *George Phranzes*, as the latin is; for we have him not publicly in greek) *Irenem vocabulo, purpurea induere sandalia iussit, quod illam & cui desponderetur successores & haeredes post obitum suum fore constituisset. Quam cum Alexia Palaeologo in matrimonii communionem dedisset, mox eundem ad despotatus honorem extulit.* Others of the greek writers testify also, that he was created a *despote*; and some learned men of this age suppose him the first that had it in this sense. But for so much as I have observed touching it, the truth seems to be that about the time of the first *Alexius* (under whom those titles of *sebastocrator*, *sebastos*, *panhypersebastos*,^{*} and such more began; the name of *augustus* and *sebastos*, being but the same, and were so first communicated unto subjects; and that ancient title of *caesar* so became much less than it was wont to be) the heirs apparent being known chiefly by their nearness of blood, and that empire being now settled as hereditary, had no such singular name as denoted them only; but were indeed called *despotes*, no otherwise than as (for example) in the time of our *Edward III.* the *black prince* being duke of *Cornwal*, might have been called duke *Edward*. If he had been so, none would have concluded thence that the title of duke had properly denoted the heir apparent, but it had been only an accidental name to him, which while he bare with the rest of his brothers, might be so vulgarly applied to him; the rest being dukes, and called so as well as he. For the title of *despote* was become a special dignity, communicable to many as duke is with us, and so was that of *sebastocrator* also. And *despotes*, *sebastocrators*, and *caesars*, and *mega-domestici* and such like, were proportionably in regard of distinction as dukes, marquesses, earls, viscounts, and the like, with us. *Georgius Acropolites* saith expressly that *Theodorus Lascaris* created *despotes*, *sebastocratores*, *mega-domestici*, and such more. *Δεσπότης τε προβαλετο ὁ σεβαστοκρατορας, μεγαλῆς τε δομεστικῆς, &c.* are his words. Where we see plainly that the title of *despote* was given to divers, as in particular examples also appears in the same author that says that the duke of *Venice* was created into the same dignity, by *Baldwin* the first emperor of *Constantinople*. But therein no thought was of designing a successor. And when *Michael Palaeologus* was lord protector of *John Lascaris* the son and successor of *Theodore Lascaris*, the state thought it fit, that being in so high a place of office, he should also be honoured with the highest dignity, and therefore they created him a *despote*, which was τῆς βασιλείας ἑγγίς αἰζῶμα or the next dignity to the emperors, as *Nicephorus Gregoras* calls it, not any such title as designed him for a successor, though he afterward most wick-

edly made himself one. And when this *Michael* was emperor, his brother *John* was a *despote*, but without pretence to succession in the empire. Therefore also when he desired singularly to honour[†] his younger son *Constantine porphyrogenetus* (whom he held most dear, and would gladly have made his successor, if he could have dispensed with the birth-right of *Andronicus* the elder) he made him not a *despote*, but created him into an innominate dignity that raised him above the dignity of a *despote*, and made him next himself and his eldest son *Andronicus*, whom he had taken to himself as a kind of partner in the empire. So also *Joannes Cantacuzenus* that was emperor about LX years after, created his eldest son *Matthew* into this innominate dignity, after he had made his younger *Manuel* and his son-in-law *Nicephorus Ducas* despotes. *Missa triremi* (so says *Cantacuzenus* himself; his greek being not published) in *Thessaliam filium Manuelem accersit eumque Constantinopoli cum Nicephoro Duca genero suo despotam declarat.* *Matthaeum seniore filium nulla dignitate nominatim cobonestat, honore tamen supra despotas effert, nempe ut esset imperatori proximus quem honorem primum Palaeologorum imperator Michael, propter filium Constantinum porphyrogenetum invenit, videbaturque ea dignitas despotarum dignitati antecellere.* So that from the time at least of this *Michael*, although the highest nominate dignity under the emperor were *despote* (which many had at once) yet there was an innominate dignity above it, by which the heir apparent, whether he were created a *despote* or no, was solemnly raised above all the *despotes*, but having no other special name for his dignity, was saluted and mentioned for the most part only by the name of *despote* with such attributes sometimes as the stile of the court had[‡] made belong to it. Thence is it that *Andronicus* while he was son and heir apparent to that *Michael Palaeologus* was stiled only a *primogenitus charissimi in Christo filii nostri Michaelis Palaeologi imperatoris Graecorum illustris*, in the letters of pope *Gregory X.* to him. Thence also it is that in *Codinus*, the heir apparent is expressed generally by the emperor's son, or ὁ υἱὸς τοῦ βασιλέως, and the despotes are mentioned by themselves, as of an inferior dignity. And *Emanuel Palaeologus* had six sons, *John*, *Theodore*, *Constantine*, *Andronicus*, *Demetrius*, and *Thomas*, of whom *John* first succeeded in the empire; all the rest are called^b *despotes*, having had the dignity with several commands bestowed on them by their father. And in the life of *John* after he was emperor (to whom *Constantine*, *Theodore* being dead, was next heir) we see that the two youngest brothers *Demetrius* and *Thomas* had the same titles generally attributed to them. For in the general council of *Ferrara*, *Demetrius*, that there accompanied his brother the emperor, is^c called ὁ δεσπότης κύρις Δημήτριος or the *despote* the lord *Demetrius*, or *dominus*

* Anna porphyrogeneta Alexiados, l. 3. & Georg. Codin. σελ. 1091. † Nicephor. Gregor. l. 6. Cantacuzen. hist. 4. c. 5. ‡ Videtis sup. p. 223. & Codinum σελ. 109. cap. 3.

^a Tom. 3. concil. part. 2. pag. 746. ed. 1614. & Laert. Cherub. bullar. tom. 1. in Greg. 10. constit. 2. pag. 121. ed. 1617. Romae.

^b Apud Zygmalam. in hist. politica, pag. 17. Georg. Protovestiar. lib. 2. &c.

^c Concil. tom. 4. part. 1. pag. 413. & 415. edit. Bin. 1618.

Demetrius (for so *κῆρς* is very often interpreted out of the later greek) and so absolutely *ὁ δεσπότης*, the *despote*. But *Constantine* indeed being the next heir, stiled himself in his letters some years before to the general council of *Basil** *Constantinus in Christo fidelis despotus Romanorum Palaeologus*, where *Romanorum* is added to *despotus*, as in the stile of the emperors of the east it was to *imperator*, being made from *Πρόμαχον* the greek of *Romanorum*, which was retained in the stile of the eastern emperors as *νέα Ρώμη* or *new Rome* was for *Constantinople*. And perhaps, *despote* with this addition of the *Romans* to it, was affected by him as the fittest to express him as heir apparent. But for the communicated use of *despote* also; beside the more obvious testimonies of it in the stories of that empire, observe the deed of confirmation made by the youngest of those brothers, *Thomas*, to *Demetrius Palaeologus Dermocaita* and *Johannes Rhofata*, of a piece of land in *Patra*, which the elder brother *John*, while he was a *despote* only, had given them. *Ἐπεὶ τοῦδε ἡγεῖσθαι* (so are the words of the deed) *παρὰ τῷ αὐθέντι μου, τῷ βασιλέως, τῷ ἀδελφεῷ μού, ὧν τῷ δεσπότης, ἔτε κῆρς, Δημήτριος, Παλαιολόγος, Δερμοκαίτης καὶ κῆρς, Ἰωάννης ὁ Ρωσσιτῆς περὶ τῷ ὡςιοχλῷ τῷ Πατρῶν περὶ βίλλῃς η, &c.* *whereas Demetrius Palaeologus Dermocaita and John Rhofata were infeoffed by my lord the emperor, my brother, while he was despote, of a close in the territory of Patra, &c.* Then he subscribes his name to it in vermilion (as the fashion was) thus *Θωμᾶς δεσπότης Πορφυρογέννητος*, the *despote Thomas Porphyrogenetus*; where plainly he calls his eldest brother that was heir apparent, *despote* no otherwise than as he doth himself being youngest. This was made some few years before this empire was lost to the *Turks*. And *Codinus* makes it most fully clear. *Οἱ τῷ βασιλέως υἱοὶ* (saith he) *δεσπότης* *περὶς αὐτοὶ τῷ ἀδελφῶν, καὶ τῷ γαμβρῶν τῷ βασιλέως, δεσπότην καὶ αὐτῶν ὄντων*, the *despotes that are the emperor's sons have the precedence of such as are his brothers and sons-in-law, although they be despotes also*. And speaking of the solemnities antiently used in the court of *Constantinople* on Christmas-day, he says the emperor stood crowned with his diadem, having his other ensigns of majesty about him, as also did his son *ἐν ἐσσεμμένῳ δρίσκειται*, if he were crowned also, that is, if he were made a partner of the empire, and so an emperor with his father, as oft-times it happened. But if he were not so crowned, he had on his rich veil, (or *φωαλὶς*, as they called it) and on his head a coronet that is expressed by *τῆραν*, and distinguished from *τέμμε* which he wore for the imperial crown. And he stood so (saith he) that he was seen from the knees upward, *τῷ δὲ δεσπότην τὰ μὲ λοντὰ τῷ σωματικῶν κρύπτουται, ὡς δὲ τῷ τῆρας καὶ ἄνω φαίνονται*, or the *despotes were seen only from the breast upward*. These passages shew plainly, that the name of *despote* taken in any notion whatsoever was not

proper only to the heir apparent. Though the coronet he speaks of were perhaps of no other kind than that of the *despotes*, whereof more presently. Neither indeed can I think, but that after such innovation of titles, as made the dignities of the empire almost ridiculous in those strange and affected compounds, the emperors in the later times were even ashamed to coin any more new words to design the heir apparent, and therefore were content that he should be called *despote* only, not as by a name that distinguished him singularly, but as one who by that title and his christian name, together with the known honour of his birth-right, was sufficiently designed. But because such an opinion (though it be a mistaking) is, that this title of *despote* absolutely spoken did denote the next heir apparent in that empire, and for that the heir apparent was a *despote* too (though not so singled out by that title, but that others had it with him) neither was their any higher dignity that had a name in that state, therefore I add that of a *despote's* creation, which was thus in that empire.

The emperor sitting on his throne in his imperial habit, he that was to be created a *despote*, was solemnly led up to him between two lords of the court in their robes and ornaments of state. He had on a crimson mantle wrought with pearl, and buskins of crimson and white intermingled, both which the two lords put upon him at the lower end of the room where the ceremony was performed. And these were those *τῷ ἀξίας δεσποτικῆς σύμβολα*, or the ornaments of that dignity mentioned in *Gregoras*, where he speaketh of *despote John*, that was brother to *Michael Palaeologus*. The emperor standing up, used these words to him, *ἡ βασιλεῖα μου τοῦδε ἀλλεται σὲ δεσπότην*, my majesty creates you a *despote*, at which words the *despote* kissed the emperor's foot, and upon his rising from the kiss, the emperor put on his head a rich coronet which they called *stematogyron*. It had four arches raised on it, if he that was created were a son; one before, another behind, and of each side one. But if he were a son-in-law (or, it seems, of any further degree from the emperor) then it had one only, and that before. (164) And so, with the acclamations of long life, the creation was dispatched. In like manner were the *sebastocrators* and *caesars* of the later time made, saving that they had not such coronets; at least, what kind of coronets they usually had, appears not. But when the emperor *Cantacuzen* created his wives brothers, *John Asanius* and *Manuel Asanius* into the title of *sebastocrators*, they had coronets like to those of a *despote*, when he was a son-in-law only. Other dignities that followed the *sebastocrators*, as the *panhypersebastus* and the rest had no coronets, but were distinguished especially by their caps and robes. This title of *despote* hath also been attributed to some princes of territories near adjoining to the eastern empire with the addition of the territory unto it, as *despote of Bulgaria* or *Rascia*, of

* Ibid. pag. 234.

d Crus. Turco-graec. l. 4. p. 343. num 59.

Circa an. Chr. MCDXII.

e περὶ ὅρων. cap. 6. §. 40. & videbis

cap. l. 9. §. 6. & 7.

f Codinus de officiis Constant. cap. 18.

g Idem cap. 19.

h Juris Graeco-Rom lib. 3. p. 186. & de

pilis aliquae excellentiorum dignitatum ornamentis, vide Codinum περὶ ὅρων. cap. 3. & 4. & 7.

i Vi-

defis, praeter historias, quae obviae sunt, decretorum Alberti 2. imper. c. 21. Leuncl. pandect. Turcic. & Grefser. ad Codin. l. 2. c. 1.

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Mol-

Moldavia, and such more : and the latin of the time made it *despotus* from *δεσπότης*. And sometimes the same person stiled himself *despote* and king together. For in the letters of *John despote* of *Moldavia*, in MDLXII. to *John Zygomalas* chief advocate of the church of *Constantinople*, the subscription is *ἡ δεσποτικὴ βασιλεὺς Μολδαβίας* or *despote king of Moldavia*.

VII. After the western empire (which is commonly called the empire transferred from the *Greeks* to the *French*) was settled in *Charles the great*, the heir or successor apparent of it, had usually the dignity of *king of Italy*. *Romani* (saith *Sigebert*) *uno omnium consensu Carolo regi imperatorias laudes acclamant, eumque per manum Leonis papae coronant, caesarem & augustum appellant*. *Pipinum vero filium ejus regem Italiae collaudant*; (¹⁶⁵) as if they had meant that the title of king of *Italy* should be proper to his son and heir as he was emperor, and not otherwise, although about xx years before this *Pipin* were crowned ¹ king of *Italy*, whilst his father was king of *France* only. So after *Pipin's* death, his son *Bernard* was created king of *Italy* in the same right. So *Lotharius* the son of *Ludovicus Pius*. Afterward when the empire was transferred to the *Germans* from the *Franks*, *Italy* being full of tumult, the heir apparent was crowned king of *Germany*. *Otho the great* crowned his son *Otho* (afterward *Otho II.*) into that title at *Acken*,* by the hand of the archbishop of *Cologne*. And thence the kingdom of *Germany* and of *Italy* both were taken to belong to the heir apparent or successor. Therefore (after such time as the empire was become elective) we see (for example) that *Frederick Barbarossa* procured his son *Henry* (afterward *Henry VI.*) to be chosen into the title of king of *Germany*, and crowned at *Acken*† by *Philip* archbishop of *Cologne*; and this *Henry*, after he was thus crowned, earnestly endeavoured to get the crown of *Italy* also, as that which had been ever joined with *Germany*, in all those that had preceded him in the title of king of *Germany*. *Affectabat eximio studio* (saith *Sigonius*) *Italicis regni coronam Henricus Frederici filius, ut qua omnes affecti fuissent, qui ante se regnum Germaniae obtinuerant*; and afterward he had it, and was crowned by *Lambert* archbishop of *Milan*. But although in the one place the apparent successor was thus crowned into the title of king of *Germany*, and at the other into the name of king of *Italy*, yet, as by a synonymy, he was called *Römischer kōnig*, or *rex Romanorum*, which was, as at this day it is, the especial title of dignity of the designed successor. That name we see taken by him in the great act of state, by which the cities of *Italy* to this day challenge their best liberties, that *de pace Constantiae*; *nos † Fredericus imperator & filius noster Henricus Romanorum rex, concedimus vobis, civitatibus locis, &c.* yet also that was before he was crowned king of

Italy. The like examples of such as having been chosen for the successors apparent of the empire were stiled *reges Romanorum*, or kings of the *Romans* in the life of the emperor, are frequent. There have been great disputations about that kind of^m choice, which are specially remembered in the *German* stories of *Charles IV.* and *V.* And the duke of *Saxony's* opposition to the choice of *Ferdinand* that was made king of the *Romans* under *Charles V.* is specially famous in those stories. But for the solemnities of choice and coronation, there is a good example in that of *Maximilian* (afterward emperor of that name the I.) created king of the *Romans* in the life of his father *Frederick III.* which is at large in *Goldastus*ⁿ with other treatises concerning this dignity. Touching it also there is enough to be obviously read in the golden bull of *Charles IV.* in *Gerlacius Buxtorfius* upon it, in *Onuphrius de comitiis*, and such more.

But although in the elder times, the *caesar* being heir or successor apparent were subject to the jurisdiction of the emperor without question, as it is before noted, and that also after the empire settled in the west upon *Charles the great*, the king of *Italy* being the designed successor had no other kind of supremacy in regard of the emperor (as it is especially clear in the example of king^o *Bernard*; who for treason against the emperor *Ludovicus Pius* was legally condemned to death, and by the emperor's indulgence suffered only the loss of his eyes) yet some good lawyers of the empire affirm, that the king of the *Romans* chosen in the emperor's life-time, is of so equal power with the emperor, that he is not subject to his jurisdiction, but that he is *alterum imperii caput*. And it is true that the king of the *Romans* there was wont to make edicts as the emperor, and to write himself *von gottes gnaden Römischer kōnig zu allen zeiten mehzer desz Reichs, in Germanien, zu Hungern, Bohem, Dalmatien, Croatien unnd Sclabonien, &c. kōnig*, as *Ferdinand's* title is under *Charles* the fifth; that is, *by the grace of God, king of the Romans, always augustus, king of Germany, of Hungary, of Bohem, Dalmatia, Croatia and Slavonia, &c.* But on the other side, some of their lawyers also deny that he hath any other power than what is to be exercised in the emperor's name, I dispute not this here, but refer you rather to *Matthias Stephani* his *synopsis materiae jurisdiēt. lib. 2. part 1. cap. 2. §. 49. & seq.* *Johas Nolden* his *synoptica tractatio de statu nobilium, cap. 2. §. 34. & seq.* *Goldastus* his *politica imperialia, part. 2.* *Joannes Wolfius* in *thes. 9. discurs. 30. Juris publici tom. 2.* *Gerlacius Buxtorfius* ad *auream bullam dissert. thes. 77. lit. c.* But they who will have his dignity highest, allow yet that he is bound *imperatoris majestatem comiter observare*, and not free from the duty of reverence, though (as they say) he be from jurisdiction.

^k Cruf. Turco-graec. l. 3. p. 247.

^l Regino in chron ann. 781. Sigon. de regno Italiae, l. 3, &c.

^{*} Circa-an. Chr. DCCCCLXI.

[†] Ann. MCLXX.

[‡] Sigon. de regno Italiae lib. 14. & in extremo feudorum.

ⁿ Videffs Gerlac. Buxtorf. ad c. 1. aureae bullae §. 12.

Tob. Paurmeist. de jurisdiēt. l. 2. c. 2. §. 43, &c.

ⁿ Politic. imperial. part. 1. pag. 86. de hac re vide cum part. 2.

^o Sigon. de regno Italiae, lib. 4. anno Chr. 818.

VIII. For those other titles in the empire; in regard that divers of them originally depend on the antient notions of *dux* and *comes* (as they were honorary or officinary, or both in the old empire) and have been also for the most part feudal, it is therefore first necessary to shew the nature and notion of those names, and also the nature and beginning of feuds, and the annexing of dignities to them. For not only those two titles, but the most of the rest, as well in other states as in the empire, being joined became first feudal, and afterward again (in some particulars) only honorary, and in some also have continued feudal to this day.

The name of *dux* (as it hath been a title of honour, or of sovereignty) hath had especially two notions. One which signified an absolute supremacy, and differs rather by the mildness of expression than by nature, from the supreme title of king; according to that of *Philip of Macedon* in *Justin*. *Ita vicit* (saith he) *ut victorem nemo sentiret. Sed nec regem se Graecis sed ducem appellari iussit.* ⁽¹⁶⁶⁾ And in this sense it is sometimes used in the stories of the more barbarous times, for such as were not crowned as kings, but yet acknowledged no superior; especially in some parts of Germany, and the neighbouring countries, and that after as well as before the beginning of the French empire. So we see it attributed also to the emperor of *Russia*, who is oft stiled the duke of *Russia*, in such a sense as that of *Martial* speaking of *Domitian*;

Plurima qua summi fulget imago ducis.

And in the title of the duke of *Venice* also, it is merely supreme and not subordinate to any prince. The other notion of it is as it hath been honorary, officinary, or feudal under a superior: and in this sense only we consider it in this place together with the title of *comes*. In the handling of both of them, we first speak of them as they were honorary or officinary before they came to be made feudal in the Roman empire, and next of the nature and beginning of feuds and of their being annexed to feuds, and so made feudal.

⁽¹⁶⁷⁾ The emperors antiently had about them, beside their greatest officers of state, select attendants of court, known by the name of *comites* or *comites* & *amici*. They were usually made of such as were consular, praetorian, senators, and sometimes out of men of less dignity, and are stiled *Romanum collegium* by the emperor *Valerian* in his oration to the senate touching *Macrianus*. *In contubernium imperatoriae majestatis adsciscere*, is used by *Lampridius* for the making them. And an old inscription in the monastery of ^a *Saint Protasio* in *Milan*, thus remembers one of them.

C. SENTIO
SEVERO
QUADRATO
C. V. COS

AMICO ET
COMIT. * AUG. N.
JULII FRATRES
MAXIMUS ET
VICTOR

They waited and assisted the emperor in his counsels and actions, and they were divided also into their several ranks of dignity. There was a rank of the first dignity, or *primi ordinis* (as they called it,) another of the second, or *ordinis secundi*, and another of a third. Testimonies of this division are obvious in both the codes, and especially in *Eusebius* ^f where he speaks of them under *Constantine*. But whence the beginning of them and of this division is to be derived, is not agreed on clear enough among learned men. I think there is sufficient proof that both have their original as antient as about the beginning of the empire in the *caesars*. If *Tiberius* had not such a kind of *comites* & *amici*, and so distinguished them also, I understand not that of *Suetonius* in his life. *Pecuniae parvus & tenax* (saith he) *comites peregrinationum expeditionumque nunquam salario, cibariis tantum, sustentavit: una modo liberalitate ex indulgentia vitrici persecutus, cum tribus classibus factis, pro dignitate cujusque primae sexcenta sestertia, secundae quingenta distribuit, ducenta tertiae; quam non amicorum sed gratorum appellabat.* Here are his *comites* which were plainly those that were near him, and hence are they also divided into three ranks and orders. Only his pleasure was to change the name of *amici* in the third rank into *grati*. And the fashion of having friends and near followers of several ranks, and that in a professed distinction of them, was in that state before the empire of the *caesars*. *Seneca* refers the first use of it to *Gracchus* and *Livius Drusus*. They, saith ^h he, *apud nos primum instituerunt segregare turbam suam, & alios in secretum recipere, alios cum pluribus, alios cum universis. Habuerunt itaque isti amicos primos, habuerunt & secundos, neutros veros.* This use, it seems, transferred into those that were near the emperors, bred the tripartite distinction of those *comites* and *amici*, which is denoted in that before cited of *Tiberius*, and also in a passage of *Lampridius* in his *Alexander Severus*. *Moderationis tantae fuit* (so are the words) *ut nemo unquam ab ejus latere submoveretur, ut omnibus se blandum affabilemque praeberet, ut amicos non solum primi ac secundi loci sed etiam inferiores aegrotantes viseret.* Here *primi ac secundi loci* & *inferiores*, are the *comites* of the first, second, and third or lowest rank, which are under the general name of *amici aut comites*, understood likewise in that of *Aelius Spartianus*, of *Adrian*. *Quum judicaret*, saith he, *in consilio habuit non amicos suos aut comites solum, sed jurisconsultos & praecipue Julium Celsum, Salvium Julianum, Neratium Priscum, aliosque quos tamen senatus omnis probasset.* And it is observable that this hono-

^f Trebellius Pollio in Macriano.

^g Apud Gruter. p. 1100, 5.

* Augusti nostri.

^f Justin. lib. 12. Theodol. l. 6.

^h De vita Constantini, lib. 4. cap. 1.

^a De beneficiis, l. 6, c. 34.

rary title of *amicus principis*, or friend to the king was so frequent in the eastern parts, that we may with reason enough believe that it was from thence derived into the Roman state. In the kingdom of the Jews, we see it in that of Chusai friend to king David. Chusai Arachites *amicus regis*^v is mentioned singularly among the dignities of his court. The Hebrew is *חֲסִי* which signifies as well *socius* as *amicus*. The septuagint have there *Χυσι πρῶτος* *φίλος* τῷ βασιλεῖ, Chusi the king's chief friend, and, in some copies, more rightly *χρῶσι* ὁ Ἀρχι εἰταίρος τῷ βασιλεῖ, Chusai the Archite companion (comes) of the king. And for the court of the Babylonian empire; *Erat autem Daniel conviva^x regis* (the greek is *συμεσίτης* τῷ βασιλεῖ, or one that lived with the king) (168) and *honoratus super omnes amicos ejus*. So for the state of Syria; under Antiochus Epiphanes, *Lysias^y chose Ptolemy the son of Dorimenes, and Nicanor and Gorgias ἀνδρες δυνατοὶ ἥπ' φιλῶν τῷ βασιλεῖ, mighty men of the king's friends*. So Aristotle (saith Laertius) *συνεβίω Ἀμύντα τῷ Μακεδόνων βασιλεῖ, ἱατρὸς καὶ φίλος χρέας, lived with Amyntas king of Macedon as his physician and friend*. And divers more such testimonies are in the Maccabees and Josephus^z, out of which use, it seems, that phrase of *amicus Dei*, or the friend of God (to express a singular honour had through great favour with almighty God) came to be^a attributed to Abraham. But for those counts, or *amici principis*, in the Roman empire, Eusebius of^{*} Constantine, *καμῖτων οἱ πρῶτοι πάρις*, οἱ δὲ δεύτεροι, οἱ δὲ τρίτοι ἕξιστο, counts were made by him; some of the first rank, some of the second, some of the third. For so it is to be interpreted, and not as if he had then begun the division, by distinguishing his counts into these ranks. Other passages referred to the times before Constantine, but not so obvious as those classic authors, mention this dignity. Of the title of count or *καμῖς* (as they made it into greek) there is mention in the rituals of the greek church, as of a known dignity under Diocletian. Saint George, they say, was *καμῖς τῷ ἀξίῳ*, a count by^b dignity, and *καμῖς τῷ Πατριάρχῳ ὁνόματι*, a certain count called Patricius, is remembered in the life of St. Artemon in that church. *Comites* occur also in the decretals of pope Anacletus, † if at least they have credit enough to be thought his. But whereas in the relation of the martyrdom of St. Clement under^c Trajan, we have mention of *comes officiorum*; doubtless that officary dignity was not in use under Trajan, nor hath the testimony any truth in that matter. But after Constantine, the mention of counts is more frequent.

But of the first rank of counts, some were stiled *comites ordinis primi intra consistorium*, as being of the nearest counsellors of state (all of them being counsellors generally) and thence *comes consistorianus* is a count of the first rank,

and a privy-counsellor of that time. For all the *consistoriani* (it seems) were of the first rank. But not all of the first rank *consistoriani*. For in inscriptions of honour, *comes ordinis primi*, & *comes ordinis primi intra consistorium*, occur sometimes given at once to the same person as titles received at several times. An example of it is^d in one to Saturninus Secundus president of Guienne. And because offices of note were at length bestowed usually among those ranks of counts (as for example, the great offices of *magister sacrarum largitionum, rerum privatarum, equitum* sometimes, and the like, being of the more eminent dignity on some of the counts of the first rank) it came into use also that those offices were denoted in the counts by the title of *comes* & *magister* in stead of *magister*, and sometimes by *comes* without *magister*, joined with the other words that signified the office: as we see in *comes & magister sacrarum largitionum*, and *comes sacrarum largitionum*, *comes & magister equitum*, *comes domesticorum*, and such more for *magister sacrarum largitionum, magister equitum* and *magister domesticorum*. Whence it is also that in the acts of the council of Chalcedon, *Flavius Ariovindus Martialis* is so often called † *καμῖς καὶ μάγιστρος*, ἥπ' ὧν ἐρραρίων, or *comes & magister sacrarum officiorum*: and the emperor's chief physician or president of the emperor's physicians, was known by the name of^e *comes archiatrorum*; because doubtless he was one of those ranks, and it seems of the first, because those that were under him, had sometimes the honour of the first rank or^f *comitivam primi ordinis*. And not only some of the greatest officers, but such as were of much less dignity being taken out of those ranks were stiled *comites* with the addition of the place, or note of employment belonging to them. Under the *comes sacrarum largitionum* of the east, there were (about Theodosius II. when the *notitia* was made) subordinate *comites largitionum* in every diocess (as they called the countries that pertained to them) besides *comites commerciorum per orientem & Aegyptum, per Maesiam, Scythiam, Pontum & Illyricum*, and a *comes metallorum per Illyricum*, and a *comes rationalis summarum Aegypti*; with divers other officers by the name of *procuratores, praefecti, magistri*, and such more. So the *comes largitionum* of the west had under his rule a *comes auri*, a *comes vestiarii*, a *comes largitionum Italianorum* and others. The office of the chief *comes largitionum*, either in the east or west, was to take care as a lord treasurer both of the receiving and issuing of such revenue of the crown, as consisted not in certainty of demesnes and rent or in confiscations, which were under the care of the *comes rerum privatarum*, both in the east and west. And in the west he had under him *comites* also, as *comes largitionum privatarum*, and *comes patrimonii Gildoniaci*

^u 1 Paralip. 27. 33, & 2 Samuel. c. 15. 37. vide item Psalm. 38. 11. & 88. 18.

^v Hist. Sufannae, seu Danielis, cap. 14.

^y 1 Maccab. c. 3. 38. vide item, cap. 6. 10, & 14, &c.

^z Archaeolog. l. 12. c. 12, & 13, &c.

^a 2 Paralip. c. 41. 8. Judith. c. 8. 22. in edit. latina & epist. D. Jacobi c. 2. 23. & observa D. Joann. 15. comm. 15.

^b Euseb. de vit. Constantini, l. 4. cap. 34.

^c Menae, die 23 Aprilis, & 24 Martii.

^d Epist. 2.

^e Acta martyrii S. Clementis apud Sur. 23 Novemb. ex Metaphrast. & videlicet Baronium annal. tom. 2. ann. 100.

^f Apud Grueter. pag. 465. 8.

^g Agt. 1. p. 115, &c. tom. 2. concil. part. 1. edit. Bin. 1618.

^h Videlicet Mercurialis, var. lect. l. 4. c. 1.

ⁱ C. de Architect. & com. sac. palat. l. unic.

niaci. So the *comes formarum*, *comes riparum* & *alvei Tiberis* & *cloacarum*, and *comes portus* were among other subordinate officers to the *praefectus urbis*. And in the eastern government there were beside a *comes orientis* (who was for civil affairs as a *vicarius* or lieutenant, yet made by the emperor, under the *praefectus praetorio* of the east) *comes Aegypti* and *comes Isauriae*, also other *comites* of less note, as in the western comes *Italiae*, *comes Africae*, *comes Tingitaniae*, *comes tractus Argemoratensis*, *comes Britanniarum*, *comes littoris Saxonici per Britannias*. And other like were in the empire, which had military forces committed to them for the government and retaining of the places whither they were sent, in like sort as others had that are called *duces*, both in the *notitia* and in the *codes*. And divers also of the second rank had the government of cities only, as is anon seen in the examples of their letters of creation or commissions; whence it is that in *Hesychius*, *κύριος* is interpreted by ἀρχων which is a governor or president, because they that were *comites* had some power of government so frequently committed to them. But there is not more clear testimony of the use of this title so begun in the court (as is before shewed) and afterward carried with the *comites* into what employment soever they were sent, than in divers councils of the primitive times. For the emperors sometimes, especially after that they found so much distraction and tumult among the factions bred by the heretical parties of the time, sent to the councils for preservation of the peace, some that were counts with competent forces, that sometimes were indeed rather a terror against the truth, than a defence of it. And in the acts of the councils these counts are often stiled only so, as if that office had been proper to none, but them that were counts; the name indeed being retained by them in that employment no otherwise than in those other offices given to counts. In the council of *Tyrus* held against *Athanasius*, there was such a count, as *Athanasius* himself* witnesseth, though he complained of it, as against what was contrary to the liberty due to a council. This count was *Flavius Dionysius*, who yet is called only *consularis* or ὁ πρῶτος ὑπατικῶν (because he had that dignity also) in the ^b letters of commission of *Constantine the great*, by which he was sent to the council. But oft-times in *Athanasius*, *comes*. And by pope *Julius* the first, ^c *Dionysius qui in ea synodo comes erat*. And in letters of the council of *Alexandria*¹ touching the same matter, *qua fronte talem conventum synodum appellare audent cui comes praefedit?* Thence is that of *Osius* in his letters to *Constantius*,^k about the council of *Sardica*; *omitte & tu violentiam tuam, nec literas scribe, nec comites mitte, sed relegatos exiliis libera*. And in the acts of the general council of *Ephesus*, *Candidianus* is mentioned most frequently with the

title of count. But it appears indeed also that he was *comes domesticorum*; and by that title he was sent thither for the preservation of peace and order. *Irenaeus*, *Joannes* and *Dionysius* by the title of *comites* are mentioned¹ there also. And in the acts of the council of *Chalcedon* (where the mention of counts is obvious enough) says *Dioscorus*^m ἔχοντες μοι κύνετες, ὁ δὲ τῶν κύνετες. *Are ye seditious? let the counts come*: and afterward ἐπὶ ἡλθον οἱ κύνετες, *the counts came in*; &c. where such are denoted as were sent from the court to the council, and were counts, though some of them had other offices also of higher dignity than the title of count: But that was the most comprehensive and usual name. Who they were may be seen especially in the beginning of the first, second, fourth and sixth actions of that council.

And whereas the lieutenants or presidents of provinces or frontiers (under the *magistri praefentales militum*) were called *duces*, yet if they were received into the honour of any of those ranks, they were, in the time that *comes* came to be thus frequent, rather expressed by the name of *comites* joined with their provinces. And such lieutenants or presidents were (it seems) commonly counts of the first rank, if counts at all; and are called generally in the laws, *comites*ⁿ *per provincias*, & *qui sub^o comitivae primi ordinis dignitate peculiariter ad quamlibet provinciam vel provincias defendendas, milite credito, auctoritate imperatoris nominis destinabantur*.⁽¹⁶⁹⁾ But divers of the presidents or lieutenants that were not counts, retained the name of *duces*; as *Scythici limitis dux*, *Rhetici limitis dux*, *Transsibreniani limitis dux*, *Britanniae dux*, & *dux Syriae*. And sometimes the counts that were made *duces*, had their name of count and *dux* kept together, as in that of *dux & comes rei militaris Isauriae* in the *notitia dignitatum*, where although *Pancirollus* thinks^p the reading is corrupted, and that *dux* and *comes* should not concur for the title of the same man, with relation to the same thing, yet I am persuaded that the copies are therein true and right enough, because I see both the titles also in an inscription that mentions the *comes Isauriae*, by the name of *comes ordinis primi Isauriae dux*. It is somewhere at *Rome* thus,

AEMILIAE

ANDRONICENIS C. ET SPECT.
F. NEPTIS URBIS PRAEFECTI FI
LIAE COMITIS AFRIC. NURUS
COMITIS ORD. PRIM. ISAVRIAE
DUCIS CONJUGIS COMITIS SA
CRARUM LARGITIONUM
INLUSTRIS.

This inscription I the rather also insert here, because it hath good examples of those kinds of counts that had employments, as *comes Africae* for a count of a province, *comes ordinis primi dux Isauriae* for one that being of

* Apolog. 2. ^b Euseb. de vita Constantini, l. 4. c. 42. de eo vide plura apud Baronium tom. 3. ann. 335. ^c Epist. 4. ^d Apud Athanas. apolog. 2. ^e Apud eundem in epist. ad solit. vir. agentes. ^f Concil. Ephesin. part. 1. pag. 148. edit. Bin. 1618. & pag. 167, 266, 267, 277, 291, &c. ^g Concil. Chalced. act. 1. p. 118. edit. Bin. 1618. tom. 2. part. 1. ^h C. de offic. rect. prov. l. iustitiam 3. ⁱ C. de comit. rei milit. & consulas novell. 27. de comite Isauriae. ^j Vide eum in notit. utr. c. 1. & ad notit. orient. c. 142.

the first rank was made *dux Isauriae*, and *comes sacrarum largitionum* for that office as it was *palatine*. And as *dux* and *comes* were sometimes so retained together, so also *magister* with *comes*, as in *comes & magister equitum Galliarum* in the *notitia*; and *praeses* with *dux*, as *dux & praeses Mauritaniae*, and the like. And for that of *dux & comes Isauriae*; observe but this in *Marcellinus* under *Constantius* and *Julian*. *Ad Isavros vi vel ratione sedandos, Lauritius adjecta comitis dignitate missus est rector*. Yet the same *Lauritius* is called *ἐπαγώνιον ἡγεμὼν*, or *dux militum* in *Socrates*. Clearly he was justly to be stiled *dux* and *comes* or *comes & dux rei militaris* or *militum* in *Isauria*. (170) But as before so great accession of offices in court or provinces to the name of *comes*, they which were *consistoriani* or *intra consistorium*, were by that title distinguished from the rest of their rank, so after that accession, such as were only *comites honorarii* (or *vacantes* and *ἀλφεῖν*, as they called them) and without any particular employment, and had the name for a mere character of dignity in them, were, for a distinction from such as were *comites provinciarum* or otherwise employed in some special service, called *comites intra palatium*, or *comites palatini* only; as if you should say, *counts of the court*. And this title after publick employment well discharged abroad by one that was before *comes ordinis primi*, was valued as a title of such dignity by itself, that it was sometimes iterated in the inscriptions of honour by *iterum comes ordinis primi intra palatium*, as we see especially in that to *the honour of L. Aradius Valerius Proculus*, where after the enumeration of divers offices of state in him, his title goes on with

COMITI ORDINIS SECUNDI
COMITI ORDINIS PRIMI.

and then, some other offices of publick employment being interposed;

PERFUNCTO OFFICIO PRAE
FECTURAE PRAETORIO, COMITI
ITERUM ORDINIS PRIMI IN-
TRA PALATIUM, &c.

And those of this kind being *comites vacantes*, but such as *post probatos labores in palatio comites esse meruerant* were of greater dignity than any that were only raised by favour or merit to the first rank of *comitiva vacans*, or the *cingulum otiosum*, which was the general name of the dignity not only of such as were *comites intra palatium* (though of the first rank) but also of them that were *intra consistorium*, if they had no other particular employment. For both were reputed *vacantes* and honorary. But those *probatos labores* (in the time of *Theodosius* and *Honorius* who made that law) were such employments as were eminent in the court or state. For besides these several sorts of counts, there

were also some that had a dignity of *comitiva ordinis primi*, and the title of *comites ordinis primi diversarum artium*, (which was given them as an honorary reward, *ob vulgaris cujuslibet artis obsequium*, or *operis publici curam temporalem injunctam*, or *rerum publicarum levem curam commissam*, as the words are in another law ^u of *Honorius* and *Theodosius*, which was not received into *Justinian's* code, as neither was that other of theirs) all which express but some service of slight nature. And although their title were with relation to their service, *ordinis primi*, yet they were of less dignity than any other counts that were *ordinis primi vacantes*, or merely honorary. For regularly all *vacantes comites* of those times, had the honorary attribute of *spectabilis*, and if they were in any of the great offices, as *sacrarum largitionum*, *rerum privatarum*, or the like, they were to be stiled *illustres*. But these *comites vulgarium artium*, were but of equal dignity to the *consulares* of provinces, which had but the title of *clarissimus*, that was next beneath *spectabilis*. But of those honorary attributes, and the places belonging to every of them in the lists of the state of that time, more largely towards the end of this part.

IX. Other testimonies, that concern those two Titles of *dux* and *comes* in the old empire, are very obvious in the codes both of *Theodosius* and *Justinian*, as also in the *notitia*. But for further light to them we add here some such forms of creation of them in those ages, as time hath permitted to posterity; as also an example or two of their ensigns, and of the officers of government under them.

It is true that in the memories that immediately belong to the Empire, the forms of their creation appear not. But in *Cassiodor* that was *chancellor* to *Theodoric* king of *Italy*, there are such as we have just reason to take for no other than those of the empire, or so like them, that from the knowledge of the one, the other may be known also. For *Cassiodor* was bred up in the learning of the *Romans*, although both himself and his king were *Goths*: and it is clear that the *Gothick* court in *Italy* then imitated the *Roman* courses of government, which they had found in that part of the Empire. And for the matter or, as we call it, the body of the letters patents or *codicilli*, (so they called the letters, and when the dignity was only honorary, *codicilli vacantes*) they were usually the same, I think, as *Cassiodor* hath. Although for the preambles, circumstantial fancies and cadencies of language, which were in that age much affected, they were varied before *Cassiodor's* time, perhaps, as often as there were new draughts of them. *Cassiodor* himself seems to affirm as much, where he says, that for the help of others, and to save them from the trouble that he was put unto in making sudden draughts,

^q Histo. 19. ^r Hist. ecclesiast. l. 2. c. 31. & videbis Baronium annal. tom. 3. an. 359. ubi de concilio Seleuciensi. apud Gruter. p. 361. 1. & 363. 2. & vide eundem, pag. 1094. 6. Poll. p. 307.

^u C. Theodof. lib. 6. tit. 20.

^v Romae in Trebel. C. Theodof. lib. 6. tit. 18. & videbis Claud. Salmast. in Trebel.

he collected those forms, and therefore it seems, meant that they should remain as constant examples for future times. *Illud autem* (saith^x he) *sustinere alios passî non sumus, quod nos frequenter incurrimus in honoribus dandis; impositas & praecepites dictiones; quae sic poscuntur ad subitum ut vix vel scribi posse putentur vel videantur. Cunctarum itaque dignitatum sexto & septimo libris formulas comprehendî, ut & mihi quamvis serò prospicerem & sequentibus in angusto tempore subvenirem.*

Out of these therefore we shall take some such of the creations of counts, or giving the *comitiva* first, and then of the *ducatus* of that time, as may give most light to the nature of them. They are of about 5 years after our Saviour.

The letters patents of making an ordinary count of the first rank merely vacant.

SI honor frequenter defertur otiosis: si interdum aut nobilitas eligitur, aut ad promerendum aliquid personae tantum gratia suffragatur: quo studio remunerandi sunt, qui ad agonis sui praemia pervenerunt? Considerandum, quali labore servitum est, & sic de remuneratione cogitandum. Harum quippe rerum mensura de contrario venit: dum tale obedientibus dari debet donum quale indevotis potuit esse periculum. Grandia sunt, quae sustinent excubantes personas, contumaces ad parendum cogunt, latentes in cubilibus suis prudenti sagacitate vestigant, superbis modestiam aequalitatis imponunt. Ita quod a iudicibus breviter dicitur, ab ipsis efficacia famulante completur. Notum est quae pericula sustineant, cum ad causas mittuntur alienas. Si segnius agat, petitor quaeritur, si districte, pullatus vociferatur. Sic inter utrumque diversum rara laus est invenisse praeconium. Dignitatum pace dicamus, facilius est laudatum iudicem reperire, quam militem injuncta sine offensione complere. Aliud est enim tantum dicere legitima, aliud ad terminum deduxisse iustitiam. Laudabiliter quidem bonum dicitur, sed multo gloriosius statuta complentur. Verba tantum diriguntur a praefulis, a militibus autem postulat effectus. Post omnia periculis subduntur, si constricti aliquid verisimile conqueratur. Frequenter nocuit aliis ipsa quoque integritas actionis. Nam multos, quos in executione contristari nisi sunt, ipsos postea impenso iudices pertulerunt. Offendunt enim frequenter ignari, quibus sunt postea parituri: & dum causis alienis fidem custodiunt, interdum pericula propriae salutis incurrunt. Verum inter haec militem evasisse laudatum, nonne iuste videtur esse miraculum? Talibus igitur meritis vicissitudo reddenda est, ut nimio labore torpentes indictis compensationibus excitemus. Utere igitur confederatione quicquid veteranis munificentia jura tribuerunt, nulli fordido subjiaciendus oneri, qui te purissima conversatione tractasti. *Comitivam* quoque tibi *primi ordinis*, quam tali militia perfunctis cana deputavit antiquitas, secundum statuta divalia vindicabis. Haec quidem praeforum beneficio

consequeris, sed nostri nominis contra inciviles impetus, & conventionalia detrimenta, perenni tuitione vallaris. Ut officium quod nostris iustionibus speciali sollicitudine famulatum est, amplius aliquid a militibus caeteris promereri potuisse videatur. Multa quoque tot librarum auri percellendum esse censemus, si quis statuta nostra qualibet crediderit occasione violanda. Nec tamen aliquid contra te valere permittimus quod dolosa fuerit machinatione tentatum.

But, I know not well why, this is titled in *Cassiodor*, with *formula magistri scrinii & comitivae primi ordinis quae danda est Comiciaco quando permilitat*.

X. The form of letters patents of making a count of the first rank that was also *consistorian*.

MAGNUM quidem multis & inter vices videtur esse geniatum, publicae utilitati probis actionibus occupari. Sed quanto foelicius honorem splendidum sumere, & cogitationum molestias non habere? Interdum enim assidui labores etiam ipsas ingratas faciunt dignitates; dum imbecilitas humana cito solet sustinere fastidia, & quod prius ambisse creditur postea vitare velle sentitur. Sed hoc multo praestantius adesse conspectibus regis & abesse molestiis, gratiam habere loci & vitare contumelias actionis. Dulce est aliquid sic mereri, ut nulla possit anxietate turbari; dum multo gratius redditur, ubi prosperitatis sola gaudia sentiuntur. Hunc igitur honorem tibi respicis otiosa remuneratione praestitum qui nimium laborantibus antiqua noscitur provisione collatus, ut rectores provinciarum, anni actione laudatos vix ad tale culmen perducerent, quibus consitebantur plurima se debere. Consiliarii quoque praefectorum, conscientia clari, dictatione praecipui, qui in illo actu amplissimae praefecturae sic videntur exercere facundiam, ut ad utilitates publicas expediendas, alteram credas esse quaesturam. Unde frequenter & nos iudices assumimus; quia eos doctissimos comprobamus. Quid ergo de tali honore sentiatur, agnosce; quando perfecti pro tot laudabilibus institutis hujusmodi inveniunt praemia dignitatis, & merito, cum tanta pompa creditur quae senatorii quoque ordinis splendore censetur. Spectabilitas clara & consistorio nostro dignissima, quae inter illustres ingreditur, inter proceres advocatur, (*the illustres and proceres were the great officers of state, consuls, consulars, the patricii, and such like; the creations of which are also in Cassiodor*) otiosi cinguli honore praecincta dignitas, quae nullum novit offendere, nullum cognoscitur ingravare, & super omnia bona concitare nescit invidiam. Quocirca provocati moribus tuis *comitivam* tibi *primi ordinis*, ab illa indictione, majestatis favore largimur, ut *consistorium* nostrum sicut rogatus ingrederis, ita moribus laudatus exornes. Quando vicinus honor est illustribus dum alter medius non habetur, delectet te illos imitari quos proximitate contingis. Tu locum amplum & honorabilem facis si te moderata consideratione tractaveris. Admoneat

^x In praefat. ad lib. variarium.

te certe, quod suscepta dignitas *primi ordinis* appellatione censetur, utique quia te sequuntur omnes qui spectabilitatis honore decorantur. Sed vide ne quis te praecedat opinione qui sequitur dignitate. Alioquin grave pondus invidiae est, splendere cinguli claritate & morum lampade non lucere.

XI. The form of the letters that made a *comes sacrarum largitionum*, wherein also is given him the office of *primicerius notariorum*, or *chief master of the clerks of the crown*.

GRata sunt omnino nomina quae designant protinus actiones: quando tota ambiguitas audienti tollitur, ubi in vocabulo concluditur quid geratur. Donis enim praefidere regalibus *comitivam sacrarum largitionum*, indicia rerum verba testantur. Quod vere decorum, vere] fuit omnimodis exquisitum, in donorum regalium parte sequestratam facere dignitatem & alterius honorem dicere dum nos constet dona conferre. Actus innocens, pietatis officium, illud semper ingerere, unde se fama principis possit augere. Regalibus magna profecto foelicitas militare donis, & dignitatem habere de publica largitate. Alii iudices obtemperant residuis virtutibus regnatori. Haec sola est quae tantummodo serviat ad monumenta pietatis. Nihil enim per ipsam districtum geritur, nil severum forte censetur, sed tunc obsequitur quando pro nobis vota funduntur, Supplicium per te fortunae erigimus, cal. Januarii affatim donum largimur, & laetitia publica militia tua est. Verum hanc liberalitatem nostram alio decoras obsequio, ut figura vultus nostri metallis usualibus imprimatur, monetamque facis de nostris temporibus futura secula commonere. O magna inventa prudentum! O laudabilia instituta majorum! ut & imago principum subjectos videretur pascere per commercium, quorum consilia invigilare non desinunt pro salute cunctorum. Sed huic (ut ita dixerim) munerariae dignitatis praekonem largitatis nostrae, publicae foelicitatis indicium, locum quoque primiceriatu adjungimus, ut per te demus honores, per quem & nostrae pecuniae conferimus largitates. Merito; quando & simili gratia utraque praestantur, & ab uno debuerunt iudice geri, quae parili videntur laude conjungi. Parum est autem quod provinciarum iudices tuae subjaceant dignitati. Ipsis quoque proceribus chartarum confirmas officium, dum perfectum non creditur, nisi a te fuerit pro solennitate completum. Vestis quoque sacra tibi antiquitus nescitur fuisse commissi qui quod (*perhaps it should be* quid, quod) ad splendorem regium pertinet tuis minus ordinationibus obediret. Curas quoque litorum adventitia lucri provisione committis. Negotiatores, quos humanae vitae constat necessarios, huic potestati manifestum est esse subjectos. Nam quicquid in vestibus, quicquid in aere, quicquid in argento, quicquid in gemmis ambitio humana potest habere pretiosum, tuis ordinationibus obsecundat, & ad iudicium tuum conflunt qui de extremis mundi partibus advenere. Salis quoque commercium, inter vestes fericas & pretiosissimam margaritam, non inepte

tibi deputavit antiquitas; ut sapientiam tuam evidenter ostenderet, cui talis species deputata serviret. Quapropter per illam indictionem *comitivae sacrarum* [*largitionum*,] & primiceriatu tibi conferimus dignitates ut multis laudibus decorari possis qui honorum numerositate praecingeris. Utere igitur sollemniter titulis tuis, si quid tibi de antiquo privilegio usus abstulit, plurima certe quae vendicare debeas dereliquit. Quando duarum dignitatum gloriosa quidem cura, sed & laboriosa custodia est, quae tibi copiosum fructum decoris afferunt si probis moribus excoluntur.

He hath another good form of king *Athalaricus* (that succeeded *Theodorick*) his giving *Opilio* the same dignity.

O*Pilioni* comiti sacrarum largitionum *Athalaricus* rex. Solent quidem venientes ad aulicas dignitates diutina exploratione trutinari, ne imperiale iudicium aliquid probare videatur ambiguum: quoniam gloria regni est reperisse iudices exquisitos. Sed tam frequens est familiae vestrae foelicitissimus provectus, tam in multis personis declarata prudentia ut licet aliquis vos eligat ad subitum, nihil fecisse videatur incertum. Similitudinem suorum foelix vena custodit: quando pudet delinquere, quia familia nequeunt suo genere reperire. Hinc est, quod melius agnoscitur elegisse nobilem, quam fecisse foelicem: quia iste commonitus per veterum facta se custodit, ille exemplum non habet, nisi quod fecerit. Quapropter secure tibi credimus, quod toties tuo generi commissum fuisse gaudemus. Pater his fascibus praefuit, sed & frater eadem resplenduit claritate. Ipsa quodammodo dignitas in penatibus vestris larem posuit, & domesticum factum est publicum decus. Nam militiae ordinem sub fraterna laude didicisti: cui mutuo connexus affectu, implebas laboribus socium, & consilio participatione germanum: ad te potius pertinere dijudicans, quod frater acceperat. Hoc baculo reclinabatur ille foeliciori actu quaedam negligens praesumptione tui, quia per te omnia cernebat impleri. En dulce fratrum obsequium, & praesentium temporum antiqua concordia! bene talibus sensibus iudicium creditur, qui servare mores naturaliter sentiuntur. Quod si amoeni recessus, & provinciale otium forte libuissent, ad te catervae causantium & anxia currebant vota laesorum. Boni iudicis inter eos assumebas officium: ut futurorum quodam urgente praefagio, quod a nobis accipere poteras, meritum assumptione peragebas. Meminimus etiam, qua nobis in primordiis regni nostri devotione servieris, quando maxime necessarium fidelium habetur obsequium. Nam cum post transitum divae memoriae domni avi nostri anxia populorum vota trepidarent, & de tanti regni adhuc incerto haerede subiectorum se corda perfunderent, auspicia nostra Liguribus foelix portitor nuntiasti, & sapientiae tuae allocutione firmasti, in errorem quem de occasu conceperant, ortum nostri imperii in gaudia commutabant. Innovatio regni sine aliqua confusione transivit: & sollicitudo tua praestitit, quod nos nullus offendit. Atque ideo probato talibus institutis,

instituti, ab indictione foeliciter sexta *sacrarum largitionum comitivam*, propitia tibi divinitate concedimus. Usurus es omnibus privilegiis atque emolumentis quae ad tuos decessores pertinuisse noscuntur. Absit enim ut aliqua calumniae machinatione quatiantur, qui actionis suae firmitate consistunt. Fuit enim tempus cum per delatores vexarentur & iudices. Deponite jam formidinem, qui non habetis errorem. Fructibus vestrarum utimini dignitatum. Nam quod vobis per decessores praedecefforesque nostros temporibus domini nostri avi consuetudo longaeva dedit, indigentia quoque nostra custodit. Conferimus tibi honorem germani, sed tu fidem ejus imitare servitii. Nam si illum sequeris, multos laude praecedis: virum auctoritatis maximae, probatae constantiae, qui sub tanto principe & sine culpa paruit & iustitiam laudatus exercuit. Promptum est enim aestimare quid egerit, quando sub ingrato successore palatinum officium praeconia ejus tacere non potuit. Difficile itaque non est moribus sequi posse germanum: quia & in conversationis fructu plerumque consentiunt, qui unius femine procreantur.

XII. The form of the creation of a *comes rerum privatarum*.

Comitiva privatarum, sicut nominis ipsius sentitur insonare vocabulum, per rationalium curam quondam principum privatam fertur gubernasse substantiam. Et quia iudicis fastigium exercere non poterat inter homines, extremis conditionibus inclinatos, alios quoque titulos provida deliberatione suscepit: ne dignitas Latialis causam tantum videretur habere cum famulis: sed actibus urbanis tunc se felicius occupavit, postquam agrestium causas decenter amisit. Quid enim prius facerent inter servos, jura publica, qui personam legibus non habebant? Non ibi advocatus aderat: non se partes solenni actione pulsabant. Erat secretarium impolluta seditione confusum: & appellabatur abusive iudicium, ubi non allegabantur a partibus dicta prudentium. Utitur nunc dignitas liberorum causis, & legitimus praeval veraciter habetur, quando de ingenuorum fortunis disceptare posse sentitur. Primum tibi contra nefarias libidines, & humani generis improbos appetitus, quasi parenti publico, decreta custodia est: nequis se probrosa commixtione pollueret, dum vicino sanguini reverentiam non haberet. Gravitas enim publica proximitatis sanctitatem & conjunctionis gratiam, habita aestimatione, discernit. Quia longe aliud debetur proximitati naturae, quam corporali possumus indulgere licentiae. Contra hos eligeris unicus & continens inquisitor: ut dum talia probra persequeris, consequaris praeconia castitatis. Defunctorum quinetiam sacram quietem aequabilia jura tuae conscientiae commiserunt: ne quis vestita marmoribus sepulchra nudaret: ne quis columnarem decorem irreligiosa temeritate praefumeret, ne quis cineres alienos, aut longinquitate temporis, aut voraci flamma consumptos, scelerata perscrutatione detegeret: ne corpus quod semel reliquerat mundanas molestias, hu-

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manas iterum pateretur insidias. Nam et si cavera furta non sentiunt, ab omni pietate alienus esse dignoscitur, qui aliquid mortuis obrogasse monstratur. Vide quae tibi commissae sunt; castitas viventium & securitas mortuorum. Habes quoque per provincias de perpetuario jure tributorum non minimam quantitatem. Canonicarios dirigis, possessores admones, & cum aliis iudicibus non modica jura partiris, caduca bona non finis esse vacantia. Ita quod usurpatio potuit invadere tu fiscum nostrum facis iustis compendiis obtinere, proximos defunctorum nobis legaliter ante ponis: quia in hoc casu principis persona post omnes est. Sed hinc optamus non acquirere, dummodo sint, qui relicta debeant possidere. Depositivae quoque pecuniae, quae longa vetustate competentes dominos amiserunt, inquisitione tua nostris applicantur aeriis: ut quos sua cunctos patimur possidere, aliena nobis debeant libenter offerre. Sine damno siquidem inventa perdit qui propria non amittit. Proinde (quod foelicibus applicetur auspiciis) per indictionem illam *comitivae privatarum* te honore decoramus, quam leges praefectis quoque parem esse decreverunt: est enim & ipsa aulica potestas, palatio nostro jure reverenda, quam tu facis ultra terminum suum crescere, si susceptam continenter egeris dignitatem.

XIII. The form of the Letters that made a *comes patrimonii*.

Antiquae consuetudinis ratio persuadet, charitis nostris illos imbuere, qui longe positi transmissas accipiunt dignitates: ut quos non poteramus praesentes instruere, lectio probabilis commoneret. Sed te quem ad patrimonii nostri curas regalis desloravit electio non tam destinatis praeceptionibus instruimus quam usu serenissimae colloctionis erudimus. Confabulationes siquidem nostrae erunt tibi instrumenta iustitiae, quando illud gratum nobis perspexeris, quod & divinis potest convenire mandatis. Patrimonium siquidem nostrum, pro sublevandis privatorum fortunis, tibi credidimus, non premendis. Nam si tranquillitatis nostrae velis considerare rationem, quoddam regiae domus famulis praedictum humilitatis imponis. Proprias quippe utilitates improbus dominus quoquo modo nititur vindicare: coeterum qui bonae famae studere cognoscitur, suo semper iudicio plus gravatur. Insolens libertatis genus est rusticorum, qui adeo sibi putant licere voluntaria, quoniam ad nostram dicuntur pertinere substantiam. Esto igitur illis cum erecta potestate moderatus. Temperamentum simul damus, cui posse concedimus. Considera, suscepta dignitas quo debeat splendore tractari, per quam supra coeteros iudices familiaritatem principis habere meruisti. Nam sicut sol ortus corporum colores fugata nocte detegit, ita se morum tuorum qualitas, assidue viso principe, non celabit. Mens tua & oculis nostris patebit & auribus. In vultu & in voce cognoscimus servientium mores. Si facies tranquilla, si vox moderata suggererit, credimus esse probatissimas causas. Quicquid enim turbulenter dicitur, iustitiam non putamus. Quapropter

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penſabit loqui tuum dominantis examen, quando nequeunt proprias tegere voluntates qui ſuos poſſunt proferre ſermones. Speculum ſiquidem cordis hominum verba ſunt : dum illico moribus placere creditur, quod ipſe ſibi ad agendum legiſſe monſtratur. Superbus quinetiam varicatis grefſibus patet. Iracundus luminum fervore declaratur. Subdoluſ terrenum ſemper amat aſpectum. Leves inconſtantia prodit oculorum. Avarus obuncis unguibus explanatur. Et ideo ad quas proveſti eſtis, ſtudeſte virtutibus. Quia nemo poteſt principem fallere, qui etiam rerum naturalium cauſas in vobis optime probatur inquirere. Quapropter ad *comitivam patrimonii noſtri* te per indictionem illam (Deo juvante) promovemus, ut inavarum judicem palatia noſtra teſtentur, quem nos judicavimus eſſe promovendum. Quid enim magis cupias, quam ſi te linguas nobilium laudare cognoſcas? Alibi forte iudices formidentur injuſti, hic ubi remedium praeſens petitur, redempta ſententia non timetur. Querimonias poſſeſſorum ſine venali protractione diſtingue. Omne ſiquidem juſtum, celeritatis commodo tranſit ad beneficium : & quod debito redditur, tali gratia munus putatur. Poſſeſſiones noſtrae, vel quia ſunt immobiles, non egrediuntur terminos conſtitutos : ne conditione contraria quod non poteſt moveri, malis moribus contingat extendi. Trade etiam militibus tuis quam ſectari delegeris animi caſtitem : Quoniam ille juſtus poteſt dici, ſub quo non probatur excedi. Utere igitur, auctore Deo, conſeſſo tibi foeliciter privilegio dignitatis. Inciter te ad bonorum deſiderium, ſapientiſſime quod videris : quia in his quae feceris, iudex & teſtis ero. Nam eſti epulas ſolicite ordinatione diſponas, non ſolum noſtro palatio clarus, ſed & gentibus neceſſe eſt, reddare eximius. Legati pene ex tota orbis parte venientes cum noſtris coeperint intereſſe conviviis, admirantur copioſe repertum, quod in patria ſua norunt eſſe rariſſimum. Stupent etiam abundantiam unius menſae, tantas ſervientium turbas poſſe ſatiare ; ut judicent conſumpta recreſcere, unde tanta quae probantur exire. Habent nimirum in ſua patria quod loquantur, dum parentibus ſuis dicere geſtiunt, quae viderunt. Sic propemodum in toto mundo celeberrimus redditur, qui providus noſtris apparatibus invenitur. Adde quod tempora noſtrae laetitiae ſecretaria tua ſunt, cum pectus redditur curis alienum : & tunc tribuitur ſuggerendi locus, quando cunctis adimitur. Merito, ut qui es iudex tanti apparatus & epularum, delinquitis tibi animus concedatur.

XIV. The form of the letters that made a *comes archiatrorum* or the *preſident* (by the name of *count*) of the emperor's phyſicians.

INter utiliſſimas artes, quas ad ſuſtentandam humanae fragilitatis indigentiam, divina tribuerunt, nulla praeflare videtur aliquid ſimile, quam quod poteſt auxiliariſ medicina conferre. Ipſa enim morbo periclitantibus materna gratia ſemper aſſiſtit. Ipſa contra dolores, pro noſtra imbecillitate conſiglit : & ibi nos nititur ſublevare, ubi nullae divitiae, nulla poteſt dignitas ſubve-

nire. Cauſarum periti palmates habentur, cum magna negotia defenderint ſingulorum : ſed quanto glorioſius eſt expellere quod mortem videbatur inferre? & ſalutem periclitanti reddere, de quo coactus fuerat deſperare? Ars quae in homine plus invenit, quam in ſeipſo cognoviſcit. Periclitantia confirmat, quaſſata corroborat, & futurorum praefcia valetudini non cedit, cum ſe aeger praefcienti debilitate turbaverit, amplius intelligens quam videtur, plus credens actioni quam oculis. Ut ab ignorantibus pene praefſagium putetur, quod ratione colligitur. Huic peritiiae deeſſe judicem, nonne humanarum rerum probatur obſivio? Et cum laſciae voluptates recipiant tribunum, haec non meretur habere primarium? Habeant itaque praefſulem, quibus noſtram committimus ſoſpitem. Sciunt ſe huic reddere rationem, qui operandam ſuſcipiunt humanam ſalutem. Non quod ad caſum fecerit, ſed quod legerit ars dicatur : alioqui periculis potius exponimur, ſi vagis voluntatibus ſubjaceamus. Unde ſi haefitatum fuerit, mox quaeratur. Obſcura nimis eſt hominum ſalus, temperies ex contrariis humoribus conſtans : ubi quicquid horum excreverit, ad infirmitatem protinus corpus inducit. Hinc eſt, quod ſicut aptis cibis valetudo recreatur feſta, ſic venenum eſt quod incompetenter accipitur. Habeantur itaque medici pro incolumitate omnium, & poſt ſcholas magiſtrum vacent, libris delectentur antiquis. Nullus juſtius aſſidue legit, quam qui de humana ſalute tractaverit. Deponite medendi artifices noxias aegrotantium contentiones : ut cum vobis non vultis cedere, inventa veſtra invicem videamini diſſipare. Habetis quem ſine invidia interrogare poſſitis. Omnis prudens conſilium quaerit, dum ille magis ſtudioſior agnoſcitur qui cautior frequenti interrogatione monſtratur. In ipſis quippe artis hujus initiis quaedam ſacerdotii genere ſacramenta vos conſecrant. Doctioribus enim veſtris promittitis, odiſſe nequitiam, & amare puritatem. Sic vobis liberum non eſt, ſponte delinquere, quibus ante momenta ſcientiae, animas imponitur obligare. Et ideo diligentius exquirite, quae curent ſaucios, corroborant imbecilles. Nam ſi videro quod delictum lapſus excuſet. Homicidii crimen eſt, in hominis ſalute peccare. Sed credimus jam iſta ſufficere, quando facimus quod vos debeat admonere. Quapropter a praefſcienti tempore *comitivae archiatrorum* honore decorare, ut inter ſalutis magiſtros ſolus habeatis eximius : & omnes judicio tuo cedant, qui ſe ambitu mutuae contentionis excruciant. Eſto arbiter artis egregiae, eorumque diſtingue conſiſtus, quos judicare ſolus ſolebat affectus. In ipſis aegros curas, ſi contentiones noxias prudenter abſcindis. Magnum munus eſt, ſubditos habere prudentes, & inter illos honorabilem fieri quos reverentur caeteri. Viſitatio tua ſoſpitas ſit aegrotantium, reſectio debiliſ, ſpes certa ſeſſorum. Requiritur rudes, quos viſitant, aegrotantes, ſi dolor ceſſavit, ſi ſomnus aſſuerit. De ſuo vero languore te aegrotus interroget, audiatque a te verius quod ipſe patitur. Habetis & vos certe veriſſimos teſtes, quos interrogare poſſitis. Perito ſiquidem archiatro venarum pulſus enuntiat, quid intus natura patitur.

tur. Offeruntur etiam oculis urinae, ut facilius sit vocem clamantis non advertere, quam huiusmodi minime signa sentire. Indulge te quoque palatio nostro: habeto fiduciam ingrediendi, quae magnis solet praetiis comparari. Nam licet alii subiecto iure serviant, tu rerum domino studio praestantis (*perhaps* dominum studio praestanti) observa. Fas est tibi nos fatigare juniis: fas est, contra nostrum sentire desiderium, & in locum beneficii dictare, quod nos ad gaudia salutis exsusciet. Talem tibi denique licentiam nostri esse cognoscis, qualem nos habere non probamur in ceteros.

XV. The letters that made a count of a province, or gave the *comitiva provinciae*.

Quamvis omnium dignitatum officia a manu secludantur armata & civilibus vestibus videantur induti qui distractionem publicam docentur operari, tua tamen dignitas a terroribus ornatur quae gladio bellico rebus etiam pacatis, accingitur. Vide quo iudicio fueris evehctus, quando aliis vigorem fascium videas esse creditum, tibi autem ab ipsis legibus ferrum constet esse porrectum. Rem cruentam dederunt animo pacato, ut & noxii nimium metuerent, & laesi de optata ultione gauderent. Alioquin culparentur priores, si temperata omnia non fecissent. Sed cum te intelligas ad moderamen electum, humanum facile non concupiscas exitium. Reus qui dicitur, & probetur. Scito puniendi remedium datum tibi pro salute multorum. Arma ista juris sunt, non furoris. Haec ostentatio nimirum est contra noxios instituta, ut plus terror corrigat quam poena consumat. Non enim cogitur ferro succidere robustum, qui adhuc teneram verbis curvat audaciam. Civilis est pavor iste non bellicus; quem tu sic facies esse gloriosum, si habere non probetur excessum. Habes etiam & ferrum nihilominus incruentum. Claudantur nexibus catenarum, quos levium criminum pulsata invidia. Cunctator esse debet, qui iudicat de salute. Alia sententia potest corrigi, de vita transactum non patitur immutari. Signa tua abactorum timeant, fures paveant, latrones perhorreant. Innocentia tantum laeta respiciat, dum sibi auxilia venisse credit, quae legum disciplina transmisit. Nemo redemptionibus tuum velle desolat. Gladius conditur ubi aurum suscipitur. Tu te inermem reddis, si a virili animo cupiditate recesseris. Quocirca per indictionem illam *comitivae* tibi in illa *provincia* tribuimus dignitatem, ut ad titulos tuos pertinentia civilitate potius laudabilis exequaris; nec quicquam praesumas facere nisi quod privatus possis legibus vindicare. Ipsa est enim recta administratio quae & sine potestate defenditur, ut tunc probetur fuisse iustus quando ei quae mavult obicere possit inimicus. Nec tamen spes nostra velut fastiditate deferitur. Nam si bene provinciarum administrationibus praesidetur, honores vos amplissimos sperare, leges merito censuerunt. Unde jam videtur pene debitum, quod vobis a tanta autoritate ultro noscitur fuisse promissum.

* Var. lib. 6. form. 8, & 9.

There is also another form in him, by which the government of *Dalmatia* and *Suavia*, is granted to *Osum*, who is called *comes* and *vir illustris*, by which it seems, he had the *illustratus* given him, besides the title of *comes*. For that title of itself was but *spectabilis*, although a province were joined with it.

XVI. The form of the letters that made a count of *Syracuse*.

Regalis est providentiae, tales iudicum personas eligere, ut ad comitatum necessitatem non habeant veniendi, quos in longinquis regionibus contigerit immorari. Nullum enim tale negotium est, quod *Siculi* itineris tantas pati possit expensas, dum commodius sit causam perdere, quam aliquid per talia dispendia conquiescere. Non enim querelas de *Sicilia* volumus venire, sed laudes; quia gravatur apud nos actio praefulis, si eam tam longinqui potuerint acculare petitores. Falsus enim dolor esse non creditur, ubi tanti laboris caecidia subeuntur. Et ideo maiore cura tractanda sunt, unde invidia plus timeatur. Proinde per indictionem illam, *comitivam* tibi *Syracusanae civitatis* propitia divinitate concedimus: ut omnia sic agere nitaris, quemadmodum nos tibi praestitisse cognoscis. De proximis vota causantium sustinemus. Inde autem ultro requirimus unde ad nos difficile venire posse sentimus. Habes quae te decorare debeant, si tu tamen ibi conscientia defecatus adveneris. Militum tibi numerus nostris servit expensis. Redderis inter arma genitus, processio tua provincialis ornatus est. Exercitu uteris pacato, nec pericula belli subis, & armorum pompa decoraris. Verum inter haec civilem cogita disciplinam. Non permittas milites esse possessoribus insolentes. Annonas suas sub moderatione percipiant, causis non misceantur extraneis. Pro securitate se omnium cognoscat electum, qui se gloriatur habere armatum. Privilegia dignitatis tuae nec volumus minui, nec jubemus excedi. Sufficiat tibi tantum gerere, quantum decessores tuos confiterit rationabiliter effecisse.

XVII. The form of the letters that made a count of the city of *Naples*.

Inter caetera vetustatis inventa, ordinarum rerum obstupenda praeconia, hoc cunctis laudibus meretur efferri, quod diversarum civitatum decora facies aptis administrationibus videtur ornari: ut & conventus nobilium occurrione celebri colligatur & causarum nodi juris disceptatione solvantur. Unde nos quoque non minorem gloriam habere cognoscimur, qui facta veterum annuis solennitatibus innovamus. Nam quid prodesset inventum, si non fuisset iugiter custoditum? Exeunt a nobis dignitates relucens quasi a solis radiis, ut in orbis nostri parte replendeat custodita iustitia. Ideo enim tot emolumentorum commoda serimus, ut securitatem provincialium colligamus. Messis nostra cunctorum quies est, quam non possumus aliter re-

* Ibid. lib. 6. form. 11.

cordari, nisi ut subiecti non videantur aliquid irrationabiliter perdidisse. Et ideo ad *comitivam* te *Neapolitanam*, per illam indictionem libenter adducimus: ut civilia negotia aequus trutinator examines: tantumque famam tuam habita maturitate custodias, quantum te illi populo vel in levi culpa facile displicere cognoscas. Urbs ornata multitudine civium, abundans marinis terrenisque deliciis: ut dulcissimam vitam te ibidem invenisse dijudices, si nullis amaritudinibus miscearis. Praetoria tua officia replent, militum turba custodit. Confidis gemmatum tribunal: sed tot testes pateris, quot te agmina circumdare cognoscis. Praeterea littora usque ad praefinitum locum data iussione custodis: tuae voluntati parent peregrina commercia. Praestas ementibus de pretio suo, & gratiae tuae proficis, quod avidus mercator acquirit. Sed inter haec praecleara fastigia optimum judicem esse decet: quando se non potest occulere; qui inter frequentes populos cognoscitur habitare. Factum tuum erit sermo civitatis, dum per ora fertur populi, quod a iudice contigerit actitari. Habet ultionem suam hominum frequentia, si loquar ad diversa: & de iudice iudicium esse creditur, quod a multis ad stipulationibus personatur. Contra, quid melius, quam illum populum gratum respicere, cui cognosceris praesidere? Quale est perfrui favore multorum & illas voces accipere, quas & clementes dominos delectat audire? Nos tibi proficiendi materiam damus: tuum est sic agere, ut sua beneficia principem delectet augere.

And with this were sent letters for command of obedience, both to those of *Naples*, and to such as were to execute the command of the count in his government. To those of *Naples* thus.

TRibuta quidem nobis annua devotione persolvitis, sed nos maiore vicissitudine decoras vobis reddimus dignitates: ut vos ab incurstantium pravitate defendant, qui nostris iussionibus obsecundant. Erit nostrum gaudium, vestra quies; suave lucrum, si nesciatis incommodum. Degite moribus compositis, ut vivatis legibus feriatis. Quid opus est quenquam facere, unde poenas possit incurrere? Quaerat iudex in vos causas, & non inveniat. Ratio motus vestros componat, qui rationales vos esse cognoscitis. Improbis iudicem, testem bonis moribus destinamus: ut nemo se cogi sentiat, nisi quem ordo legitima conversationis accusat. Atque ideo illi nos *comitivam Neapolitanae* civitatis per illam indictionem dedisse declaramus: ut nostra gubernatione laudatus, alteram mereatur de nostro iudicio dignitatem. Cui vos convenit prudenter obedire: quia utrumque laudabile est, ut bonus populus iudicem benignum faciat, & mansuetus iudex gratissimum populum aequabili ratione componat.

To the officers under the *comitiva* in these words.

OMnes apparitiones decet habere iudices suos. Nam cui praeful adimitur, & militia denegatur. Sed nos, quibus cordi est, locis

suis universos ordines continere indicamus, illi *comitivam Neapolitanam*, Deo juvante, largitos. Ut iudicibus annua successione reparatis, vobis solennitas non pereat actionis. Quapropter designato viro praestate competenter obsequium, ut sicut vos non patimur emolumentorum commoda perdere, ita & vos parendi debetis praescam regulam custodire.

Both these I inserted because they add some light both to the knowledge of the power of the count, and of the use at his creation.

XVIII. The form of making a count of the second rank for the government of cities.

SEculi hujus honor humanae mentis est manifesta probatio: quia libertas animi voluntatem propriam semper ostendit, cum se contemnit occulere, qui sibi alios cognoverit subiacere. Sed humanae mentis foelix illa conditio est, quae arbitrium profectionis suae intra terminum moderationis includit, & sic peragit dignitatis brevissimum spatium, ut universis temporibus reddatur acceptus. Quapropter interdum iudices ad blanda descendite. Laboriosum quidem, sed non est impossibile, iustitiam suadere mortalibus: quam ita cunctorum sensibus beneficium divinitatis attribuit, ut & qui nesciunt jura, rationem tamen veritatis agnoscant. Necessae enim, ut quod a natura conceditur, submonente iterum eadem suaviter audiat. Et ideo non laboreis populis imponere, quae eos constat ex propria voluntate sentire. Facile enim sequuntur vestigia verbi alieni, qui se posse credunt monitione compelli. Propterea per illam indictionem in illa civitate *comitivae honorem secundi ordinis* tibi, propitia divinitate, largimur: ut & cives commissos aequitate regas, & publicarum ordinationum iussiones constanter adimpleas: quatenus tibi meliora praestemus, quando te probabiliter egisse praesentia, sentiemus.

Then follow also letters for command of obedience to the citizens, and to the officers that belonged to the *comitiva* of like sense to those before shewed in that of *Naples*, whence it may be collected that such counts generally were of the second rank, although they be not named so in any example that *Cassiodorus* hath, saying in this which is proposed as a general precedent, or for *diversae civitates*, as the title says.

XIX. But there is one form of making a count that was proper to king *Theodoric*, or at least to the *Gothick* kings, which yet we insert here because it helps to the knowledge of the various use of the title of *comes*, that afterward (as is anon shewed) passing through the *Roman-Gothick* customs, came to be fixed to feuds in the *French* empire. It was for the appointing of a judge by the name of *comes* in every province under the *Gothick* kings, where any *Goths* resided, for determining all causes arising, either between two *Goths*, or between a *Goth* and a *Roman*. But in the last case he was to have a *Roman* lawyer sit as an assistant with him. The

title

title in *Cassiodoris, formulae comitivae* Gotthorum *per singulas provincias.*

Theodoricus Rex, &c. Cum Deo juvante, sci-
amus *Gothos* vobiscum habitare permixtos,
ne qua inter consortes, ut assolet, indisciplina
nasceretur, necessarium duximus, illum sublimem
virum, bonis nobis moribus haecenus compro-
batum, ad vos *comitem* destinare, qui secundum
edicta nostra inter duos *Gothos* litem debeat am-
putare. Si quod etiam inter *Gothum* & *Roma-
num* natum fuerit fortasse negotium, adhibito si-
bi prudente *Romano* certamen possit aequabili
ratione distringere. Inter duos autem *Romanos*
Romani audiant, quos per provincias dirigimus
cognitores: ut unicuique sua jura serventur &
sub diversitate judicum una iustitia complectatur
universos. Sic pace communi utraque nationes,
divinitate propitia, dulci otio perfruantur. Sci-
tote autem, unam nobis in omnibus aequabiliter
esse charitatem: sed ille se animo nostro amplius
commendare poterit, qui leges moderata volun-
tate dilexerit. Non amamus aliquid incivile,
scelestem superbiam cum suis detestamur aucto-
ribus. Violentos nostra pietas execratur. In
causa possint jura, non brachia. Nam cur eli-
gant quaerere violenta, qui praesentia probantur
habere judicia? Ideo enim emolumenta iudicibus
damus, ideo tot officia diversis largitibus con-
tinemus, ut inter vos non sinamus crescere, quod
possit ad odium pertinere. Unum vos amplecti-
tur vivendi votum, quibus unum esse constat im-
perium. Audiat uterque populus, quod amamus.
Romani vobis sicut sunt possessionibus vicini, ita
sint & charitate conjuncti. Vos autem *Romani*
magno studio *Gothos* diligere debetis, qui & in
pace numerosos vobis populos faciunt, & univer-
sam rem publicam per bella defendunt. Itaque
destinato a nobis iudici, vos convenit obedire ut
quicquid pro conservandis legibus censuerit, mo-
dis omnibus impleatis: quatenus & nostro impe-
rio & vestrae utilitati satisfecisse videamini.

Those other forms of making a Count of the
City of *Rome*, whose office was to hear and de-
termine all crimes committed in breaking or o-
therwise defacing the statues or other publick
works of the city, of a *comes portus*, *comes do-
mesticorum*, and some more that are in *Cassiodor*,
we omit here. These that we have taken out of
him being sufficient to shew the forms of the time
in making counts of the chiefest several natures.
And for the forms of *letters of creation*, or
commissions to counts; hitherto.

XX. For the *duces* or dukes of that time;
the same author hath this example of the giving
of the *ducatus Retiarum*, or the military go-
vernment of the frontiers, which now we call
the *Grisons* country.

Quamvis spectabilitatis honor unus esse vi-
deatur, nec in his aliquid aliud nisi tempus
soleat anteferri, tamen rerum qualitate propensa,
multum his creditum videtur quibus confines
populi deputantur. Quia non est tale pacatis
regionibus *jan* dicere, quale suspectis gentibus

assidere, ubi non tantum vitia, quantum bella
suspecta sunt, nec solum vox praeconis insonat,
sed tubarum crepitus frequenter insultat. *Retiae*
namque munimina sunt *Italiae*, & claustra pro-
vinciae. Quae non immerito sic appellata esse
judicamus, quando contra feras & agrestissimas
gentes velut quaedam plagarum obstaculo dispo-
nuntur. Ibi enim impetus gentilis excipitur, &
transmissis jaculis fauciat furibunda praesumptio.
Sic gentilis impetus vestra venatio est, & ludo
geritis, quod vos assidue foeliciter egisse sentitis.
Ideo validum te ingenio ac viribus audientes,
per illam indictionem, *ducatum* tibi credimus
Retiarum, ut milites & in pace regas, & cum
eis fines nostros solenni alacritate circumneas.
Quia non parvam rem tibi respicis esse commis-
sam, quando tranquillitas regni nostri tua credi-
tur sollicitudine custodiri. Ita tamen ut milites
tibi commissi vivant cum provincialibus jure civi-
li, nec insolecat animus qui se sentit armatum;
quia clypeus ille exercitus nostri quietem debet
praestare *Romanis*. Quos ideo constat appositos,
ut intus vita foelicior secura libertate carpatur.
Quapropter nostro responde judicio fide nobis &
industria placiturus, ut nec gentiles sine discul-
sione suscipias, nec nostros ad gentes sub incurio-
sitate transmittas. Ad necessitatem siquidem ra-
rius venit armorum, ubi suscepta surreptio cu-
stodiri posse sentitur. Privilegia vero dignitatis
tuae nostris tibi iussionibus vendicabis.

This commission for a duke gave the same
authority, as that before shewed for the *count*
of a province. And he that had a province so
committed to him with military government,
being not a count, was called *dux* only; if a
count, then *comes hujus* or *illius provinciae*;
as is before noted. Saying (as I think) in cases
where the predecessors had been so frequently
counts, that the name of *count* and *comitiva*
with relation to the province, was become in re-
putation a note rather of office there only, than
a severed character of honour in the court. In
such cases, I conceive, the successors were stiled
comites of the provinces, although they were
not otherwise *comites*; and so in truth their titles
were but mere *synonymies* to *duces*, as also their
comitiva to *ducatus*, whereas if they were *co-
mites* of the court besides (as at first all were)
then there remained the same difference between
them and mere dukes, that is before remembered.
But some further light to them will appear in
that which we next shew, touching their ensigns
and the officers that were under them in the
places of their command.

XXI. Besides the letters of creation or com-
mission, by which the counts or dukes of those
times were made (wherein the offices of counts
were, as is seen in the examples before brought,
according to their several natures, either *Pa-
latine*, civil, or military; but of the dukes, al-
ways military) they had also, as other officers
of the greater note, ensigns or *symbola admini-
strationis* or ^a *signa* or *σημεία* ^b *ἀρχῆς* which

^a Novell. 24. cap. 6. & videbis Pancirol. ad notitiam utrang. cap. 12.

were painted in their letters or *codicilli* (as they were called) as also books of instructions or *principis mandata*, for their direction in government. The *symbola* or ensigns were of such nature, as for the most part denoted in picture the principal parts of what was comprehended in the object of their government, and that under the picture of their book of instructions, and sometime of the letters themselves loosely folded, both which were usually added also. As the *comes sacrarum largitionum* had money in dishes, bags, chests, and the like under the picture of his book of instructions. Of the like nature were those of the *comes rerum privatarum*. The *magister militum* had shields of several colours and devices on them, with the names of their bands or regiments. The *quaestor* a bundle of rolls, and a column inscribed with *leges salutaris*. The *comes orientis*, his provinces designed in the shape of women crowned, and holding dishes of money, and supercribed with the names of the provinces. The *comes limitis Aegypti* had *Memphis*, *Pelusium*, and some other cities of *Aegypt* painted with a part of *Nilus*. The duke of *Thebes* there, *Hermunthus*, *Oasis*, *Copto*, *Syena*, and some other cities with another part of *Nilus*. And thus both in the east and west, those great officers had their ensigns pictured in their letters of creation or commission, and that with various colours, as you may know more largely out of *Pancirollus* his commentary on the *notitia*, where also the officers that were under them are expressed.

But for examples here both of the ensigns of a military count and of a duke, as also to shew what officers they had under them, and what mixed with them; I have chosen those of the *comes Britanniarum*, *comes littoris Saxonici per Britannias* and *dux Britanniarum* and the rest which were of this island about MCC years now past or about *Theodosius II.* which falls near the last times wherein the *Roman* empire extended itself hither.

The government of the empire was then such that there were four vice-roys or *praefecti praetorio* for civil government; one of the east, another of *Illyricum*, a third of *Italy*, and the fourth titled of *Gaul*, or *praefectus praetorio Galliarum*, to whose superintendency both *Britain* and *Spain* were subject. Every of these *praefecti* had immediately under them, for civil government, *vicarii* or lieutenants; and sometimes *comites* immediately (as in the example of the *comes orientis*, that was as a *vicarius* or lieutenant to the *praefectus orientis*) sometimes other such officers; but all made by the emperor. And the *praefectus Galliarum* had three *vicarii*, one for *Spain*, the second for *Gaul*, and the third for *Britain*. And the *vicarius Britanniarum*, whose ensigns or *symbola administrationis*, were the draught of those five parts of their *Britain*; *Britannia prima*, *Britannia secunda*, *Flavia Caesariensis*, *maxima Caesariensis*, and *Valentia*, every of them being expressed in several forms of buildings with their names supercribed,

and so placed on land synuously drawn and encompassed with the sea, as if those five had comprehended the whole island. And the book of instructions, as covered with green, and the letters or commission, as in a gilt cover, were added in the self-same form as is anon shewed in the ensigns of the counts and dukes there. Under this *vicarius*, there were five that exercised jurisdiction: two *consulares* and three *praesides*; every one having one of these five parts for his province. They are thus mentioned in the *notitia*.

Sub dispositione viri spectabilis, vicarii Britanniarum.

Consulares.

Maximae Caesariensis.
Valentiae.

Praesides.

Britanniae primae.
Britanniae secundae.
Flaviae Caesariensis.

Officium autem habet idem vir spectabilis vicarius hoc modo.

Principem de schola Agentum in rebus ex duce-nariis.

Cornicularium.
Numerarios duos.
Commentariensem.

Ab actis:
Curam epistolarum.
Adjutorem.
Subadjuvas.

Singulares & reliquos officiales.

The ensigns and offices of these *consulares*, are well enough known out of that of the *consulares Campaniae*, whose *officium*, (as the author of the *notitia* saith) *habet ita* :

Principem de officio praefecti praetorio Italiae.
Cornicularium.

Tabularios duos pro numerario.
Adjutorem.

Commentariensem.
Ab actis.
Subadjuvam.

Exceptores & reliquos cohortalinos quibus non licet ad aliam transire militiam sine annotatione clementiae principalis, caeteri omnes consulares ad similitudinem consularium Campaniae officium habent.

So that, turn but *praefectus praetorio Italiae* here into *praefectus praetorio Galliarum*, and then every such officer as is mentioned here belonged also to every of the *consulares* of *Britain*.

^b De his nominibus, vide, si placet, *Panciroli*. ad not. occidentis, cap. 69. & *Camden*, *Brit.* p. 111.

And the ensigns also of other *consulares* (says *Pancirollus*) were as this of *Campania*, which was a woman with a mural crown, sitting on a seat of judgement, holding in her right hand the name of the province on the top of a lance, and resting her left on a shield. But some have the shape of a man to the same purpose. The book of instructions is also added, as set by on a table. The *praesides* in Britain had also the same officers with the *praeses* *Dalmatiae*. The *praeses* *Dalmatiae* *officium habet* (says the author of the *notitia*) *hoc modo*; *principem ex eodem officio* (that is *ex officio praefecti praetorio Italiae*, and so those of Britain had their *principes*, *ex officio praefecti praetorio Galliarum*.)

Cornicularium.

Tabularios duos.

Commentariensem.

Adjutorem.

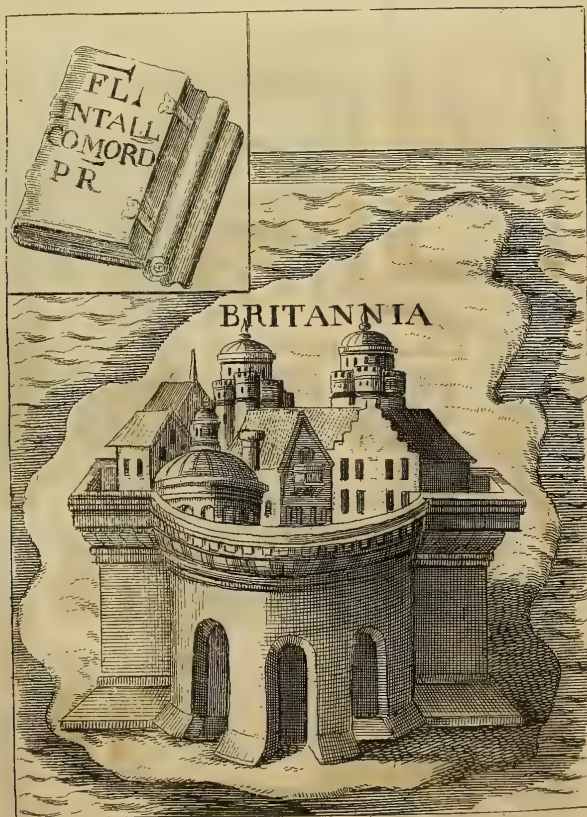
Ab actis.

Subadjuvam.

Exceptores & caeteros cohortalinos quibus non licet ad aliam transire militiam sine annotatione clementiae principalis. Caeteri praesides ad similitudinem Dalmatiae officium habent.

And the ensigns of every *praeses* are known by those of the *correctores* *Apuliae & Calabriae*, which were a fair building supercribed with the name of the province under the book of instructions, and the emperor's picture which was frequent also among the ensigns of other officers. And as the *vicarius* was honoured with the attribute of *spectabilis*, so the *consulares* with *clarissimi*, and the *praesides* with *perfectissimi*. And thus was then the civil administration of Britain.

For the military; the *magister peditum praesentalis*, and the *magister equitum praesentalis*, in the west, having the immediate power under the emperor over the horse and foot appointed for the defence of the provinces or frontiers of the west (as others in the east) had under them six military counts of provinces, and twelve dukes. The counts were of *Italy*, *Africa*, *Tingitania*, *tractus Argentoratensis*, or the parts about *Strasbourg*, of *Britain*, and of the *Saxon coast* or *comes littoris Saxonici*. The dukes were of *Mauritania Caesariensis*, the *Tripolitani*, *Pannonia secunda*, *Valeria Ripensis*, *Pannonia prima*, *Noricum Ripense*, *Retia prima* and *secunda*, *Sequanicum Armoricanum*, *Belgica secunda*, *Germania prima*, of *Britain*, and of the parts about *Mentz*. All these had their ensigns and officers almost in every thing proportionably alike.



The *comes Britanniae* had for his ensigns the island thus encompassed with the sea, under the book of his instructions and the letters of his commission; one fair building (to denote the chief city, it seems) being placed in it. On the book also the same letters are inscribed, which were upon the book of instructions in the ensigns of the *vicarius Britanniarum*, and commonly upon the books of other such counts and dukes in the *notitia*. What they mean I sufficiently understand not. But *Pancirollus* conceives them as if they had been sigles and parts of words so well and commonly known in the office of the court of notaries, or of the clerks of the crown, that it needed not they should be more largely expressed. The words he thinks are these, *foelix liber injunctus notariis laterculi continens mandata ordine principis* or *primicerii*, which was the master or president of the clerks of the crown.

The government of this count was, it seems, in the southern parts of the island. He had with him, at the time when the *notitia* was written, about MMM. foot and DC. horse; and though there were a duke besides (as is anon shewed) yet, it seems, all that part of *Britain*, which the *Romans* then had, was generally under his care, and the dukes government was added for assistance to him. For after his ensigns in the *notitia*, the whole province is expressly thus placed under his government, as his ensigns also denote.

Sub dispositione viri spectabilis comitis Britanniae.

Provincia Britanniae.

And then for his officers.

Officium autem habebat idem vir spectabilis, comes hoc modo.

Principem ex officio magistri militum praesentium alternis annis.

Commentariensem ut supra.

Numerarios duos, singulos ex utroque officio supradicto.

Adjutorem.

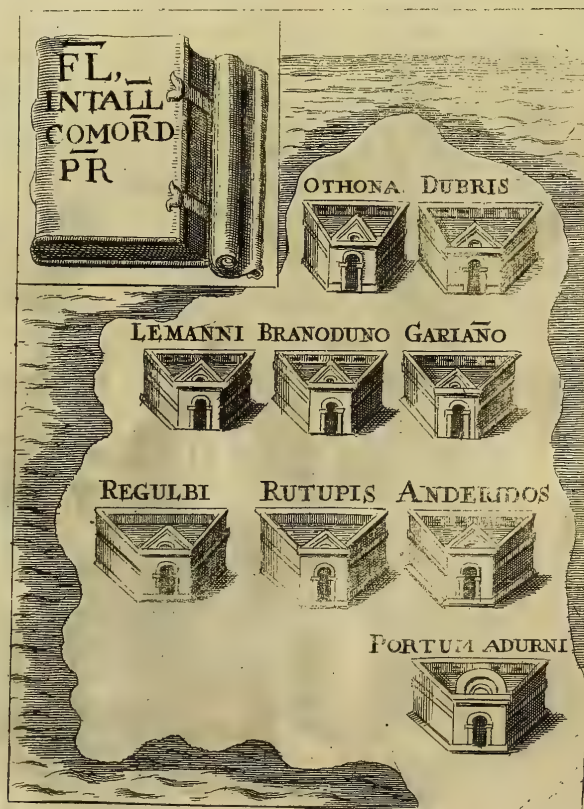
Subadiuvam.

Exceptores.

Singulares & reliquos officiales.

The *cornicularius* and *regerendarius* are wanting here, which other counts most commonly had. But *Pancirollus* imputes that to the negligence of the transcriber of the *notitia*.

The *comes littoris Saxonici* was as admiral of that time, and placed against the maritime incursions of the *Saxons*, or those of the west part of *Germany*, that were known most commonly by that name. His ensigns were ix maritime towns, but thus placed on the form of the whole island. That which appears in his ensigns besides the



towns names, may be well known from what is already said touching the ensigns of other officers in that time. And for his garrisons, he had under him about MMCC foot, and CC horse, with his officers, both together thus expressed.

Sub dispositione viri spectabilis comitis littoris Saxonici per Britanniam.

Praepositus numeri Fortensium, Othonae.

Praepositus militum Tangricanorum, Dubris.

Praepositus numeri Turnacensium, Lemannis.

Praepositus equitum Dalmatarum Branodunensis, Branoduno.

Praepositus equitum Stablesiani Garianonensis, Garianmono.

Tribunus Cohortis primae Vetasiorum, Regulbio.

Praepositus Legionis. II. Aug. Rutupis.

Praepositus numeri Abulcorum, Anderida.

Praepositus numeri exploratorum, portu Adurni.

Officium autem habet idem vir spectabilis comes hoc modo.

Principem ex officio magistri praesentalium a parte peditum.

Numerarios duos ut supra, ex officio praedicto.

Commentariensem ex officio supradicto.

Cornicularium.

Adiutorem.

Subadjuuam.

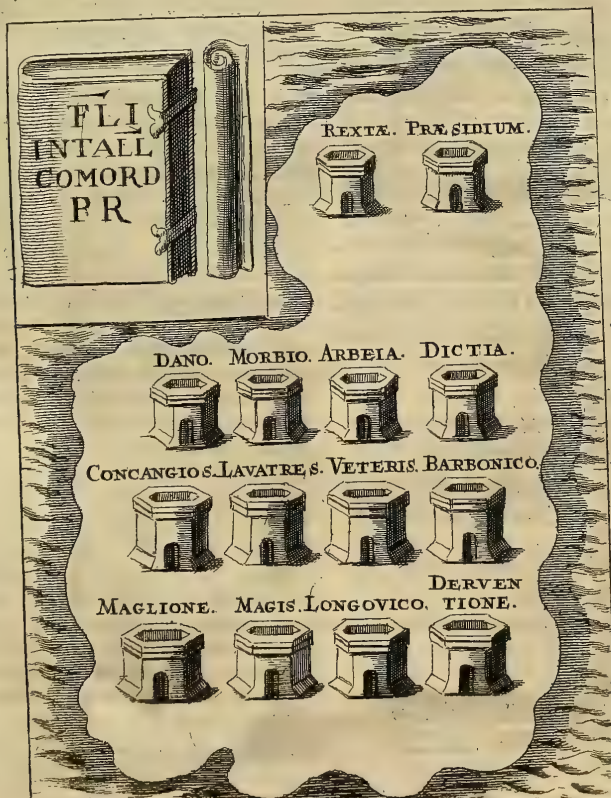
Regerendarium.

Exceptores.

Singulares & reliquos officiales.

For the maritime towns of this island mentioned here; *Othona* is conceived by some learned men to have been in the hundred of *Dengy* in *Essex*, in the same place or near where saint *Peters in the wall* is. *Dubris* was *Dover*, *Lemmani* or *Lemmanis* (which is *Portus Lemmanis* in *Antoninus*, and *Λιμὴν* in *Ptolemy*, but not, it seems, as the word *λίμνη* is significant in Greek, ^d but as it was made from the *British* name) *Line* or *Linehill* in *Kent*, as also *Regulbium*, *Reculver*, and *Rutupis* either *Sandwich* or *Richborough* near *Sandwich* on the shore of the same county. And *Anderida* is taken for *Dewenden* in *Kent*. However, it seems certain, that it was some maritime town either of *Kent* or *Suffex*. For *Andrædeswald* which occurs in the old *Annals of England*, for the *Wild* of *Kent* and *Suffex*, may justify so much by the affinity of sound. *Branodunum* is taken for *Bancaster* in *Norfolk*, and *Gariano* or *Garianmonum* for *Tarmouth*. And that *Portus Adurni* is supposed to have been *Corington* in the shore of *Suffex*.

The *dux Britanniarum* had for his ensign xiv towns, but thus placed also as upon the whole island with his book of instructions and letters of creation or commission, as the counts and other dukes. His garrisons and officers are thus described.



^d Videbis V. C. G. Camden. in *Canto* pag. 245. & 246. ubi nomina apud eum habet sunt explicata, suo nempe quodlibet loco.

Sub dispositione viri spectabilis ducis Britan-
niarum.

Praefectus legionis sextae.

Praefectus equitum Dalmatarum, Praesidio.

Praefectus equitum Crispianorum, Dano.

Praefectus equitum Catafractariorum, Morbio.

*Praefectus numeri Barcariorum Tigrisensium,
Arbeia.*

Praefectus numeri Nerviorum Dictensium, Dicti.

Praefectus numeri Vigilum, Concangios.

Praefectus numeri Exploratorum, Lavatres.

*Praefectus numeri Directorum veterum alias
Veneris.*

Praefectus numeri Defensorum, Braboniaco.

Praefectus numeri Solensium, Maglovae.

Praefectus numeri Pacensium, Magis.

Praefectus numeri Longovicariorum, Longovico.

Praefectus numeri Derventionensis, Derventione.

Item per lineam Valli.

Tribunus cohortis quartae Lergorum, Segeduno.

Tribunus cohortis Corvoviorum, ponte Aelii.

Praefectus Alae primae Astorum, Conderoo.

Tribunus cohortis primae Frixagorum, Vindobala.

Praefectus Alae Savinianae Hunno.

Praefectus Alae secundae Astorum, Cilurno.

Tribunus cohortis primae Batavorum, Procolitia.

Tribunus cohortis primae Tungrorum, Borcovico.

Tribunus cohortis quartae Gallorum, Vindolana.

Tribunus cohortis primae Astorum, Aesica.

Tribunus cohortis secundae Dalmatarum, Magnis.

*Tribunus cohortis primae Aeliae Dacorum, Am-
boglanna.*

Praefectus alae Petrianae, Petrianis.

*Praefectus numeri Maurorum Aurelianorum,
Aballaba.*

Tribunus cohortis secundae Lergorum, Congavata.

Tribunus cohortis primae Hispanorum, Axeloduno.

Tribunus cohortis secundae Thracum, Gabrosenti.

Tribunus cohortis primae Aeliae Classicae, Tunnocelo.

Tribunus cohortis primae Morinorum, Glannibanta.

Tribunus cohortis tertiae Nerviorum, Alione.

Cuneus Armaturarum, Bremetenraco.

Praefectus alae primae Herculeae, Olenaco.

Tribunus cohortis sextae Nerviorum, Virofido.

*Officium autem habet idem vir spectabilis dux
hoc modo.*

*Principem ex officiis magistrorum militum prae-
sentialium alteris annis.*

Commentariensem utrunque.

Numerarios in utrisque officiis omni anno.

Adiutorem.

Subadjuvam.

Regerendarium.

Exceptores.

Singulares & reliquos officiales.

Those towns expressed in the old names were of the more northern parts. *Sexta* (they say) was *Pork*; *Praesidium*, *Marwick*; *Danum*, *Doncaster*; *Arbeia* and *Morbium*, *Jerby*, and *Moresby* in *Cumberland*; and the rest noted in the ensigns and by the wall (the *Picts wall* is understood by it) may be had out of Mr. *Camden's* most probable conjectures. But hence it may well enough be concluded that this duke's government was in the inner parts of the island, and upon the northern frontiers of that which the *Romans* had; and so, that of the *comes Britanniarum*, chiefly in the southern parts. And in the times that were but little before the *notitia*, it seems, there was only a *dux Britanniarum* (that executed both these offices of count and duke of *Britain*) and a *comes tractus maritimi*, which was the same with that *comes litoris Saxonici* before mentioned. For under *Valentinian* the 1. *Nectardius* was the count of the sea-coast or maritime marches, as they then called it, and *Bucbobaudes* first, and then *Theodosius*, were dukes of *Britain*. This duke by the account made out of the *notitia*, had *xrv. M.* foot, and *cccc.* horse, which reckoned with those that were with the two counts, make *xix. m. cc.* foot, and *m. dcc.* horse for the number of such as the *Romans* then, under those counts and this duke, maintained in this island.

And thus much of the several kinds of honorary and officary counts and dukes, and of their original in the old empire before those titles became feudal.

XXII. But some learned men endure not that the original of these titles of *dux* and *comes* (I mean of the nature of them) should be drawn from the old empire into *Germany*, where the empire now is; but rather will have it that the old empire had the nature of them, and the first use of them, (especially of *comes*) from the *Germans* by imitation of what was observed among them after the *Romans* were accustomed to their manners. It appears indeed in *Tacitus*, that divers princes in *Germany* had their government of several territories assigned them, and held their courts in them, and had every one at least a *c. comites* or followers that were counsellors and assistants to them; and the honour of every of them was according to the multitude and courage of those *comites*. *Tacitus* his words are, *eliguntur in conciliis & principes qui jura per pagos vicosque reddunt. Centeni singulis ex plebe comites, consilium simul & auctoritas adsunt.* And then he says, that blood and virtue gave the title also of prince to some such as were of those *comites*, and among them also there were several ranks. So is that which follows in him to be understood. *Insignis nobilitas* (saith he) *aut magna patrum merita principis dignationem etiam adolescentulis asignant. Caeteris robustioribus ac jampridem*

probat is aggregantur. Nec rubor inter comites aspicit. Gradus quintetiam & ipse comitatus habet iudicio ejus quem sectantur. Magnaque & comitum æmulatione, quibus primus apud principem suum locus; & principum cui plurimi & acerrimi comites. Haec dignitas, hae vires, magno semper electorum juvenum globo circundari, in pace decus, in bello praesidium. And the number and bravery of these followers, was the chief glory of those princes which had them. And *Chonodomarius* king of the *Almans*, under *Constantinus* the younger, had of this kind cc. comites, as we see in *Marcellinus* that notes them by a distinct title from such as were only amici. *Comites ejus ducenti numero & tres amici junctissimi.* Out of this use among the *Germans*, some of the *Dutch*⁵ would deduce the title and use of *comes* into the old empire; as if the *Romans* (with whom indeed it appears not to have been honorary or officary, until after the *Germans* were known to them) finding these counts in *Germany* by the name of *graven*, which they understand to have been in those times as at this day the *German* word for counts, had turned it significantly into *comites*, and then by imitation had taken the like dignity into use in the emperor's court, and that *duces* came so likewise from their *hertzen* as they call dukes at this day. But I observe not the *Romans* to have been such imitators of foreign nations. They gave laws and customs, but rarely took any. And the conjecture may please, but I cannot assent to it. It had been equally probable if not more, to draw it from the *Gauls*. For among them every great man according to his worth had his like followers, whom they called *ambacti*, as *Caesar*⁶ tells us. *Eorum ut quisque est (are his words) genere copiosque amplissimus ita plurimos circa se ambactos clientisque habet. Hanc unam gratiam potentiamque noverunt.* This is in substance the same that *Tacitus* speaks of the *Germans*. And if their tongues were the same in those times, it is very likely that the *comites* that *Tacitus* speaks of, were called *ambacti* also. And I remember it noted that in old *Dutch*, *ambachte*, is translated *comitatus*; as⁷ in *Engelbrectes ambachte*, in *Engelberti comitatu*. But, this by the way. The title of *dux* and *comes* thus shewed, as they were in the antient empire, the nature and original of feuds, with which they were at length, as at this day, commonly joined, succeeds here.

XXIII. *Feuds* or *feuda* (being the same which in our laws we call tenancies or lands held, and *feuda* also; which is but the same word in our *feoda militaria*) are possessions so given and held, that the possessor is bound by homage or fealty to do service to him (or those which derive under him) from whom they were given. And the services that are to be performed by the tenants of these lands are various. And frequently rents as well as other service are

due out of them to the lords of whom they are held. But although *feudum* or *feud*, be taken to interpret the very word *beneficium*, and of it self originally to signify no more, yet that which really gives it the nature and notion that is now fixed on it, is the bond⁸ of homage or fealty between the lord and the tenant. For without that bond, no possession (though it pay rent or other satisfaction upon any contract, either censual, emphyteuticary, or the like) can be a feud.

Whence this use to give lands by such a right, originally came, is much disputed. (171) Some fetch it from the antient right of patrons and clients in *Rome*. But there was only a kind of bond between them, but no possession held by that bond. Others derive it from the *Roman* deduction of military colonies into subdued countries, so the better to preserve what was won to the empire. Others otherwise. But among the *Romans* I see not any thing so near the just nature of feuds, as those possessions which were given to such as were their *duces limitanei*, or dukes of frontiers in the empire, and to others that spent their time with them in defence of those frontiers, to be held only under military service. And of those we find express mention under *Alexander Severus*. He (saith **Lampridius*) gave such territories as were gained in the frontiers, *limitaneis ducibus & militibus, ita ut eorum ita essent si haeredes illorum militarent, nec unquam ad privatos pertinerent; dicens attentius eos militaturos si etiam sua rura defenderent. Addidit sane his & animalia & servos; ut possent colere quod acceperant, ne per inopiam hominum vel per senectutem possidentium desererentur rara vicina barbariae quod turpissimum esse ducebat.* Here we see that lands were given to be possessed to them and their heirs, under the tenure of military service to be performed by them. So *Probus* gave much land in *Isauria* to his old soldiers, adding (as *Vopiscus* says) *ut eorum ab filii anno decimo octavo mares duntaxat ad militiam mitterentur.* (172) And of this kind were the *agri militibus assignati* which are mentioned by *Ulpian*. Some other like examples are. And so to the time of *Alexander Severus*, an original or some use of feuds in the empire may be well referred. As also a kind of joining them with the title of *dux*; but not the making of that title feudal or perpetual as annexed to the feud given. For I conceive not that the *duces* themselves kept their offices or names the longer by reason of their feuds, much less transmitted them to their heirs. Only the feuds were given as rewards to them and their heirs under the tenure by military service, which continued after the name and office ended. It is very likely also, that the same course was in the following times used as well to counts and dukes (being to this purpose of the self same nature) in their several frontiers committed to them. But the annexing of those dignities to feuds, and so

⁵ Hist. lib. 16.

⁶ Ph. Cluverius Germaniae lib. 1. cap. 48. & ante eum *Udalricus Zasius* & *Rutgerus Roslandus*, ut videre est apud *Resold.* discurs. politic. 4. cap. 4. §. 1.

⁷ De bello Gallic. lib. 7.

⁸ Agud Freher. orig. Palatin. lib. 1. cap. 5. & de ambacto, videlicet Jos. Scalig. ad Festum.

⁹ Vide Cujac. observat. lib. 8. cap. 14.

¹⁰ Praeter eos qui ex professo de *Feudis* volumina scribunt, vide *Bodin*: de Rebus, lib. 1. cap. 9.

¹¹ Circa an. Christi 220.

¹² L. 15. item §. 1. item si. ff. de rei vindicatione & L. Lucius 11.

¹³ de evictione,

making them also feudal, is of another original. Nor was the use of making them feudal in the empire, antienter than the translation of it to France.

(173) The use of feuds also was very frequent among those northern nations which overran the most of all Europe, about the time of the declining empire. And the power and glory of their princes consisting in the multitude of such as were devoted to live and die with them, the bond of such devotion was made chiefly by such gifts of possessions as created a feudal right between the giver and the possessor, confirmed also by an oath of the possessors part, which bound^m him both to be faithful to the giver and also assistant to him. And there is a plain taste both of the frequency and antiquity of feuds among those northern nations in that of the *Cimbri* (which is the most comprehensive name of them) when being precluded out of Spain and Gaul, they petitioned the state of Rome, that they might have lands given them to be held of the state by military service, as if such kind of gifts had been ordinary among the princes of their countries. *Ut martius populus aliquid sibi terrae daret* (says * *Florus*) *quasi stipendium; caeterum, ut vellet, manibus atque armis suis uteretur.*

And although there were some use of feuds in the empire before the incursions of those northern nations in the declining times, yet we may more fitly attribute the original of the common use of feuds through all the western and southern parts of Europe, to those nations. And to them also the first annexing of feuds to the dignities of *dux* and *comes* is justly to be referred. For those dignities, as they were officary, they found in all or most of the provinces where the Romans had been, and they annexed them to feuds, and so used those Roman names as they did otherwise the language of Rome in their charters, laws, and such like, though not without much abuse and spoil of the neatness of it. But the *Lumbards* in Italy being a great part of those nations, and in their own nature being chiefly warlike (when they found those two titles in use, and that the power joined to both was frequently equal, and that the title of *comes*, as it had relation to the court, and when it was of the first rank was better than *dux*, and that yet *dux* was the more expressing title of a governor that had garrisons with him) so preferred the name of *dux*, that their chiefest dignity thus given in their kingdom, in feudal right, was *dux*; and that of *comes* was at first left not only inferior, but often also subordinate to it, and givenⁿ to the judges and civil governors of cities or small territories, that were part either of duchies or other provinces of their kingdom. And the first joining of the title of *dux* with a feud, and so making it perpetual being before temporary or at will only) was in that of *Alboinus* the first king of the *Lumbards*, his making *Friuli* and the province about it a

duchy, and giving it to *Gisulfe* his nephew. *Regio* (saith *Sigonius*) *in formulam ducatus redacta, & Gisulfus nepos ejus dux institutus; ac familiae Longobardorum, quas ille depoposcit, concessae. Hinc ducatus Foro-Julienensis nomen inclauit. Atque hic primus fuit qui perpetuam in Italia ditionem dux institutus adeptus sit.* Thus under him and his successors before *Charles the great*, began also the duchies of *Spoletto*, *Tuscany*, *Benevento*, and others in Italy. And as soon as the *Lumbards* had gotten the territory of the *Exarchat* of *Ravenna*, it was erected into a feudal duchy by king *Luitprand*.

And as the *Lumbards* in Italy, chose *dux* rather than *comes* for their highest title under the king, so in some parts of France, of Germany, and of other countries also (where those northern nations planting themselves had found the provincial names of *dux* and *comes*, as they denoted governors of provinces) *comes* being apprehended to be every way, at least as honourable a title as *dux* (it was indeed greater in the old empire) was retained also, among such as were subordinate, as a title of highest dignity, and so annexed to feuds, as *dux* in Italy. And oftentimes both that and *dux* were taken for so much the same, that there was no difference of their dignities designed by them. For though in Italy chiefly under the *Lumbards*, and elsewhere also, the highest of these were for the most part *dux*, and that of *comes* were frequently subordinate to it (as in that law of the *Bavarians*,^o *Si talis homo potens hoc fecerit quem ille comes distringere non potest, tunc dicet duci suo, & dux ille distringat secundum legem*, (174) and in divers such, whence it appears, that dukes^p had counts under them, as archbishops have the suffragans of their provinces) yet also there were frequently in those times, *comites qui super se ducem^q non habebant*; and *comites qui post imperialis apicis dignitatem populum Dei regebant*. And as in the old empire there were counts of the first, second, and third rank, that were distinguished by those ranks also in their offices annexed to their dignities, so after the connexion of feuds with those dignities, among those northern nations, there were divers counts equal with dukes, and there were also counts inferior to them. Counts equal to them (and such as were indifferently titled counts or dukes) had whole provinces with like power to dukes, and were immediately subject to the king or emperor that made them. Counts inferior were such as were either subordinate to dukes, as judges or presidents of parts of their provinces, or being immediate to the emperor, had yet no other dignity and office, meant by that name, than the judge or president of some city or small part of a province committed to them. Such inferior counts were the *comites civitatum* that frequently occur in the laws of the *West-Goths*, the *judices fiscales* called counts in the laws of the *Ripuarrians*, and such like. And those greater counts are such as are meant in the testimo-

^m Videffis Sigon. de regno Italiae, lib. 3. & 7. & Hieronym. Rubicum in hist. Raven. lib. 4. & feudorum lib. 2.

ⁿ Videffis feud. lib. 2. tit. 27. §. 2. &c. & Hotoman, de verb. feudalibus, in comes.

^o Strab. de rebus Eccles. cap. 31.

^q App. ad Fredegar. apud Bignon. in Marculph.

^p Leg. Bavar. cap. 5. art. 8.

^r Synod. Cabillon. 2. cap. 20.

^{*} Lib. 3. c. 3.

^p Walafrid.

nies but now cited, and in *Ditmarus* * where he says that in *Burgundy*, *nullus vocabatur comes nisi is qui honorem possidebat* (175).

These names thus taken into use among those northern nations, and joined with feuds in the countries of *France, Italy, Germany*, and elsewhere in that which hath been since, the western empire, continued so in them until *Charles the great*, who being king of all those parts was made emperor, and retained the former use in them. And so came these dignities to be first feudal in the empire. And though in the later empire of the east, whence this of the west was translated; the names of *dux* and *comes* were of use for some marine officers (as in *μέγας δὲξ*, or great duke, who was as our lord admiral, and had power over the *protocomes* and *comites* that were also marine, as also otherwise) yet we find no step of making them feudal there; or annexing them to territories, unless we believe that which *Nicephorus Gregoras*† tells us of *Constantine* the great his making *Athens* and the territory there a dutchy, and giving the title of great duke, or *μέγας δὲξ*, to the lord of it. But this *Nicephorus* hath not warrant for it, but being a *Grecian* of the later ages, hath herein, as in some other things of like nature, too boldly affirmed what some light traditions perhaps afforded him. For of the same kind is that which he says of the lord of *Peloponnesus*, being made prince by that *Constantine*, the lord of *Sicily*, *rex* of *Boeotia* and *Thebes*, *magnus primicerius*, and such like; as if those names had been so long since annexed to these territories. And although they had in the east their *ἡγεμονικὰ*, or *military possessions*, which were as feuds; yet I find not any conjunction of these dignities with feuds used among them. The frivolous deduction of *comes* and *comitatus*, a *comminando*;‡ and the rest of that nature I omit here; it being thus plain, that from the title of *comes* so derived out of the old empire into those nations that joined it with feuds, the title of *comitatus* was made for the territory or feud, as also, in the abstract, for the dignity of a count; as *ducatus* for a dutchy, from *dux* also.

Since the empire translated to the *French* in *Charles the great* (under whom the use of feudal dignities was common enough, as they were also before him in the kingdoms of *Italy, France, Germany*) not only those titles of duke and count (or *hertzog* and *grave*, as the *Dutch* call them) but divers others also were annexed to feuds; the chiefest of them being made out of duke and count, or *hertzog* and *grave* by addition; as *ertzhertzog* great duke, *pfaltzgrave*, *landtgrave*, *margrave*, or *marques*, and such more. And whereas those titles of duke and count, and some others were not commonly hereditary in the *French* empire; after it was translated to *Germany*, into *Otho* the great, they became both to be more frequently given, and

commonly also thus far hereditary, that the feuds, and dignities descended to the issue male of them that were first invested with them, and afterward * under *Conrad II.* the inheritance of them was extended to the grand children, and since that time as well to females as males generally of the blood, and in perpetual succession to prelates, or otherwise according to the limitations of the first grant. But the course of inheritance of feuds and the title annexed to them, hath been and is various in *Germany*. And for that, I had rather send the reader to the feudists as also especially to *Andrew Knichen*, in *jus Saxoniae*, verbo *duc*, and to *Henricus Brulæus* his book *de Renunciandi recepto more modoque quem Germaniae principum, comitum, baronum, nobiliumque filiae, si quando nuptui collocantur, secundum ritum consuetudinem & statuta patriae, salubriter introducta, observare solent*, and to *Gregorius Rolbagius* his *illustre certamen masculo-foemineum* touching the excluding of women from succession into feudal dignities, than here say more of it. In these he shall have store enough, of what concerns the disputations belonging to this point.

And with those great titles, jurisdiction and power of government have been usually given in the empire, or *die hohen landes obrig und herelicheit* (as they call it in *Germany*) or *the sovereignty and dominion over the province that is so given*, together with the royalties of the territory, as tolls, customs, mines, fishings, forests, and such like. And although frequently in *Germany*, by reason of the title of duke, count, *marques*, *landtgrave*, and such like given to every son of him that hath his province, or dukedom, or earldom with the title of duke or *grave*, we have dukes, *graves*, and other of such great dignities, denominated from provinces or territories, that have neither jurisdiction nor territory necessarily or really annexed to their title, yet the ancestors at least, from whom they derive those titles (saving in some few cases, some of which are remembered anon, where we speak of the title of *grave*) regularly had territories and jurisdiction in them. *Nemo principum reperitur* (saith *Andrew* † *Knichen* chancellor of the dutchy of *Saxony*) in *Germania qui dux, marchio vel princeps dicitur* (the word *princeps* or *furst*, as they name it, generally comprehending all the feudal dignities of the empire from a baron or *freypere* inclusively upward; as is anon shewed) *cui non realitas territorii respondeat, vel ditio ab ipso non possideatur, vel saltem a majoribus suis non fuerit possessa*. This he regularly delivers, though he have before a singular example of the title of duke in the empire, which from the first creation hath had no territory. *Talem ducatum* (saith he, speaking of dutchies, or the dignity of dukes in other countries without territories) *obtinuit Bertoldus de Zeringen qui vacuum nomen ducis gerens id quasi haereditarium posteris*

* Chron. lib. 7.

† Hist. Rom. lib. 7.

‡ Harmenopol. Prochir. lib. 1. tit. 16.

* Vide Othonem Frisingens. de gest.

Fred. 1. lib. 2. cap. 12. Autor. de regim. princip. lib. 3. cap. 22. &c. Hotoman. verb. Feud. in comes.

† Circa A. D. 970. vide Sigon. de regno Italiae lib. 7. an. 973. & Feud. lib. 1. tit. 1. atque ibi Cujacium, &c.

* Circa A. D. 1030.

† Com. ad jus duc.

Saxon. c. 4. & de rebus hifce, vide Tob. Paumelleter. de Jurisdi. Imp. Rom. lib. 2. cap. 16. Matth. Stephan. de jurisdi. lib. 2. part. 1. cap. 5. &c.

reliquit. Omnes enim usque ad praesentem diem duces dicti sunt nullum ducatum habentes, solumque nomine sine re, participantes. And the province or territory thus given with the name of *dux* or *hertzog* was and is a dutchy or *hertzogthum*; with the name of *comes* or *grave* a *graffshafft* or county, with the title of *marcgrave* or *marquess*, a *marcgraffshafft* or *marquissate*. The like is to be said of the rest of them. The beginning of those titles of *dux* and *comes*, and of annexing them with the rest to feuds, thus far being declared; we come more particularly to the continuance, creations and investitures of them, with the more especial ornaments and ensigns belonging to them, And first of the dignity of *duke*, *archduke*, and *great duke*.

XXIV. That of *duke* having been, since the beginning of the *French* empire, much propagated; they say there are four dutchies the most eminent or *die vier hohen hertzogthum*, the four high dutchies, although they agree not in the names of them. For some reckon them to be *Burgundy*,² *Baviera*, *Brunswick* and *Austria*. Others *Brunswick*, *Baviera*, *Suevia* and *Lorraine*. Some otherwise. But in the old laws of *Saxony*, we read, that ^a *quaelibet provincia Theutonicae terrae suum habet palans-gravionatum* (touching which word, more where we speak of counts *palatin*) *Saxonia*, *Bavaria*, *Franconia*, & *Suevia*, quae antequam a Romanis superabantur, regna fuerunt a quibus ipsis in ducatus nomina fuerunt permutata. Here are some principal dutchies named. But not without a gross error attributed to the *Romans*; if the word *Romans* signify here any other than *Charles the great* and his successors. But as of their dutchies, four are said to be the chiefest, so also out of their counties or *graffschaffts*, *landgraviats*, *marquissats*, and most other dignities in the empire, the like number is made to the same purpose. And the beginning of these selected numbers of four, is by some attributed to *Otho III*. Others place it otherwise; and it is uncertain. As also is the original of their word *hertzog* for *dux* or *duke*, though perhaps that from *ein heer derz zugs*^b as if you should say, *praefectus* or *magister expeditionis*, be most likely. And so it may signify *dux* in such sense as *dux* was used in the ancient empire, where it had relation to such forces as were committed to him that by this name had any government.

(176) In the elder times about the beginning of the *French* empire, a dutchy consisted specially of XII counties, and so a duke had XII counts under him, which must be understood of those inferior sort of counts, touching whom, enough is already said. *Pipinus Grifonem*, more *ducum*, XII *comitatibus* donavit faith an^c old author of the *French* story, speaking of the parts of *Normandy*, as if the government of a dutchy had usually been distinguished by such a number of counties; whence also in those elder times when

the dutchy of *Friuli* was taken from duke *Baldricus*, it was divided by the emperor *Lewis* the first, in *ter quatuor comitatus* (and so preserved in the form of a dutchy, though in the emperor's hands) as^d some read the passage of it in^e *Aimoinus*, though in the best editions we read *inter quatuor comites divisa est*. But howsoever this of XII counties were in those times in some use, and be taken by some learned men to have been almost essential to a dutchy, yet it is plain that both before and after the beginning of the *French* empire, dukes often had no such constant number under them. For the time before; we may see in *Gregory*^f of *Tours*, that sometimes two, sometimes three counts only were subject to a duke. And for the ages since; we find not that in dukedoms any regard hath been of this number. Only it appears that some counts and marquesses also were (as at this day) under dukes that had either power derived from the emperor to make them, or had received from the emperor sovereignty over them together with their dutchies. But the number is uncertain. But of this kind of counts, marquesses, and of other such dignities under subordinate princes; somewhat more, after we have delivered those which are immediately subject to the emperor.

XXV. The chief ceremony of investiture, added to the charter of the emperors creation of a lay duke in the elder times, and sometime also used without a charter, was for the most part, the delivery of one or more banners, or *banneroles*; and that ceremony was used not only in giving of dutchies, but other provinces or territories to lay marquesses, counts and such more, as *marquissats* and counties. And as the investiture of them at creations chiefly consisted in this ceremony of delivery of banners, so did also the surrender of them into the hands of the emperor, and likewise the investitures or livery of them to heirs. The testimonies thereof are full enough in the writers of the empire. When the dutchy of *Baviera* was surrendered, and the marquissate of *Austria*, under *Frederick Barbarossa*, changed into a dutchy, both the surrender and the investiture were so made. The surrender of the dutchy of *Baviera* by VII banners, and the investiture that was at the creation of the dutchy of *Austria* by two, as also the investiture of the dutchy of *Baviera* to the duke of *Saxony*, by the same VII banners: *Henricus major natu* (that is the duke of *Baviera*, that was made duke of *Austria*;^g says *Otho Frisingensis*) *ducatum Bavariae, per vii vexilla resignavit. Quibus minori* (to *Henry* duke of *Saxony*, who was then restored to the dutchy of *Baviera*, and had it by a kind of livery, as heir to his father) *traditis, ille* (that is the emperor) *duobus vexillis marchiam orientalem* (or *Austria*) *cum comitatibus ad eam ex antiquo pertinentibus reddidit. Exinde de eadem marchia cum praedictis comitatibus, quos tres dicunt, judi-*

^a *Neu titular buch* pag. 7. & vide Onuph. de comitiis imp. cap. 13. Tob. Paurmeist. de jurisd. lib. 2. c. 10. §. 14. Matth. Stephan. de jurisd. lib. 2. part 1. cap. 4. §. 10. &c.

^b Spec. Sax. lib. 3. art. 53.

^c Videis Matth. Stephan. de jurisd. lib. 2. part 1.

cap. 6. §. 56. & cap. 6. membr. 2. initio. Ad etiam Philipp. Cluverium in German. antiquit. lib. 1. cap. 46.

^d Aimoinus lib. 4. c. 61.

Et de ea re vide Hotoman. verb. feudal. in duces & Douz. annal. Holland. lib. 5. pag. 218.

^e P. Pich. adversar. lib. 1. cap. 8.

^f Lib. 4. cap. 116.

^g Hist. lib. 8. cap. 18. & lib. 9. cap. 7.

^h De gestis Fred. 1. lib. 2. cap. 32. &c.

cio principum, ducatum fecit, eamque non solum sibi sed & uxori cum duobus vexillis tradidit (that is to Henry (177) who had surrendered the duchy of Baviere) neve in posterum ab aliquo successorum mutari possit aut infringi, privilegio confirmavit. And the same author in another place, est consuetudo curiae ut regna per gladium, provinciae per vexillum a principe tradantur vel recipiantur. And Gunterus^b speaking of Frederick Barbarossa his giving a kingdom to one brother, and a dukedom to another.

Ergo ubi vexillo partem, quam diximus, ille, Hic autem gladio regnum suscepit ab ipso; Hunc etenim longo servatum tempore morem Curia nostra tenet, &c.

So when Casimir and Buggislaw princes of Pomerland, received from Frederick Barbarossa the title of dukes, they were investedⁱ traditis aquilis cum bannerio, or by a banner of the empire, and of the province of which they were invested given into their hands. For the imperial banner^k as well as that of the province was delivered at the investiture of this duchy. But in the^l Sachsen Spiegel, a principal quality of a feudal prince of the empire (touching the title of prince of the empire, more anon) is that he have his investiture by a banner or fahyn, as they call it, or by a scepter. The scepter here is the cause why we before refrained the investiture by banners to lay princes. For the scepter belonged^m chiefly to the investiture of spiritual men in feudal dignities, as the banner to lay. And the words of the Sachsen Spiegel to this purpose are, *imperator confert cum sceptro spiritualibus, & cum vexillis, secularibus, feuda omnia illustris dignitatis*. Some memory is of it in the investiture of Gualter Cronberg master of Prussia, and of the Dutch order, wherein, besides the banners, the emperor's scepter is offered to him to touch. *Cum autem* (saith Georgiusⁿ Caelestinus) *non tantum ecclesiasticus sed & politicus princeps esset, sceptrum quoque imperiale per Caesarem ei tangendum dabatur*. But we find sometimes banners alone also in the investitures of ecclesiastical persons, as in the example of the archbishop of Mentz invested by fifty^o banners. And these feuds given by the banners are therefore called fahnteihen or wanteihen as if you should say banner-fiefs, or banner-fees, or feuda vexilli, or feuda vexillaria. Lehen signifying a territory or province given as a fief or tenancy, and fahyn a banner. Thence is the use of that word in the golden bull of Charles IV. where it is ordained that the count palatine of the Rhine, in the vacancy of the empire, should exercise jurisdiction, present to benefices, receive the imperial rents, and also give investitures of fiefs, *feudis principum*, as the words are, *duntaxat ex-*

ceptis & illis^p que wanteihen vulgariter appellantur quorum investituram & collationem soli imperatori vel regi Romanorum reservamus. And other examples of this use in the investitures^q of such dignities are in that of the investiture of the dukes of Pomerland, in MDXXX. at Auspurg by Charles V. and of the dukes of Saxony at the same place MDXLVIII. where also the solemnities of court that otherwise concur at such investitures, are at large expressed. And if, at the investiture, any other prince had laid claim to the dignity conferred, the use was, that at the very act of investiture or delivery of the banners, he laid his hand on them, which supplied the continuance of his claim. So did the elector of Brandenburg, in that^r investiture of the dukes of Pomerland. And other testimonies are of these things, and some more we shall use hereafter.

Some old testimonies also are of the title of duke created by investiture with a sword, as in that creation of Borso^t marquis of Ferrara, into the title of duke by Frederick III. And the creation of Eberhard Grave of Wittenberg under Maximilian I. at Wormes is thus described by Johannes^u Linturius. *Rex comitem ex ordine comitum posuit, & fecit illum ducem, & primo pallium ducale, deinde pileum ducalem, tertio gladium ducalem & arma & titulum dedit*. Yet at these creations there were banners; and perhaps also they were used in the investiture, although there be not memory of so much in the relation made of them. The kissing of the pommel of a sword held by the emperors, was indeed usual among the old ceremonies after the delivery of the banners. But I see not warrant enough to prove that the investiture of provinces consisted at all antiently in a sword, saving in the case of subordinate kingdoms given by it.

The banners were presented to the emperor sitting in state, and that by several princes (after such time as the emperor was pleased to publish, that he would make the investiture, which was commonly done upon solemn petition made to him by some princes also in the behalf of him that was invested, especially in case of livery of to be the dignity to an heir or legitimate successor) and then by the emperor given severally to the hands of him that received the dignity. But this custom of investiture by banners hath in the later times grown out of use. *Olim feuda* (saith Andrew Knichen, a great lawyer of the empire, meaning the fahnteihen) *in publico confessu cum vexillis ab imperatore recognoscebantur, tam ab electoribus quam ab aliis principibus, quod ante per paucos annos in desuetudinem abiit*. So that now the investiture of princes with such dignities, jurisdiction, and privileges belonging to them, is by charter, with a sword, or otherwise, besides their solemn words of in feudation, as the emperor's pleasure is to declare

^a Lib. 1. ⁱ Krantz. Wandal. lib. 6. cap. 14. ^k Vide Goldast. Politic. imp. part. 6. pag. 363. ^l Spec. Saxonie, lib. 3. art. 60. & videfis Matth. Steph. de iurisdic. lib. 2. part. 1. cap. 6. §. 50. ubi glossa ejusdem loci. ^m Nam & laici interdum scepro investiti; quod vide infra §. 29. ubi ducatus Lucae instituitur. ⁿ Hist. comit. Aug. part. 2. pag. 251. ^o Jo. Eiarom. annal. Francof. ann. 1349. ^p Ad hanc rem vide etiam Rupert. imp. constit. ap. Goldast. tom. 1. pag. 382. ann. 1401. ^q Videfis Georg. Caelestin. hist. comit. August. 1530. part. 2. fol. 246. & seq. & Goldast. politic. imperial. part. 6. pag. 361. &c. ^r Caelestin. & Goldast. locis citatis. ^s Fran. Mod. pandect. triumphal. tom. 1. lib. 4. cap. 14. ^t Append. ad Fascic. temp. ann. 1495. singularem autem illum & lepidissimum ritum investiendi ducis Carinthiae habere licet apud Aen. Sylvium in Europa; Jo. Candid. de rebus Aquilegens. lib. 7. & Bodin. de rep. lib. 1. cap. 8.

it. See that of the earl of *Rhodia* where we speak of counts of the empire. And the most usual form of investiture to an heir is, *„Wie keyser R. befehen R. R. mit dem Hertzogthumb, &c. (if it be a duchy; and the same form serves in other principalities conferred; the name only changed) Landen, Leuten, Lehen, Lehenfchaften, Emptern, Stadden, Strucken und Gubern, Zollen, Glaten, Schulden, Renten, Zinsen, Nutzungen, Gerichten Obrist und Nidrigst, Bergwercken, Saltzwerken, Wildtsfahnen sampt allen andern dergleichen Landtsfurstlichen, Hohen, Regalien, Herrlichkeiten, Obrigkeiten, Ehz, Warden und Freheiten, Gerechtigkeit, Gewonheiten, &c. that is, We, N. the emperor, do invest N. N. with the dutchy of, &c. and the lands, countries, fiefs, tenancies, circuits, cities, divisions, possessions, tributes, tolls, rents, profits, commodities, high and low jurisdiction, mines, salt pits, forests, and all other princely sovereignties of like kind, royalties, dominions, superiorities, honours, dignities, freedoms; and rights accustomed, &c.*

XXVII. But in *Italy* (where the pope creates dukes) there is a prescript form of the creation and investiture by a ducal cap and a scepter, instituted by *Paul* the second and thus related in *Marcellus Corcyrensis*.

Ordo servandus in creatione novi ducis a
Paulo II. institutus.

CReandus in ducem per summum pontificem, veniet ad cameram pontificis indutus manto aureo, panno contexto, aperto a dextero humero ad terram usque, & sequitur pontificem ad ecclesiam descendentem, portabitque caudam pluvialis. Facta oratione ante altare, pontifex statim faciet confessionem cum celebrante: deinde ascendet ad sedem eminentem, & recipit cardinales ad reverentiam: non tamen imponit incensum, nec cantores incipient introitum. Et interim creandus dux sedet ad pedes pontificis super primum gradum, & celebrans osculato altari accedet ad suum faldistorium, & ibi expectabit. Finita reverentia, creandus dux accedit ad pedes genuflexus sanctissimi domini nostri, & sit miles sancti Petri etiam si prius erat miles.

Ordo benedicendi novum militem.

Pontifex primo stans sine mitra benedicit enssem quem unus ex acoluthis nudum tenet in manu; dicens:

Versus. Adjutorium nostrum in nomine domini.

Resp. Qui fecit coelum & terram.

Vers. Domine exaudi orationem meam.

Resp. Et clamor meus ad te veniat.

Vers. Dominus vobiscum.

Resp. Et cum spiritu tuo.

Oremus.

Exaudi quaesumus domine, preces nostras, &

hunc enssem, quo hic famulus tuus circumcingi desiderat, majestatis tuae dextra dignare bene dicere, quatenus esse possit defensor ecclesiarum, viduarum, orphanorum, omniumque Deo servientium, contra saevitiam paganorum, aliisque sibi insidiantibus sit terror, & formido: praestans ei, quae persecutionis & in defensionis sint effectum: per Christum Dominum nostrum, Amen.

Benedic Domine sancte, Pater omnipotens, aeternae Deus per invocationem sancti tui nominis, & per adventum Christi filii tui domini nostri, & per donum Spiritus Sancti paracleti, hunc enssem ut hic famulus tuus, qui hodierna die eo tua concedente pietate praecingitur, invisibiles inimicos sub pedibus conculcet, victoriaeque per omnia positis maneat semper illaesus, per Christum Dominum nostrum, Amen.

Deinde aspergit aquam benedictam. Tunc stans sine mitra dicit,

Benedictus Dominus Deus meus, qui docet manus meas ad praelium, & digitos meos ad bellum: misericordia mea & refugium meum, susceptor meus, & liberator meus, protector meus, & in ipso speravi, qui subdit populum sub me. Gloria Patri & Filio, &c. Sicut erat in principio, &c.

Vers. Saluum fac servum tuum Domine.

Resp. Deus meus sperantem in te.

Vers. Esto ei Domine turris fortitudinis.

Resp. A facie inimici.

Vers. Domine exaudi orationem meam.

Resp. Et clamor meus ad te veniat.

Vers. Dominus vobiscum.

Resp. Et cum spiritu tuo.

Oremus.

Domine sancte Pater omnipotens, aeternae Deus qui cuncta solus ordinas, & recte disponis: qui ad coercendam malitiam reproborum, & tuendam justitiam, usum gladii in terris hominibus tua salubri dispositione permixisti, & militarem ordinem ad populi protectionem institui voluisti; quique per beatum *Johannem Baptistam* militibus ad se in deserto venientibus ut neminem concuterent, sed propriis stipendiis contenti essent, dici fecisti, clementiam tuam Domine suppliciter exoramus ut sicut *David* puero tuo *Goliath* superandi largitus es facultatem & *Judam Machabaeum* de feritate gentium nomen tuum non invocantium, triumphare fecisti: ita & huic famulo tuo, qui noviter jugo militiae colla supponit, pietate coelesti vires & audaciam, ac fidei & justitiae defensionem tribuas: & praestes ei fidei, spei, & charitatis augmentum, & tui timorem pariter, & amorem, humilitatem, perseverantiam, obedientiam, & patientiam bonam, & cuncta in eo recte disponas, ut neminem cum gladio isto vel alio injuste laedat, & omnia cum eo juste & recte defendat: sicut ipse de minori statu ad novum militiae promovetur honorem: ita veterem hominem deponens cum actibus suis, novum induat hominem, ut recte retineat, & recte colat: perfidorum consortia vitet, & suam in proximum charitatem extendat: praeposito suo in omnibus obediat, & suum in civitate justum

u Tob. Paurmeist. de jurisdic. lib. 2. cap. 8. §. 3. & Knichen. com. ad jus Saxon. cap. 4. pag. 120.

officium exequatur: Per Christum Dominum nostrum, Amen.

Deinde sedens cum mitra pontifex imponit nudum gladium in ejus manu, dicens: Accipe gladium istum in nomine Patris ✠, & Filii ✠, & Spiritus Sancti ✠, & utaris eo ad defensionem tuam & sanctae ecclesiae Dei, & ad confusionem inimicorum crucis Christi, & fidei christianae; & quantum humana fragilitas tibi permiserit, cum eo neminem injuste laedas. Quod ipse praestare dignetur, qui cum Patre & Spiritu sancto vivit & regnat in saecula saeculorum, Amen. Et reposito gladio in vagina per eundem militem, accingitur eodem gladio per duos nobiliores milites praesentes, pontifice dicente: Accingere gladio tuo super femur tuum potentissime, in nomine Patris Domini nostri Jesu Christi. Et attende, quod sancti non in gladio sed per fidem vicerunt regna. Novus igitur miles ense accinctus, illum de vagina ter vibrat nudum viriliter, & eo super sinistram brachium, ter so, mox in vaginam recondit. Deinde pontifex insigniens illum charactere militari, & dat ei osculum pacis, dicens: Pax tibi. Tunc accipiens illum ensen nudum ter militem percutit plane super spatulas, dicens: Esto miles pacificus, strenuus, fidelis, & Deo devotus; & mox dat ei leniter alapam, dicens: Exciteris a somno malitiae, & vigila in fide Christi, & fama laudabili. Tunc nobiles assistentes imponunt sibi calcaria, & cantores sive pontifex (si magis placet) dicit antiphonam: Speciosus forma prae filiis hominum, accingere gladio tuo super femur tuum potentissime. Deinde dicit pontifex.

Vers. Dominus vobiscum.

Resp. Et cum spiritu tuo.

Oremus.

OMnipotens sempiterna Deus, super hunc famulum tuum N. qui hoc eminenti mucrone circumcingi desiderat, gratiam tuae benedictionis infunde, & eum dextrae tuae virtute fretum, fac contra cuncta adversantia coelestibus armari praefidiis, quo nullus in hoc saeculo tempestatibus bellorum turbetur, per Christum Dominum nostrum. Amen.

Finita oratione novus miles osculatur pedem papae: tum surgit & deponit ensen & calcaria, & redit ad sedendum, ubi prius. Cantores incipiunt introitum, incensatur altare, & procedit in missamque ad cantatum graduale, quod dum cantatur, futurus dux ducitur ante pontificem, ubi genuflexus praestabit juramentum.

Ego N. annuente Domino futurus dux promitto, spondeo, polliceor, atque juro coram Deo, & beato Petro apostolorum principe, me de caetero reverentiam & obedientiam servaturum (etiam si alias obligatus sum) sacrosanctae & apostolicae ecclesiae & vobis domino domino N. divina providentia summo pontifici, & successoribus vestris canonice intrantibus: nec deficiam in omnibus necessitatibus vestris & utilitatibus, juxta vires meas, & quantum potero divino auxilio fultus, pura & bona fide, custodiendo etiam, & conservando omnes possessiones, terras, loca, honores, jurisdictiones, & jura vestra, & sanctae Romanae ecclesiae in omnibus & per omnia: & propter honorem, & praecminentiam

ducalem, quam hodie a vobis recepturus sum: etiam promitto in recognitione tantae susceptae gratiae, pro me, & successoribus meis, perpetuo dare vobis, & successoribus vestris singulis annis in die festivitatis beatorum apostolorum Petri & Pauli unum parafrenum album bene & decenter ornatum. Sic me Deus adjuvet, & haec sancta Dei evangelia.

Praestituto juramento, pontifex descendit ad faldistorium, & procumbit super illud ante altare cum mitra. Dux futurus prostrat se ad sinistram papae, aliquantulum retro supra scabellum viride. Subdiaconus vero apostolicus facit litaniam, caeteris cum choro respondentibus kyrie-eleison, &c. ubi autem dixerit, & obsequium servitutis, & replicatum fuerit, surgit pontifex & signans super ducem alte dicit: Ut hunc famulum tuum in ducem eligere digneris te rogamus, audi nos. Et iterum, ut hunc famulum tuum benedicere digneris, te rogamus, audi nos. Et tertio, ut hunc famulum tuum ad ducale fastigium perducere digneris, te rogamus, audi nos: & semper chorus respondens explicando. Recumbit iterum pontifex, & subdiaconus atque alii faciunt litaniam. Qua finita, papa revertitur ad sedem eminentem, & futuro duce permanente prostrato, papa deposita mitra stans dicit super eum Pater noster. Deinde, Et ne nos inducas, &c.

Vers. Salvum fac servum tuum.

Resp. Deus meus sperantem in te.

Vers. Esto ei Domine turris fortitudinis.

Resp. A facie inimici.

Vers. Nihil proficiat inimicus in eo.

Resp. Et filius iniquitatis non opponat nocere ei.

Vers. Domine exaudi orationem meam.

Resp. Et clamor meus ad te veniat.

Vers. Dominus vobiscum.

Resp. Et cum spiritu tuo.

Oremus.

PRaetende, quaesumus famulo tuo N. duci dextram coelestis auxilii, ut te toto corde perquirat, & quae digne postulat, consequi mereatur. Actiones nostras, quaesumus Domine, aspirando praeveni, & adjuvando prosequere, ut cuncta nostra oratio, & operatio a te semper incipiat, & per te coepta finiatur: Per Christum Dominum nostrum. Amen.

Sedebit deinde pontifex cum mitra, & dux ducetur ad ejus pedes: & tunc pontifex accipiens ducale biretum imponit ejus capiti ante se genuflexi dicens: Accipe insigne ducalis praecminentiae quod per nos capiti tuo imponitur, in nomine Patris ✠ & Filii ✠ & Spiritus Sancti ✠. Amen. Et intelligas te amodo ad defensionem fidei, sacrosanctae ecclesiae, viduarum, pupillorum, & quarumcunque aliarum miserabilium personarum fore debitorem: velisque deinceps utilis esse executor, perspicuusque dominator coram Domino, & inter gloriosos athletas virtutum merito ornatus appareas, quam gratiam tibi concedere dignetur Dominus noster Jesus Christus: qui cum Patre & Spiritu sancto vivit & regnat in saecula saeculorum. Amen.

Post haec immediate dat ei sceptrum in manu dextra dicens: Accipe virgam directionis &

justitiae,

justitiae, in nomine Patris ✠ & Filii ✠ & Spiritus Sancti ✠. Amen. Per quam valeas unicuique secundum merita sua tribuere five boni, five mali, semper Deum ante oculos habens, non declinans a dextris, vel a sinistris, sed cum omni bonitate & charitate bonos foveas, malos coerceas, ut omnes intelligant, & sciant te justitiam dilexisse, iniquitatem odio habuisse. Quam gratiam tibi concedere dignetur, qui est benedictus in secula seculorum. Amen.

Et mox cum bireto, & sceptro osculatur pedem pontificis, qui deinde surgens sine mitra dicit super novum ducem adhuc genuflectentem cum suo habitu, hanc orationem: Deus Pater aeternae gloriae sis adjutor tuus, & omnipotens benedicat tibi, preces tuas in cunctis exaudiat, & vitam tuam longitudine dierum adimpleat, statum domini tui jugiter firmet, & gentem populumque tuum in aeternum conservet, & inimicos tuos confusione induat, & super te sanctificatio Christi floreat, ut qui tibi tribuit in terris dominium, ipse in coelis conferat praemium. Qui vivit & regnat per omnia secula seculorum. Amen.

Surgit deinde novus dux, & sociatus per duos juniores diaconos cardinales ducitur in locum suum ad sedendum, id est, inter duos ultimos diaconos cardinales. Quod recipiatur ad osculum a cardinalibus, non videtur convenire, cum non sit ex ordine illorum, neque par. His finitis proceditur in missa usque ad offertorium. Et tunc novus dux deposito bireto, accedit ad pedes pontificis, & offeret aurum, quantum voluerit: & recipietur ad osculum pedis, manus, & oris, & mox revertetur ad locum suum: & finita missa, procedet inter ipsos juniores diaconos cardinales.

But here *Marcellus* makes some difference between this form of creation of a duke, in Italy, of less dignity. His words are,

Quae servantur in duce minoris potentiae.

ET haec quidem servantur, ut supra dictum est, si dux est magnae nobilitatis & potentiae, ut fuit tempore domini Pauli papae secundi *Borsus* Ferrariae. Si vero esset mediocris potentiae, ut fuit tempore domini Sixti papae quarti, *Fredericus* dux Urbini, omnia servarentur, nisi quod non duceretur a cardinalibus, sed a duobus assistentibus papae principalibus: & sederet ultimus post omnes cardinales, in banco diaconorum, & eundo incederet solus post crucem ante omnes cardinales. Quod si adhuc esset inferior, tunc omnia alia servarentur, nisi quod non daretur ei sceptrum, neque sederet in banco cardinalium, sed ad pedes papae in supremo gradu, & eundo incederet ante crucem post oratores, & alios principes. (178)

We add here another example of pope *Paul II.* his investiture or creation of the same *Borso* duke of Ferrara, whom *Frederick III.* had before made. It was done for the better surety

of preserving that territory in the patrimony of the church of Rome.

Pontificis pontificali ornatu amicti, atque ita ad templum divi Petri incedentis, rei divinae celebrandae gratia, *Borsus* a tergo extremas lacinias, longas alioqui, & persolum raptandas, leviter attollebat gestabatque. Finitis autem teritiis, deducitur idem *Borsus* medius inter archiepiscopos *Mediolanensem* & *Cretensem*, & sistitur ante pontificem, qui eum initiavit ordini equestri S. Petri, oblato ei nudo gladio, quo uteretur ad defensionem sui, sanctaeque matris ecclesiae, & extirpationem omnium prophanorum & a religione nostrae alienorum: atque hoc eum mox cinxit, jam condito vagina, *Thomasius* princeps *Peloponnesi* (*Moream* vocant nunc) nuper ex regno profugus. Calcaria ei induit *Neapolio* ex *Ursinorum* familia, praefectus copiarum militarium pontificiarum, & *Constantinus Sfortia*, filius reguli *Pesarenensis*. Lecta epistola, secundo ab iisdem archiepiscopis pontifici sistitur, cui Sacramentum dixit obsequi; quo facto litaniae cantantur, praefectus profunduntur, uti bene vertat quod in praesenti re agitur: atque inde *Borsus* ad locum suum reducit, sed jam cardinalibus altrinsecus latera ejus claudentibus: a quibus etiam tertio ad pontificem deductus est, praecedentibus iisdem duobus archiepiscopis, a quo oblatum pacis symbolum cum osculatus esset, ex ordine etiam omnes cardinales osculo salutavit, & veneratus est. Hinc cum pontif. max. sacram synaxim fumpfisset, *Borsus* effudit ei aquam, vicissimque accepit ab eo habitum ducalem, pallium caeruleum, Alpinae muselarum exuviiis duplicatum, ab humerisque replicatum: pileum a summo acuminatum, ab imo auritum. Praeterea insertum est dextrae ejus ab eodem, sceptrum, five pedum aureatum, colloque aureus torques injectus, atque hoc ornatu a cardinalibus suis ad locum pristinum reductus est. Finito vero sacro, comitatum est eum ad diversorium usque ubi hospitio excipiebatur, atque hoc quidem jussu pontificis, universum collegium purpuratorum patrum. Postridie rediit *Borsus* habitu ducali cum pont. ad templum D. Petri, ibique locatus est inter cardinales S. Mariae in porticu, & S. Luciae. Finito sacro concionem habuit pontifex in commendationem *Borsi*, gentisque & familiae *Estensis*; enumeratis & percursis breviter ejus erga sedem apostolicam meritis. Hinc ductus a cardinalibus montis Ferrari, & S. Mariae in porticu, accepit a pontifice rosam, quam vocant auream; quam cum per alterum cardinalium ipsius sanctitatis reddidisset; tulit eum pont. max. ad limina usque templi, ubi inspectante omni papulo eandem rosam *Borso* secundo obtulit: qui cum ea ductus est a cardinalium collegio in palatium S. Mariae; ubi ei sumptuosissimum prandium instructum erat, ultimus autem in hac pompa equitabat honoris causa *Borsus*, praecedentibus more Romano reliquis cardinalibus medius inter eum qui erat vicecancellarius & Mantuanum.

* 15. April, 1571. Modius Pandect. triumphal. tom. 1. lib. 4. cap. 15.

XXVII. The more especial ornaments or habit of state of the dukes in the empire, are their crimson velvet robes doubled with powdered ermins, and the cap of the same, and so doubled. The cap is called *galerus ducalis*, *ducale biretum* as in that of *Paul II.* and *ducalis pileus*. And thereof *Modius*, in his narration of the creating *Borso* marquels of *Ferrara* into duke; *mandavit* (he speaks of *Frederick III.*) *ut tunica indueretur rubra segmentata, muscelis Alpini duplicata, cui accessit ducalis concolor pileus*. Other testimonies occur frequently of it. And it is usually on the heads of dukes in their monies. But as they have their robe and cap for their special ornaments or habit of state, so have they, for ensigns of dignity, coronets on their arms. For although by the first creation of the duke of *Austria*, anon inserted, he might wear a *sertum pinnitum*, or a pointed coronet, by special privilege, yet the more general use of the empire is, that no duke bears a coronet save only on his arms in image or picture. But some speak of the use of coronets over the arms of some dukes only as if they meant that none might use them, but only such dukes as had no less sovereignty than kings of the empire. So *Alciat*; where he says, that the dukes of *Milan*, *Austria*, and *Burgundy*, having regal power, may use coronets over their arms, and other dukes of less name, caps only. After kings, saith ^a he, *gradu sequenti sunt duces, quorum aliqui regali potestate decorati sunt; ut Mediolanensis, Pannoniae superioris, quam Austria vocant, itemque Burgundus. Atque ideo gentilitiis insignibus coronam ferre jus illis est. Aliqui non sunt, ut quos Romani pontifices in Umbria, Piceno aliisque Italiae locis quandoque constituerunt. Hi cum pontifici deferre teneantur, nec soluti legibus sint, non coronam sed birrum ostentant*. He means those dukes of *Orbin*, *Ferrara*, and such more dutchies that are devolved now, and annexed ^b to the see of *Rome*. So *Lancellotus Conradus*; *dux quartum dignitatis gradum* (having ^c before reckoned the titles of king and prince) *ostentabat birro, cooperiens sine coronae ornamento, quae regali splendori videtur concessa, nisi ducali ordini quandoque hoc etiam attributum sit*, to which purpose he cites that of *Alciat*, as if clearly dukes by that dignity only without especial privilege, had not any use so much as of the picture of a coronet. And the rabbins have their saying, that כל מלך או דוכא ^d col aluph malcutha dela thega, every duke or dukedom is a kingdom without a crown or coronet. For *aluph* or מלך is interpreted by *dux* or דוכא being the same word in rabbinical *Hebrew*, and is expressly turned into the name of duke in our *English* translations of the holy ^e text, where yet it signifies no other than the *princes* or heads of families or companies, or ראשי משפחות as the *Jews* in the same sense call them. And accor-

ding to that fancy of the rabbins, in the title page of *Abraham Ben David's* commentary upon that which they call the patriarch *Abraham's Jetzira*, there is an inscription of the imprinting it under duke *William Gonzaga*, concluded with תנשא מלכותא or increase to his kingdom, Amen. And some have likewise regnum ducis religiosissimi ducis *Tassilonis gentis Boiariorum* in the old ^e council of *Dingolswing*, held in *Baviera* under him. But whereas *Alciat* (whom divers herein negligently follow) so made his distinction as if only those dukes of greater eminency used crowns or coronets on their arms, and the other only ducal caps; it is plain that he was deceived. For we find in the coins of the duke of *Ferrara*, *Modena*, and *Parma*, frequently, as well as in those of *Milan*, *Florence*, and *Savoy*, like coronets over their arms. And they are sometimes fleury; and sometimes only short points are raised out of the circles of them; and so they appear radiant only, or such as the coronets of marquesses in *England* would be, if they had neither flowers raised out of them, nor pearls on the points of them. And therefore though the learned *Paschalius* ^f justly distinguishes dukes at this day into *maiores* and *minores* (meaning, for the first, those of *Savoy*, *Milan*, *Lorrain*; and, for the other kind, such as are created into the dignity but have not regal power communicated to them) yet he attributes the same kind of coronets to them both equally. His words (that give light hither also) are transcribed where we speak hereafter of the dukes of *France*, on whom his eye was especially while he wrote of ducal coronets. And he speaks of these coronets also as if generally they were part of the ducal habit, as well as to be used in image or picture over their arms.

XXVIII. For the form of letters of creation or institution of dukes and dutchies, we first add this of *Frederick* the first, made at his creation of his uncle, *Henry*, ^g into the title of duke of *Austria*.

FRidericus, divina ^h favente clementia, *Romanorum* imperator *augustus*, primus ejus nominis. Quamquam rerum commutatio ex ipsa corporali institutione possit firma consistere; nec ea quae legitime geruntur, ulla possint refractione convelli: ne causa rei gestae ulla possit esse dubietas, imperialis debet intervenire auctoritas. Noverit igitur omnium Christi imperiique nostri fidelium praefens aetas, & futura posteritas, qualiter nos ejus co-operante gratia a quo caelitus pax missa est hominibus super terram, in generali nostra curia *Ratisponae*, in nativitate sanctae *Mariae* celebrata, in praesentia multorum religiosorum & catholicorum, litem, & controversiam, quae inter charissimum nostrum patrum *Heinricum* ducem *Austriacae*, & inter nepotem nostrum charissimum *Heinricum* ducem *Saxoniae*, diu agitata extitit, super ducatu *Bavariae*,

^a Pandect. triumph. tom. 1. lib. 4. cap. 14. ^b Vide infra, §. 30, & 31. sed & vide stat. Lud. equestrium ab Henrico 1. imp. edita apud Goldast. constit. tom. 1. pag. 212. ^c Principes & duces serto caput adumbrare contenti. ^d De singulari certamine, cap. 32. ^e Bulla Pii V. 35. ad monet. &c. apud La. Cherubin. & Clem. VIII. bull. 67. sanctissimus, &c. ^f Templum judicum lib. 1. cap. 4. §. 1. ^g De nef. cap. 36. ubi Salomon Jarchi ad comma 15. ^h Baron. annal. tom. 9. ann. 772. & tom. 3. Concil. part. 1. §. 1. pag. 426. edit. Bin. 1618. ⁱ De coronis. lib. 9. cap. 22. ^j Vide ante §. XXV. ^k Culpin. Austr. pag. 33. & videtis Henric. Steronem in annalibus an. 1156. Goldast. constit. imp. tom. 1. pag. 302. & Chronic. Augustenf. a Marquardo Frehero editum.

& super marchia a superiori fluminis parte *Anasi*, terminavimus hoc modo: quod dux *Austriæ* resignavit nobis ducatum *Bavariæ*, & dictam marchiam quos tenebat. Qua resignatione facta mox eundem ducatum *Bavariæ* in beneficium contulimus duci *Saxoniae*. Praedictus vero dux *Saxoniae* cessit & renunciavit omni juri, & actioni quas habebat ad dictam marchiam, cum omnibus suis juribus & beneficiis. Ne autem in hoc facto honor & gloria patris nostri charissimi aliquatenus minuatur, de consilio & judicio principum, illustri *Vladislao* duce *Bohemiae* sententiam promulgante, quam caeteri principes approbant, *marchionatum Austriæ*, & dictam marchiam supra *Anasum* commutavimus in ducatum: ejusdemque ducatum cum subscriptis juribus, privilegiis, & gratiis omnibus liberalitate *Caesarea* contulimus *Heinrico* praedicto patri nostro charissimo, praenobili suae uxori *Theodoraë* & liberis eorumdem, ob singularem favorem, quo erga dilectissimum patrum nostrum *Heinricum Austriæ* ducem, ejus conthoralem praenobilem *Theodoram*, & eorum successores, necnon erga terram *Austriæ*, quae clypeus & cor sacri *Romani* imperii esse dinoscitur, afficimur, de consilio & assensu principum imperii dictis conjugibus, eorum in eodem ducatu successores, necnon praetactæ terrae *Austriæ*, subnotatas constitutiones. concessionibus, & indulta auctoritate imperiali in jura plena & perpetua redactas, donavimus liberaliter vigore praesentium & donamus: primo quidem quod dux *Austriæ* quibuscumque subsidiiis & servitiis non tenetur, nec esse debet obnoxius sacro *Romano* imperio, nec cuiquam alteri, nisi ea de sui arbitrii libertate fecerit: eo excepto duntaxat, quod imperio servire tenebitur, in *Hungariam* duodecim viris armatis per mensem unum sub expensis propriis, in ejus rei evidentiam ut princeps imperii agnoscatur. Nec pro conducendis feudis requirere seu accedere debet imperium extra metas *Austriæ*, verum in terra *Austriæ* sibi debentur sua feuda conferri per imperium, & locari. Quod si sibi denegaretur, ab imperio requiratur, exigat literatorie trina vice: quo facto, iuste possidebit sua feuda, sine offensa imperii, ac si ea corporaliter conduxisset. Dux etiam *Austriæ* non tenetur aliquam curiam accedere, eandem per imperium, seu quemvis alium, nisi ultro de sua fecerit voluntate. Imperium quoque nullum feudum habere debet *Austriæ* in ducatu. Si vero princeps aliquis, vel alterius status persona nobilis vel ignobilis, cujuscunque conditionis existat, haberet in dicto ducatu possessiones ab ipso jure feudali dependentes, has nulli locet seu conferat, nisi eas prius conduxerit a duce *Austriæ* memorato: cujus contrarium si fecerit, eadem feuda ad ducem *Austriæ* devoluta, libere sibi extunc jure proprietatis & directi domini pertinebunt, principibus ecclesiasticis & monasteriis exceptis duntaxat in hoc casu. Cuncta etiam secularia judicia, bannum sylvestrium, & ferinarum, piscinae & nemora in ducatu *Austriæ*, debent jure feudali a duce *Austriæ* dependere. Etiam debet dux *Austriæ* de nullis oppositionibus vel objectis quibuscunque nec coram imperio, nec aliis quibuscumque, cuiquam respondere, nisi id sua propria &

spontanea voluerit facere libertate: sed si voluerit unum locare, poterit de vassallis seu homologiis, & coram illo secundum terminos praefixos parere potest & debet justitiae complemento. Insuper potest idem dux *Austriæ*, cum impugnatus fuerit ab aliquo de duello, per unum idoneum, non inenormitatis macula detentum, vices suas prorsus supplere. Et illam ipse eadem die seu princeps, vel alius quisquam pro alicujus nota infamiae non potest impetere, nec debet impugnari. Praeterea quicquid dux *Austriæ* in terris seu districtibus seu fecerit, vel statuerit, hoc imperium nec alia potentia modis seu viis quibuscunque debet alio quoquo modo in posterum commutare. Et si, quod Deus avertat, dux *Austriæ* sine haerede filio decesserit, idem ducatus ad seniores filiam, quam reliquerit devolvatur. Inter duces *Austriæ* qui senior fuerit, dominium habeat dictae terrae. Ad cujus etiam seniores filium jure hereditario educatur; ita tamen, quod ab ejusdem sanguinis stirpe non recedat, nec ducatus *Austriæ* ullo unquam tempore divisionis alicujus recipiat sectionem. Si quis in dicto ducatu residens, vel in eo possessiones habens, fecerit contra ducem *Austriæ* occulte vel publice, est dicto duci in rebus & corpore sine gratia condemnatus. Imperium dicto duci *Austriæ* contra omnes suos injuriatos debet auxiliari & succurrere, quoad justitiam assequatur. Dux *Austriæ* principali indutus veste, *supposito pileo ducali circumdato sero pinnito*, baculum habens in manibus, equo infidens, & insuper more aliorum principum imperii, conducere ab imperio feuda sua debet. Dicti ducis institutionibus & destitutionibus in ducatu *Austriæ* suo est parendum. Et potest in terris suis omnibus tenere *Judaeos*, & usurarios publicos, quos vulgus vocat *Gewertelschin*, sine imperii nostri molestia & offensa. Si quibuscumque imperii curiis publicis dux *Austriæ* praesens fuerit, unus de *Palatinis archiducibus* est censendus. Et nihilominus in concessu & incesso, ad latus dextrum imperii post electores principes obtineat primum locum. Dux *Austriæ* donandi & deputandi terras suas cuicunque voluerit, habere debet potestatem liberam, si (quod absit) sine haeredibus liberis decederet: nec in hoc per imperium debet aliquatenus impediri. Praefatus quoque ducatus *Austriæ* habere debet omnia & singula jura, privilegia & indulta, quae obtinere reliqui principatus imperii dinoscuntur. Volumus etiam, ut si districtus & ditiones dicti ducatus ampliati fuerint ex haereditatibus, donationibus, , emptionibus, deputationibus, vel quibuscumque aliis devolutionum successibus, praefata jura, privilegia, & indulta ad augmentum dicti domini *Austriæ* plenarie referantur. Et ut haec nostra imperialis constitutio omni aevo firma & inconvulsa permaneat, praesentes literas scribi, & sigilli nostri impressione fecimus insigniri, adhibitis idoneis testibus quorum nomina sunt haec; *Pilegrinus* patriarcha *Aquileiensis*, *Eberhardus* archiepiscopus *Salisburgensis*, *Otho Frisingensis* episcopus, *Chunradus Bathavensis* episcopus, *Eberhardus Babenbergensis* episcopus, *Hartmannus Brixienensis*, *Harwicus Ratisponensis* & *Tridentinus* episcopus, dominus *Welfo*, dux *Chunradus* frater imperatoris *Friderici* primi *Caesaris*: *Palatinus*

latinus Rhēni Fridericus filius regis Chunradi: Heinrichus dux Carinthiae, marchio Engelbertus de Hysria, marchio Leopaldus de Wochburg, Hermannus palatinus comes de Rheno, Otto comes palatinus, & frater ejus, Fridericus de Schierri & Wiltspach, Eberhardus comes de Sultzbach, Rudolfus comes de Swetinsheut, Albertus comes Hallensis, Eberhardus comes de Pürchau, comes de Putina, comes de Peilstatin, & quamplures &c. signum, &c. Ego Reynaldus cancellarius vice Arnoldi Moguntini archiepiscopi, & archicancellarii recognovi, regnante domino Friderico Romanorum imperatore augusto, ejus nominis primo, in Christo. Datum Ratisponae quinto decimo cal. Octobris, indictione quarta, anno dominicae incarnationis M.C.LVI. feliciter. Amen. Anno regni ejus quarto, imperii secundo.

This Henry thus made duke of Austria, was both duke of Bavaria before and marquis of Austria (the marquisate being then subordinate to the duchy) and was removed from the duchy by surrender and sentence in the diet at Ratisbon. And *ut ipse ducis non perderet & ducis Bavariae* (that duchy being at the same time restored to Henry duke of Saxony, that was indeed heir to it) *minus deinceps contra imperium superbiere valerent, imperator de voluntate & consensu principum* (so are the words of Siero Altabensis) *in curia Ratisponae habita an. dom. M.C.LVI. marchionatum Austriae a jurisdictione ducis Bavariae eximendo & quosdam ei comitatus de Bavaria adjungendo, convertit in ducatum. Judiciariam potestatem principi Austriae ab Anasusque ad Sylvam prope Patavium quae dicitur Rotensal protendendo.*

XXIX. That also of Maximilian the first, to Jacques de Croy, bishop of Cambray, created duke of Cambray,^k we insert for another example.

Maximilianus, divina favente clementia, electus Romanorum imperator, semper augustus, ac Germaniae, Hungariae, Dalmatiae, Croatiae, &c. rex, venerabili, illustri, Jacobo de Croy episcopo ac duci Cameracensi, comiti Cameracensi, principi, consiliario & consanguineo nostro devoto dilecto, gratiam nostram Caesaris & omne bonum. Splendor nostrae Caesaris majestatis ad instar divini illius solii qui in magnitudine & multitudine electorum & sanctorum suorum exultat, digne trahens exemplum, hilari semper affectu desiderat, ut in circuitu augustalis solii nostri principum numerus crescat & foeliciter augeatur, quo & nostra majestas majoribus aucta dignitatibus, & potestatibus solidius roboretur, & fidelibus populis nostris justitia administretur, ac indebite oppressi & afflicti refugium habeant ubi sublevamen & auxilium in pressuris eorum comperiant, & caeteri fideles nostri spe gloriae & praemii ad virtutes magis magisque excitentur. Attendentes itaque multiplicia virtutum tuarum merita, & devotionis affectum, quo nos & sacrum Romanum imperium omni studio & officio veneraris, ac gloriam, honorem, & commodum nostrum & ipsius imperii

assidue sollicitis studiis procuras, motu proprio, & ex certa nostra scientia, animo deliberato, accedente etiam consilio & assensu venerabilium & illustrium nostrorum, ac ejusdem sacri imperii principum, comitum, baronum, nobilium nostrorum, fidelium dilectorum; te praefatum Jacobum episcopum Cameracensem, comitem Cameracensem (cum & origo nobilitatis tuae a serenissimis regibus Hungariae originem trahat, & beatitudo, ac amplitudo ditionis tuae multum se diffundat, necnon intemerata fides, devotio, & observantia tua, & progenitorum tuorum, qua a longo tempore nobis & eidem sacro Romano imperio & serenissimae domui nostrae Burgundicae inservivisti) hodie in verum ducem Cameracensem erigimus, illustramus, insignimus, & decoramus, decernentes expresse quod tu ex nunc in antea omni dignitate & praeceminentia, jure, potestate, libertate, honore, & consuetudine, gaudere, & frui debeas, quibus alii nostri & sacri Romani imperii duces illustres freti sunt hactenus, & quotidie potiuntur.

Civitatem Cameracensem, terras quoque tuas, munitiones, territoria cum omnibus aquis, pratis, pascuis, judiciis, homagiis, & aliis juribus tibi competentibus, ac omnibus eorum pertinentiis, quae latitudo domini civitatis Cameracensis comprehendit, in verum ducatum Cameracensem ereximus, ac de plenitudine nostrae Caesaris potestatis tenore praesentium erigimus; decernentes & hoc Caesareo statuente edito, quod tu Jacobus episcopus & dux Cameracensis, & comes Cameracensis, nominari & appellari ex nunc in antea debeas, & tanquam caeteri Romani imperii duces teneri & honorari, ac ubique locorum ab omnibus reputari: Privilegiis, gratiis & immunitatibus absque omni impedimento frui, quibus alii nostri & sacri Romani imperii duces & principes in conferendis & recipiendis juribus; & omnibus & singulis aliis, illustrem statum, & conditionem ducum concernentibus, freti sunt hactenus, seu quomodo liber potiuntur. Quo autem universi re ipsa cognoscant peculiarem gratiam & benevolentiam nostram qua te complectimur, ad arma & insignia tuae antiquae & praeclarae nobilitatis, quae sunt in hunc modum descripta: videlicet, scutum quadripartitum, habens in superiori dextra, & inferiori sinistra in campo argenteo tres facies rubeas ad regulam directe per transversum ductas, & in superiori sinistra, & inferiori dextra, etiam in campo argenteo, tres secures rubeas latas manubriis brevibus rubeis, quarum duae superiores, manubriis ad invicem converfis, inferior autem in dextram vertens, in medio autem scuti parvus clipeus superpositus etiam quadripartitus, in cujus superiori dextra & inferiori sinistra, in campo aureo sunt rubei tractus incerti numeri ab angulis incipientes, quadrati in formam rumbi cancellantes, in superiori autem sinistra, & inferiori dextra ejusdem clipei, iterum in campo aureo est leo niger elevatis pedibus erectis, & cauda ad caput elevata: Haec arma & insignia tuae & tuorum nobilitatis antiquae in modum & formam subscriptam innovanda & melioranda, statuimus &

ⁱ Videtur Krantz, Wandaliae, lib. 7. cap. 23. Saxon. lib. 6. cap. 8. pag. 51.

^k Jehan Schojer en la genealogie de la maison de Croy,

etiam innovamus, & meliora facimus auctoritate & de plenitudine potestatis nostrae Caesareae, scilicet, quod tu *Jacobus episcopus & dux Cameracensis, Cameracensis comes*, in posterum ultra arma & insignia solita, eisdem armis potioribus quibus in eodem scuto ad tertiam partem (quae caput scuti vocatur) superponatur sacra nostra aquila nigra regalis, in campo aureo, extensis alis, pedibus, & cauda, rastellum rubeum transversum per alas ad pectus gestans tribus dentibus, quorum singuli in singulis alis, medius in pectore deorsum porrecti, prout melius haec artificis ministerio hac ¹ in medio cernuntur figurata. Quibus ex nunc imposterum futuris temporibus in omnibus uti possis in quibus alii nostri & sacri imperii duces talibus utuntur. Omnes autem & singulos defectus si qui in praemissis ratione solennitatis omissi, dubia interpretatione sententiarum aut verborum, seu alio quovismodo, comperti fuerint, supplemus ex certa nostra scientia, & de plenitudine nostrae Caesareae potestatis, nostris tamen ac cujuslibet alterius, juribus semper salvis, & praesertim ipsius civitatis *Cameracensis* quam ultra solitum minime gravari volumus: & sine praedictio primaevae amortificationis, libertatis, neutralitatis, jurium, privilegiorum, concessionum, usum, & consuetudinum laudabilium, tuorum episcopatus, ecclesiae, comitatus, civitatis, & subditorum tuorum, & absque eo, quod vos aut alii qui vestrum, ad aliqua servitia, subventionesque teneantur, ad quae ante eandem erectionem non tenebantur. Nulli ergo omnino hominum liceat hanc nostrae illustrationis, erectionis, augmentationis, suppletionis, decreti, concessionis, & mandati paginam infringere, aut ei ausu temerario contraire, sub nostra & sacri *Romani* imperii indignatione gravissima ac poena centum marcarum auri puri, quarum medietatem fisco seu aulario nostro Caesareo, reliquam vero partem, injuriam passi vel passorum usibus, decrevimus applicari, quam maluerint evitare. Harum testimonio literarum, sigilli nostri appensione munitarum, datum in civitate nostra imperiali *Augusta*, die xxviii. Junii, anno domini millesimo quingentesimo decimo, regnorum nostrorum *Romani* xxv. *Hungariae* vero vigesimo primo.

We add here that also of *Lewes of Baviera* his patent of creation ^m of *Castruccio de Antelminelli* into the title of duke of *Luca*.

L *Udovicus* Dei gratia *Romanorum* imperator semper augustus; illustri *Castruccio de Antelminelli*, duci *Lucano*, comiti sacri *Lateranensis* palatii & vexillifero imperii, suo & imperii fidei dilecto, gratiam suam & omne bonum. Principalis liberalitatis clementia, in suis fidelibus dona multiplicans illis praecipue consuevit assurgere larga manu qui per pugnam continuam in rebelles pro exaltatione coronae singulares triumphos & nomen laudabile sunt sortiti: Sane cum veraciter sciamus, experientia nobis existente magistro te praecipuum & strenuum in partibus *Italiae* pro sacro imperio pugilem extitisse nulli parcendo oneri, periculo vel labori:

ac iustitia tua ac animi probitate victos, de hostibus devotos pro imperio tenuisse & devios infideles ad fidem gratiosis meritis invitasse, tantoque magis imperiale sceptrum extollitur: tanto cura regiminis a solitudinibus & laboribus relevatur, quanto fideles in circuitu imperii circumspicit digniores & de fulgore throni *Caesarei* velut ex sole radii, sic caeterae prodeunt dignitates ut primae lucis integritas minorati luminis non sentiat detrimentum. Hac igitur consideratione commoniti, qui coelesti providentia *Romani* imperii moderamur habenas, ac solii nostri decus tam veterum dignitatum ornatibus confovemus, quam novis honoribus ampliamus; volentes praemissorum obtentu extollere nomen tuum & te praerogativa speciali magnifice honorare, de plenitudine potestatis, & de certa scientia & de consilio nostrorum principum & baronum, civitatis *Lucae*, *Pistorii*, *Volaterrarum* & *Lunae*, cum omnibus & singulis castris, villis, & locis sitis in dioecesium ipsarum & cum omnibus earum & cujusque earum pertinentiis territorii & jurisdictionibus quibuscunque ad jus honorem & nomen *ducatus* pertinentibus transferentes & volentes sub uno dignitatis vocabulo contineri *ducatus Lucani* te pro te & successoribus tuis & te per lineam masculinam, natis & nascituris in perpetuum ipsius *ducatus ducem* & vexilliferum nostrum & sacri *Romani* imperii ubi libet, de praemissae nostrae potestatis plenitudine & principali munificentia promovemus: eisdem libertatibus, immunitatibus & juribus praedictum *ducatum* tuum praesentium auctoritate donantes, quae ducalem deceant dignitatem, praefataeque civitates & quamlibet earum & omnes terras, castra, territoria, atque loca, quae in dioecesium seu episcopatus & territorii, & pertinentiarum ipsarum civitatum, seu cujuslibet earum, seu intra confines dioecesium episcopatum, pertinentiarum & territoriorum praefatarum civitatum & cujuslibet earum, sitae sunt seu sita in perpetuum, tibi & legitimis successoribus tuis, ex te descendantibus natis & nascituris per lineam masculinam ex certa scientia damus, concedimus & donamus; cum omnibus & singulis villis, castris, terris, fortaliis, casalibus, vasallis, hominibus, possessionibus, honoribus, usibus, deditis, demaniis, feudis, homagiis, patronatibus vacantium & non vacantium ecclesiarum & locorum ad nos & sacrum *Romanum* imperium spectantibus seu pertinentibus & cum terris cultis, & incultis, sylvis, pascuis, nemoribus, salinis, balneis, stagnis, lacubus, atque quibuscunque aquis & aquarum decursibus, molendinis, piscariis, piscationibus, venationibus, montibus, planis, vallibus & omnibus & singulis locis, juribus, & pertinentiis tam maris quam terrae praefatarum civitatum, terrarum, & locorum, & cujuscunque ipsorum existentium infra praedictas dioeceses, confines & loca, quae in hujusmodi nostra concessione & donatione sub speciali aut generali vocabulo possunt intelligi, sive comprehendendi, & quae ad nos & *Romanum* imperium spectare noscuntur. Et sic te & successores tuos praedictos in *ducem* & duces praedicti *ducatus*

¹ The form of the arms, thus altered by addition, is not expressed in the author from whom this is taken. vici 4. & Marquardus Freherus, in appendice ad tom. unum de reb. Germanic. ed. 1624. pag. 31.

^m Aldus Manutius in vita Ludovici 4.

cum dignitate illustri erigimus, constituimus, praeficiamus & creamus, dantes & concedentes tibi & successoribus tuis praedictis in praemisso ducatu plenissimam jurisdictionem, & liberam auctoritatem & potestatem juris dicendi per te & per alios, ac etiam merum & mixtum imperium, ut exercere valeas & valeant gladii potestatem ad animadvertendum in facinorosos & malos. Et ut ipsius ducatus dignitate te & praefatos tuos successores cognoscas amplius & favorabilius ab imperiali eminentia sublimari, tibi & successoribus tuis praedictis ex ipsa dignitate ducatus perpetuo decrevit competere nostra serenitas, auctoritatem & potestatem creandi & ordinandi perpetuo & ad tempus (prout vobis placuerit) in singulis civitatibus, castris, oppidis, villis, terris dicti *ducatus*, vicarios, capitaneos, potestates, iudices, seu rectores, & quoslibet ordinarios magistratus, vel etiam delegatos & quoscunque honores & dignitates, atque honorum & dignitatum officia cum auctoritate & potestate iudicandi, & mero & mixto imperio; statuta municipalia condendi, juri divino & naturali non contraria, prout utilitati & pacifico statui expedire videritis subjectorum. Ad haec quoque in praedicto tuo ducatu flumina navigabilia, & ex quibus navigabiles fuerint portus, plagae (sicut & nunc dinosceris possidere) ripas & ripatica, necnon vectigalia, telonea auri & argenti, & metallorum omnium quaestum, nunc nobis & imperio pertinentes, tibi tuisque successoribus memoratis concedimus & donamus. Ac monetarum tam auri quam argenti & aeris cudendi, iusti & recti ponderis, in ipso tuo ducatu, tibi praedictisque tuis successoribus praesenti privilegio facultatem liberam indulgemus; & feuda antiqua & nova, & recta & regalia conferendi & infeudandi vasallos imperii de feudis quae manu vel ore, aut quocunque alio modo fuerint conferenda, & recipiendi a vasallis imperii fidelitatis & homagii sacramenta; & multarum seu poenarum compendia & confiscationes bonorum & caetera quae dicuntur regalia in ipso ducatu, ad tuum & praedictorum tuorum successorum compendium volumus pertinere. Milites quoque in dicto ducatu & extra constituendi & militari cingulo decorandi & iudices ordinarios & notarios publicos creandi & ordinandi, ac faciendi: filios & filias naturales, tam spurios quam vulgo quaesitos, ex damnabili coitu natos legitimandi, & cum ipsis super natalium defectu, & alio quolibet, dispensandi tibi & ipsis auctoritatem & potestatem plenariam indulgemus. Ut tamen pro honore, quem tibi libenter adjicimus, nullum jus subtrahatur obedientibus vel obedituris nobis, & imperio in eorum bonis, feudis, jura tamen imperii remaneant ducatu supra dicto; volumus insuper quod in praemissis ducatu & vexilliferatu semper major natu seu senior ex generatione tua, ex te & successoribus tuis legitime descendentibus, exclusis aliis filiis seu haeredibus minoribus, solus & in totum succedat. Et propter praemissa omnia te pro te ipso, & praedictis successoribus tuis, nobis pro nobis ipsis & successoribus nostris homagium & debitae fidelitatis juramentum praestantem de praemissis ducatu & vexilliferatu *per sceptrum* (quod in manu tenemus)

praefentialiter investimus & infeudamus. Porro omnia & singula supra dicta valere & tenere volumus & firmamus, non obstantem aliqua lege, consuetudine aut jure quibus contrarium cavetur, quibus omnibus & singulis specialiter & expresse tanquam nominatim de illis in praesenti privilegio fieret mentio intendimus ut esse debeat derogatum, & potissime juri & consuetudini quo & qua cavetur seu cautum diceretur, quod haeres in *ducatu*, *comitatu*, vel *marcbia*, nullo modo succedat, nisi ab imperatore acquisiverit per investituram quantum ad casum praesentem: in aliis vero casibus in suo robore semper durent. Volumus tamen quod tu & successores tui a nobis & successoribus nostris & sacro *Romano* imperio requisitus & requisiti perpetuo tenearis & teneantur plenam & liberam obedientiam facere & in omnibus nostris mandatis successorumque nostrorum & sacri *Romani imperii*, libere intendere & parere, & omnia nostra mandata observare, & efficaciter adimplere juxta posse, & executioni mandare. Meminit quoque nostra serenitas de praedictis ante nostrae coronationis solennia tibi & praedictis tuis successoribus privilegium simile indulsisse. Quae & omnia in ipso contenta, ex certa scientia, & de potestatis plenitudine ac de consilio & assensu procerum & baronum imperialis aulae ratificamus approbamus & confirmamus. Statuimus etiam & mandamus quatenus nulla civitas, nulla communitas & generaliter nulla persona cujuscunque conditionis seu status & praeceminentiae existat, huic nostrae paginae audeat in aliquo contra facere vel venire, seu te aut praedictos tuos successores in aliquo molestare, de his quae supra tibi, & eis a nostra clementia liberaliter sunt collata. Si quis autem temerario ausu praesumpserit contravenire, mille marcarum auri poenam incurrat, pro dimidia camerarum nostrae persolvendam, & pro alia dimidia camerarum dicti ducatus & vexilliferatus in quorum praesudicium aliquando extiterit attentatum. Quibus ab omnibus & singulis supradictis testibus fuerint infra scripti. Videlicet, *Rudolphus* dux *Bavariae*, princeps & patruus noster charissimus, venerabilis *Jacobus* episcopus *Castellanus*, venerabilis frater *Bonifacius* episcopus *Chironensis*, *Hermannus* de *Lithelberg* cancellarius noster, *Henricus* dux *Brunsvicensis*, *Ludovicus* dux de *Tech*, *Albertus* de *Lithelberg* marescallus noster, *Henricus* landgravius *Alsatie*, *Fredericus* de *Nuremberg*, *Menchardus* comes de *Hortenburg*, *Otho* comes de *Trubendingen*, *Johannes* comes dictus de *Claramonte*, necnon nobiles viri *Jacobus Sciara* de *Columna*, *Jacobus* de *Sabellis* senatores urbis, *Manfredus* de *Vito Ulmae* urbis praefectus, *Theobaldus* de sancto *Conslacchio*. Et ad praedictorum omnium testimonium & corroborationem praesentes conscribi & sigillo majestatis nostrae jussimus communiri. Datum *Romae* apud S. *Petrum* xv die mensis *Febr.* indictione xi. anno dominicae incarnationis mcccxxix. Regni nostri anno xiv. imperii vero primo.

The charter also of creation of *Wenceslaus* first duke of *Luxenberge* by *Charles* the fourth, is at large in *Aubertus Miraes*, and the words

of erection of *Mantua* into a dutchy by *Charles* the fifth, and also of *Montferrat* by *Maximilian* the second, are in *Franciscus Niger Cyriacus* his late published controversy of the dutchy of *Mantua*.

And for the title of duke, without other addition, beside the territory or feud, hitherto.

XXX. (179) The title of archduke, is in those of *Austria*; the syllable *arch* being but the same that is in archbishop; though it denote in archduke an excellency or preeminence only, not a superiority or any power over other dukes, as in archbishop it doth over other bishops. That of *arch* in *archiatrus* in the old empire, is a juster example of it. When it began to be fixed on the duke of *Austria*, is ⁿ uncertain. In the acts of the general council ^o of *Constance*, held in MCCCLXXIV. the title of *dux Austriae*, is frequent, but not *archidux*. Neither doth duke *Albert* stile himself otherwise in his letters to the council ^p of *Basil*, about twenty years after. But some refer the original of it to *Albert*, (eldest son of the emperor *Rodulph* the first) whom, they say, his father created into that title at *Norimberg* in MCCLXXXIV. Others fetch it from the time of *Frederick III*. And some will have the title of archduke there as antient as the title of duke, and that *Henry* being created by *Frederick* the first (the creation is before at large) besides the extraordinary privileges and characters of dignity then settled in him, was honoured also, though not in the present by express words, yet in the title that was publicly given him, with the name of archduke, and that thence it hath continued. So *Cuspinian*. *Est*, saith he, *a Frederico imperatore magnis libertatibus, immunitatibus ac privilegiis supra alios principes imperii donatus, quae exant ac circumferuntur, insignitus, praecipue pileo ducali crinito qualis fuit apud Romanos corona rostrata; tum veste principali, qui quidem habitus regius est & inde archidux dictus est*. That *pileus ducalis crinitus*, of which he speaks, is the *pileus ducalis circumdatus ferto pinnito* in the patent, and no other than a kind of radiant or pointed crown, whereunto afterward these archdukes had a privilege to add a cross: so I understand that in the charter of liberties granted to *Frederick* duke of *Austria*, by the emperor *Frederick* the second, in MCCXLIV. *Concedimus* (says ^q the emperor) *nostro illustri principi duci Austriae crucem nostrae diadematis, suo principali pileo sufferendam*.

The form of the cap and coronet of *Austria* with the cross, is thus divers times expressed in the edition of the *Syriack* testament printed at *Vienna*: yet sometimes it is drawn with arches raised from the four sides as



a perfect close crown; so I see it in the *Thurnier Buch* ^r of *Germany*. But in the charters of the emperors, the title of archduke occurred not, as expressly given to those of *Austria*, for many years after the creation of the first duke there; as especially we see in that ^r by which duke *Frederick* was created into the title of king by the emperor *Frederick* the second. Nevertheless, the title of archduke (as communicable to those which were the more eminent dukes of the empire) is antienter in the empire, than the title of duke is in *Austria*. That we see expressly in that charter of creation of the first duke of *Austria*, where *archiduces palatini*, for the chief dukes of the court are remembered. And divers ages before, *Witichind* king of *Saxony*, being conquered by *Charles the great*, was called archduke of *Saxony*, if ^r my author deceive not. *Bruno* also being archbishop of *Cologne* was made duke of *Lorrain* by his brother *Otho the great*, and wrote himself archduke, where the name of archduke is observed to have been first used; but so, that none of his successors in *Lorrain* imitated him. *Non ante ea vox aut dignitas* (saith ^u *Lipsius*) *nec in Lotharingia quidem post illum haesit*. And he gives his fancy, both whence this *Bruno* used it, and whence *Austria* might take it. *Opinor solo archiepiscopo nomine motum* (so are his words) *& visum ei decorum illud archi etiam in ducem transferre. Exemplum quidem (quod sciam) ante non fuit; & illi Austriae, diu post usurparunt; mirum ni isto praeunte. Etsi fortasse alia etiam causa, aut jus. Nam & insignia Lotharingiae iidem Austriaci gerunt*. Some also tell us of a custom in *Germany*, ^w *ut cum filii appellantur duces, eorum tamen primogenitus frater appelletur & vocetur archidux*. And this is affirmed for a truth, by ^x *Knichen* chancellor of the dutchy of *Saxony*. But in ^y others of the empire, I read that the emperors have denied this title to all (though some have importuned them for it) saving to those of *Austria*.

XXXI. As in *Germany*, the dukes of *Austria* are especially eminent by the title of archduke, so in *Italy* are those of *Florence*, by that of *great duke*, or *gran duca*, or *magnus Etruriae dux*. But this began in *Cosmo di Medices* duke of *Florence*, who was created into it in the year M.D.LXIX. by the bull of ^a *Pius Quintus*, when he would have made him a king, but that the emperor *Maximilian* the first allowed ^a that name to none in *Italy*, besides himself. The bull was in these words.

P I U S. episcopus, servus servorum Dei. Ad perpetuam rei memoriam. *Romanus* pontifex in excelso militantis ecclesiae throno, disponent domino, super gentes & regna constitutus, post perlustratas suae indefessae mentis acie orbis christiani provincias, circumspecta sua providentia praeclaros, ac principes viros, qui de sancta sede

ⁿ Vide Krantz. Saxoniae lib. 6. cap. 8. ^o Tom. 3. Concil. part. 2. pag. 861. & 909.

^p Tom. 4. Concil. part. 1. pag. 235. *Dux* item *Austriae* dictus *Maximilianus* anno 1480. in instrumento illo quod ad nuptias, inter *Philippum* *Cadrestii* comitem *F. ejuldem* *Maximiliani* & *Annam* *Edwardi* quarti regis *Angliae* filiam contrahendas spectabat, atque alibi eodem aevo, ut videre est in *Rot. Franc.* 20. Ed. 4. membr. 8. &c. ^q *Cuspinian*. *Austr.* pag. 34. ^r *Thurnier Buch*, part. 2. fol. 27. ^s *Petr.* de *Vineis* lib. 6. epist. 26. ^t *Befold*. *Polit.* discurs. 4. cap. 3. §. 7. ^u *Lovan.* lib. 1. cap. 9. ^w *Mozz.* de *Feud.* tit. de his qui feud. dare poss. n. 16. apud *Stephan.* *Pomeran.* de *Jurisd.* lib. 2. part. 1. cap. 6. §. 77. ^x *Comm.* ad *Jus Saxon.* cap. 4. p. 117. ^y *Befold*. *Polit.* discurs. 4. cap. 3. §. 7. ^z *Cherubin.* de *Nursia* Bullar. tom. 2. constit. *Pii V.* 88. p. 288. *P. Matth.* in *summ.* constit. *Pont. Conf.* *Pii V.* 35. p. 614. ^a *Bodin.* de *Rep.* lib. 1. cap. 9.

apostolica, fideque catholica bene mereri videntur, singulari suae benignitatis clementia, quantum sibi ex alto conceditur, augere, eosque insignibus, ornamentis, ac speciosis honorum titulis decorare, atque illustrare consuevit, necnon alias disponit, prout temporum, locorum, & personarum qualitate pensata, conspicit in Domino salubriter expedire. Sane cum nos his nostris luctuosissimae tempestatis diebus, animo nostro diu multumque gravissimo cum dolore versaremus, quot & quantae pestiferarum haeresium sectae quotidie undique erumperent, diraque & exitiosa perditorum hominum a fide catholica aberrantium semina passim serperent, & usque quaque propagarentur, omnia *Italiae* loca circumspicientes, *Ethruia* provincia, nobilitatis decore, & antiquitatis nomine a maioribus celebrata, cujus maxima pars quae nobis & ipsi apostolica sedi subiecta non est, ab omnibus fere lateribus ditioni nostrae ecclesiasticae contermina atque conjuncta existit, nobis praecipue occurrat, quam divinae primum bonitatis gratia, sollicitudineque ac vigilantia nostra, deinde praestantissimi ac religiosissimi ejus principis virtute, consilio, diligentia, prae caeteris intactam & incorruptam, ab hujusmodi perniciofa labe & contagione, sartam tectam conservatam esse conspiciamus. Huc accedit, quod profecto magnopere nos movet, sedem apostolicam, cum ob regionis vicinitatem, tum propter loci opportunitatem gratissima plerumque obsequia, atque etiam commoda, subministratis ab *Ethruscis* auxiliis, a multis jam ante saeculis recepisse, idque complures *Romanos* pontifices praedecessores nostros, & praefertim fel. recordat. *Innocentium* quartum, *Clementem* etiam quartum, *Gregorium* decimum, *Benedictum* undecimum, *Martinum* quintum, & *Leonem* decimum luculenter testatos fuisse, adeo ut tam eandem provinciam, quam ejus rectores & magistratus ob peculiarem eorum erga *Romanam* ecclesiam devotionem, & observantiam, propenso paternoque affectu, variis gratiis, honoribus, ac privilegiis jure cohonestandos, atque ornandos esse duxerint. Quibus rebus debita meditatione mature consideratis, attendentes quoque in primis quod dilectus filius, nobilis vir, *Cosmus Medices* reipublicae *Florentinae* dux, majorem indies suae eximiae virtutis splendorem, ferventiorumque catholicae religionis cultum, & in administranda justitia praecellens studium, ex eo tempore quo imperare coepit, nusquam praetermissum, laudabiliter prae se ferre non cessat; quod omnibus in occasionibus, nobis, ac praedecessoribus nostris, & apostolicae sedi, prompto ac libenti animo obsequi semper studuerit; quod nos & eandem sedem ab ipso nostri pontificatus initio continuato debita reverentiae honore coluerit; mandatis nostris filiali obedientia paruerit; honestis nostris petitionibus obsequentissime morem gesserit; quod a nobis requisitus, coepta nostra pecuniis, peditatu, equitatuque alacriter juverit, praefertim pro ferendo auxilio charissimo in Christo filio nostro *Carolo Francorum* regi christianissimo, adversus ejus rebelles, & haereticos, centum etiam aureorum millia, ultra alia, illi mutuando; hortatu nostro id fecerit; quod majora, si usus venerit, ad catholicae fidei defensionem, & incrementum se praestatur.

rum ultro pollicetur; qui pro inclita ejus in Deum pietate, superioribus annis, militiam sancti *Stephani*, ad sanctae fidei exaltationem ac propagationem instituerit, bonis ditaverit & amplaverit; quod univ ersae prope provinciae *Ethruscae* imperscrutabili Dei judicio ad summae dignitatis potestatem civium *Florentinorum* assensu vocatus foelicissime praesit ac dominetur; quod delatum sibi admirabiliter principatum admirabilius regat & moderetur, illumque incomparabili prudentia ac sapientia in pacis ac justitiae amoenitate, ab ineunte ejus aetate diligentissime contineat & conservet; quod terra marique praepotens existat; quod piratis, facinorosis sicariis, quietis & otii turbatoribus, necnon nostris & hujus sanctae sedis rebellibus, & adversariis hostis acerrimus, scelorumque & delictorum severus vindex sit; quod numerosa ac frequenti populorum ei subditorum Deo benedicente multitudo, copiosis grandibusque redditibus, & amplissimis proventibus gaudeat, & fruatur; quod validus peditum & equitum numerus in omnes usus ei praesto semper esse possit; quod quamplures florentissimas urbes, tam cathedralium quam earum nonnullas metropoliticarum ecclesiarum dignitate insignes, ac studiorum generalium universitatibus ornatas, munitissimos portus, validissimas arces, loca tutissima, triremium classem paratam, & instructam tam ad *Tyrrheni* sui maris, quam etiam ad nostrae orae maritimae tutelam habeat; quod rerum omnium copia, ditionis amplitudine, locorum ubertate, continua vitae foelicitate, demumque gentis celebris admodum & opulentae viribus firmissime subnixus vigeat; quod cuncta haec ipsa bona per immensam Dei omnipotentis benignitatem sibi elargita, ad divinum honorem & gloriam paratissima semper fore profiteatur; quod absoluta potestate ratione liberi & directi domini *Florentini* nemini sit subjectus ita ut juxta distinctionem piaem memoriae *Pelagii* similiter *Romani* pontificis praedecessoris nostri, uti rex & magnus dux ac princeps merito existat, & inter caeteros magnos duces ac principes re ipsa esse, censerit, & connumerari possit, & debeat. Nos igitur tot ac tantis rationabilibus dignisque de causis, clarissimis quoque ipsius *Cosmi ducis* erga nos & sedem eandem meritorum, & officiorum monumentis inducti, firmaque spe freti, quod is, & ejus successores, collati nostri in eos beneficii memores debitam nobis, futurisque *Romanis* pontificibus grato animo fidei ac devotionis sinceritatem, perpetuo exhibere, conservareque studebunt; attendentes etiam, quod sane plurimi facimus, dictum *Cosmum* ducem, ac dilectum filium nobilem virum *Franciscum* ejus filium primogenitum arcis admodum affinitatis, sanguinis, & necessitudinis vinculis cum charissimo in Christo filio nostro *Maximiliano* in imperatorem electo, & maximis Christiani nominis regibus conjunctos esse, eosque a nobilissima stirpe *Mediceae*, multis honoribus & titulis decorata, & ex qua tot illustres proceres, ac tres *Romani* pontifices prodierunt, ortum habere; propterea eundem *Cosmum* ducem specialibus favoribus, & gratiis paterne benigneque prosequi volentes, ipsi quoque a quibusvis excommunicationis, suspensionis, & interdicti, aliisque ecclesiasticis sententiis, censuris,

& poenis a jure vel ab homine quavis occasione vel causa latis, si quibus quomodolibet innodatus existit, ad effectum praesentium duntaxat confectendum, harum serie absolventes, & absolutum fore censentes, motu proprio, non ad ipsius *Cosmi* ducis, seu alterius pro eo nobis super hoc oblatae petitionis instantiam, sed ex certa scientia, maturaque deliberatione, & mera liberalitate nostris, ac de supremæ nostræ apostolicæ potestatis plenitudine, tam dictorum prædecessorum, quam etiam *Alexandri III.* & *Innocentii* pariter *III.* ac *Pauli IV.* similiter prædecessorum nostrorum, qui *Portugalliae, Bulgarorum, ac Blanchorum, necnon Hiberniæ* reges, & ut tunc dux *Bohemiæ* rex in suis literis nominari possit, respectue crearunt, constituerunt & concesserunt, aliorumque *Romanorum* pontificum erga diversos principes exempla sequentes, vestigiisque inhaerentes, ut potissimum caeteri principes hoc exemplo invitati ad bene de sancta hac sede promerendum incitentur, eundem *Cosmum ducem*, ejusque successores pro tempore existentes duces, perpetuis futuris temporibus in *magno duces & principes provinciae Ethruriæ* sibi pro maxima illius parte subiectæ, & in ipsa provincia respectue auctoritate apostolica tenore praesentium creamus, constituimus, pronunciamus, & declaramus, *magnumque ducem Ethruriæ provinciae*, ut praefertur, eis subiectæ nomine, titulo, & denominatione extollimus, & amplificamus, necnon eos dictæ *Ethruriæ* provinciae eis subiectæ *magno duces & principes* ab omnibus nominari, inscribi, dici, haberi, censeri, & tractari debere volumus, praecipimus, ac mandamus, atque *Cosmum magnum ducem*, ejusque successores praefatos omnibus, & singulis exemptionibus, immunitatibus, libertatibus, favoribus, praecminentis, praerogativis, indultis, privilegiis, aliisque quibuscumque gratiis, & honoribus quibus alii vere liberi, & directi domini, ac *magni duces & principes* etiam ducali, aut alia quavis etiam majori dignitate praefulgentes, ac quacunque libera & absoluta potestate fungentes, in genere vel specie, in quibuscunque locis, pompis, sessionibus, celebritatibus, ceremoniis, & artibus publicis vel privatis, tam de jure quam de consuetudine, etiam in aula nostra Vaticana, & ubique terrarum, etiam si aliqui alii *magni*, & similes duces & principes praesentes fuerint, quomodo utuntur, fruuntur, potiuntur, & gaudent, seu uti, frui, potiri, & gaudere in futurum quomodolibet poterunt, & soliti sunt, non quidem ad illorum instar, sed pariformiter, & absque ulla prorsus differentia uti, frui, potiri, & gaudere posse ac debere. Et insuper in evidens clarumque propensæ nostræ voluntatis erga dictum *Cosmum magnum ducem* testimonium, certamque dilectionis significationem, cum amplioris quoque gratiæ, & favoris praerogativa, maxime dignum censentes, ut juxta sententiam *Clementis* quarti prædecessoris nostri praedicti, ex majori decore ornatum, majoritas appareat dignitatis, ipsum *Cosmum magnum ducem*, & ejus successores hujusmodi, *regali corona*, ut inferius depingi mandavimus, qua super eorum gentilibus insignibus, ad illustrius nobilisque ipsorum decus & ornamentum, uti, eamque portare, ferre, & gestare, depingique & insculpi facere

libere & licite possint, & valeant, motu, scientia, ac potestatis plenitudine similibus decoramus, exornamus, & insignimus, decoratosque exornatos, & insignitos fore & esse. Praesentesque literas de subreptionis vitio, aut intentionis nostræ, seu quocunque alio defectu ex quavis etiam quantumlibet justissima, & urgentissima, rationabilique causa nullo unquam tempore a quoquam notari vel impugnari posse, sed illas validas & efficaces perpetuo fore & esse, suofque plenarios, totales, & omnimodos effectus fortiri posse ac debere in omnibus & per omnia, ac si consistorialiter & de fratrurn nostrorum consilio factæ & in ipso consistorio nostro secreto lectæ fuissent. Sicque per quoscunque judices etiam imperiali, regia, ducali, vel quavis alia excellentia, ac dignitate praeditos, & alios commissarios qualibet auctoritate fungentes, etiam causarum sacri palatii nostri auditores, & sanctæ *Romanæ* ecclesiæ cardinales, sublata eis, & eorum culibet quavis aliter judicandi, sententiandi, diffiniendi, & interpretandi facultate & auctoritate, judicari, diffiniri, & interpretari debere; ac quicquid secus super his a quoquam quavis auctoritate scienter vel ignoranter contigerit attentari, irritum, & inane decrevimus & declaramus. Non obstantibus quibuscunque constitutionibus & ordinationibus apostolicis, ac provincialium, civitatum, & locorum quorumlibet statutis & consuetudinibus, etiam juramento, confirmatione apostolica, vel quavis firmitate alia roboratis, privilegiis quoque indultis, & literis apostolicis, illis & quibuscunque aliis personis etiam ducibus quibus forsan per sedem apostolicam concessum sit, quod privilegiis, praecminentis, favoribus, indultis, & gratiis ad instar *magnum ducem*, perinde ac si ipsi *magni duces* realiter & cum effectu essent, uti & gaudere possint, in genere vel in specie sub quibuscunque tenoribus & formis, ac cum quibuscunque derogatoriarum derogatoriis, & quantumcunque efficacissimis clausulis, & decretis quomodolibet concessis, confirmatis & innovatis (quibus omnibus etiam si de illis, eorumque totis tenoribus specialis, specifica, & expressa, & individua, ac de verbo ad verbum mentio seu quævis alia expressa habenda, aut aliqua exquisita forma ad haec servanda esset, eorum omnium tenores praesentibus pro sufficienter expressis habentes illis alias in suo robore permanfuris, hac vice duntaxat ad effectum praesentium specialiter & expresse derogamus totaliterque & latissime derogatum esse volumus & decernimus) caeterisque contrariis quibuscunque. Salva nihilominus in nostris dictæ provinciae, civitatis, & locis, nostra, & *Romanæ* ecclesiæ auctoritate, jurisdictione, & potestate, necnon imperatoris, & regum superioritate, jurisdictione, ac quibuscunque juribus respectue in locis mediate vel immediate eis subiectis, ac citra aliquod praejudicium civitatum, terrarum, & locorum in eadem *Ethruriæ* provincia consistentium quæ non sunt ditiones dicti *Cosmi ducis*, nec ei quomodolibet subiecta sunt, neque alio modo obediunt. Nulli ergo omnino hominum liceat hanc paginam nostrorum absolutionis, creationis, constitutionis, pronuntiationis, declarationis, amplificationis, voluntatis, praecepti, mandati, decorationis, exornationis, insignitionis,

& derogationis infringere, vel ei ausu temerario contraire. Siquis autem hoc attentare praesumpserit, indignationem omnipotentis Dei, ac beatorum *Petri & Pauli* apostolorum ejus se noverit incursum. Datum *Romae* apud *S. Petrum*, anno incarnationis dominicae, millesimo quingentesimo sexagesimo nono. vi. calend. *Septembris*, pontificatus nostri anno quarto.

This bull of creation was sent to the duke of Florence by *Signior Michael Bonello*. And the regalis corona here spoken of, is a crown radiant or pointed, or as the old *corona rostrata*, a flower *de lis* being raised in the front of it. And, by the direction of *Pius Quintus* it hath these words inscribed on it;



Pius Quintus pontifex maximus, ob eximiam dilectionem ac catholicae religionis zelum praecipuumque justitiae studium, donavit. It was solemnly afterward put on the duke by the pope at the solemnities of the investiture, which are thus described by one that calls him *archidux*, instead of *magnus dux*.

De inauguratione Cosmi Medicei in magnum ducem Etruriae, Romae, anno CIO.D.LXX.

Dominica laetare, quae fuit v. Martii anno CIO.D.LXX. *Cosmus* Mediceus dux Florentinus inauguratus est Romae in magnum Etruriae ducem, a pontifice Pio V. in sacello *S. Sixti*, praesenti cardinalium consessu, & multis aliis proceribus, his fere cum ceremoniis quae sequuntur.

Pontifici ex palatio descendenti in eum locum ubi indui pontificalibus & ad solennem talem inaugurationem pertinentibus solet, *Cosmus* dux veste ducali ipse indutus, hoc officium praestitit, ut togae ejus extremas lacinias a tergo per viam gestaret. Hic comparens in re praesenti orator Caesareus coram cardinalibus *Morono*, *Alexandrino*, & *Chieffensi*, testatus est eam inaugurationem quae pararetur, in domini sui praesudicium vergere, sine cujus expresso consensu nihil tale fieri deberet. Quare etiam illegitimam futuram pronunciare sustinuit; cujus sui officii & facti ut testes essent tres modo dicti cardinales, oravit: addita persona publica etiam, quodam Caesareo notario.

Interpellans autem oratorem Caesareum procurator fisci, interrogavit, an mandatum nominatum ad hujus suae cautionis formulam a domino suo accepisset; ad quod ille respondit non ultra quam per literas interpretes, quas literas etiam suae sanctitati ederet eo ipso momento, quibus ultro citroque dictis, facessit orator.

Pontifex nihilo secius institit facere quod proposuisset, indutusque solenniter & pontificali diademate coronatus: ad *S. Sixti* sacellum perrexit, *Cosmo* semper lacinias extremas gestante, sed nunc *archiducali* habitu, hoc est, vestito tunica talari ex holoserico rubro segmentato, cujus subditiua fultura essent *Alpinae* mustelae can-

didae, dependentibus codis nigris ad terram fere; manicae ejusdem generis, tam interius, quam exterius erant latissimae. Ipsa autem tunica sub axillam alteram reducta ita erat, ut facile proderet gemmarum, & unionum vim, quibus intrinsecus ditaretur. Huic tunicae pallium injecerat generis per omnia ejusdem, solo autem capite ducalem adhuc pileum retinebat. Habuit autem in facello consuetum locum inter duos presbyteros cardinales.

Cum sacrum five missa eo perducta esset, ut cantandae epistolae finis fieret; allata sunt pontifici diadema primum in pelvi aurata ex auro puro ductili a *D. Galitto* cubiculario pontificio, atque sceptrum argenteum a summo lilio praegrandi decoratum, perinde in aurata pelvi a *D. Justiniano*.

Hinc *Cosmus* medius inter duces *Tagliacozam* & *Gratianum* ad pontificem processit, ibique in genua procubuit; pontifex vero postquam ipsum ducem precationibus lustrasset aliquot, diadematique & sceptro benedixisset: acceptum a cardinale *Urbino* diadema vertici *Cosmi* imposuit, qui ante pileo ex holoserico rubro segmentato tectus fuerat: similiterque sceptrum ei in manum dedit.

Eo habitu, *Cosmus* jam archidux pontificis pedis osculum impressit, quem inde cardinales duo juniores *Madruccius* & *Alciatus* medium ad locum suum reducerunt, ubi ante nominati duces archiduci novo eam operam dederunt, ut *Tagliacozza* diadema, *Gratianus* sceptrum ab eo acciperent; pontifice quoque eodem tempore suum diadema deponente.

Ad oblationis datum signum archidux ducibus altrinsecus eum comitantibus muneri obtulit pontifici primo calicem auratum cum operculo suo, & patera altera aurata; qui calix dicitur habuisse pondus novem librarum. Erantque incisae in ambitu ejus arte rarissima tres figurae: fidei, puta, spei, & charitatis; quae manibus calicem tenerent; ad pedes vero haberent evangelicos quatuor scriptores, additis insignibus tam pontificiis quam *archiducis*, qui secundum munus quatuor praelatis in pateris offerri mandavit, quod erat amiculum aureum, cujus generis ornatu pontifices non nisi solennioribus festivitatis uti solent; & pallium item ex textili auro, quod a pectore ita conjungebatur, ut fibulae gemmae & pretii incredibilis, characteres eos exprimerent & conformarent, quae nomen Jesu mediatoris nostri conficerent.

Haec dona pontifici, quod ex vultu etiam ipsius colligi poterat, longe charissima cardinali *Urbino* commissa sunt, qui ea exposuit in ara quae juxta erat; cuique idem cardinalis *Urbinus*, tanquam senior inter presbyteros cardinales, assidere solet.

Archiducem duces ad locum reducerunt, ne etiam idem ad sacri finem usque operam dederunt.

Finito sacro ad officium suum rediit *archidux*, utque erat diademate ornata, translato in sinistram sceptro, dextra posticam vestem pontificiam, tulit usque eum locum, ubi exui de more is consuevit.

^b Anton. Gabutius de vita Pii V. lib. 3. cap. 16, &c.

^c Fr. Modius Pandect. triumph. tom. 1. lib. 4. cap. 27.

Qui depositis pontificalibus *rosam sacram* archiduci in donum dedit, quam ille laetus ad hospitium suum usque ipse ferre voluit: prosequentibus eum omnibus omnino cardinalibus, & novum ei honorem gratulantibus: etsi persequendi officium magis *rosae sacrae*, quam archiduci imputasse atque impendisse credantur.

Sacrum fecit eo die cardinalis *Donellus*, tanquam pontificis vicarius. Ceremoniis tamen hujus inaugurationis nemo legatus, aut orator externorum principum gentiumque interfuit; exceptis duobus *Alexandrinis* fratribus & filio legati *Lusitanici*.

Sub noctem ignes quidem privatim a quibusdam laetitiae indices excitati sunt, sed publice nulli.

Die lunae archidux coepit salutandis cardinalibus operam dare, ex quibus eum humanissime excepere *Pisanus, Farnesius, Ferrariensis, Urbinas, & Corregius*, qui etiam comitatu ipsius, honoris causa, vinum tragemataque largissime praebeverunt. Idem archidux non parvam pecuniae summam, apud presbyteros *Hieronimianos* deposuit, ipsorum arbitrio in pauperes, & egenos erogandam.

Eo tempore illustrissimus *Paulus Jordanus Roma* decessit, cupiens ea domi providere, quae ad novum archiducem quam honorificentissime excipiendum pertinerent.

Missus est etiam pontificis nomine ad ditiones sedi *Romanae* subiectas *D. Harnius*, qui curaret archiducem passim maximo apparatu tractari.

Jurisjurandi forma archiducis.

Ego *Cosmus Medicus magnus dux Ethruviae* promitto & juro sacrosanctae *Romanae* ecclesiae, ejusque sedi apostolicae & tibi, *Pie*, Dei providentia hujus nominis quinte pontifex, solitam haecenus obedientiam, & venerationem, quemadmodum per legatos meos eam ad hanc diem semper exhibui, & ad officium principis pertinet. Prosteor etiam hic me pro viribus paratum & studiosum sanctam catholicam religionem promovere & propagare in perpetuum, commodis ejus & tuae sanctitatis servire, tanquam veri *Christi* vicarii, cui vellem plenius posse demonstrare animi propensionem principis vere christiani, quam deo innumerabilibus sanctitatibus tuae in me beneficiis, & huic sanctae sedi apostolicae, quibus ea quae supra meo posterorumque meorum nomine caveo & jurejurando confirmo, sic me Deus adjuvet & haec sancta Evangelia.

Formula cautionis qua orator Caesareus rebus domini sui consultum voluit in inauguratione magni ducis.

Quandoquidem *Florentia & Senae* camerae sunt *Romani imperii*, neque potest, neque debet circa titulum ducis *Florentini* aliquid innovari citra voluntatem *Caesareae* majestatis; aliqui enim pertinebit ea res ad manifestum ejusdem majestatis praejudicium, atque ita tanquam non facta habebitur, & viribus omnibus destituetur.

Precatio pontificis ante coronationem magni ducis.

O Domine Deus, extende ad hunc famulum tuum, *magnum Ethruviae ducem*, dexteram tuam cum coelesti auxilio; quo ita ex toto corde suo quaerat quae divina sunt &c.

Verba pontificis sedentis, ad magnum ducem.

Accipe coronam testimonium gloriosarum tuarum virtutum, quam nos ex officio tibi imponimus in nomine Patris & Filii, & Spiritus Sancti.

Quando autem deinceps obligaris & teneris protectorem agere fidei, hujus sacrosanctae ecclesiae, viduarum, pupillorum, & omnium afflictorum, opeque indigentium, vide in posterum gubernator & administrator sis justus & clemens; ut coram Deo gloriosus athleta omnium virtutum gemmis splendeas; quam gratiam tibi faciat Dominus noster *Iesus Christus* qui cum Patre & Sancto Spiritu imperat & regnat in omnia saecula saeculorum. Amen.

Accipe virgam amoris atque aequitatis in nomine Patris, &c. qua unicuique retribuas pro meritis suis, mulceas bonos, terreas improbos; & ut Deum semper ante oculos habens neque in dextram neque in sinistram declines, sed aequalis sis omnibus, pauperes protegas, malos punias; ut omnes intelligant te cultorem justitiae, orem iniquitatis, quod tibi concedat qui est benedictus in saecula saeculorum.

Benedictio pontificis.

Deus Pater sempiternae gloriae sit adjutor & protector tuus, benedicat tibi omnipotens; audiat in omnibus orationem tuam, & impleat vitam tuam dierum plenitudine, confirmet dominationem tuam, populos tibi subiectos foveat, hostes tuos predat: sanctus *Christi* vicarius in te inspi-ret, ut quemadmodum hic tibi ditiones terrestres contulit, ita in coelis praemia tibi aeterna largiatur, &c.

The name of *great duke* or *Wielki książę*, is also used by the king of Poland in his stile of some of his dutchies. But that is in regard of other dukedoms that are within those dutchies, and not from any particular institution. Nor was it by creation that the title of *great duke* was given to those of *Burgundy* and *Silesia* antiently. Yet in the states of the empire before *Goldastus's* constitutions, and elsewhere, they are reckoned by that name together with *mag-nus dux Lithuaniae*. (180) That officary title of *μεγας δεξ* or *δεγς*, or *great duke*, which was in the eastern empire in the nature of the lord high admiral with us, and ended with the Greek empire of *Constantinople* in *Lucas^d Notaras*, belongs not to this place. And for the title of *μεγας δεξ*, or *great duke* fixed antiently on the prince of *Athens*; we have only *Nicephorus Gregoras* (that is, a later *Graecian*) his word for it.

* Videfis Anton. Gabutium in vita Pil. V. lib. 3. cap. 16.

^d Crust. Turcograec. pag. 55.

XXXII. (181) As the title of duke, so that of count, or comes, or grave, or graffe (as it is varied in the Dutch dialects) hath been joined also with fiefs or territories in the empire, and that from the examples used in the French, Italian, and German kingdoms, before Charles the great, as is before shewed. And the title of count or grave is also variously otherwise used now in the empire, than with relation only to feuds. Of those therefore that are counts there, for methods sake, I first make (I mean of such as are immediate to the emperor) six kinds; the first, such as are called counts or graves, without other ordinary note or addition, in expressing the name of their dignity, than the place which is their county or graffschafft, unless you call it an addition to their dignity in that they are stiled sometimes schlecht graben, or simple counts, or the like; the second, counts palatine, which also are anon duly subdivided; the third, counts of the empire, without relation to any feud; the fourth, counts of frontiers, or marchgraves, or marqueses; the fifth, counts of provinces, or landgraves; and the sixth, counts of cities or eminent towns, burggraves. Peregrine also, or comes militaris, and some such other^e have been in use there, which we omit. As we do also, in this place, the office of freygrave^f and such like, and all relation that any of these which make the parts of our division have to the particular title of prince. For although their gefurstete graben, or counts that have that particular title of prince, seem perhaps justly to challenge a place of a member in the division of their counts, yet we have rather left it to another division concerning most of their titles which we shall make anon, where we speak of their title of furst or prince in the empire. Therefore here, of those six kinds only. And first of counts or graves without other ordinary addition than of their territory, as graffe von Effenburg, von Ottenburg, and the like. They are sometime called graphiones, in the old writers, and their territories, (and dignities also in the abstract) comitatus, comitia, and comitiana. The creation and investiture of counts or graves having territories or graffschaffts, was antiently as of dukes by the delivery of one or more banners, in the name or for feisin of their territories, whereof^g before. But in later time it hath varied, and sometimes is by charter, and sometimes by word only, as it seems by that of Charles V. his creation of Adrian de Croy, lord of Rhodo, into the title of count of Rhodo. The emperor at his coronation in Bologna, sitting with his crown on his head, and his scepter and mound in his hands, called for de Croy (who came and kneeled before him) and thus created him, as Cornelius Agrippa^h relates it.

Non me latent, generose Adriane, majorum tuorum vetustissimae nobilitatis imagines: eorum-

demque erga praedecessores nostros ingentia merita. Sed nec tuam in majorum tuorum virtute imitanda constantiam ignoro, qui tua strenue gesta magnificeque facta expertus, dignum virtutibus tuis praemium referre statuens, te unum vocavi & elegi, in quem hujus sacri diadematis primitias impenderem, teque quod & merita tua deposcunt, & virtutes tuae merentur, in sacri Romani imperii comitem proveherem. Quae dignitas nunc nostro imperio gloria, tibi que ac tuis successoribus perpetuum decus esto. Sacri Romani imperii comes bona fide appellator, tuoque Rhodio dominio, cum adjacentibus illi terris tuis, tu & successores tui, deinceps comitatus titulo fruuntor, aequalem cum caeteris Romani imperii comitibus dignitatem habento, paribus honoribus, privilegiis, praeceminentiis, libertateque sine ulla contradictione utuntor. Qui in istis contradicere tibi ausus fuerit, aut obstinatus non paruerit, sacri Romani imperii rebellis, & majestatis nostrae reus habetor.

Of this kind of counts or graves, there were heretofore (according to that distinction in most other orders of the empire by the several numbers of four for the most eminent) four graves or counts, or die vier graben desz heiligen Romischen reichs, that is, the four graves of the holy Roman empire, or die vier schlechte graben, the four simple graves; the grave of Cleeve, of Schwartzenburg, of Ciley, and of Savoy. But those of Cleeve and Savoy, being since raised into dukes, and the graves of Ciley being extinct about CLXX years past, the count of Schwartzenburg in Thuringia, only remains of them, and to this day stiles himself, der vier graben desz Reichs, grave zu Schwartzenburg; of the four graves of the empire, grave of Schwartzenburg. The graves or counts of the empire have caps^k as the dukes. But also one speaking of both those dignities, gives to them both, crowns distinguished only in richness. Insignitur dux sicut comes, superaddito, quod in corona ducis (so are^l the words, which suppose that both have their crowns) sunt affixi & insculpti lapides & gemmae pretiosae, ad demonstrandam ejus dignitatem magis esse praefulgidam & illustrem; cum regulariter ex aequitate ornamentorum cognoscatur majoritas dignitatis.

But there are also some counts that have no investiture into any graffschafft or county, and yet are called graves or counts of some castles or small territories which they possess, and are (as it is conceived by^m great lawyers) of the posterity of some such as were counts of the old empire, in the time before that feuds were annexed to this dignity, and so thence retain the name still of count joined with their castle or territory. And of these they remember specially the graves of Ottingen, and of Zollern. These in regard of their denomination or title, though

^e Vide Goldast. in ord. praefixis tom. 1. Confit. p. 35. Knichen de jure territorii cap. 4. n. 54. &c. ^f Vide Frigraviatum concessum a Ruperto Imper. Goldast. Confit. tom. 1. pag. 386. ^g §. 25. ^h Apud Goldast. Politic. Imperial. part. 4. pag. 337. ⁱ Paurmeist. de Jurisdic. lib. 2. cap. 10. §. 24. Stephan. de Jurisdic. lib. 2. part. 1. cap. 6. §. 115. Goldast. Ord. praefix. tom. 1. Confit. pag. 35. ^k Templum Judic. lib. 1. cap. 6. §. 1. ^l Nicol. Intrigliol. apud Stephan. de Jurisdic. lib. 2. part. 1. cap. 6. §. 69. &c. ^m Petr. de Andio de Imp. Rom. lib. 2. cap. 12. & lib. 1. cap. 15. & Paurmeist. de Jurisdic. lib. 2. cap. 10. §. 15. &c.

not of their nature or investiture, are to be reckoned with the *counts* here of the first kind.

To these belongs that example (which I confess is singular to me; for I have not observed the like of it) of the *graffschaft* of *Cambray*, given in *MVII.* to *Earlwin* bishop of *Cambray* and his successors by the emperor *St. Henry* the second, so that he might there *eligere comitem*, and enjoy also the *graffschaft*. The words are,

IN nomine S. & individuae trinitatis, *Heinricus*, divina clementia favente, rex; omnibus sanctae Dei ecclesiae fidelibus, praesentibus & futuris, notum fieri volumus, qualiter nos, tam animae nostrae consulto, quam venerabilis *Herberti* archiepiscopi *Colonienfis* interventu, *Chambracensi ecclesiae*, in honore S. *Mariae* constructae, *comitatum Cameracensem*, hac nostrae autoritatis praeceptali pagina, prout firmissime potuimus, in proprium donavimus. Praecipientes igitur, ut praelibatae sedis venerabilis *Earlwinus* episcopus siveque successores, liberam dehinc habeant potestatem, *eundem comitatum*, in usum ecclesiae supradictae, *tenendi, comitem eligendi*, bannos habendi, seu quicquid sibi libeat modis omnibus inde faciendi. Et ut haec nostrae traditionis autoritas stabilis & inconvulsa permaneat; hanc chartam inde conscriptam manu propria roborantes, sigilli nostri impressione insigniri iussimus.

^a Signum Domini *Heinrici* regis invictissimi
Eberhardus cancellarius, vice *Willelgi*
archicapellani, recognovit.

Data *xi. kalend. Novembris*, indictione *v.*
anno Dominicae incarnationis *MVII.* anno
Domini *Henrici* secundi regni *vi.* Actum
Aquisgranienfi palatio feliciter, *Amen.*

For a time, the bishops appointed a count under them for government, which I think is the same with *castellanus civitatis* in *Baldricus*. And in *Manasses* bishop of *Cambray's* confirmation of *Wenemar*, *cbastelan* of *Gant*, his charter of foundation of *Barheim* dated in *MCi.* at *Gant*, the time is further designed^o by regnant Philippo Francorum rege, *episcopante* *Manasse Cameracensi pontifice*, *Roberto Roberti filio in comitatu agente*, where I take this *Robert Fitz Robert* to be the count appointed by the bishop. I see also *comitatum* granted to some^p monasteries, by which, whether the title of count were ever enjoyed, I know not. But afterward the bishops of *Cambray* kept and used the title of count there themselves, as appears by that title of *comes Cameracensi*, which you see before in^q the creation of the bishop into the title of duke of *Cambray*. And what *Aubertus Miraeus* hath in his notes upon those words *comitem eligendi*, in the charter, is here observable; *lector curiosus notet* (saith^r he) *olim Lotharingae superioris & inferioris, adeoque Belgiae nostrae episcopos, habuisse jus eligendi & constituendi comites in suis civitatibus qui jus gladii exer-*

cebant. Hinc comites Cameracenses, Atrabantenfes, Treverenses, Metenses, Virdunenses, Tul- lenses, & alii passim qui medii aevi historiis oc- currunt. Coloniae Agrippinae etiamnum comes, greve, ab archiepiscopo constitui solet, qui jus gladii exercet. In adolescentibus postea comitibus (ut de Cameracensibus Baldricus in cronico testa- tur) episcopi plerique comitativam dignitatem ac titulum ad se traxerunt. Hinc Tullenses, Virdunenses, & alii episcopi hodieque comites nuncupantur.

XXXIII. (182) *Counts palatine* or *psaltz*, *grades* or *deß heiligen Römischen reichs hofst- graben*, or *comites palatini* or *palantini* (as they are sometimes called) are such counts as have in their title a special eminence of their dignity from a relation (as their name denotes) to the emperor's court or palace. For *palatine* or *palatinus* is but the possessive of *palatium*; and signifies as much as the words of *the household* with us, when we say *the officers of the household*. But this title is twofold; either originally feudal, and annexed to the name of some territory or *graffschaft*, with such *jura imperii & majestatis* as other ordinary princes have not, as we see in the title especially of the *counts palatine* of the *Rhine*; or merely personal without the addition of any particular territory proper to him that hath the dignity. For those of the first kind; as the original and nature of other feudal dignities are best discovered by the deduction of their names to the fiefs with which they are joined, so also will the original and nature of this be. And though the two kinds of *counts palatine* agree in name, yet both in nature and original they altogether differ. And the title or name only of the first is to be deduced out of the custom and stile of the old *French* state as from its first original, though yet the nature of it were more antient and that in the *Roman* empire under the name of *praefectus praetorio*, as is presently shewed. But both the title or name and nature also of the second kind are originally to be had from the examples of the old *Roman* empire. (183) Touching the first; in the more antient times (and that also before the beginning of the *French* empire) there was in the court of the kings of *France*, a great officer known by the name of *comes palatii*, or *count palatine*, or *of the palace*, or *master of the household*, that had a vicegerency under the king, in like sort as the *praefecti praetorio* in the elder empire, the old chief justice of *England* under the kings of *England*, or in like proportion to the king, as the chancellors or vicars general of bishops are to the bishops; that is, they had the exercise of supreme jurisdiction (for and in the name of the king) in all causes that came to the king's immediate audience. For example; one *Andobellus* was *palatii comes*, in this sense, to *Chlothar III.* king of *France*, (about *DCIX.*) and by vertue of that office fate *ad universum cau-*

^a That was, the capital letters of *Heinricus* cast into the draught of one figure, as the fashion of the emperors then was, as you may see it in *Georgius Colvenerius* his notes upon *Baldricus's* *Chronicon Camerac.* lib. i. cap. 119. p. 495, taken out of the records of the church of *Cambray*.

^o Apud *Aubert. Miraeum* in *Diplom. Belgic.* tom. 1. cap. 46.

^p Ibid. tom. 2. cap. 41. & 44.

^q § 29.

fas audiendas justoque judicio terminandas. Other testimonies are of this office, or official dignity in *Walafridus* [†] *Strabo*, *Hincmarus* [‡], *Gregorius* [§] *Turonensis*, and the like. But that of *Adalhardus* who was himself a *comes palatii* to king *Caroloman of France*, is here most observable. *Comitis autem palatii* (saith he, as *Hincmarus* relates out of [¶] him) *inter caetera pene innumerabilia, in hoc maxime sollicitudo erat, ut omnes contentiones legales, quae alibi ortae propter aequitatis judicium palatium adgrediebantur, juste, ac rationabiliter determinaret, seu perverse judicata ad aequitatis tramitem reduceret, & ut coram Deo propter iustitiam & coram hominibus propter legum observationem cunctis placeret.* Whence the name of *comes* joined with *palatii* came to denote this officer, may be easily understood out of what is already said touching the various use of that word *comes* in the old empire, whose language and customs were exceedingly dispersed over *Europe*, before the translation to *France*. This officary title being thus antiently used in the *French* state, continued there afterward also in the empire translated thither. And as the ordinary title of *comes* alone, joined (as is before shewed) with any province, made that kind of *count* or *grave*, whose title consists only in the name of *grave* or *count*, with the addition of his county or *grafschaft*, so this title of *comes palatii*, or *comes palatinus* annexed to a province (not so much by express name as by gift of like jurisdiction or power in the province, as the *count palatine* in the court had) was the original of *counts palatine* of provinces. And so the reason, why the name of *palatine* (which by the force of the word seems to denote them only as if they were a part of the household) was so joined with the province, is plain enough. For whereas other ordinary *counts* had only ordinary power and jurisdiction given them, and such as was subordinate to the *counts palatine* that in the emperor's court exercised supreme jurisdiction in the emperor's name; these *counts* that had territories given them with a jurisdiction of equal nature to that of the *counts palatine* in the court, were as supreme in their provinces, as the *counts palatine* were in the court; and had all royalties or *jura imperii*, which thus fixed upon them, the title of *count palatine*, that so it became to signify in a province no otherwise than it did at court; as if the emperor should have said in the creation or gift of the province, that together with the province the person honoured should have or might use the title of *count palatine*, because in the province he should not be as an ordinary *count*, but equal and alike in power and dignity to the *counts palatine* that were his immediate and supreme lieutenants in his palace. (184) And the very like form also

we see in the elder empire in the officary dignities of the *praefecti praetorio*. For it is plain that the name of *praefectus praetorio* signifies but as the *master of the household*, or indeed expressly as *comes palatii* in the sense that the *French* had it. *Praetorium* and *palatium* being, especially in the middle times, merely synonymies; as in that of *Hincmarus* [‡] or rather *Adelardus* in him; *praetoria nunc regia, & usitatus palatia nominantur.* And not only in signification but in nature also the *comes palatii* and *praefectus praetorio* very much agree together. For the *praefectus praetorio* was in the household, the like lieutenant to the old emperors, as the *comes palatii* in the *French* state.

Now we see that in the officary dignities of *praefectus praetorio orientis*, *praefectus praetorio Illyrici*, *praefectus praetorio Italiae*, and *praefectus praetorio Galliarum*, the very name of the household was transferred from the household to the several provinces, to denote that they who bore those offices (being as vice-roys in their provinces) should have like power, jurisdiction, and dignity in their provinces, as if by that name of *praefecti praetorio*, they had always lived with the emperor in the court. And indeed in the *Roman* empire there was nothing so much the same, or so near to the officary dignity of *comes palatii* in the *French* empire, as that of *praefectus praetorio*; however some very learned men suppose that from the *cura palatii* or *curopalates* in the *Roman* empire, and the very name of *comes palatii* also then used, the original and nature of the present title of this kind of feudal *count palatine* is to be deduced. It is true, that the *cura palatii* (as it is called in the [‡] Code) or *curopalates*, was antiently of great eminency in the household, and that whether you respect it as it was given to him that was captain of the emperor's guard, or to the master of the works of the palace. *Nicetas David* speaking of *Michael* that was after emperor, and is to this day stiled *Michael curopalates*, because he had that office under *Nicephorus* his father-in-law, saith, he had [¶] τὴν πρώτην καὶ ἐν τῷ παλατίῳ τιμωμένων. *Κεροπαλᾶτης ὁ βῶ.* the chiefest honour among those of the household. For he was *curopalates*. But it is certain, that neither of them that had the name of *curopalates* had any jurisdiction or power beyond the household. And those verses in *Corippus*, of *Justin* the designed successor to *Justinian*,

*Par extans curis, solo diademate dispar,
Ordine pro rerum vocitatus cura palati.*

cited by [¶] some as if they would thence prove the greatness of the place to be no less than such a lieutenantancy as the *praefectus praetorio*, or (in the *French* empire) the *comes palatii* had, are mistaken. For that of *par extans curis*, &c.

[†] Chron. Ms. Divionens. apud Bignon in Marculph. l. 1.

[‡] Hist. lib. 9. cap. 30. & videlicet capitul. Caroli magni lib. 3. cap. 77. alia porro apud Freherum Orig. Palat. lib. 2. pag. 2. Capitul. lib. 5. cap. 151. Leg. Longobard. lib. 2. tit. 45. &c. vide item Aventin. Annal. Boiorum lib. 5.

[§] Epist. 3. cap. 15.

[¶] Unic. tit. de comit. & trib. scholarum.

[‡] In vita Ignatii patriarchae Constantinopolitani, sub initium. Sed ut Curopalates dignitatem plenius intelligas videlicet Alemannum ad Procopii Arcanani historiam pag. 28. Grefer. ad Codinum pag. 185. 209. & 345. Codin. αὐτὸς δὲ καὶ. cap. 5. §. 26. Cassiodor. lib. 7. var. form. 5. Meurs. in Gloss. Graecobar. ver. Κεροπαλᾶτης, Salmast. ad Trebell. Poll. pag. 336. ad Spartian. pag. 137. Dempster. ad Corippum lib. 1. Juris Graeco. Rom. tom. 1. lib. 2. pag. 184. &c.

[¶] Freher. Orig. Palat. part. 1. fol. 3.

hath no relation in *Corippus* to *cura palatii*, to any such purpose. But to the next verse, *dispositum nam Caesar eras*, &c. as the whole context of *Corippus* is before transcribed. As if he had said that while he was the *cura palatii* or *curiopales* or captain of the guard, or general surveyor of the works of the palace, he governed all as lieutenant to the emperor, and was *ei par curis*, but that (he says) was as he was *Caesar* or designed successor, being both at the same time *Caesar* and *curiopales*. And for the name of *comes palatii* in the Roman empire; it is true that in some editions of the Code, there is a title *de officio comitis sacri palatii*, and in all, another *de comitibus & archiatris sacri palatii*. But neither of these can give any proof that the name or nature of this first kind of count *palatine* hath any other original than from that most different use of the name of *comes palatii* in the French state. For that first title *de officio comitis sacri imperii*; although it be in the later editions, yet the elder have it not. But in them the two laws that are under it are continued with the rest that precede under the title *de officio comitis rerum privatarum*, as the matter of them indeed persuades also that they might well be. And some great lawyers also (especially *Cujacius*) not without great and, I think, just reason, make the title there *de officio comitis sacri patrimonii* and not *palatii*. But however; there is nothing at all in the laws under that title, that can by any construction concern any such power or jurisdiction as was in the *comes palatii* there of the French empire. Nor doth the *comes palatii* there (if it should be there) denote any such thing. And for that other title *de comitibus & archiatris sacri palatii*; it hath only reference to that personal dignity of count which was bestowed on them that lived in court with the emperor, or to the old *comitiva vacans*, (whence the second sort of counts *palatine* are anon justly deduced) and not to any that had such eminence in power or jurisdiction above others as the *comes palatii* (whence we here derive the counts *palatine* of our first kind) had in the French state both before and after the empire came to the French, and not otherwise than as the *praefectus praetorio* had in the Roman empire. Other frivolous deductions there are (especially among the German writers) of this title; but they are neither worth a confutation nor any further memory. They are obvious in *Munster*, *Freher*, *Hubertus Thomas*, and such more.

XXXIV. This title or power (which made the title) of count *palatine* being annexed to fiefs or territories, first in the French, and then in the German empires, made those feudal dignities of count *palatine*, and those counties *palatine* or *pfaltzgraven* and *pfaltzgraftschafften*

in the empire. The French that live about *Blayz* in *Xantogne* say, that the famous *Rouland* (slain in the battel of *Roncivalles*) was a count^h *palatine* of their territory under *Charles the great*. And in Germany the title hath been in those of *Habspurg*,^h *Cubing*, *Wittelsbach*, *Schiern*, *Otenberg*, and other more. *Otto comes palatinus de Wittelsbach* (whom *Guntbertus* calls *comes aulicus* sometimes, and sometimes *palatinus*) is often remembered in *Conradus Philoſophus* his *chronicon Schirensse*, and occurs among the witnessesⁱ to a charter of *Eberhard* bishop of *Babenberg* made in MCLIV. And the same by that title with *frater ejus Fredericus de Schiern* and *Wittelsbach* is mentioned in the subscriptions to that^k charter of creation to the first duke of *Austria*. Another *Otho comes palatinus de Wittelsbach*, slew the emperor *Philip* in MCCVIII. for so was his title that slew him. And *Rigordus* an old author of France remembers him by the name of *comes palatinus* without further addition, and interprets that, I know not why, by the word *landanga*, as if it were the Dutch signification of it. *Quidam comes palatinus* (saith he, as the printed copies are) *qui eorum lingua landanga vocabatur, id est, comes palatii, Philippum Romanum imperatorem interfecit*. Perhaps he wrote *landtgrave* and mistook it for *pfaltzgrave*; or perhaps *pfaltzgrave*, and the corruption came from the transcribers. (185) And indeed some^m laid the crime to the *landtgrave* of *Turingen*; which might give *Rigordus* the hint of calling this *Otto* a *landtgrave*, being as it seems a stranger enough to the German titles. And *Arnolfus rex* (saith *Andreas Ratissponensis* in his chronicle of *Baviere*) *castrum Scheyrn in terra Bavariae construens, comitatus palatinos ibidem instituit*. So in the old laws of the dutchy of Saxony; *Quaelibet provincia Teutonicae terrae suum habebat palantzgraviatum; Saxonia, Bavaria, Franconia, & Suevia, quae antequam a Romanis superabantur, regna fuerunt*. And in someⁿ lists of the princes of the empire, there are four *archipalatini* mentioned, or *die vier ertz-pfaltzgraven*, *Rheni, Saxoniae, Franciae*,^o (it seems it should be *Franconiae*) *Hungariae*. In the stile also of the emperors that had the xvij provinces of the Netherlands, *pfaltzgrave zu Henigatu*, &c. and *palatinus Hannoniae*, &c. is obvious. So that although the counts *palatine* of the Rhine, or the *pfaltzgraven bey Rhine* have long been so singularly eminent princes by this title of count *palatine*, that commonly no other place is understood by the general name of the *palatinate*, but only their territories, yet also the dominions of some other princes of the empire have had the same name attributed to them, that is, of some such princes as have had the power of counts *palatine* in their territories, and that also although their

^d Cod. lib. 1. tit. 34.

^e C. lib. 12. tit. 13. & videlicet Basilic. lib. 6. tit. 21.

^f Vide Wefenbech. ad c. 1. tit. 34.

^g Me-

rule Cosmog. lib. 3. part. 2. c. 34. & videlicet Hubert. Thom. Leod. de origine palat. pag. 5. subjunctum Freheri origin. Sed Rolandus erat (si fides Eginharti in vita Caroli) Britannici litoris praefectus, & Anselmus tunc temporis Palatii comes. Inde etiam alii Rolandum Britanniae comitem appellant. vide Baron. tom. 9. ann. 812.

^h Freher. Orig. Palat. part. 1. cap. 2. & part. 2. cap. 7. ⁱ Chronic. ^j Paul. Langius Chronic. Citizen. sub anno 1208. ^k Rolewink in Fascic. ^l Specul. Saxon. lib. 3. art. 53. & videlicet ibidem art. 6. ^m Goldast. in ord. praefix. tom. 1. Constit. pag. 45. & comites Palatinos habes in legg. Longobard. lib. 3. tit. 41. editis a Goldasto in collect. legg. & consuetudinum imperii.

title be not counts but dukes. Thence is it that *Saxony* (for the purpose) is a *pfaltzgraffschaft* or *palatinate*. For in that territory, the duke of *Saxony* hath the sovereignty of a *count palatine*, but is not stiled so because of his title of duke which is rarely joined with *palatinus*. Indeed in that charter of the duke of *Austria*, *archiduces palatini* are mentioned, and, as it seems, denote those great dukes of the empire, that had the rights of a *count palatine*: in which sense also perhaps we have *ἡγεμόνας παλατινούς* in *Chalcondylas* ¹ or *duces palatinos*. But to this purpose, that of the golden bull of *Charles IV.* is observable, where, as the right belonging to the *pfaltzgrave* or *count palatine* of the *Rhine* in the vacancy of the empire, *ratione principatus seu comitatus palatini*, that is, the exercise of all jurisdiction (as in lieu of the emperor) is recognized to him in the territories of the *Rhine*, *Suevia*, and *Franconia*, so are the very same to the duke of *Saxony*, in *illis locis ubi Saxonica jura servantur*, as the words are. The particular creations of any into this title as feudal in the empire, I have not seen. Nor do I think that the title was expressly given to many that have it, if to any. Only thus; by reason of the supereminent jurisdiction and power (such as is in the *counts palatine* of the *Rhine*, and other the greatest princes of the empire, above that which was in common *graves* or ordinary counts of provinces) and such as was the same in the territory with that of the officary *comes palatii* in the emperor's court; this name, I conceive, was by some assumed, and so attributed to them (if they were counts) or at least the territories only called *pfaltzgraffschaften* or *palatinates*, if they were dukes, as also it hath been in *France*, *England*, and elsewhere, as is hereafter shewed. Thence is that of *Conradus Philosophus* ² an old writer of *Germany*, speaking of the first *Otho*, *count palatine* of *Mittelspach*, *Eckardus filium egregie strenuitatis Othonem qui & postea palatinus comes dictus est, habuit*; as if he had said that the accession of *palatine* was afterward, for his greatness of power, attributed to him. But also divers other counts that have by degrees gained to themselves equal power in their territories, to that of the old *comes palatii* at court, have not used the name of *count palatine*, because doubtless both such an innovation would have been with much more envy than the glory of the title would have recompensed, and more properly also it should belong to them that have such power and jurisdiction from the first creation of their feudal dignities.

XXXV. But at this day in the empire, the title of *count palatine*, with a *palatinate* together, remains most eminently in those of the *Rhine*, or the

— — *sacrae comes inclitus aulae,*
Cujus erat tumido tellus circumflua Rheno.

as *Guntberus* ³ describes *Hermannus count palatine* of the *Rhine* under *Frederick Barbarossa*. The beginning of that title appears not. Nor before the *German* empire doth any express mention of it occur, unless we could be persuaded that the name of *capellatium* or *palas* in *Marcellinus* denoted it, as some would have ⁴ it, but without ground enough for their conjecture. But touching both the singularity of it and its particular original, I rather insert here the words of the learned *Marquardus Freberus*, a late counsellor of that state, than any more of my own observation. After some antient testimony of the title of *count palatine* in the empire as feudal; denique (saith ⁵ he) *cum tot genera palatinorum fuerint familiis & ditonibus distincta (qui tamen omnes praeter nostros (the counts palatine of the Rhine) exoleverunt aut nominibus mutatis, aut etiam familiis intermortuis) nostri palatini inter caeteros eo eminebant, quod non ab una aliqua arce aut ditone, sed amplissima voce ab ingenti illo tractu principis fluvii, palatini Rheni vel ad Rhenum (ut* ⁶ *Germanice verterunt) dicebantur*. And in the next chapter, touching the original, *illud negare non possum, quod vere est ab Irenico & Munstero notatum, palatinatus Rheni appellationem (nam de re ipsa, id est, familia pariter & ditone palatinorum, nihil concessero) non ita esse veterem, nec apud ullum scriptorem de temporibus Carolorum inveniri: sed post imperium demum ad Germanos translatum & confirmatum (id est, Ottonum tempora & electores postea institutos) palatinos ad Rhenum prius fere inauditos, inclarusse; utpote tum munere electorio auctos. Quod cum perpendo, in eam sententiam venio, nulli quidem hactenus observatam sed valde arduam; palatinum Rheni ad differentiam quidem caeterorum, sed maxime palatini Saxoniae dictum fuisse. Cum enim imperium Romanum in duo regna, Lombardicum & Teutonicum esset divisum; & hoc rursus duplici jure regeatur, Francico & Saxonico, quorum hoc tractum Saxonicum usque ad mare Balticum, illud tractum Rheni cum Belgio, Sueviam, Franconiam orientalem, Bavariam, & Austriam ad Alpes usque Italicas (omnia a veteribus Francis subacta) complectebatur, hinc factum est ut duo etiam principales palatini haberentur Saxonici & Rhenensis. Ita enim placuit hunc a tractu Rheni, tanquam antiquissima, optima, & nobilissima Germaniae parte, potius quam caeteris denominare. Unde etiam est, quod hi duo palatini, velut proximi a rege Teutoniae, eo absente, divisim inter se ad modum praedictum limitibus, vice sacra imperium totum gubernant. Quod a majoribus sine dubio ita receptum Carolus quartus imperator confirmavit: * Quoties sacrum vacare continget imperium, illustris comes palatinus Rheni, sacri imperii archidapifer, ad manus futuri regis Romanorum in partibus Rheni & Sueviae, & in jure Franconico, ratione principatus seu co-*

¹ Supra §. XXVIII. pag. 416. & vide Freher. orig. palat. part. 2. p. 6. Dux palatinus item dictus est dux Bavariae, in epistola dedicatoria Johannis de Beka historiae suae de episcopis Ultrajectensibus praefixa.

² Hist. Turcic. lib. 2.

³ Chronic. Schirenfi.

⁴ Vita Fred. AEnobarb. l. 5.

⁵ Videtis praeter alios magis obvios, Cluverium German. antiq. lib. 3. cap. 36. Basil. Harold. de stationibus legionum in vet. Germ. cap. 12. & Lindebrog. ad Marcellin. lib. 18.

⁶ Freher. ibid. cap. 3. pag. 21.

* Verba bullae aureae cap. 5.

mitatus palatini privilegio, esse debet provisor ipsius imperii. Et postea mox, & eodem jure provisionis illustrem ducem Saxoniae sacri imperii archimarchallum frui volumus, in illis locis, ubi Saxonica jura servantur (haec enim passim Sueviae & Rheno opponi, in illorum Speculo observamus) sub omnibus modis & conditionibus, sicut superius est expressum. Et hinc (saith he) palatinorum Rheni origo nobis deducenda est. And as feudal counts palatine were above all other counts, so the palatines of the Rhine are ever above all other palatines, as also appears by this one most supereminent jurisdiction belonging to them; that the emperor himself might by the antient custom of the empire be brought to answer before them. I add the very words of that golden bull of Charles the fourth to that purpose. *Imperator sive rex Romanorum, super causis pro quibus impetitus fuerit, habet (sicut ex consuetudine introductum dicitur) coram comite palatino Rheni, sacri imperii archidapifero electore principe respondere. Illud tamen judicium comes ipse palatinus non alibi praeterquam in imperiali curia, ubi imperator seu Romanorum rex praesens extiterit poterit exercere.*

For the special ornaments of the counts palatine of the Rhine; I find not their robes of state differ from that of other great counts and dukes of the empire. But their cap with a crown on it, is of this form in Freherus. And the like is set over the arms of the dukes of Baviere oft-times; as in the title page of Marcus Velserus his *res Boicae* printed at Aupourg. MDCII. And of feudal counts palatine, thus much.



XXXVI. The other kinds of counts palatine (that have no relation to any fief or feud) are they whose honour and title consist only in the personal dignity of being counts palatine, or sacri palatii comites generally. For although divers of them have also privileges of power or jurisdiction added to their dignities, yet those privileges are various, according to the will of him that creates them, and are merely accidental to their title. This personal title is borne as acquired by two ways; the one is the publick profession or reading of the imperial laws by the space of xx years together, and also, as some take it, of the canon laws. For Hieronymus a Laurentiis, ^p that published decisions of the Rota of Avignon (where he was dean) styles himself *utriusque juris comes*, by which he means, I think, this title of *comes palatinus*. The other by letters patents or bulls.

That assuming it from the xx years profession of the imperial laws, is grounded upon a constitution of Theodosius and Valentinian, which equals the dignity of all lawyers professing in Constantinople xx years, and that with publick

approbation, to the *comitiva primi ordinis*, or the dignity of counts of the first rank. Cum ad viginti annos, observatione jugi (so are ^q the words) ac sedulo docendi labore pervenerint, placuit honorari & his quae sunt ex vicaria dignitate connumerari; as it is in Justinian's code. But in that of Theodosius, the *comitiva primi ordinis* is expressly given them, which is but the same in sense, with those words taken out of Justinian. For the *vicaria dignitas*, is the dignity of them that had been lieutenants to the *praefecti praetorio* in their provinces, and were of equal or ^r the same rank with the counts that by eminent employment in the state had deserved the first rank or order. And therefore the dignities of such counts and of the *vicarii*, being both as one, and the title of this of the professors in Justinian's time expressly mentioning the *comitiva*; divers ^t professors of the laws have in the later ages interpreted it for the honour of their faculty, and called themselves (after xx years profession) *comites sacri palatii*, or *comites palatini*. For in those times of the Roman empire all the counts that were only honorary (as those of the first rank without other addition, were) might justly be called palatine or sacri palatii, as, it seems, they are in that title ^v de comitibus & archiatris sacri palatii, where sacri palatii hath as much reference to comitibus as to archiatris, as it hath also in that title (to the same purpose) in the Basilica, ^u ἐν νόμων, καὶ τελεσίων, καὶ ἱερῶν τοῦ παλατίου, de comitibus, tribunis, & medicis palatii: comites palatii denoting there only honorary counts that were palatini or a part of the household. Neither can it be proved, that the name of comes palatii in the Roman empire, before it came to the French, denoted any other kind of dignity. For as touching that title de officio comitis sacri palatii in some editions of the ^x code, there is neither antiquity enough to make us believe it should be there, nor do the laws that follow it, concern any such person or office. And some of the most curious and judicious in the text of the body of that law and in the exacter parts of learning belonging to that profession, have expunged it, as is before ^{*} noted. But why the constitution being restrained to Constantinople (in Justinian) should be extended to other cities, and why, if lawyers gain such a dignity by so long profession, grammarians and rhetoricians should not (in regard they are also equally named in it) I leave to better judgment. And some great lawyers also think, that however the name be assumed by some professors, yet there is not ground enough ^y in that constitution or otherwise to warrant it; there being also of the greatest lawyers, that in their titles and elogies, although they professed above xx years, have not this of count palatine given them, as we see in ^z Angelus de Castro, Decius, Jason, and others. And it is (saith Paurmeister ^a) at this day beneath all other titles of count that are without the addi-

^p Lugduni, 1600.

chiatris sacri palatii.

^q Bartol. ad ff. tit. de militari test. l. 43. n. 4.

^r Menoch. de arbitr. jud. quaest. lib. 2. cap. 68.

^s 10. §. 19. Ita Boetius de autor. mag. concil. §. 109.

^t C. de professoribus qui in urbe, &c. l. unica. & C. Theod. lib. 6. tit. 21.

^u & vide Dd. ad C. tit. de professoribus in urbe & Petr. Lenauder. de

C. lib. 12. tit. 13.

^v Elog. lib. 6. tit. 21.

^w C. lib. 1. tit. 34.

^x Fichard in vitis jurisconsultorum.

^y De jurisdic. lib. 2. cap.

tion of *palatine*. *Menochius*^b and some others remember a charter of *Frederick III.* to the university of *Padua*, by which he that professes *xvi* years there should have this dignity. But how it came to pass that the name of *count palatine* being so great, as it was both officary and feudal (as is before shewed) in the *German* and *French* empires, should be thus assumed by men of so much less condition, deriving it more antiently and out of the *Roman* empire, and how in the later empire it came to be first used, shall be presently shewed, as soon as we have dispatched the dignity of those other *counts palatine* who have the title given them, as meerly personal by patents or bulls. For the reason to be used in shewing it, equally concerns them that are thus created, as well as those that so by colour of that constitution assume the title.

XXXVII. The title of those which are created by letters patents under the emperor's or pope's seal, we subdivide into two kinds; the one is singular, and we find it in one family only, as both honorary and officary; the other is given to many, and is only honorary. That which we call singular and officary as well as honorary here, is that special title of *comes palatii Lateranensis* charged with the attendance and service to be performed in the same palace at the emperor's coronation at *Rome*. It was thus given by the emperor *Lewes* of *Baviere*^c to *Castrucio de Antelminellis* duke of *Luca*, and to his heirs males in *MCCCXXVII.* about a month after that he was created duke.

De officio comitis palatii Lateranensis Romani.

*L*udovicus Dei gratia *Romanorum* imperator semper augustus, illustri *Castrucio duci Lucano, sacri Lateranensis palatii comiti & Romani imperii vexillifero*, suo & imperii fidei dilecto, gratiam suam & omne bonum.

Dignum est & maiestati imperiali proprium, ut, sicut quotidie fidelium augetur substantia, & devotio, ita eis imperiale culmen augeat dignitatis privilegia & honores. Sane experientia docente novit imperialis maiestas maximam fidem, devotionem & constantiam tuam, & ante, & post a nobis collatos honores, ultra caeteros fideles imperii de bono in melius quotidie proficisse. Ut igitur praemissorum contemplatione ad ampliores dignitatum apices per imperiale culmen tua devotio attollatur, de consilio & assensu procerum nostrae imperialis aulae, tibi & successoribus tuis ex te natis & nascituris, per lineam masculinam in perpetuum, *comitatum sacri Lateranensis palatii* (quem ad hunc nostrum, & *sacrum Romanum imperium* iustis & legitimis causis devolutum & applicatum pronunciamus & declaramus, & ad omnem dubitatem tollendam devolvimus & applicamus) damus, concedimus & donamus & ex certa scientia & plenitudine potestatis, & te & praedictos successores tuos in perpetuum eligimus, constituimus, praeficimus, & creamus *comitem*

& *comites ipsius sacri palatii Lateranensis*, vobis & de *comitatu* praedicto investimus & infeudamus tanquam veros imperii fideles & vassallos; dantes & concedentes & tribuentes tibi & eis, omnes & singulos honores & omnia & singula privilegia & emolumenta quos & quae *comites* praedicti *sacri palatii* habent & habuerunt quoquo tempore, de consuetudine vel de jure. Declarantes & nunc per hoc nostrae serenitatis indultum tibi & praedictis successoribus tuis ex praedicta *comitatus* dignitate competere jus assistendi perpetuo benedictioni, sacrae unctioni, & coronationi successorum nostrorum principum *Romanorum* & omnibus & singulis coronationis istius solennitatibus: & praecipue sociandi & deducendi ipsos *Romanos* principes, tempore coronationis fiendae de eis, ad sacram unctionem de ipsis faciendam, & eosdem *Romanos* imperatores successores nostros tenendi & juvandi in ipsa sacra unctione & actu ipsius & eadem unctione perfecta, eos reduci & sociandi ad altare, & thalamum, prout & quoties principes expediunt redire, ita jus levandi & tenendi imperiale diadema, de nostro & successorum nostrorum *Romanorum* principum capite, tempore quo imperialis coronationis solennia celebrantur, & etiam quocunque alio tempore, quoties publice ipsum diadema expedierit elevare de capite nostro & successorum nostrorum *Romanorum* reponi. Quae omnia & singula suprascripta valere & tenere volumus, & jubemus ex certa scientia, de plenitudine potestatis, jure aliquo non obstante. Nulli ergo omnino hominum liceat hanc nostram paginam in aliquo violare, vel ei ausu temerario contraire. Si quis vero hoc attentare praesumpserit, gravem indignationem nostram se noverit incurrisse. In cujus rei testimonium praesentes conscribi, & sigilli maiestatis nostrae robore, cum annotatione testium subscriptorum iussimus communiri.

Rudolphi ducis Bavariae, principis & patrui nostri charissimi.

Henrici ducis Brunsvicensis.

Ludovici ducis de Teck.

Hermannii de Linthelberg mareschalli nostri.

Meinhardi comitis de Hoxtenburg.

Othonis comitis de Colamende.

Joannis comitis de Claramonte.

Conradi comitis de Cruchendingen.

Conradi de Zolseberg.

Nec non nobilium virorum *Jacobi de Columna, Sciarae, & Jacobi de Sabellis* senatorum urbis.

Datum Romae xiv die mensis Martii, indictione II. anno Domini MCCCXXVIII. regni nostri anno XIV. imperii vero primo.

XXXVIII. For those other created into this personal title of *count palatine*; the nature and circumstance of their dignity will best appear out of the power that makes them, the style that is given them, the estates limited to them, the chiefest privileges that are usually, but very variously, inserted into their patents, and the exer-

^b De arbit. judic. quaest. lib. 2. cap. 68. & vide plura de hujusmodi comitibus, apud Matth. Steph. de iurisdic. lib. 2. part. 1. cap. 6. memb. 1. §. 4. 5. & 6. & lib. 3. part. 2. cap. 4. §. 43. & disputationem de hac re ab Arumaeo institutam habes in tom. 2. de jure publico discurs. 4. ^c Goldast. constit. tom. 1. pag. 3329. & Ald. Manut. in vit. Ludovic. IV.

cise of those privileges with something of the estimation had of them.

The power that makes them is originally in the emperor; but is exercised also by the ^d pope, although some lawyers of the empire ^e that are not pontifical, quarrel at him for it, and leave it doubtful also whether the empress, the king of the Romans, other kings, or the princes electors, may of themselves confer this dignity. Of that I dispute not. But for the pope's exercising the creation of this title; besides the arbitrary power used by him in creating singular persons into it by several bulls, and that power also acknowledged ^f in the council of Trent; that of the referendaries who are as presidents of his two signatures of grace and justice is here most observable. Those referendaries were ^g instituted by Alexander VI. and by a bull of Paul III. were every of them together thus created counts palatine.

PAULUS episcopus servus ⁱ servorum Dei ad futuram rei memoriam. Debita consideratione pensantes quantum venerabiles fratres episcopi, ac dilecti filii in minoribus constituti, utriusque signaturae, supplicationum videlicet & commisionum per nos, seu in praesentia nostra signandarum, infra scripti referendarii nostri, qui prae caeteris officialibus, & ministris nostris propinquius nobis assunt, circa ipsas supplicationes & commisiones pro nostro, & apostolicae sedis honore, ac universalis ecclesiae utilitate, & alias gratis, prompta voluntate, indefesse laborant; dignum, quin potius debitum reputamus, ut illos specialis benevolentiae favoribus amplectamur, ac praeclaris dignitatum titulis decoramus, & alias nos eis (prout convenit) gratiosos exhibeamus.

Hinc est quod nos fel. rec. Leonis X. & Clementis VII. Romanorum pontificum praedecessorum nostrorum vestigiis inhaerentes, eosdem infra scriptos referendarios nostros, qui praelati, ac etiam familiares continui commentales nostri existunt, condigni favoris gratia, & excellentiae dignitate sublimare, ac opportunis favoribus munire volentes, ipsosque referendarios, ac eorum singulos a quibuscumque excommunicationis, suspensionis, & interdicti, aliisque ecclesiasticis sententiis, censuris, & poenis, a jure vel ab homine, quavis occasione vel causa latis, si quibus vel quomodolibet innodati existunt, ad effectum praesentium duntaxat consequendum harum serie absolventes & absolutos fore censentes, motu proprio, non ad ipsorum referendariorum, vel aliorum pro eis nobis super hoc oblatae petitionis instantiam, sed de nostra mera deliberatione, & ex certa scientia, auctoritate apostolica, tenore praesentium, praefatos referendarios, & eorum singulos, qui praefules non sunt, ac alios infra scriptos, & eorum singulos in nostris, & dictae sedis notarios gratiose recipimus, eosque & alios qui praefules existunt, ac eorum singulos in sacri palatii, & aulae Lateranensis comites, nec non qui

nobiles non sunt, nobiles facimus, constituimus, ordinamus, & deputamus, ac nobilitamus, necnon nobilitatis titulo, & favore decoramus, ac aliorum nostrorum, & sedis praedictae notariorum, necnon palatii & aulae hujusmodi comitum, ac ex magno baronum, & nobilium genere procreatorum numero, & consortio favorabiliter aggregamus, eosque deinceps nobiles esse, & pro nobilibus reputari, nominari, teneri, censer, & judicari, ac de caetero in quibuscumque concessionibus, & literis, tam gratiam quam justitiam concernentibus, a nobis, seu sede praedicta impetratis, seu impetrandis, vel eis a nobis, aut aliis quibuscumque concessis & concedendis, ac instrumentis, seu aliis scriptis etiam authenticis, & privatis, nobiles nominari, & pro talibus haberi posse & debere volumus, eisque quod omnibus & singulis privilegiis, praeceminentibus, indultis, immunitatibus, libertatibus, exemptionibus, facultatibus, honoribus, antelationibus, praerogativis, etiam in assuetudine quorumcumque beneficiorum ecclesiasticorum etiam vigore gratiarum expectativarum, & illarum mutationum, extensionum, & revalidationum, collationum & quorumcumque aliarum gratiarum, & indultorum, quibus caeteri nostri, & dictae sedis notarii de numero participantium existentes, & absque illorum praejudicio, ac palatii aulae praedictorum comites, necnon veri & indubitati nobiles, & ex nobilium genere ex utroque parente procreati, tam de jure, quam consuetudine, seu alias quomodocumque utuntur, potiuntur, & gaudent, ac uti, potiri, & gaudere poterunt quomodolibet in futurum, in judicio, & extra, ac ubicumque locorum uti, potiri, & gaudere debeant in omnibus & per omnia, perinde ac si referendarii, & alii infra scripti, de dicto magno baronum & nobilium genere ex utroque parente, vere & non ficti procreati, & geniti forent, concedimus. Ac eorum singulis, sublati quibuscumque obstaculis & impedimentis veros nobiles esse, & de nobili ex dicto genere ex utroque parente procreatos, censeri debere, decernimus, & declaramus. Et in signum honoris, & nobilitatis hujusmodi, eis & eorum cuilibet, pro insigniis & armis, quibus ipsi, & ab eis descendentes & ascendentes uti possunt in decorem, partem insigniorum nostrorum, si eis uti voluerint, etiam cum vel absque armis suis, si illa habuerint, vel illis usi fuerint, aut sine ipsis, prout duxerint ordinandum, seu eligendum, assignamus & perpetuo decoramus.

The bull hath other privileges also usually given to counts palatine, whereof more ⁱ anon. And Clement VIII. and Paul V. in their bulls of privilege ^k to their conclavists, as they call them (or those which were in the conclave when they were chosen popes) make them all sacri palatii & aulae Lateranensis comites. And to the exercise of this power, belongs also that bull of pope Julius III. by which ^l he created Fabius, Christopher, Christopher and John, patriarchs of Constantinople, Alexandria, Hierusa-

^d Templ. Judic. lib. 1. cap. 1. §. 4. de comitibus palat. n. 3. &c. ^e Th. Sagittar. de jure & privileg. comit. palat. ad Thes. 6. ^f Seff. 24. cap. 2. ^g Videbis Laelium Zecchium de repub. ecclesiastica cap. 10. ^h Laert. Cherubin. in Bullar. tom. 1. pag. 647. in Paul. III. constit. 23. 30. Julii 1540. ⁱ §. XL. ^k Laert. Cherubin. Bullar. tom. 3. constit. Clem. VIII. 16. pag. 20. & Paul V. constit. 3. pag. 177. ^l Idem Bullar. tom. 1. pag. 704. Julii III. 12. April 6. 1551.

lem, and *Aquilegia*, together with *Andrew* archbishop of *Spalato*, and divers other archbishops and bishops (being as his household chaplains, or, as he calls them, *praelati domestici nostri* & in *capella nostra assistentes*) into such a degree of gentry as that they should enjoy all privileges that were due to any other gentlemen whatsoever, although they were *ex comitum genere*, as the words are; and that every one of them might create notaries in like sort as *counts palatine* might do, or *ad instar sacri palatii* & *aulae Lateranensis comites*, as the bull says.

The stile wherein the dignity of these personal *counts palatine* is expressed, is indifferently *comes aulæ Caesareæ*, *comes curiæ Caesareæ*, *comes palatii sacri*, *comes palatinus*, or *comes consistorii imperialis*, or *comes sacri Lateranensis palatii*; when it is created by the emperors. But if by the pope, *comes sacri Lateranensis palatii* most usually. And although the emperors long since left their residence in the *Lateran*, yet the name of that palace is of such eminence still in the empire, that commonly in the creations of these *counts palatine* they retain a reference to it as much as the pope doth. But although they be called *comites palatini* in *Latin*, yet the *Dutch* that express them in the language of the *German* empire, so distinguish them that are created by the emperors, that they call them not (as I think) *pfaltzgraven*, which is for the most part proper to the feudal *counts palatine*, but *des heiligen Römischen reichs hoftegraven*, or *counts of the house of the holy Roman empire*, as if by using the word *house* or *house*, they would purposely decline the name of *pfaltz* for some distinctions sake in the mention of them.

XXXIX. For the estates limited in the grant of this title; they are (besides those for life) sometimes to the issues of the patentees, and sometimes also to the successors. *John de Amatis* was made a *count palatine* by the emperor *Charles IV.* and the title extended to all *ex eo legitime descendentes*. So the counts of *Thurn* and *Vallesassin* write themselves *Caesarei comites palatini haereditarii*. And *John de Dominis* (an ancestor of the late archbishop of *Spalato*) being bishop of *Waradin*, was for his service to the emperor *Sigismund*, especially in the council of *Basil*, created by him^o into this dignity, with a limitation, to his brothers and the heirs of their bodies begotten. *Te Sc. fratres tuos & haeredes eorum* (as the words^p are) & *descendentes in perpetuum legitimo tantum Sc. nostros & imperii sacri Lateranensis palatii comites facimus, creamus, erigimus, Sc.* Other such examples are of creation of these kind of *counts*, although it be not very frequent that the dignity extends beyond the person first created.

And as thus to heirs, so also to successors it is sometimes given; as in that of *Maximilian II.* his creation of *Henry Julius* the first rector of the university of *Helmeſtadt*, and his successors,

into the title of *counts palatine*. *Sed Sjam dictum Henricum Julium per nos designatum* (as the words of creation are recited in *Thomas Sagittarius*) *primum rectorem, illosque in illo officio & dignitate posterum seligendos, ex speciali gratia & favore, sacri Lateranensis palatii aulae nostrae & imperialis consistorii comites facimus, creamus, erigimus, ac comitatus palatini dignitate clementer insignimus, aliorumque comitum palatinorum numero, coetui & consortio ascribimus, adjungimus, & aggregamus, decernentes & statuantes quod universo illo tempore quo dictae dignitati rectoratus praefuerint, omnibus & singulis, privilegiis, gratiis, juribus & immunitatibus, honoribus, exemptionibus & libertatibus uti, frui, potiri & gaudere possint & valeant quibus caeteri Lateranensis palatii comites haecenus usi, potiti & gavisī sive quomodolibet utuntur, fruuntur, potiuntur & gaudent consuetudine vel de jure, Sc.*

XL. The chiefest power and privileges inserted in their patents are various, and for the most part such, as are a kind of voluntary jurisdiction; and sometimes they have also something of the contentious or compulsory. For the purpose; the power of making the bastards (of all that are beneath barons) legitimate is frequently given them, as it occurs in the charter of the emperor *Rodolph II.* to *Nicholaus Reufnerus*, by which he created him into this dignity, and granted that he might *natos illegitime legitimare*, & *eos ac eorum quemlibet ad omnia & singula jura legitima restituere, omnemque geniturae maculam penitus abolere, ipsos restituendo & habilitando ad omnia & singula jura successionum, haereditatum, bonorum paternorum & maternorum etiam, ab intestato, cognatorum & agnatorum, ac ad honores dignitates & singulos actus legitimos tam ex contractu vel ultima voluntate quam alio quocunque modo tam in judicio quam extra, perinde ac si essent legitimo matrimonio procreati, objectione prolis illegitimae penitus quiescente Sc. dummodo tamen legitimaciones ejusmodi non praejudicent filiis & haeredibus legitimis, Sc.* — *Illustrium tamen principum, comitum & baronum filiis duntaxat exceptis.* So in that of *Sigismund*'s patent of creation to *John de Dominis* bishop of *Waradin* and his brothers; *Dantes & concedentes vobis & haeredibus vestris supradictis, quod possitis ubique locorum & terrarum, unusquisque vestrum & ex vobis quilibet (illustrum virorum principum comitum & baronum filiis duntaxat exceptis) legitimare & in patriam potestatem reducere quoscunque naturales, incestuosos, manzeres notbos Sc.* The power also of making doctors as well in divinity as in law, physick, and philosophy, is sometimes added in their patents, as in that to *Reufnerus*; but with this condition, *adhibitis in cujuslibet doctoris creatione doctoribus exitiis de professione creandi ad minus tribus, qui doctorandum examini subjiciant.* So the right of confer-

^m Schonburn. Politic. lib. 5. cap. 15. & Thom. Sagitta. ad thes. 2. lit. d. jurisdict. lib. 2. part. 1. c. 6. membr. 1. §. XXVI. &c. 26. Augusti 1427.

^p Pragae 9. Maii 1575. Sagittar. ad thes. 13.

ⁿ Sagittar. ad thes. 13. lit. b. videlicet Matth. Stephan. de

^p Apud Danielem Loner. in Sorice primo oras

^q Apud Th. Sagittar. ad thes. 22.

ring other degrees in learning, and especially also the making of poets laureat, is often among the privileges of these *counts palatine*. We add here the patent of *Rodolph II.* by which he created *Georgius Obrechtus* and his son *Thomas* (both professors of the law at *Strasbourg*) into this title, and annexed to their dignity, the arbitrary power of conferring the degrees of doctor, licentiat, and batchelor in both laws, master and batchelor of the arts, and of poet laureat.

*R*odolphus secundus divina favente clementia electus *Romanorum* imperator, semper *augustus*, ac *Germaniae, Hungariae, Bohemiae, Dalmatiae, Croatiae, Sclavoniae, &c.* rex, archidux *Austriae*, dux *Burgundiae, Brabantiae, Stiriae, Carinthiae, Carniolae, &c.* marchio *Moraviae, &c.* dux *Lucemburgiae*, ac superioris & inferioris *Silesiae, Wittembergiae, & Teckae*: Princeps *Sueviae*, comes *Habsburgi, Tyrolis, Ferretis, Kyburgi, & Gloritiae*: Landgravius *Alsatie*, marchio *sacri Romani imperii, Burgoviae* ac superioris & inferioris *Lusatie* dominus, marchiae *Sclavonicae*, portus *Nationis & Salinarum &c.* Honorabili, docto nostro & *sacri imperii* fideli dilecto, *Georgio Obrecht*, juris utriusque doctori, & in academia *Argentoratensi* professori primario, *sacri Lateranensis palatii, aulaeque nostrae Caesareae & imperialis consistorii comiti*, gratiam nostram *Caesaream* & omne bonum. Pervetusta atque laudatissima divis praedecessoribus nostris, *Romanis* imperatoribus, ac regibus consuetudo fuit: ut cum honorum & dignitatum incrementa, ab imperatoriae majestatis splendore, tanquam lumen a sole dimanent, singularem adhiberent curam, ut in iis decernendis, liberaliores se erga eos praeberent, qui non tantum ab honesta generis origine, sed etiam a praeclaris actionibus, & virtutum studiis, sibi commendarentur: Idque non solum, ut dignum illi se praeium consecutos, sibi gratulari possent, sed ut alii etiam illorum exemplo accensi, atque inflammati, ad laudabilia virtutum certamina, ferventiore studio incitarentur. Quam consuetudinem laudatissimam, & nos, postquam ad excelsum hoc imperatoriae sublimitatis fastigium evecti sumus servare cupientes: Nihil sane libentius facimus, quam ut praestantium virorum, quorum virtus clara habeatur, & merita in rempublicam singularia extent, ornamenta, quantum occasio & rerum ipsarum status fert, augeamus. Edocti itaque fide digno testimonio, *Georgi*, honestis ac vitae morumque integritate conspicuis te parentibus ac majoribus ortum qui laudabilibus actionibus nomen sibi decusque pepererint, eorumque vestigiis te naviter insistendo, id a primis temporibus aetatis tuae quam maxime curae habuisse, ut domesticum illud decus non modo continuares, verum etiam quoad ejus fieri posset, augeres magisque illustratum ad posteros tuos transmitteres. Quod quidem usque adeo consecutus fueris, ut post septem artium liberalium curriculum absolutum, in utroque jure, ad quod animum applicuisti, quodque naviter legendo & disputando excoluisti, tantum profeceris, quod gradatim magna cum laude & applausu publico,

laurea doctorali insigniri merueris, indeque singulari cum auditorum fructu a pluribus jam annis in universitate *Argentoratensi* publice jura docueris, & etiamnum ejusdem academiae professorem primum, & strenuum in forensibus causis advocatum agas: tum vel maxime libris diversis in publicum datis, insignes ingenii tui dotes, & exactam, qua polles, eruditionem, toti quasi orbi testatam reddideris, praetermittere sane nolumus, quin pro singulari benignae voluntatis nostrae inclinatione, te insigni aliquo munificentiae nostrae ornamento, quod virtutibus & meritis responderet, condecorandum susciperemus.

Motu itaque proprio, ex certa nostra scientia, animo bene deliberato, ac sano accedente consilio, deque *Caesareae* potestatis plenitudine te praedictum *Georgium Obrechtum*, simul & filium tuum unicum *Johannem Thomam Obrechtum*, post obitum tuum, *sacri Lateranensis palatii, aulaeque nostrae Caesareae & imperialis consistorii comites* fecimus, creavimus, & *comitatus palatini* titulo clementer insignivimus, pro ut vigore praesentium facimus, creamus, & insignimus, aliorumque *comitum palatinorum* numero, ordini, & consortio gratiose cooptamus, adscribimus, & aggregamus. Decernentes & imperiali edicto nostro firmiter statuentes, quod praedicto modo omnibus ac singulis privilegiis, praerogativis, immunitatibus, honoribus, exemptionibus, & libertatibus, uti, frui, potiri, & gaudere possitis ac valeatis, quibus caeteri *sacri Lateranensis palatii comites* hactenus usi & potiti sunt, seu quomodolibet utantur, fruuntur, potiuntur, & gaudent, consuetudine vel de jure.

Praeterea tibi praenominato *Georgio Obrecht*, & post obitum tuum filio tuo *Johanni Thomae Obrecht*, scientia, motu, & autoritate, quibus supra, clementer indulgemus, ut possitis, & valeatis *doctores, licentiatos, & baccalaureos in utroque jure*: *Magistros* item & *baccalaureos liberalium artium*, ac *philosophiae*, nec non *poetas laureatos* creare, promovere, ordinare, constituere, ac facere: Adhibitis tamen in cuiuslibet *doctoris, licentii, magistri, baccalaurei* creatione, *doctoribus* eximisi de professione creandi ad minus tribus, qui creandum examini subjiciant, ac ei quem sic idoneum invenerint, sufficientemque comprobaverint, vestram auctoritatem interponendo, *doctoratus, licentiae, magisterii, aut baccalaureatus, & laureae poeticae* insignia (ut moris est) conferre: Qui quidem *doctoratus, licentiae, magisterii, baccalaureatus vel laureae poeticae* titulo per vos donati possint & valeant in omnibus civitatibus, terris, & locis *sacri Romani imperii*, & ubilibet terrarum, omnes actus *doctores* & *magisteriales*, legendi, docendi, interpretandi, cathedram ascendendi, & glossandi, disputandi, consulendi, advocandi, ac caeteros actus *doctores*, *licentiae* vel *baccalaureatus* in jure, nec non *magisterii* ac *baccalaureatus* in philosophia, facere atque exercere, ac omnibus & singulis privilegiis, praerogativis, exemptionibus, honoribus, praemiis, favoribus, indultis, gratiis, ac quibuscunque aliis quibus caeteri *doctores, licentii, magistri,*

magistri, baccalarei, & poetae laureati, qui vel in gymnasio *Viennensi, Parisiensi, Bononiensi, Patavino, Perusino, Coloniensi, Pisano, Ingolfradiensi*, & quolibet alio publico, & privilegiato gymnasio promoti, vel etiam a nobis, ac di-
vis praedecessoribus nostris *Romanorum* imperatoribus ac regibus insigniti, seu aliter quocunque modo talia insignia acceperunt, utuntur, fruuntur, potiuntur, & gaudent, quomodolibet consuetudine vel de jure, omni dolo, fraude, contradictione quorumcunque ac sinistra machinatione sublata, penitus & remota. Mandantes idcirco & firmissime praecipientes universis ac singulis electoribus tam ecclesiasticis quam saecularibus, aliisque principibus, archiepiscopis, episcopis, ducibus, marchionibus, comitibus, baronibus, militibus, nobilibus, clientibus, capitaneis, vicedominis, advocatis, praefectis, procuratoribus, heroldis, officialibus, quaestoribus, civum magistris, iudicibus, consulis, civibus, communitatibus, & denique omnibus nostris, & *sacri Romani imperii*, ac regnorum & dominiorum nostrorum haereditarium subditis, & fidelibus dilectis cujuscunque status, gradus, ordinis, & conditionis extiterint, ut vos saepe factos *Obrechtos*, legitimofque vestros liberos, haeredes, posteros & descendentes utriusque sexus, una cum uxoribus, servitoribus, domesticis, subditis, & conjunctis, masculis & foeminis ab hac hora in futurum, perpetuis temporibus, omnibus, ac singulis supra scriptis privilegiis, gratiis, libertatibus, immunitatibus, exemptionibus, indulgis, concessionibus, juribus, protectione, & salva guardia aliisque approbationis, ratificationis, confirmationis, innovationis, extensionis, augmentationis, creationis, assumptionis, aggregationis, concessionis, indulti, suppletionis, derogationis, statuti, decreti, voluntatis, & gratiae, praesertim vero nobilitatis, & insignium praerogativis vobis *Caesarei* hujus diplomatis nostri vigore conjunctim vel separatim competentibus pacifice, quiete, & sine omni prorsus impedimento uti, frui, potiri, gaudere sinant, adeoque vos & illos in iisdem conservare & manu tenere studeant, haecque omnia & singula ab aliis etiam quantam in ipsis erit, fieri curent. Si quis vero aliter fecerit, & hoc nostrum *Caesareum* diploma, in parte, vel in universum temere ausus fuerit violare, is noverit se ipso facto praeter nostram, & *sacri Romani imperii* ipsi indignationem gravissimam, sexaginta quoque marcarum auri puri poenam pro dimidia parte fisco nostro *Caesareo*, & pro residua injuriarum passo, vel passis, omni spe veniae sublata, & ex aequo toties quoties contra factum fuerit, solvendam incursum. Harum testimonio literarum, manu nostra subscriptarum, & sigilli nostri *Caesarei* appensione munitarum. Datum in arce nostra regia *Prage*, die decima nona mensis *Novembris*, anno domini millesimo, sexcentesimo, decimo; regnorum nostrorum, *Romani* trigesimo sexto,

Hungarici, trigesimo nono, & *Bobemici* itidem trigesimo sexto.

Rudolphus

†
V Leopaldus a Stralendorf

L. B. V. C.

Ad mandatum fac. Caes.
majestatis proprium

Jo. Barvitius.

The discharge also of taxes is sometimes inserted, and power of making public notaries and ordinary judges often. *Ut possis & valeas per totum Romanorum imperium & ubique locorum notarios publicos & judices ordinarios creare & facere*, are the words in the patent of creation to *Reusnerus*. Sometimes also the appointing tutors or guardians to infants, adoptions, manumissions, making of knights, giving of arms, granting of pardons, and such more. And in that to *John de Dominis* and his brothers—*possitis insuper facere & creare notarios publicos & tabelliones, necnon judices ordinarios & delegatos, & per vos ipsos facere, exercere omnia ea quae sunt jurisdictionis ordinariae, voluntariae vel delegatae, &c.* And for a special example of the largest privileges annexed to this dignity, observe that of *Charles IV.* to *John de Amatis*, as it is recited in a patent made by count *Ferdinand de Amatis* to *Bartholomaeus Bilovius* at *Padua* in *December, MDC.* The emperor gave (saith *Ferdinand*, speaking of the posterity of count *John*) *liberam potestatem non modo legitimandi, adoptandi, emancipandi, manumittendi, cives Romanos creandi, tabelliones, ac doctores pronuntiandi, verumetiam (morum prius & personarum qualitate indagata, receptoque de fide Romano imperio & Caesareae coronae praestanda juramento) milites armatos inditiae faciendi, infames redintegrandi, crimen laesae majestatis absolvendi, ignobiles nobilitandi, ac porro illustres, spectabiles, ac clarissimos, imo comites, valvalores, capitaneos, majores & minores & mediocres cum earundem vel aliquarum ex eis dignitatum & potestatum, quas in alios transferre possimus, concessu creandi.* Here the giving of dignities also, and that of the very dignity of count, is a privilege joined with the title of count palatine to this family.

In that bull also of *Paul III.* to the referendaries in the court of *Rome*, after those words of their creation before cited, power is given them to create public notaries *ad instar aliorum dicti palatii comitum ubique locorum, extra tamen muros urbis seu locum in quo Romanam curiam residere contigerit*; and to make ordinary judges, investing both of them *per pennam & calamare ut moris est*, and taking

† Privileg. forest. de Bergamo cujus mentio apud Pich. de palat. camp. lib. 1. tit. forma instrumenti, &c.

† Sagittar. ad thes. 34.

† Apud Sagittar. ad thes. 8. Videtis item privilegia cum hac dignitate a Rudolpho II. concessa Raimaro Selrechio juris v. doctori & Philippo Pomeraniae ducis consiliario apud Matth. Stephani de jurisdic.

lib. 2. part. 1. cap. 6. memb. 1. §. LXXI, LXXII, LXXIII.

the oath of them, which is prescribed at the end of the bull, for their faith to the church of Rome, and just execution of their places. Also to legitimate bastards, to all purposes, *prout collegium archivii diſtæ Romanæ curiæ vel ejus officiales juxta facultatem eis per piæ memoriæ Julium papam II. etiam prædeceſſorem noſtrum conceſſam vel alias ipſi comites palatini de jure vel conſuetudine legitimare & habilitare reſpective poſſunt*; to make doctors, licentiats, maſters, and batchelors of either law, divinity or the arts, with the aſſiſtance of two or three doctors, maſters, or licentiats in the faculty whereof they make them. And theſe graduates have by the ſame bull equal dignity and privilege with all others made in any univerſity. Divers other privileges are there given to them, eſpecially in eccleſiaſtical matters. Afterward Pius V. ordained that no legitimation made by any ſuch count palatine ſhould be good in præjudicium vocatorum ex fidei commiſſo aut teſtamento, vel quavis alia valida tamen diſpoſitione, as the words of the ¹ bull are. The privilege alſo of making of notaries given to referendaries, is leſſened by Pius² V. And for the power of making doctors, licentiats, maſters of either law or divinity; it was expreſſly taken (as far as papal authority could extend) from all counts palatine by the ſame Pius; and ſuch alſo as had been made by counts, were precluded from all benefit, that they might thence pretend unto in the church. *Decernimus & declaramus* (ſays his³ bull) *eos qui a comitibus & aliis promoti fuerunt, quoad dignitates cæteraque beneficia eccleſiaſtica nulla gradus prærogativa frui & gaudere poſſe vel debere*. And Laelius Zecchini a doctor of both laws is much deceived (unleſs he wrote before that latter bull of Pius V. but his book was publiſhed long ſince) wherein^b he ſays that by the bull of Pius IV. legitimations of counts palatine are forbidden (according to that before cited out of the bull) but he allows them ſtill the authority of making doctors, licentiats, and maſters in both laws and divinity. But this we ſee is as much forbidden by Pius V. as the other by the IV. Whether doctors and other graduates created by ſuch counts made by the emperor have like privileges with others that are made according to the laws of univerſities, is largely diſputed in ^c *Matthias Stephani*. Thoſe counts made by the emperor may ſtill (according to their privileges) give degrees in any faculty. And ſuch as are made by the pope alſo with the privilege (without a non obſtante to that bull) may at this day according to the laws of the church of Rome exerciſe their power in making of doctors of phyſick or philoſophy, as you may ſee in this next example with which we begin the exerciſe of their privileges.

XLI. *Saluſtius Tiberius a Corneto* in his formulary^d hath this inſtrument of a doctorſhip in

philology and phyſick, given under ſeal by *Hieronimus Botis* a doctor of the arts, phyſick and divinity, and a count palatine created by the pope, to one that was firſt examined upon ſeveral queſtions both in philoſophy and phyſick by two doctors of both faculties, and thence reported to be ſufficient.

IN nomine ſanctæ & individuae Trinitatis Patris & Filii & Spiritus Sancti; Amen. *Hieronimus Botis comes palatinus*, &c. artium, medicinarum, theologiæ, doctor, primus olim Peruſini gymnaſii philoſophus, ſuperordinarius, &c. Univerſis & ſingulis præſentes literas ſive præſens publicum doctoratus inſtrumentum, & privilegium viſuris, lecturis, pariter & audituris notum facimus & atteſtamur, qualiter vocatis magnificis *D. D. F. & N. art. & medic. doctoribus*, ut magnificum *D. B. q. D. B. q. D. A. & C. conjugum filium legitimum & naturalem in artium medicinarum & philoſophiæ ſcientia rigoroſe inquirent, & examinarent*; qui quidem domini doctoris mandatis noſtris obſequentes, datis dicto *B. his punctis*; videlicet, *primo phyſ. text. 42. omnia autem contraria faciunt principia, &c.* & primo aphoriſmorum aphoriſmo 7. *ubi morbus peracutus eſt, &c.* & eodem *B. ſuper eis rigoroſe & diligenter inſiſſito, & examinato, ita cum tam in legendo, inferendo, ſuſtinendo quam etiam in aliis emergentibus quaſtionibus, ac fortiffimis, & ſubtiliffimis argumentis contra eum ſummo cum ſtudio factis reſponſiſſe, & reſpiciſſe valde diligenter, & ſubtiliter nobis juxta eorum conſcientiam retulerunt, ut merito ad hujusmodi artium medicinarum & philoſophiæ doctoratus gradum tanquam idoneum & ſufficientem promoveri poſſit; ideo vigore indulti nobis a ſede apoſtolica conceſſi (hic cauſa brevitatis inferi omiſi); quod tamen volumus inferi quancumque poſſe) de eorundem *D. D. doctorum unanimi conſilio, & aſſenſu conſiderantes, quod ex annosa literarum radice debes, & glorioſe debeant recolligi fructus; ipſum B. ad nos revocatum, & id poſtulantem ad gradum & inſignia doctoratus hujusmodi ad laudem & gloriam omnipotentis Dei, & glorioſiſſimæ ejus matris Mariæ virginis, omni meliori modo, quo magis, & validius potuimus, & debuimus, ac poſſumus & debemus, recipimus, & aſſumpſimus, ac aliorum doctorum in arte medicinarum, & philoſophiæ numero, & actui aggregavimus, prout tenore præſentium recipimus, aſſumimus, & aggregamus. Pronunciantes, decernentes, & declarantes ipſum B. artium, medicinarum & philoſophiæ doctorum omnibus & ſingulis privilegiis, exemptionibus, prærogativis, libertatibus, immunitatibus, honoribus, conſeſſionibus, favoribus & indultis quibus cæteri doctores utuntur, potiuntur & gaudent, uti, potiri, & gaudere debere; ſibiſque libros clauſos & apertos, biretum in capite, annulum in digito, oſculum pacis, ac ſedem, ſive cathedram, omniaque & ſingula doctoratus inſignia ſibi tradidimus & conceſſimus, prout tra-**

¹ Pius IV. conſtit. 45. quamvis 30. Dec. 1562.

tribunalium tom. 3. Bullar. pag. 278. col. 2.

comitibus palatinis.

membr. 2. §. LXXIV. LXXV. &c. eodem capite etiam, §. XXIX.

pag. 287. Romæ 1621.

² Conſtit. 87. pridem. videſis Pauli V. conſtit. 71. univerſi. de reformatione

³ Pius V. conſtit. 60. quamvis 1. Junii 1568 in Bullar. & 7. Decretal. lib. 3. tit. 4. de

⁴ De Repub. Eccleſiaſt. cap. 10. pag. 131. Veronæ 1590.

⁵ De juridiſt. lib. 2. part. 1. c. 6.

⁶ Formul. lib. 1.

dimus

dimus & concedimus per praesentes. In quorum omnium & singulorum fidem & testimonium praemissorum, praesentes manu nostra propria subscriptas, & sigilli nostri appensione munitas, fieri curavimus. Datum & actum Romae in aedibus nostris sub anno &c. praesentibus, &c. testibus, &c.

XLII. The course also used by counts palatine in giving the crown of laurel to poets is seen especially in that of Joannes Crusius^e his receiving it at Strasbourg, in ann. 1616. from the hands of Thomas Obrechtus a professor of law and a count palatine, whose patent from the emperor is before inserted. First the time and place were solemnly appointed by a publick instrument from the count, where he shews how much degrees in learning conduce to the advancement of it, and then that Paulus Crusius having first received the dignity of master of arts, now, out of his happy vein in verse, deserved also the laurel of poetry, and therefore by virtue of the power and licence that he had from the emperor, he appointed the xxij. of December (the instrument was dated the xx.) for the solemnity of giving it him. Quamobrem (saith he) omnes literarum studiorumque amantes ac in primis illustres & generosos dominos, comites, atque barones, patres academicos omnes, omnium ordinum doctores, licentiatos, professores, magistratos, auditores, nobilissimos, praestantissimos, doctissimos, ea quae decet animi veneratione invitamus ut felicitatem hujus actus literarii illustri ac honorifica sua praesentia non solum illustrare atque exornare, verum pia etiam vota hac praefertim conclamata tempestate, pro salute ecclesiae, scholae & reipub. ad Deum facere nobiscum velint majorem in modum rogamus ac obtestamur. At the day appointed, the assembly being full, Crusius begins with the recital of this petitory epigram.

Caesarei comes alme fori, clarissime Thoma,
Si merui laurum, Phoebus adesto mihi.
Si minus, hic reddas justae argumenta repulsae,
Parebo monitis parte in utraque tuis.
Fallor? an adspicio viridem sub veste coronam.
O Dii! quam pulchre laurus amoena vires!
Caesaris haec munus, vigeat cum Caesare laurus:
Praevaleat vulgo gratia Caesarea
Quae mihi contingit per te, celeberrime Conse,
Si mihi continget laurea Caesarea.

Then the count palatine made a long speech, in praise of the art of poetry, which he concluded with — *audivisti haecenus satis superque uti spero, auditores nobilissimi, intellexistis, artem poeticam reipublicae & utilem. & necessariam esse, ejus cultores dignis afficiendos praemiis, titulum & privilegia poetae laureati, non quibusvis promiscue & sine discretionem, sed iis tantum conferenda esse, in arte poetica singulares qui fecerunt progressus.* Then directing himself to Crusius that was to be honoured with the laurel, cum itaque, saith he, tu magister Johannes Paulus Crusius, poeseos candidate, ad eundem

honoris & dignitatis titulum aspirare cupias, tui jam officii tuarumque partium erit, ut antequam petitus honoris titulus, solenni cum applausu tibi conferatur, eruditionis tuae insigne ac nobile aliquod specimen illustri huic auditorio edas, exhibeas te talem, qualem te commendando, ut omnibus & singulis liquido constet te eum esse quem ipsa eruditio ac doctrina commendat, ipsa virtus & morum integritas condecorat, ipsa justitia honore petito condecorandum dignum judicet, nec ipsa etiam invidia, virtutis comes, idem deneget. Then Crusius recites a poem of above 300 verses, hexameter and pentameter, his theme being (chosen by himself) *quam nihil omnis homo!* and these verses are called, in the act of creation, *specimen pro impetranda laurea.* Next, the count palatine (to the end that this his act of conferring the laurel might have the fuller credit and authority with all that were present) produces the emperor's patent that made him count palatine, and gave him this authority, and hath it recognised, upon a solemn observation of the seal and subscription, by a publick notary, and openly read by him also. Thence he sums up the authority given him, and shews that the course is, that whosoever is to be thus crowned with the laurel ought first to take an oath to the emperor and his successors, which he bids the publick notary read to Crusius, and required Crusius carefully to hearken to it. The Oath was,

Promittes & jurabis quod velis esse invictissimo, potentissimo, & serenissimo principi ac domino, domino Matthiae primo Romanorum imperatori semper augusto & eidem sacro Romano imperio, omnibus successoribus ejus Romanorum imperatoribus ac regibus legitime intransibus, fidelis; nec unquam assistes consilio, ubi periculum eorum tractetur; sed bonum & salutem eorum defendes fideliter & promovebis, damna eorum pro tua possibilitate & facultate vitabis & avertes; quae in laudem & honorem Romani imperii spectabunt aliquando carminibus celebrabis, amplificabis, nec licentia data, in maledicentiam & convitia prorumpes; ab omnibus famosis libellis abstinebis, & omnia quae Caesareuni, verum, sincerum & Germanum poetam jure vel consuetudine decent, modo sint honesta & justa, diligenter exercitio & morum ornatu facies & praestabis.

By direction then of the count, he lays his hand on the book and swears, *haec omnia mihi praestanda summa qua potero obedientia & diligentia observabo & faciam, ut me Deus adjuvet, & haec sancta Dei evangelia.* The oath thus taken; because (saith the count) I doubt not but that during your whole life you will truly observe what you have thus sworn, it remains only that I now give you the laurel appointed for you;

Te itaque Johannem Paulum Crusium Argentinensem liberalium artium ac disciplinarum magistrum in hac florentissima assidentium & ad-

^e Daphnis seu actus Caesareus Argentorati 1616. in 8.

stantium corona ob insignes ingenii tui dotes, præsertim vero artis poeticae doctrinam singularem, peritiam eximiam; ut moris est, vigore, ac tenore Cæsarei hujus nostri diplomatis, tanquam comes palatinus augustissima imperatoriae ac Cæsareae majestatis auctoritate, hac laureae poetica coronamus, condecoramus, donamus, ac poetam & vatem laureatum pronuntiamus, proclamamus, facimus, creamus, promovemus, aureoque hoc annulo ornamus, condecoramus, & hoc ipse laureae poeticae insignibus ac titulis, insignimus, investimus, aliorumque poetarum numero, ordini, & confortio cooptamus, adscribimus, & aggregamus. Concedimus insuper, plenamque facultatem, auctoritatem & licentiam largimur ut tu per nos laureae poeticae titulo sic donatus, ab hac hora in futurum possis & valeas omnibus passim in urbibus, civitatibus, communitatibus, universitatibus, collegiis & academiis quibuscunque universi sacri Romani imperii, & ubi libet terrarum in artis poeticae facultate publice legere, docere, scribere, interpretari, commentari, cathedram ascendere, disputare, ac omnes praeterea eos actus poeticos quos caeteri poetae laureati solenniter insigniti atque investiti, subire, facere, & exercere soliti sunt, suscipere & exercere, ac omnibus denique & singulis quibus iidem poetae, quocunque demum loco, & a quibuscunque potestatem, facultatemque lauream conferendi habentibus, promoti, ornamentis, insignibus, privilegiis, praerogativis, exemptionibus, honoribus, praeclementiis, favoribus, indultis & gratiis uti, frui, potiri, & gaudere quomodo liber, consuetudine, vel de jure, omni dolo, fraude, contradictione quorumcunque, ac sinistra machinatione sublata penitus ac remota.

With a laurel we see also a ring was given him. And after the count had made another speech touching the laurel and ring, the crowned poet recites another poem of thanks for his dignity, and so the act ended. Other testimonies occur of the laurel and ring thus given in the letters testimonial of counts palatine to poets laureat, as in those of Reusner to Casparus Wagnerus 29. Decemb. 1593. *Te per laureae impositionem & annuli traditionem poetam laureatum fecimus.* And in another of the same Reusner and Jacobus Grasserus (both counts palatine) to Michael Bartschius 8. Julii 1618.—*Imperiali auctoritate fronti ejus ingeniosissimae lauream poeticam imposuimus, & dextram in diviniore hac poeseos harmonia exercitatissimam annulo aureo exornavimus;* both which are noted in ^f Thomas Sagittarius. And Martinus Crusius speaking of Jacobus Basilicus ^g despote of Samos, and a count palatine, saith, that *ab eo creatus fuerat poeta Zacharias Orthus, qui nobiscum Turingae fuit 64. & 72.* We conclude here with those verses of Paulus Melissus (who was a count palatine) expressing his solemn giving the crown of laurel to Matthias Stephani at Heidelberg, ^h where also he was made doctor of both laws.

—*Annis a juvenilibus
Instinctus acri corda thyrsos
Castalios inhiare coepisti
Fontes amoenos, O Stephane, & tuae
Fetus abunde saepius indolis
Dias in aras publicasti,
Non sine laude recentis aevi
Partaeque famae. Proinde etiam, licet
Te per supremos extulerit gradus
Dice triumphantem, forique
Curia, Romuleique fasces;
Adhuc poetari ingenue soles.
Eo fit, ut me iudice lauream
Apollinarem censearis
Posse tuis merito capillis
Gestare: qua nunc te, vice Caesaris
Fungens, corono: juribus additis,
Quis libere utuntur, fruuntur,
Pieriae comites cohortis.
Tu quod decorum est, si tua postmodum
(Ut ante) lima scripta poliveris,
Seras ut aeternum nepotum
Ad soboles mereare nomen.*

XLIII. This custom of giving crowns of laurel to poets (touching which we take leave by the way here to speak more largely) as the ensigns of the degree taken of mastership in poetry, and that by imperial authority exercised either by the emperor's own hand, or by counts palatine, or by others that have such delegate authority, hath continued above six years at least in the empire. In the French empire I remember no example of it. Nor was any poet after the translation to Germany, until that of Petrarck, some say, made laureat. Neither was he by the emperor, or by any count palatine, but by the city of Rome, and that in the Capitol, whence being carried with a pompous attendance he consecrated his laurel on the top of Saint Peter's church. Coronantur poetae (saith Matthias ⁱ Stephani) a comitibus palatinis lauru, quam sacratissimi olim imperii Romani principes gestarunt, quam Germani Caesares non aliqua vicaria sed sua manu poetis qui id honoris virtute ingenii consecuti essent, imponebant. Unde conjicere liquet, quid de studio poetices imperatores judicarent. Quin & senatus urbis Romae idem magnificare exinde constare potest, quod anno Christi MCCCXII, desuetum ab aliquot seculis morem poetas coronandi revocaret, & ^k Franciscum Petrarckam magna populi frequentia & acclamatione in Capitolio laurea donaret, quam ille deinceps ingenti nobilium pompa comitatus tholo & umbilico testudinis templi Petri, exemplum posteritati, suspendit. Lewes of Baviere was then emperor. But there was some use in the German empire, long before Petrarck, of the emperor's giving this laurel; and perhaps it began there about the time of those other degrees in learning, which came into frequent use about Frederick I. For in the time of S. Francis (who

^f De jure & privileg. com. palat. ad thes. 31. lit. d. jurisdict.

^g Turcograec. lib. 3. pag. 248. ^h 1599. 19 Aprilis praefix. Matth. Steph. de jurisdict. lib. 2. part. 1. cap. 6. memb. 1. §. 91. Videtis porro Lil. Gyrard. de poetarum historia dialog. 1. p. 16. ^k Ab Urso Anguillariae comite & Jordano de filiis Urbi Romanis senatoribus, Petrarck idib. April. in Capitolio anno 1341. coronatus est. Videtis Henric. Bullinger. de episcop. institut. lib. 2. cap. 19. Carol. Paschal. de coronis lib. 5. cap. 14. & Petrarckae vitam a Papilio Massorio conscriptam, praeter ipsius opera, quorum tomo 3. ipsum laureae receptae privilegium legitur.

lived in the end of that emperor) we find that a poet had been then crowned by the emperor. Among those that came to see Saint Francis, *quidam secularium cantionum* (saith Bonaventura¹ that lived also near c years before Petrarch) *curiosus inventor, qui ab imperatore propterea fuerat coronatus, & exinde rex versuum dictus, virum Dei contemptorem mundalium adire proposuit*; and he tells us further of some visions of this crowned poet. But afterward the laurel was given by Frederick III. to Conradus Celtes, and he was called the first poet laureat of Germany, and was afterward made by this patent of Maximilian^m the first, superintendent or rector of the college of poetry and rhetoric in Vienna, with the authority of giving the laurel to such as deserved it.

De honore & privilegis poetarum.

Maximilianus, divina favente clementia, Romanorum rex semper augustus, ac Hungariae, Dalmatiae, Croatiae, &c. rex: archidux Austriae; dux Burgundiae, Lotharingiae, Brabantiae, Stiriae, Charinthiae, Carniolae, Limburgiae, Gellriae; lantgravius Alsatie: princeps Sueviae; palatinus in Habsburg, & Hannoniae: princeps & comes Burgundiae, Flandriae, Tyrolis, Goritiae, Artois, Hollandiae, Selandiae, Ferretis, in Kiburg, Namurci, & Zutphaniae: marchio sacri Romani imperii ad Anasam & Burgoviae: dominus Frisiae, marchiae Sclavonicae, Mechliniae, portus Naonis & Salinarum, &c. ad perpetuam rei memoriam. Notum facimus tenore praesentium universis, cum post susceptum divino auspicio Caesareae majestatis titulum, officii nostri imprimis duxerimus, ad ea singula animi intendere, quae & reipublicae nostrae decori & ornamento perpetuo fore arbitramur, & nationem nostram Germanicam ac domum Austriae, ex qua orti sumus, quantis possemus honoribus apud omnes gentes ad posteritatem notas faceremus, id potissimum occurrit pro aeternitate literarum necessarium in humanis rebus fore, ut populis & urbibus nostris Romanarum literarum gymnasia, laudato ordine & Romano more statueremus, unde publicarum rerum moderatores ac rectores ut plurimum excellentes prodire, qui veterum rerum gestarum lectione facti prudentiores, bene & beate vivendi rationes multa etiam experientia posteris scripsere. Directis itaque a nobis in nostro Viennensi gymnasio civilis juris lectionibus, cum in poetica & oratoria arte nihil hactenus ibi instituerimus, decrevimus pro ipsius universitatis nostrae augmento collegium poetarum ibidem, priscorum imperatorum antecessorum nostrorum more, erigere, obolitumque prisci saeculi eloquentiam restituere. Itaque de hac re provehenda & imitanda duos in poetica & oratoria, duos vero in mathematicis disciplinis eruditos, ad ipsum collegium deputamus: inter quos eum, quem pro tempore lectorem ordinarium in poetica constituimus, volumus eidem collegio praesse, quem etiam praesentibus nostris ipsius collegii & lectionum superintendentem facimus & creamus.

Quo autem praefatum collegium uberiori a nobis gratia & privilegio decoretur, resque ipsa foelici gradu debitum sumat incrementum, pro honore nostro, & dignitate augendae Viennensis universitatis, Caesarea nostra auctoritate, ac motu proprio, praefatum collegium hoc praesenti privilegio & praerogativa decoramus, ut quicumque in praefata nostra universitate Viennensi in oratoria & poetica studuerit, leaureamque concupiverit, is in praenominato poetarum collegio diligenter examinatus, si idoneus ad id munus suscipiendum habitus & inventus fuerit, per honorabilem fidelem nobis dilectum Conradum Celtem, per genitorem nostrum Fredericum tertium divae memoriae primum inter Germanos laureatum poetam, & modo in universitate nostra Viennensi poetices ac oratoriae lectorem ordinarium, ac deinde per successores ejus, qui pro tempore collegio praefuerint, laurea coronari possit. Sicque per eum & successores ejus laureatus poeta ab omnibus habeatur & celebretur; omnibusque privilegiis & insignibus, quibus caeteri poetae laureati fruuntur, quomodolibet, consuetudine vel de jure, uti & gaudere possit, ac si manibus nostris ea dignitate fuisset insignitus. Cujus rei tenore praesentium, damus, concedimus, & impartimur, nostri Caesarei juris eidem legenti, poetae ordinario, ut praedictum est, omnimodam auctoritatem, non obstantibus quibuscunque legibus, statutis, consuetudinibus, ordinationibus atque aliis quibuscunque in contrarium facientibus, reservato tamen nobis nihilominus jure poetas coronandi, quos idoneos duxerimus. Potestati enim nostrae per hoc privilegium nequaquam derogamus. Nulli ergo omnino hominum liceat hanc nostrae concessionis & ordinationis paginam infringere, aut ei quovis ausu temerario contraire. Si quis id attentare praesumpserit, poenam indignationis nostrae gravissimae, ac quinquaginta marcarum auri puri irremissibiliter se noverit incursum: quarum medietatem imperiali fisco nostro, ac reliquam partem praefato collegio decernimus applicandam. Harum testimonio literarum, sigilli nostri consueti appenditione munitarum. Datum in oppido nostro Bezano, pridie calendas Novembris, anno Domini millesimo quingentesimo primo, regnorum nostrorum, Romani sexto decimo, Hungariae vero duodecimo.

And this is that which Vincentius Longinus Eleutherius means in his panegyrickⁿ to this Maximilian, in those verses.

*Audit ut nuper lyricum resonare poema
Germani vatis, Phoebi praesente caterua,
Obtulit huic hilari mox regia munera vultu,
Munera quae donare potest tantummodo Caesar.
Nam potis est lauro sacros decorare poetas
Celts in Austria memorandi principis aula.*

But although this crowning of poets hath not been of very long use in the later empire, yet, when it first came there, into use, it proceeded (it seems) from a kind of example of it which was under the old Roman emperors. That of

¹ Vita B. Francisci, cap. 4. ^m Goldast. constit. tom. 3. pag. 482. & in script. rer. Ger. tom. 2. edit. a Frehero p. 237. ⁿ In rer. Germ. script. tom. 2. edit. a Frehero pag. 241.

Priscorum imperatorum antecessorum nostrorum more in this patent of foundation, intimates somewhat to that purpose. And those examples are observable in the acts (as we may call them) or the *agones* or *certamina* of poets and of some other artists, instituted by *Domitian*. They were two; the *agon Capitolinus* which was celebrated, in honour of *Jupiter*, within every four years or every *lustrum*, (for so *lustrum* is here to be interpreted; though in regard of the whole four, compleat still from the beginning of the account before the next act, the acts or games were called; as also upon the same reason the *Olympic* games, *certamina quinquennialia*) and the *quinquatria* dedicated to *Pallas* and celebrated yearly. In both, the ensigns of excellency given, by solemn judgement of the emperor and his assistant judges, were crowns. In the first, of oak leaves, or branches of oak; in the second, of olive mixed with fillets or labels of gold. And if one were crowned alone, all the rest being rejected as not meriting any crown at all, he was then said to be crowned *contra omnes poetas*. So it may be conceived by that of *coronatus contra omnes scenicos* in that inscription ^o to *L. Surre dius* crowned in one of those acts by *Domitian*, and *coronatus adversus histriones & omnes scenicos*, is in another of like nature to *M. Vlpinus Apolaustus*. The phrase is so singular that, I think, it occurs not elsewhere in any Latin of the antients. *Martial* remembers both those acts in that on *Domitian's* birth day,

*Hic colat Albano Tritonida multus in auro,
Perque manus tantas plurima quercus eat.*

In other of his epigrams also he mentions the crowns given in them. And thrice was *Statius* crowned in the *quinquatria*, as himself testifies in that to his wife ^a *Claudia*.

— *ter me vidiſti Albana ferentem
Dona comes, ſanctoque indutum Caſaris auro;
Viſceribus complexa tuis, ſertisque dediſti
Oſcula anhelata meis* —

The ſame honour he remembers in his celebration ^r of *Domitian's* feaſt.

— *talis longo poſt tempore venit
Lux, mihi Trojanæ qualis ſub collibus Albæ,
Cum modo Germanicas acies, modo Dacæ ſonantem
Praeliâ, Palladio tua me manus induit auro.*

But as he had the crown thrice in the *quinquatria*, ſo he loſt it in the *agon Capitolinus*, and complains of his diſhonour in what follows them before cited to his wife.

— *tu cum Capitolia noſtræ
Inſciata byræ, ſævum ingratumque dolebas
Mecum victa Jovem* —

And this loſs or miſs of his crown was upon the recital of his *Thebais*, as we learn from his own words in his *Epicede* on his ^r father.

*Nam quod me mixta quercus non preſſit oliva,
Et fugit ſperatus honos &c.*

Where he means that although he had the crown of olive with the gold (which he calls *Albana dona*, and *aurum Palladium*) yet he could not add to it the crown of oak which he expected in the *Capitoline* act.

Under *Trajan* this ^r inſcription was made to the honour of *L. Valerius* a child of thirteen years, crowned in the ſame act among others.

L. VALERIO L. F.
PUDENTI.

HIC CUM ESSET ANNORUM
XII. ROMÆ CERTAMINE
JOVIS CAPITOLINI LUSTRO
SEXTO CLARITATE INGENI
CORONATUS EST INTER
POETAS LATINOS OMNIBUS
SENTENTIIS JUDICUM.

HUIC PLEBS UNIVERSA
HISCONIENSIIUM STATUAM
AERE COLLATO DECREVIT.
CURAT. R. P.

The beginning of this *sextum lustrum*, reckoned from the first institution of the *agon Capitolinus*, which was in LXXXVI of our Saviour (according to the vulgar account) or in DCCCXXXIX. ab V. C. falls in CVI. of our Saviour, or about the middle of *Trajan*. Afterward this custom of crowning poets continued into the time of *Theodosius* the first, as it is observed upon *Ausonius*, who ^a lived then, and writes these of *Atticus Tiro Delphidius*.

*Tu pene ab ipsis orsus incunabulis
Dei poeta nobilis
Sertum Coronæ præferens Olympicæ
Puer celebrasti Jovem.*

Corona Olympica denoting here the *quercus Capitolina*, or crown of oak, or *Tarpeiae quercus*, as *Martial* long before called ^r it in that to *Collinus*.

*O cui Tarpeias licuit contingere quercus,
Et meritas prima cingere fronde comas.*

Where I understand *prima fronde* for the first crown rather than as if *prima* there signified (as indeed the word might) the general excellency of the crown, because it was both sacred to *Jupiter*, and given by the emperor's hand, as some learned men interpret it. For when divers were crowned, the first crown might very well give the best dignity of that act, the second the next, and so the rest. And although in *Martial's* time, the testimony of those crowns are not so frequent, that we can clearly justify such an interpretation; yet we find afterward another difference of them in *Ausonius*, which may well enough persuade us that there were degrees in

^o Gruter. inſcript. pag. 331. num. 4. & 6.

^r Sylvarum 4.

^a Sylvarum 5, de quo loco, vide potiſſimum Scaliger. de emendat. temp. lib. 5. pag. 453. & 454.

pag. 332. num. 3.

^r Profeſſor. Burdegal. 6. & Scalig. Auſon. lect. lib. 1. cap. 10.

^r Lib. 4. epig. 1. & videtiſ lib. 5. epig. 24. & lib. 4. epig. 54.

^a Lib. 4. epig. 34.

^r Sylvarum 3.

^r Gruter.

the crowns and in the dignities that were given by them.

Et quae jamdudum tibi palma poetica pollet

Lemnisco ornata est, quo mea palma caret;

Saith he to *Paulinus* ^v, making that which had the *lemnisci*, or labels, or fillets, to be of more dignity than that which wanted them. And thus much, it seems, he understood of the crowns given in the *agon Capitolinus* only. For the act of the *quinquatria*, I think, was not in use in *Aufonius* his time. And therefore it may be conceived that in the *Capitoline* acts of his age, the *corona lemniscata* was become to be of like nature with that which *Martial* calls *primam frondem* only.

And in that age of *Aufonius* the *Capitoline* act ceased also, upon the same reason as their plays of all kind did soon after. For that was dedicated to *Jupiter*, as the plays were to the other Deities of the gentiles; whence it is that *Tertullian*, *S. Chrysostome*, *S. Ambrose*, and some other of the fathers so justly inveigh against them. For it could not be that either this act or the plays of those times could have been performed according to the first institution without gross idolatry, which, in those times of the infancy of christianity, was to be feared wherefoever any relation was but so made to the name of a false god. And after the ending of the celebration of this *Capitoline* act, we find no more use of crowning of poets, until the first example before remembered under *Frederick* the first, which hath been since imitated by the emperors and counts *palatine*, and some others that therein exercise imperial authority.

And though the use hath been since that age of *Frederick* the first to crown poets with laurel (the branches of the tree of their old patron *Phoebus*, or *amantes carmina laurus*, as *Statius* calls it; which was declined in those antient acts, perhaps because that was then become in *Rome* most proper to the emperors in their triumphs) and although the crowning in those times were iterated to the same person, which is not done in the later custom, yet learned men attribute the original of the later use of it in the empire to those antient acts, as if the German emperors had, so far as christianity would permit them, reduced again that solemn custom. *Neque puta* (saith most learned *Scaliger* upon *Aufonius*) *aliunde poetarum laureatorum morem manasse. Nam & ipsi antiquitus ab ipsis Caesaribus Germanis coronabantur. Magnoque in pretio habiti semper apud Italos & Germanos qui id honoris virtute ingenii consecuti essent.* Others to the same purpose. Yet neither is it to be understood, as if in those antient *agones* or acts, the first use of crowning of poets were found. It was much antienter both in *Greece* and *Rome*.

*Insignemque meo capiti petere inde coronam,
Unde prius nulli velarunt tempora Musae,*

Saith ^z *Lucretius*, that lived before the beginning of the *Roman* monarchy. And other frequent ^a testimonies are of poets crowns in the times both that precede and follow *Domitian*, and that given in other places beside *Rome*. But his institution was that which first made any such crowns proper to the gift of the emperors, whence only it hath been derived to his successors.

As from the use of the old empire, the later took the example of crowning poets, so from that of the later, some use of giving the laurel, was antiently received into *England*. *John Skelton* had that title of laureat ^b under *Henry VIII.* And in the same time *Robert Whittington* called himself ^c *grammaticae magister & protovates Angliae, in florentissima Oxoniensi academia laureatus.* Under *Edward IV.* one *John Kay* by the title of *his humble poet laureat*, dedicates ^d to him the siege of *Rhodes* in prose. But *John Gower*, a famous poet under *Richard II.* buried in *S. Mary Overy's* church, hath his statue crowned with ivy mixed with roses. *Habet ibidem statuum* (saith ^e *Bale*) *duplici nota insignem, nempe aurea torque & haederacea corona rosis interfecta. Illud militis; hoc poetae ornamentum.* But of the crown of laurel given to poets, hitherto. And thus have I, by no unseasonable digression, performed a promise to you my beloved *Ben. Johnson*. Your curious learning and judgment may correct where I have erred, and add where my notes and memory have left me short. You are

— omnia carmina doctus
Et calles mythom plasmata & historiam.

And so you both fully know what concerns it, and your singular excellency in the art most eminently deserves it. And I return to the power exercised by counts *palatine* in some other things.

XLIV. Their form of creating publick notaries appears in that of count *Joannes Jacobus Canis* ^f.

Idem comes, L. publicum & autenticum tabellionem creavit & fecit, ipsumque coram se flexis genibus constitutum devotique suscipiensem, de tabellionatus officio publice exercendo, tam instrumentis & ultimis voluntatibus & quibuscunque judiciorum actibus autentice conscribendis quam in omnibus & singulis quae ad dictum spectant officium per omnes terras & loca, quae Romanum profitentur imperium peragendis cum penna & calamis, seu per calamarii traditionem solenniter & legitime investivit &c. Qui L. ipsi domino comiti vice ac nomine imperii Romani recipienti corporale praestitit fidelitatis debitae sacramentum, jurans etiam ad sanctum Dei evangelium quod instrumenta tam publica quam privata, ultimas voluntates & quaecunque judiciorum acta, & generaliter omnia & singula, quae sibi ex officii debito facienda seu scribenda occurrerent, juste, pure, fideliter, om-

^v Epist. 20. & vide Scalig. Aufon. lect. lib. 1. cap. 10.

^z Lib. 1.

^a Videfis Carol. Paschal. de coronis, lib. 5. cap. 12.

13, & 14.

^b Bal. cent. 8. script. 66.

^c In opusculis aliquot Londini tunc editis; & videfis Antiboissicon &c. Londini

1520.

^d Ms. in biblioth. Cotton.

^e Cent. 7. script. 23.

^f Jacob. Canis lib. de officio tabellionat. §. forma instrumenti.

De notariis quos hujusce modi comites creant extra imperii territorium. vide Gail. lib. 2. observat. 71. n. 13. Marth. Stephani de iurisdic.

lib. 2. part. 2. cap. 5.

ni simulatione, machinatione, falsitate, ac dolo remotis scriber, scripturas illas quas in publicam formam debuerit redigere in membranis & non chartis abrais vel de papyro fideliter conscribendo, & sententias & dicta testium, donec publicata fuerint & aperta, sub secreto fidei retinebit, & omnia fideliter & recte faciet quae ad ipsum pertinebunt.

Where we see the form of their investing a notary, and the notaries oath taken to the emperor. But these words, *per omnes terras & loca quae Romanum proficiunt imperium*, seem to restrain the exercise of the office from all other places than such as acknowledge the emperor supreme. And some great lawyers^b think that a *count palatine* to whom this privilege is given by the pope, cannot create notaries for any territory of the emperor, nor one to whom the emperor gives it, for any territory of the see of Rome; which they affirm also of giving legitimations of bastards and the like; though others will have it that a notary^c thus created, is to be allowed for a notary in both territories, as antiently they were also in other states.

For here in England, until a command was to the contrary under king Edward II. notaries thus made by imperial authority were commonly admitted. But then it was conceived that such a general admission was against the dignity of the kings of England being supreme princes, and therefore it was ordered that they should not be so hereafter taken for notaries in this kingdom. And to that purpose a writ was sent to the archbishop of Canterbury and the mayor of London, which is yet extant both in the rolls^d of the Tower, and in the register of^e Reynolds then archbishop. And something to this purpose is^f already noted. But in the elder ages before that of Edward II. (after such time as the use of notaries began to be common there, which I conceive to be but about the end of Henry III.) imperial counts palatine not only made notaries that were received there, but also gave sometimes, by way of delegation, their power to others in England to make them. This special example of as much, I find in a register of the church of Winchester, wherein^g Rogerus de Monte florum one of these counts palatine, at the earnest request of the prior of Winchester, that lived about the end of king Edward the first, thus grants to him power to create two notaries, and to invest them *per pennam, calamarium & chartam*, but so, that first he carefully should examine their sufficiency, and take an oath of them to be true to the see of Rome, to the empire, and to the count himself.

VIRO venerabili & discreto priori Sancti Swithini Wintoniae, Rogerus de Monte florum Dei gratia comes palatinus, pacem, gaudium & salutem. Sagax humanae naturae discretio, memoriae hominum labilitate pensata, ne diuturnitate temporum ea quae inter contrahen-

tes aguntur oblivionis defectui subjacerent, rebellionatus adinvenit officium, per quod contrahentium vota scribuntur & scripturae ministerio postmodum longum servantur in aevum. Cum itaque ex parte vestra nobis exiterit humiliter supplicatum ut vobis committere dignemur pro autoritate nostra & successoribus, super creandis tabellionibus publicis a divis imperatoribus, concessa, ut duas personas idoneas clericos & sufficientes literatos quos duxeritis eligendos creare possitis, ad dictum tabellionatus officium exercendum, nos de discretione vestra plenam in Domino fiduciam optinentes, necnon & de diligentia quam super vobis per nos in hac parte commissis laudabiliter vos credimus adhibere, dictisque supplicationibus inclinati discretioni vestrae praemissa & eorum singula tenore praesentium duximus committenda, diligenti examinatione praemissa, super idoneitate personarum, recepto postmodum ab ipsis S. S. Romanae ecclesiae, ac sacri imperii nomine solito, necnon de ipso tabellionatus officio fideliter, & legaliter exercendo, prout inferius annotatur, corporaliter juramento, quas vos fungi volumus in hac parte ipsis quibus ex tunc concedimus officium memoratum per pennam, calamarium, atque chartam investiatas de officio praedicto, dantes & concedentes eisdem autoritate praesentium plenam licentiam & liberam potestatem ac etiam facultatem instrumenta, acta, procuraciones, codicillos, prothocolia, cujuscunque tenoris & formae scribendi, copiandi, publicandi, & in formam publicam redigendi, testes examinandi, & recipiendi, examinationes, & depositiones testium publicandi, testamenta conficiendi, & tam ultimas decidentium voluntates quam quaecunque instrumenta super quibuscunque contractibus & negotiis vel actibus quibuscunque scribendi, copiandi, publicandi, & in formam publicam redigendi, allegationes, exceptiones, propositiones scribendi & insinuandi ac omnia alia & singula faciendi quae ad praedictum officium spectare dicuntur, ut illa ubique fideliter & legaliter exequantur & ad eos tanquam ad notarios seu tabelliones publicos quotiens opus fuerit libere recurratur.

Forma juramenti de quo supra fit mentio, talis est.

TU jurabis ad haec sancta Dei evang. quod de caetero fidelis eris S. S. R. E. ac sacro imperio gratiam & communionem sedis apostolicae habenti, ipsique comiti supradicto, & quod dictum tabellionatus officium fideliter & legaliter exercebis, non addens nec minuens aliquid quod in contrahentium vota aliquid prodesse vel obesse valeat. Scripturas vero per te in forma publica per te redigendas in carta papirea vel alias^h obrasa fuerit scriptura in loco subscripto, aut quae de sacili vitiari valeat, non conscribes, praedictumque officium semper absque fraude quotiens sacris requisitus fideliter & legaliter exercebis.

^a Vide Bähr. & Abb. in c. per venerabilem extr. qui filii sint legitimi. & c. & spec. tit. de instrum. editione §. 8.

fol. 96. a.

^b Chap. III. §. V. of the first part.

^c Claus. 13. Ed. II. m. 6. in fcedula.

^d Regist. ms. Wint. ecl. de divers. episcop. quatern. 22. fol. 7.

^e Vide Jacob. Canem de officio tabellionat. §. quis possit

^f Regist. Reynolds arch. Cant. ms.

In quorum omnium testimonium praefens privilegium conscribi jussimus per notarium infra-scriptum & sigilli nostri appensione muniri. Datum *Burdegalae* in clauistro praedicatorum anno a nat. Domini millesimo trecentesimo sexto, indict. iv. die xxij. mensis Novem. pontificatus domini *Clementis* papae quinti anno secundo, praesentibus discretis viris *Guillelmo Leserii*, *Guillelmo de Grantbam*, *Johanne Raymundi*, clericis, cum pluribus aliis fide dignis ad hoc vocatis specialiter & rogatis.

Et ego *Guillelmus de Gredone*, clericus *Miniacensis* diocesis publicus imperiali autoritate notarius omnibus praemissis & singulis & commissioni per praedictum comitem factae praesens interfui, & ea omnia & singula scripsi, & in hanc publicam formam redegi, & signo meo solito signavi rogatus in testimonium praemissorum.

But however this personal dignity of *count palatine* be allowed in the empire, and in the territory of the see of *Rome*, yet the estimation of it hath been various. The learned *Pierre Pithou*^a says, that it was never received or acknowledged in *France* to be any lawful dignity, although the emperor or pope created them in their own territories. And in the parliament of *Tholouse* in mccccxlii. *John de Navarre* a *count palatine* made by the pope, was censured^o for granting legitimations, and making notaries in *France*, by colour of his bull of creation. And his acts were declared merely void. And a great lawyer^p of this age in the empire (having himself been created a *count palatine* at *Ratispon* by *Rodulph II.* in mdcxiv.) makes this personal title of *count palatine* less than the dignity of any other *count* or *grave* whatsoever. *Horum etsi* (saith he) *non vulgaris est existimatio* & *amplissima potestatis politicae pars solis imperatoribus ac regibus reservata conferatur, ut nimirum nomine ac vice imperatoris possint creare tabellionis dignitatem, ac insignia nobilitatis conferre ac natalibus restituere, ac alia ad summam reipub. potestatem pertinentia exercere, dignitate tamen comitibus simpliciter distinctis inferiores habentur, nec ad haeredes potestas eorum transmittitur.* Which also he speaks as well of such as assume the name from xx years profession as of those that are created. But that of *nec ad haeredes* &c. must be understood only in case whereby the patents of creation, the dignity and power are not expressly extended to the posterity of the *count*.

XLV. The original and nature of both the feudal and personal title of *counts palatine* being thus opened; it rests now that it be further cleared, as is before promised, why the same title (in a general expression) should be deduced to those *palatines* that are feudal, and the greatest, only out of the *French*, and yet those that are personal, and so far beneath them, out of the old *Roman* empire. For that point; we must observe, that in the *French* empire, and also long after the beginning of the *German* empire, that

personal title of *count palatine* (as it now expresses any kind of the personal *palatines* of this day) was not in any use. At least no testimony any where shews it to have been in use. But during the continuance of the *French* empire; and afterward also until the times of *Frederick Barbarossa*, the title of *count palatine*, or *comes palatii* in the empire, denoted only either the officary dignity known by that name in the emperor's household (as is before shewed) or else the supereminency of those counts that had like power in their provinces, as the *counts palatine* had in the household, and thence had the name also of *counts palatine* fixed on them. Neither was there any of those old laws of the *Roman* empire, that speak of *comites palatii*, either practised or read in the *French* empire, as neither was any part of the body of the old imperial^q civil laws, in those times, besides the feudal laws. But the *capitulars* of *Charles the great*, and other emperors in the *French* empire, of some kings of the *Lombards* in *Italy*, and other such in *France*, were (with local customs) the only laws studied, and by which all, in those states, was, during those ages, regulated. And in all those laws or customs there was never found any such title as this of the personal *counts palatine*, who by virtue of that name alone, without special grant, never so much as pretended to any kind of jurisdiction. So that there being in all that time but only that notion of *count palatine* which designed one of such a supereminent jurisdiction, either in the emperor's court, or in a county or province; this which is merely personal, and assumed either by professors of xx years, or given otherwise by letters patents, was not at all known in the empire. But when as (about mcl.) the old imperial civil laws were after so long an intermission reduced into study, the professors of them finding in *Justinian's* Code the honorary title of *comites*, and the *comitiva*, and other such merely personal dignities of the elder empire, and especially of the *comites palatii* (all such of those elder times of the *Roman* empire that had the merely honorary *comitiva*, being also by reason of their residence and attendance at court, truly *palatini comites*, or counts of the household) persuaded, as I conceive, the emperors that as they had reduced the laws of the old empire into study and use, so they should give this honorary title of *count palatine*, according as it appeared in those laws that the old emperors had done. But because from the custom deduced out of the *French* empire; there was at that time a far different notion of *comes palatinus* as it had relation to the exercise of jurisdiction both in the emperor's court, and in provinces held by feudal right, therefore in the letters of creation of this personal dignity, a plain distinction was made from the officary or feudal *count palatine*. This dignity being only personal and not annexed to any territory, was therein clearly enough distinguished from that of others which were either feudal or had

^a Des counts de Champagne, liv. 1.

^o Cod. decif. Forens. liv. 10. tit. 16. decif. 1.

^p Tob. Paurmeister. de jurisdic. imp.

Rom. lib. 2. cap. 10. §. 49. videfis item Hermann. Kirchnerum de officio & dignitate cancellarii lib. 4. cap. 6. §. 83, 84. Menoch. de arbitr. judic. lib. 2. cas. 68.

^q De hac re consulas Sigon. de regno Italiae, lib. 7. & 11.

their titles with relation to feuds. And for a distinction from the officary great title of *comes palatii* that had its original in the *French* state; they were, as to this day they are, created *comites aulae*, or *palatii Lateranensis*, or the like, (as is before noted) to express the meaning of the letters of creation to be, that they should have the title as it was in the elder empire under *Constantine* when the palace of *Lateran* was the principal palace of the empire, and not as it was used in the palaces of *Triers*, *Cologne*, or elsewhere in the old *French* kingdom and empire, where it denoted that great officer which was lieutenant or viceroy for matter of jurisdiction to the emperor. And in like sense are the professors of xx years *counts palatine* if at all they be so (which some great lawyers[†] deny) and not otherwise; as also they who are made by the[†] pope, or by any other that herein exercise authority derived from the emperor.

XLVI. That of *count of the empire* I find personal also, as personal is opposed to feudal, tho' it be also hereditary. We have a special example of it in *Rodulph II.* his creation of *Thomas Arundel* of *Wardour* in *Wiltshire*, afterward made lord *Arundel* of *Wardour* by king *James*. The patent* is directed in these words, *Illustri sincere nobis dilecto Thomae Arundelio nostro & sacri Romani imperii comiti gratiam nostram Caesaream & omne bonum.* And then after a part of the preamble which concerns the advancement of men of merit, the emperor considering first the dignity of his blood goes on with

Insignes etiam virtutes quibus illustre genus tuum magis ac magis domi forisque illustras, ut liberalibus primum disciplinis pectus imbueris, peregrinas provincias adieris, multorum mores, multorum & urbes videris, magnumque rerum usum acqviseris, ut denique tandem hoc sacro, quod contra communem *christiani* nominis hostem *Turcam* gerimus, bello raro ac singulari zelo excitus tam longinquis & remotis ex partibus in *Hungariam* propriis stipendiis nobis militatum veneris, teque in apertis praeliis in civitatum & castrorum oppugnationibus fortiter ac strenue gesseris, ut omnibus nationibus admirationi nobisque & a serenissimo principe archiduce *Matthia* fratre nostro charissimo & a primariis exercitus nostri praefectis majorem in modum commendatus fueris, insigni hoc inter alia exemplo spectato quod in expugnatione oppidi *Aquatici* juxta *Strigonium*, vexillum *Turcis* tua manu eripueris & in principiis tempore pugnae te spectandum praebueris, praetermittere noluimus quin te posterosque tuos legitimos insigni aliquo gratiae nostrae documento benigne decoremus; motu itaque propria, ex certa nostra scientia, animo bene deliberato, ac sano accedente consilio, deque *Caesareae* autoritatis atque potestatis nostrae plenitudine, te supradictum *Thomam Arundelium* qui jam ante comitum consanguinitatem a majoribus acceptam in *Anglia* obtrines, omnesque & singulos liberos haeredes,

posteros & descendentes tuos legitimos utriusque sexus natos aeternaque serie nascituros, etiam veros sacros *Romani imperii comites & comitissas* creavimus, fecimus & nominavimus, tituloque honore & dignitate *comitatus imperialis* auximus atque insignivimus sicut vigore praesentium creamus, facimus & nominamus, augemus, & insignimus, volentes praesentique edicto nostro *Caesareo* imperpetuum valituro firmiter & expresse decernentes quod tu, supradicta *Thoma Arundelie*, una cum universa prole atque posteritate legitima mascula & foeminea in infinitum titulum, nomen, & dignitatem *comitum imperii* perpetuis deinceps temporibus habere & obtinere & deferre eoque tam in literis quam nuncupatione verbali in rebus spiritualibus & temporalibus, ecclesiasticis & prophanis honorari appellari & reputari, ac denique omnibus & singulis honoribus, ornamentis, dignitatibus, gratiis, libertatibus, privilegiis, juribus, indultis, consuetudinibus, praecipientiis, & praerogativis, libere & citra cujuslibet impedimentum uti, frui, potiri & gaudere possitis & debeatis quibus caeteri nostri *sacri imperii comites* fruuntur, potiuntur & gaudent jure vel consuetudine. Non obstantibus in contrarium facientibus quibuscunque etiam si talia forent de quibus in praesentibus specialis & expressa mentio fieri deberet, quibus omnibus & singulis quatenus obstarent seu obstatere quovismodo possent *Caesarea* auctoritate nostra scienter derogamus sufficienterque derogatum esse volumus & declaramus per praesentes; serenissimae tamen principis & dominae *Elizabethae*, reginae *Angliae*, *Franciae*, & *Hiberniae*, sororis & consanguineae nostrae charissimae juribus ac superioritatibus semper illaesis ac salvis. Nulli ergo omnino hominum, cujuscunque gradus, status, ordinis, conditionis, & dignitatis extiterit & quacunque praefulgeant eminentia, liceat hanc nostrae confirmationis, ratificationis, approbationis, corroboracionis, erectionis, autoritatis, voluntatis, gratiae & decreti paginam infringere aut ei quovis ausu temerario contravenire. Quisquis vero id fecerit, is noverit sese ex ipso facto in nostram & *sacri Romani imperii* indignationem gravissimam ac poenam centum marcarum auri puri (quarum mediam partem fisco nostro imperiali, residuum vero injuriam passorum usibus solvendam & applicandam decernimus, omni veniae seu remissionis spe prorsus sublata) incursum. Harum testimonio literarum manu nostra subscriptarum & sigilli nostri *Caesarei* appensione munitarum. Datum in arce nostra regia *Pragae*, die decima quarta mensis Decembris, anno Domini millesimo quingentesimo nonagesimo quinto, regnorum nostrorum, *Romani* vicefimo primo, *Hungarici* vicefimo quarto & *Bohemici* itidem vicefimo primo.

RUDOLPHUS.

Ad mandatum sac. Caes. majestatis proprium

Jo. Barvitijs.

* Videfis donat. Constantini.

Brit. pag. 175.

† Menoch. de arbit. jud. quaest. lib. 2. cas. 68.

* Ex autographo.

† Vid: s porro de comite apostolico Camden.

Hoc titulo qui gaudent (faith^u learned Camden) *et hujusmodi privilegiis gaudere perhibentur, ut in laetis imperialibus sedem et suffragium habeant, praedia in imperio comparent, milites volones conscribant et judicio, nisi in camera imperiali, non sistantur.*

—Comitis sed jure recepto
Danubii ripas et tractum limitis ampli
Circuit, hortatur, disponit, discutit, armat.

XLVII. As the counts or graves of ordinary provinces were and are generally called counts or graves of this or that province, so such of them as were employed in government under the emperor in provinces that were of the frontiers of the empire, had the titles of *marchio* and *margravinus* in *Latin*, and *markgrave* in *Dutch*, and in *Italian* *marchese*, whence also the later Greeks have their *μαρκης*, (186) and *μαρκουχης* for a *marquess* and *marchioness*. And the counts of frontiers were thus called, because those frontiers were known by the name of *marken* or *marks* or limits of the empire, in the same sense as in *England*, we say the *marches* with relation to *Scotland* or *Wales*. The word *mark* or *march* denoting a limit, bound, or frontier, both in the ancient and later *Dutch*: or rather in the language of those nations that overran the most part of Christendom under the names of *Vandals*, *Goths*, and such more, and mixed themselves with the *Dutch* and most other nations of *Europe*. For the ancient use of *marth* or *mark*; there is testimony in divers passages that occur in the laws of the *Alemans*^u, of those that inhabited *Baviere*^v, of the *Ripuarians*, of the *Lombards*^u, and in divers other parts^b of story, that give us the same notion of the word *marcha* (with the *Latin* termination) which clearly is the same with *march* or *mark*. Whence it is also that *commarchani* occurs^c for neighbours bordering one on the other. And *margus* (the same word varied in termination) is used by *Sugerius* for *Normandy*, being the utmost south march of *France*. So *marca Hispanica*, *marca Britannica*, and such more we meet with in the elder times, (187) and thence also *marbiser* at this day, in *French*, is to border or adjoin to, and the *Spaniards* say *la ciudad o sus comarcas*, for the city or its skirts or limits. And thus the word hath out of *Germany* and those northern nations spread it self into the rest of *Europe*. From *mark* in this sense, nothing was easier than to make *marchiones* or *marchese*,^d or *marchiani*^e (as sometimes also they are called) in the *Latin* termination, and *markgraves*, which literally denotes as much as *comites limitanei*, or *duces limitanei*, as *comes* and *dux* were in the elder age oftentimes indifferently used for the same dignity. As *comes* et *dux Sorabici limitis* in some old annals of *France*^f concur in the same person, to express the meaning of *markgrave*. And *Sidonius Apollinaris*^g thus describes the officary dignity in *Anthemius*, before the name of *marquess* appears to have been known.

And fully to this purpose, *maiores nostri* (faith^h *Aventin*) *unumquodque regnum, quo ceteriora ejus tutiora forent, juxta cardines coeli, in limites, quibus praefectos cum praesidiis militum et equitum imposuere, diviserunt. Illos Marcas, hos Marcigraphos appellant.* There are other testimonies and infinite to this purpose. And from this original without question, is the title of *markgrave* or *marquess* to be derived; however some wouldⁱ have it from *mare* or *march*, as it antiently in *Gaulish* or old *Dutch*, signified a *horse*; (188) and others otherwise. But in^k the feuds; *Qui de marchia investitur marchio dicitur. Dicitur autem marchia quia marcha et ut plurimum juxta mare sit posita.* Here so much as is spoken of *marchio* with relation to *marcha* is true. But if the author in that of *ut plurimum juxta mare*, &c. meant that the word *mare* had any place in the original of *mark* or *marquess*, he was plainly deceived. For although the *marca Anconitana* and *Trevigiana* in *Italy*, as also the *marquisat* of the holy empire in *Brabant*, the *marcha Normantica*, and *Britannica* in *France*, be adjoining to the sea, yet those *marquisats* of *Misnia*, *Lusatia*, *Brandenburg*, *Moravia*, *Austria*, *Mountferrat*, and *Susa* in *Savoy* (being called so because they were *marcae* or *marches* or limits, and thence having *marquesses*) are inland countries, and had the name of *markgraves* or *marquissat* fixed on them in those elder times when *marquesses* had their titles, together with such provinces as were limits or frontiers, given them.

The original of the name of this title being thus opened; the first use of it also must be deduced out of the *French* empire, unless we account the *duces limitanei*, and such counts also as had provinces which were frontiers, to have been *marquesses* in the old *Roman* empire. Indeed those officary dignities were but the same in sense. But the word *marchio* occurs not in the empire before *Charles the great*. He appointed governors by that name in *Gascony*; *Relictis marchionibus* (faith^l *Aimoinus*) *qui fines regni tinentes, omnes, si forte ingruerent, hostium arcerent incursum.* And in his constitution *de regia imperii Transalpini sede tenenda*, he reckons^m *duces* et *marchiones*. But although these times of the beginning of the *French* empire had the word or the title so distinguished from *dux* and *comes*, in regard of the frontiers that were committed to him that was called by it, yet, perhaps it was but officary only, at least, not feudal as of later time, until under the emperor *Henry I*. For before him I find not the making of any particular *marquess*, whose *marquissat* by that name

^u Annal Elizab. R. sub anno 1596. pag. 126. ed. Londini, ubi plura de hoc diplomate. ^v Alemi. Tit. 46 & 47. ^w Bojor. tit. 12. cap. 9. ^x Ripuar. tit. 60. §. V. ^y Longob. 2. tit. 30. ^z Aimoin. lib. 4. cap. 109. Annal. Franc. ann. 861. Dit. mar. chronie. lib. 7. &c. ^a Leg. Bojor. tit. 11. cap. 5. &c. ^b Ardrevaldus Floriac. de Mir. S. Bened. cap. 13. ^c Pet. de Vineis lib. 2. epist. 15. ^d Anonym. Annal. Fr. edit. à Pithaeo sub anno 873. ^e Panegyric. Anthemio. ^f Annal. Bojorum lib. 6. & 4. ^g Alciat de singulari certamine cap. 32. ^h Lib. 2. tit. 10. quis dicitur, &c. videtis autem autorem libri de regim. princip. lib. 3. cap. 20. vide de marchionibus imperii, Tob. Pauremest. de jurisdic. lib. 2. cap. 10. Matth. Stephani de jurisdic. lib. 3. part. 1. cap. 6. §. 90. &c. Lancelot. Temp. judic. Bescolum. Alciat. de singulari certamine cap. 32. &c. ⁱ De gest. Fran. lib. 5. cap. 2. & Adhemar. vita Lud. Pii. vide item Joann. PP. 8. epist. 219. ^j Apud Goldast. Constit. imp. tom. 2.

yet continues. He against the *Danes* made one in *Sleswick*, another against the *Vandals* in *Brandenburg*, and another in *Missen*. *Apud Sleswick quae nunc Heydebo dicitur* (saith ^a *Helmoldus*) *regni terminos ponens ibi* & *marchionem constituit* & *Saxonum coloniam habitare praecepit*. But that marquisat ended in the death of the marquis that was then created. For the *Danes* after the death of this emperor *Henry*, soon cut him off, together with his forces that were there with him. And *Crantzius* speaking of this of *Sleswick*, and the same emperor's taking in *Brandenburg*, saith that he there also placed a governor, *cui simile indidit honoris vocabulum ut marchio diceretur*. But where he says that the name of *marchio* is not found in the ^o empire before the time of this *Henry*, it is plain enough, by what is before cited, that he was deceived. (¹⁸⁹) Since that time divers others have ^p been made in the empire. And some dukes having frontiers for their provinces, have called themselves as well marquesses as dukes. *Lotharingiae dux* & *marchio* was often used, ^q the stile of the antient dukes of *Lorrain*. Sometimes *comes* & *marchio* is given to others ^r in like sense. Their creations of marquesses and their investitures, have been as of the other dignities of duke and count. And sometimes they have been created into the titles of duke and their marquisats made dutchies, as we see in that of *Austria*.

In the later times, as of dukes and counts there are specially four more eminent than the rest, so also of marquesses. And they are called *die vier hohen marggraffen*, and their territories *die vier hohen marggrafschaften*. They are those of *Brandenburg*, *Merbern*, (or *Moravia*) *Meissen* and *Baden*. And thence was it, perhaps, that in the most barbarous poem of *Henricus Aquilonipolenis*, ^t the marquis of *Brandenburg* is called an *archicomes*.

Dux Luneburgi infendatus non minus isthic Albertus Brandenburgicus archicomes.

So he uses the word in his enumeration of the princes that came to *Lubeck* with *Charles IV.* in *MCCCLXXVI*.

Besides the robes of state, the ornament of an imperial marquis is a cap of state, and such as the duke's is. *Birro* & *ipse munitus*, saith ^u *Lancelotus Conradus*, meaning to tell us the principal ensign of state that a marquis wears.

But whereas *Nicephorus Gregoras* ^v a *Grecian* of the later time says, that among the *Latins* (the *Grecians* sometimes call all of the western *Europe*, *Latins*; but more especially those of the empire) the dignity of marquis is not of any eminency, but *ἵππερ ἐν τοῖς Ῥωμαιοῖς στρατοῦ μόνον ὁ βασιλικὸς κατέχει σιμῶλαν τότε παρὰ Λατίνους μάρκεσσι*, or a marquis was with them as the eastern emperor's standard bearer in the field; he was grossly mistaken, if he spake of the dignity in general, as it is in the em-

pire. For neither the nature of the title of marquis, nor the name of it hath any relation to a standard. But the later *Grecians* do usually thus err when they speak of the affairs of the West. And *Nicephorus* here, being perhaps misinformed by some that told him that the office of the *Gonfaloniers* in *Italy*, (that name indeed literally denotes a standardbearer) and the title of *marquess* were scarce different in dignity (which might be true enough if they meant it of such kind of marquesses as in some parts of *Italy* have rather the name only than any such dignity as the name otherwise regularly imports) either was that way deceived, or else it was from this that the particular marquis of whom he speaks there, held his marquisat by the tenure of being a standardbearer to the western emperor, and had (as he says) *τὸ τὸ μαρκεσιὸν καὶ ἵππερ τινα, καὶ τὴν ἐπαρχίαν ἐκείνην ἀνδραγαθῶς, the dignity of marquess, which was of no great eminency, but proportionable to the small territory that was his marquisat*.

XLVIII. In those other titles of *landtgrave* and *burggrave*, the like addition of *grave*, is to *landt* and *burg*, as to *mark* in *markgrave*. For *landt* denotes but as much as *provincia*, or a territory. And although, as the provinces of the other feudal *graves* be land or territories, so they might also literally be called all *landt-graves* or *comites provinciales* (for so is the significant ^x expression of *landtgraves* in *Latin*) yet in regard of the large extent of some provinces or territories, and of such eminency which from that extent the *graves* of them had before others in the inland countries of the empire, these *graves* had at first, as a note of excellency, the word *landt* joined with *grave* in their common appellation, as at this day it remains most eminent in the *landtgraves* of *Hessen*. As the lord of *Verona*, ^y or the family of *la Scala*, or the *Scaligers*, of *Mirandula*, of *Padua*, and of *Milan*, had antiently also the express name of *landtherren* or *domini provinciales*. And how great the estimation of the name was, may be seen also in that before cited out of *Rigordus*, touching *Otho* the count palatine of *Wittenspach*, where (if I apprehend the reading aright) the title was conceived by *Rigordus*, as great as count palatine, and, by a mistaking also, to signify it. There are four *landt-graves* reckoned (as four dukes, four marquesses, four counts, and four of most other dignities) for the chief of this title in the empire. The *landtgrave* of *Thuringen*, *Hessen*, *Elfsatz* and *Luchtenberg*. This title as distinguished from that of other *graves* came first into use, it seems, in the German empire. And *landgraviatus dignitas incognita videtur Longobardis*, saith ^z *Knichen*. The most especial creation and the most antient together of a *landgrave*, that remember, is that of *Lewis III.* count of *Thuringen*. He being by inheritance count there

^a Chron. Slavorum lib. 1. cap. 8. vide Crantz. Daniae lib. 4. cap. 18. Wandalliae lib. 3. cap. 16. & Saxoniae lib. 3. cap. 9. Ludovic. Dec. lib. 2. rerum Polonic. in Mietzlaio 11.

^q Wandal. lib. 3. cap. 16.

^r Liptium Lovan. lib. 1. cap. 12. & Franciscum de Rossiers in diplomatis quae stemmatis Lotharingiae praefixa, saepius.

^u De primordiis urbis Lubecanae, lib. 2. cap. 8.

^v Crantz. Wandal. lib. 10. cap. 4. Cuicq. de feudis ad lib. 1. tit. 1.

^w jus Saxon. cap. 4. pag. 117.

^x Videfiss Andr. Knichen com. in jus Saxon. cap. 4. p. 118.

^y Templ. judic. lib. 1. cap. 5. de march.

^z Goldast. in ord. praefix. tom. 1. constit. pag. 36.

^z Ad

(the

(the counts from the first institution having continually increased) was by the emperor *Lothar*, his father in law, in *MCXXVI.* created into the title of *landtgrave*. *Imperator* (saith an old * author) *videns Ludovicum generum suum esse militem strenuum & potentem in Thuringia & Hassia, de consilio principum, ipsum cum vexillorum festina exhibitione, ut moris est, imperatoria legatione sollemniter extulit, & cum magno praeconio, ei nomen principis imposuit, & landtgravium Thuringiae ipsum proclamari ab omnibus fecit. Hic Ludovicus primus Thuringiae princeps & landtgravius genuit Ludovicum primogenitum qui sibi successit in principatu, item Ludovicum comitem qui mortuo patre resedit in Cungiſbrucke*, whence we may correct a place in another history which is called *historia secunda* of those *landtgraves*, and says that *Ludovicus comes* (the father of this *Lewis III.*) *genuit Ludovicum primum principalem comitem Thuringiae*. Doubtless it should be *provincialem* not *principalem*. But also afterward, this title was attributed to some of far less dignity than these great *landtgraves*.

XLIX. The title of *burggrave* denotes a *grave* or *count* of a castle or fort. *Burg* there signifying a castle, fortress, or the like. *Knichen* says that *burggraviatus eminentia*, or a *burggravenschaft*, had the name † from being *praefectura arcis cujusdam imperii, desz reichs burck, ut sunt praefecti castellani*. And *Matthias Stephani*; *burggravi arcis praesidique praefecti*. So *Cujacius*, *Befoldus*, and ^a others, whence the *burggraves* are called also *comites castrenses*. The four *burggravschaften* of the empire, are those of *Stromburg*, *Noremburg*, *Madgeburg* and *Rheineck*; there being divers other also of less note. This title began, it seems, in the *German* empire. For that of *Madgeburg*; although the territory be annexed to the bishoprick, yet the title remains with the dukes of *Saxony*,^b to whom both title and territory were heretofore given by the emperor *Rodolph* the first, who also annexed the *burggravenschaft* of *Noremburg*^c to the *graves von Zoltern*, from whom it is since derived into the marquisat of *Brandeburg*. And *magna*, saith *Befoldus*, *haec olim dignitas erat, adeo ut, in civilibus, etiam marchionibus jus dicere possent, ni nos fallit auctor des sachsenſpiegel part. 3. art. 52. ad finem*. In the *sachsenſpiegel* indeed we read, *Palatinus seu palansgravius imperatoris judex est. Burggravius vero, id est perpetuus castellanus, judex marchionis. Aliquando etiam* (saith *Befoldus*) *in episcopatibus exercebant jurisdictionem, unde Pencerus lib. 5. chron. eos illarum terrarum judices esse censet, quae imperatorum donatione ecclesiis accesserunt*.

But in these two titles *landtgrave* and *burggrave*, which are found only in the *German* empire (where they had their original) this is

to be observed, that, as it happens in some others also, they are not so restrained to singular eminency, but that sometimes they occur communicated to men of less note than such as generally are understood by them. For in some memories of the *Dutch*,^d *landtgraves* are mentioned that were but barons, and *burggraves* that were not above gentlemen. But that proceeds from that various use of such words as make titles of honour. For sometimes they are used as significant literally, and sometimes as only for denotation of particular honour. Literally; as when *landtgrave* is taken for any petty judge of any province or territory (for as *comes* to *grave*, signified a judge, and *landt* literally denotes as well a small as a great territory) and then it may be well enough applied to such a one as an ordinary baron is, that hath any territory and jurisdiction. But for denotation of particular and more distinct honour; when it is given (as in the more known use) to such as are specially eminent by it in their territories and jurisdiction. The like may be said of *burggrave*. For regularly as it is a title of honour, it denotes one that hath the command of some eminent fort of the empire; but literally it may also be used for him that hath a command of any obscure or scarce esteemed fort, whence the dignity yet cannot be gained, though the word be. But as the rest, so these of *landtgrave* and *burggrave* are and have been commonly hereditary, especially from the beginning of the *German* empire; and the investitures of them are as of dukes, counts and marquesses.

L. The title of *vaivod* reckoned also among the dignities of the empire, is but rare in regard of other titles. In the ranks of the empire published by *Goldastus*, the *vaivoda Walachiae*, and *vaivoda Moldaviae* are remembered with this note on them. *Sunt* (saith^e he) *inter principes imperii allekti, sed sub patrocinio principis Transilvaniae, a quo eximuntur. Quoniam id in praesentia supradicti principis* (he means *Sigismund* prince of *Transilvania*, who is called sometimes *vaivod* also) *me rogante, illustrissimus dominus Caspar vaivoda Valachiae negaverit; asserens principatui Valachico esse eadem jura ab imperatore concessa quoad suffragia & dignitates consequendas, quae ipsi serenissimo Transilvano*. But for the title of *vaivod* more anon, where we speak of the dignities of *Poland*, where also, of the title of *despote* taken by the *vaivod* of *Moldavia*. And instead of it, the name of prince^f generally is used also, of which title more anon by it self.

LI. *Barons* or *freypheeren* of the empire, are principally such as possess territories and jurisdiction from the emperor, together with the dignity of a *baron* or *freypheeren*, which title is also, as those of most other dignities, communicated sometimes to such as have no jurisdiction or ter-

* Hist. Erphefordiensis anonym. de langraviis Thuringiae cap. 18. vide item hist. secundam de langraviis pag. 956. & 958. in rerum Germ. scriptoribus videtur 1583. Francofurti, ex bibliotheca Jo. Pittorii.

† Ad jus Saxon. cap. 4. pag. 118. Videtur de hoc nomine Jac. Werner de ganerbiis castrorum disc. 3. §. 148.

^a Knichen. loco citato.

^b Idem ib. & Befold. dissert.

^c Corp. memb. imperii

^d Stumpf. chron. apud. Befold. dict. dissertat. cap. 4. §. 12.

^e Diplom. Rodulphi II. apud Goldast. Constit. tom. 3. pag. 579.

territories. But that is accidental only, and proceeds from some special descent, grant, or custom. For regularly and originally both jurisdiction and territory are essential to them. Yet by reason of such barons without territory, *barones* (saith ⁸ *Paumeister*) in genere *definitio* *proceres proximo, post comites, nobilitatis gradu ornatores*, and so he defines them without any particular relation to their territories and jurisdiction. But *Baldus* makes the territories and jurisdiction chief parts of the dignity. For he says that a baron is one that hath *merum*^h *mistumque imperium in aliquo castro, oppidove, concessione principis*, which is but, as if he had said, a baron is one that hath a territory less than a *count* or *grave*, and without the title of *count* or *grave*, but with jurisdiction in it both for civil and criminal causes; whence it is also, that this dignity in regard of the nature of it (which comes to near an ordinary *grave* or *count*) though it differ in name, is by some lawyers of good note in the empire reputed, as that of a *grave* or *count*. *Quidam Germanis moribus* (saith *Paumeister*) *inter comites & barones praeter nominis ac ordinis rationem parum vel nihil interesse arbitrantur*. And to that purpose, he uses the testimonies of those feudists, *Zafius*, *Schenckius*, and *Rotbensal*. And *Besoldus* more directly for their equality with *graves*; *tandem ex moribus nostris* (saith ⁱ he) *comiti baro equiparatur, nullumque inter eos censetur esse discrimen; nisi quod baro non est investitus de comitatu; qui tamen aliis in rebus suscipiendis honoribusque administrandis hautquaquam comite inferior censetur*. But although these so almost confound barons of the empire with *counts*, which is a dignity superior to them, yet others not only separate them from *counts*, as having a much less territory, and wanting the investiture of *graffschafft* and the title of *graves* (and in these cases, the titles make the distinction) but also distinguish them into several kinds among themselves. Some make six kinds of them, and give them their several names. The first they call *freypen* (which is as much as *liberi* or *freemen*.) The second *freypetren* or *liberi domini* as *freypetren zu Walpurg*, *zu Aulendorff*, and the like. The third *semper freypen* or *semper liberi*, which is given to those that are the special four barons of the empire, those of *Limburgk*, *Dussis*, *Weysserburgk*, and *Alwalden*. The fourth, *herren*, or *domini* or *lords*; as *herren zu Plawen*, *herren zu Ktannichsfelt*, and such more. The fifth, *edlen herren* or *nobiles domini*, as the *counts* of *Mansfield* have the title of *edle herren zu Belzungen*, &c. The sixth is only *edlen* or *nobiles* as *edle von Overturck*, for the baron of *Overturck*, and sometimes *edle* after the mention of the barony, as *Evert von Alverberge de edle*, for *Everart* baron of *Werberg*, as he occurs among the witnesses to an old charter ^k of *Mag-*

nus duke of Brunswick in *MCCCLX*. Others make ^l two kinds only, the one of *freypetren* simply so called, by which, they say, are understood barons, that have their baronies consisting of fiefs or held in feudal right, the other of *semper freypen* that are such (they say) that have fiefs held under them, but hold not their baronies as fiefs. And some would have three kinds of them; *semperfreypen*^m, *freypetren*, and *herren*. That of *semperfreypen* they find in those four; *Limburgk*, *Dussis* and the rest. And for *herren*, absolutely distinguished from *freypen* or *freypetren*; they find them so in some ordinances of the empire where *churfursten*, *furstten*, *graven*, *freypen* and *herren* are reckoned with such a distinction between *freypen* and *herren*. But I see some great ⁿ lawyers of the empire, that carefully examine these distinctions, allow none of them as they may any way conduce to the making of several ranks among the barons. Thus take rather the names of *freypen*, *freypetren*, *edlen herren*, *herren*, and *edlen*, for indifferent words that denote them. And observe by the way, that the word baron is not used in high *Germany*, saving when they express their *freypetren* in *Latin*. But in high *Dutch* they call a baron by some of those other names always, though in low *Dutch* the word baron be sometimes used, as in a subscription of *Philip* count of *Hohenloe* where he is ^o according to the low *Dutch*, stiled *baron zu Liesfeld* among his other titles. But *ego baronum genera nulla esse arbitror*, saith ^p *Paumeister*, & quocunque nomine *semperfreypen*, *freypetren*, *freypen*, *edle herren*, vel singulariter *herren*, *edle* vel *die edle*, *appellantur, nobilitate ac dignitate pares esse*. *Omnes enim generali vocabulo herren, comprehenduntur, ut perpetuo habet decretorum comitiunum subscriptio, von der graven und herren wegen*, that is, *by the assent or authority of the graves and barons*. So that all barons of the empire immediate to the emperor, are of one rank, and are known also indifferently by all those names saving that of *semper freypetren* which belongs only to those more eminent four, who, it seems, have it not as a distinction of their rank, from the rank of other barons, but only to denote their antiquity in the rank of barons, though others would draw the original of that title from the solemn words of *semper ingenuus existat*, or the like in old manumissions, as if thence afterward that name had been left on such as were made barons antiently in the empire. But I see not ground enough for that conjecture. And as *herren* is a common name for *German* barons, so is *heerschaft* for a barony.

LII. These names by which they denote a baron in high *Germany*, (for in *Italy*, as in low *Germany* sometimes also, they use the word *baron*) are already so interpreted, that their signification is thence sufficiently known. But whence their *Latin* word *baro*, which hath been

⁸ Cap. 10. §. 31.

^h Ad c. innotuit, extr. tit. de electione & Alciat. lib. de singulari certamine cap. 33.

ⁱ Dissertatio de comiti-

bus &c. cap. 4. §. 20.

^k Apud Paumeist. de jurisdic. lib. 2. cap. 10. §. 37.

^l Petr. de Ando de imp. Rom. lib. 2. cap. 12.

^m Videis Ruriger, Ruland, de commissionibus part. 2. lib. 9. cap. 4. num. 35. Munster Cosmog. lib. 3. cap. 20. & Besold. dissert. de comitibus &c. cap. 4. §. 19.

ⁿ Post Paumeist. lib. 2. de jurisdic. cap. 10. §. 39.

Vide Matth. Steph. de jurisdic. lib. 2. part. 1. cap. 6. §. 118. & Besold. loc. citat. Sixtin. de regalibus 1. cap. 4. n. 37, &c.

^o Petr. Ertz. de nobil. civili, ad conclus. 18.

^p Decret. Ratispon.

1603. apud Paumeist. dict. loc. §. 35.

^q Ibid. §. 39.

^r Goldast. rer. Alem. tom. 1. fol. 218.

also dispersed through *Europe*, comes, and what it signifies, is a question much controverted among such as are content to be too troublesome to themselves in so needless a disputation. ⁽¹⁹⁰⁾ Some will have it from *barones* used ¹ in *Cicero*, and *baro* in that of ¹ *Perfius*.

Baro regnatum digito terebrare salinum
Contentus perages, si vivere cum Jove tendis.

Where the old scholiast *Cornutus* reads *varo*, ⁽¹⁹¹⁾ and tells us that *varones dicuntur servi militum, qui utique sultissimi sunt, servi scilicet sultorum*. ⁽¹⁹²⁾ But doubtless both in *Perfius* and *Cicero*, *baro* is taken for a stupid or contemptible and blockish fellow. And *concurritur* (saith ¹ *Hirtius*, speaking of the violence offered by *Minutius Silius*) *ad Cassium defendendum. Evocari enim barones (or berones) compluresque evocatos cum telis secum habere consueverat*. Here *berones* or *barones* seems to denote mercenary soldiers; and to that purpose *mercenarii sunt* (saith ¹ *Isidore*) *qui serviunt accepta mercede; iidem & barones Graeco nomine quod sint fortes in laboribus*. ⁽¹⁹³⁾ And in an old *Arabick-Latin* glossary, we read *barones fortes in laboribus*, which reaches us to, mend *Isidore's* glossary where it is printed *bargines fortes in bello*. ⁽¹⁹⁴⁾ In some other glossaries ^x *baro* is turned into *hate* or *hatred*, and *barosus*, *disdainful* or *curriish*. ⁽¹⁹⁵⁾ But how from any of these significations it can be brought to denote the dignity we speak of, I understand not. Others will have it, I know not why, from the *Hebrew* *בַּר*, that is, a *son*. But clearly they only derive it from the true root, that make it from *bar barn* or *bern*, as in some of the northern languages which dispersed themselves into *Europe* upon the incursions of the *Goths* and *Vandals*, and the rest of that kind, it signified a *man*, and in that sense as it denotes the sex as *vir* doth and not as *homo* may; or rather as *homo* doth in a common and most usual acceptation when it expresses the male sex only, as in the provincial languages that have *hommes*, *buomini* and *hombres* (all made of *homines*) for *men* only. That *baro* did signify so much, is justified not only from those old glossaries which have *baro* interpreted by *vir* or *vir*, but also by this, that both in *Picart French*, and with us in our law *French* (for all or the most of the tongues of *Europe* had something from those northern languages, and in this particular we see the word *baron* almost in every state of *Europe*) *baron* & *femme* denote the same with *vir* & *foemina*. And in the laws both of the *Salians* ^y, *Alemans* ^z and *Ripuarians* ^a, *baro* or *barus* and *foemina* occur for a *man* and a *woman*. ⁽¹⁹⁶⁾ *Si quis mortaudit barum aut foeminam, &c.* and *si quis foeminam ingenuam colpo percusserit, &c.* *si barus fuerit similiter, &c.* The word thus signifying a *man* came by application to be restrained to a dignity, as *dux* and *comes* from their common signifi-

cations did, and as also *miles* for a *knight* often, sometimes for a *gentleman*; as in the feudal laws. And thence was it that the word *barones* is sometimes used also in *Latin* writers ^b for some greater officers under the *grand signior* in whose state we are sure the title was never any honorary dignity, as it is and long hath been in the christian states, where such as had none of those superior titles of *dux* or *comes*, and yet had their territories given them under the tenure of *homage* or *becoming the men* (as the phrase is in *England* especially to this day, in *homage*) or the barons of the emperor, that gave them their territories or towns with jurisdiction in them, were afterward called *barons*. And although the name be so ancient, as it signifies a *man*, and *barones nostri* ^c occur in the *Lumbard* laws for the *king's men*, yet it seems, the annexing of the name of *baron* to feuds and the resultant of a dignity out of that annexion, was not common till in the following times of the empire, when other feudal dignities also grew frequent out of such annexion, as is before shewed. And to fit also the name of *baron* with their *freylen* and *freylherren*, some learned men tell us that in old *Dutch*, *bar*, which signifies a *man* or *manchild*, is justly interpreted also by *freyl* or *free*. So *Goldastus* ^d upon *Winsbeck* an old *Dutch* poet; where also he cites out of *Cicardus* an ancient author of a glossary, that *baro* (as it denotes *freedom*) is interpreted by *dominus vel princeps*. And for the name *baron* (because more light will be given to it, in relation of the same dignity in other countries that have it) we conclude here only with this note, that when the later *Greeks* that write into the empire, mention the title of *baron*, they call it ^e *μπαρόν*, and a barony *μπαρόνια* according to their fashion of expressing *beta* by *μτ*.

But the *Germans* have also the name of *banner-her* or *panner-her* for a *baron*, as if you would say *dominus vexillifer* or the like, or as the title of *banneret* is. The nearness and sometimes community of the title of *banneret* and *baron* in other states appears in due place hereafter. But I remember not that it occurs in the writers of *Germany*, as applied to that country, though they have a custom of delivering of the imperial banner as an ensign of the authority of a general, which we see in those letters of *Rodolph* the II. directed to the ^f emperor of *Russia*, the prince of *Moldavia*, and the duke of *Zbaraw*, certifying them that he had caused to be delivered, *vexillum nostrum Caesareum imperiali aquila insignitum, to Stanislaw Clopitz, quo secundum morem militare quamdiu in servitiis nostris fuerit utatur*; to which words *Goldastus* notes in the margin, *mos investiendi principem imperii*. And it is true, indeed, that the delivery of a banner is the ancient ceremony in the investitures of the dukes and *graves* of the empire, as is already declared.

¹ Epist. ad Attic. lib. 9. ep. 11. & de finibus lib. 2.

¹ Satir. 5. ubi videlicet Elium Vinerum.

¹ De bello Alexandrino, & vide Alciat.

pareng. 5. cap. 16.

² Orig. lib. 9. cap. de civibus.

² Pich. ad verfar. lib. 1. cap. 8. videlicet item autor. de regim. princip. lib. 3.

cap. 20. originationem baronis futillem.

³ Tit. 33. de via Latina.

⁴ Tit. 76. & 95.

⁵ Tit. 58. §. 12.

⁶ Chronic. Richer.

sparg. sub anno 1190. pag. 280.

⁷ Longobard. lib. 1. tit. 13. L. Unic.

⁸ Ad Paraenetic. vet. poet. 1. pag. 414.

⁹ Lit. Jo. Ichim.

patriarch. Alex. apud. Cruf. Turcograec. lib. 3.

¹⁰ Pragae 3. Feb. 1594. apud Goldast. constit. imper. tom. 3. p. 579.

memorantur saepius in legibus Sabaudiae, editis Augustae Taurinorum 1588. ubi etiam a baronibus distinguuntur.

They that have the immediate title of *freihæren* (or *banner*, or *panner-hæren*) and *barones* in *Latin* in *Germany*, were such as in the *Lombard* customs are called *valvasores regis*, and *valvasores majores*, and *capitanei* also. For in the feuds the name of *baron* is not; but these names instead of it. *In jure feudorum* (saith ^g *Capiblanco*) *baronum nomen non reperitur, sed magni valvasores vel Capitanei, aut proceres nominari solent*. But of *valvasores* and *capitanei* more ^h anon.

LIII. The titles of *duke* or *hertzog*, and *count* or *grave* with those that are made by additions to these titles, together with this of *baron* being thus deduced; the title of *furst* or *prince* follows here. Nor did we till now meddle with it, because the various acceptation and use of it in the empire cannot be so well expressed without the knowledge of those other dignities that hitherto have been handled. And with it here also we join that great one of *churfurst* or *elector*, which (as it is secular) hath its being in those that bear the several dignities of *pfaltzgrave*, *duke* and *marquess*, beside the king of *Bohemia*. And therefore could not have had so proper a place before as after those several dignities declared. And as a corollary to those feudal dignities, we add then also other names that are, in the *Lombard* customs, comprehensive of divers feudal dignities together, as *capitaneus* and *valvasor*.

For that of *furst* or *prince* (to omit the use of it, as it denotes the emperor himself, and did so in ancient *Rome*, and yet in the same *Rome* was attributed to some mean officers in government, as we see frequently in the *Notitia*, *Cassiodore*, the *Coder*, and elsewhere) it hath, in *Germany*, a threefold acceptation. The first is, where we find it, as other dignities, joined with some territory, and denoting a singular and distinct name of honour: the second, where it is specially also attributed to persons that have other dignities also; and the third, where it comprehensively denotes all the states of the empire, besides the free cities. It is also but differently a great dignity in *Italy*, which we refer hence to the next chapter, where we speak especially of the title of *prince* in the kingdom of *Naples*.

Of the first kind, an example is in the prince of *Anhalt*, or *furst von Anhalt*, who is neither duke, *pfaltzgrave*, *marckgrave*, *landtgrave*, nor *burggrave*, yet hath this of *prince* for his especial dignity. And some *graves* have, by the indulgence of the emperors, been created ⁱ *princes*, and are called *die gefürstete graven*, or *graves made princes*, as we see in those of *Henneberg*, besides the grave of *Arnberg*, made a prince by *Maximilian* the II. and of *Mansfield* by *Rodolph* the II. Divers other principalities or *fürstenthums* as they call them, are in the empire, as we see in the stiles of the marquess of *Brandenburg*, and of the duke of *Hildesburg* (the one being *furst zu Rugen*, the other *furst zu Wlen-*

den) and ^k in others. But I find no select number of four of this rank, as in the other great dignities of the empire.

The beginning of this title thus applied to a territory, and making a rank of dignity next above ordinary counts of territories, appears not. But some that have laboured (and that with learning enough) in the old state of *Germany*, conceive that the title is to be deduced out of such customs as were antienter in *Germany* than the *Roman* government. They observe in ^l *Caesar*, of the *Germans*, that in pace nullus erat communis magistratus; sed principes regionum atque pagorum inter suos jus dicebant, controversasque minuebant; and in ^m *Tacitus* of them; eligebantur & principes qui jura per pagos vicisque reddebant. Centeni singulis ex plebe comites consilium simul & auxilium aderant. In these passages they conceive ⁿ that the name of *principes* was but as translated out of the *Dutch* *die fursten* (signifying *princes*) at such time as they had not so many titular distinctions of honour and power as afterward. And in regard that the *hertzogen* or dukes were of a greater place in *Germany* than those *pagorum principes* or *fursten*, and the *comites* or *graves* of territories, of a less and subordinate to them, them, thence is it (say they) that even to this day the title of *prince* with the addition of a territory is less than that of *hertzog*, and greater than *grave* or *count* in the empire; whereas in other places of *Europe*, it is above that of duke. *Haec una est ratio* (saith *Cluverius*) *cur hodieque ducis dignitas in Germania superior sit ordine principum; quum e diverso aliis in gentibus Europae, principalis dignitas superet ducalem*. But the authors of this opinion would have the original also of *comes* and *dux* in the empire, deduced only out of *Germany*, and they interpret the words of *Caesar* and *Tacitus*, to make them justify as much. Of that matter enough is ^o already said. And for this of *principes*; in regard, indeed, that *furst* and *princeps* do exactly interpret one another, and both of them most naturally signify an especial eminency, it might seem, at least as likely, that *principes* among the *Romans* (applied to *Germany*) interpreted *furst* as a title there used before the *Romans* had to do with it, as that *furst* should be afterward used in *Dutch*, to signify that which the *Romans* called *principes*. But we are also sure that *princeps* was a title of honour in *Rome*, before either the empire or the name of the *Romans* came into *Germany*. That appears in *principes senatus* and *principes juventutis*, besides the application of it to the emperors themselves. And in the declining times also of the empire, there were ^p *principes agentium in rebus* for the chief directors of court proceedings and dispatches in civil government; and the place of such a *princeps*, was called *principatus honor* ^q, and divers privileges also belonged to

^g Proem. ad Rubric. de baronibus §. 1. & vide Frecc. de subfeud. lib. 1. tit. 2.
cap. 10. §. 21. Matth. Steph. de juridict. lib. 2. part. 1. cap. 5. §. 22.
bell. Gallie. comm. 6. ^m De morib. Germ. ⁿ Ph. Cluverius German. li. 1. cap. 39. & 41.
princip. ag. in reb. & C. Theod. cod. tit. lib. 6. tit. 28.
cap. 103.

^h §. LV. ⁱ Paurmeist. de juridict. lib. 2. §. 18.
^k Goldast. in ord. praefix. tom. 1. constit. pag. 18.
^l De §. XXII. supra. ^p C. de
^q Videfiss. Panciroll. ad notit. utramque cap. 9. & in notit. orientis

it. And such of them as were under any great governor of a province (as the most of the great governors or lieutenants had of these *principes* in their courts) had also sometimes the title of *prince* of the same province, as we see in the *principes Dalmatarum*¹, under ¹ the comes or lieutenant that governed there. And Nicephorus Gregoras expressly, that in the time of Constantine¹ the great, this of *prince* was given with a territory. For he says that this emperor created a *prince* of Peloponnesus; Ὁ δὲ Πελοποννήσιον τὸ (saith he) ἀξίωμα τὸ πρίγκιπι, καὶ κληρώται, The governor of Peloponnesus had the honorary title of prince given him; whence it is also that in Phranzes^u the title of prince of Peloponnesus occurs, as also of Achaia. And in the Greek writers of the later ages, the name of * περιπαῖδες, περιχίππας, περιγυῖες, περιγυῖται, and for a principality περιγυῖται often occur. So that there is use enough of the title *princes*, both in the testimonies of old Rome, and in such fragments of it as are left in the writers of the Greek empire, to warrant the original of it out of Rome, and that it hath been since made a feudal dignity by being annexed to a territory, as those other of comes and dux also have been. For nothing is clearer than that, ever since the customs of the Roman empire together with the empire came into Germany, *princes* and *furst* have not only signified the same, but have literally been always taken for the same. But it is not so clear that the very literal title of *furst* was meant in Tacitus and Cæsar. For the word *princes* might with them denote any other eminent governor that had any other name or dignity beside *furst*. And therefore the more certain deduction of it is out of the old Roman empire, where no man can doubt but that the word *princes* was a title of dignity. But it cannot be so cleared that the word *furst* was so in Germany, before this of *princeps* came thither.

The second acceptation of *prince* is in the stiles of such as being of the states of the empire, have other titles and yet are called ^v *princes* also, as by a title distinguishing them from such as are not *princes* in either of these two first notions. And it is thus attributed not only to the electors (who are sometimes stiled *archi-principes*²) dukes and others of their greatest *graves* that have those additions of *plattz*, *landt*, *mark*, *burg*, and to such ordinary *graves* as are made princes, but to their bishops and some abbots, provosts and abbesses also by reason of their temporal power. In this sense is *princes* used by Linturius³ speaking of the lords that appeared at the diet at Wormes in mcccxcv. under Maximilian the first. *Principes*, saith he, in propria persona xlv. comites vero sine illis qui cum principibus erant circiter lxxvii. qui per se venerant. Other like passages are. And hence is it that we read that the *principatus* or *fursteu-*

thumb of the abbey of Lorsch near Heydelberg was transferred by the emperor Frederick the II. to the archbishopric of Mentz. Nos considerantes (saith the emperor, as it is in Trithemius^b) tenuem statum ecclesiae Laurissensis ab honore & nomine principatus processu temporis collabentem, ut non minus imperio quam sibi deficere videatur &c. Cum deliberatione & consilio principum de innata providentia & nostrae gratia majestatis, eundem principatum ecclesiae Laurissensis cum omni honore, vassallis, ministerialibus, castris, oppidis, proventibus, juribus & pertinentiis suis sicut ad nos & imperium noscitur pertinere, eidem Moguntinae ecclesiae, dicto Moguntino archiepiscopo (Siffredo) & suis successoribus imperiali auctoritate in perpetuum donavimus & concessimus, & nominatum principem nostrum venerabilem archiepiscopum Moguntinum praesentibus principibus solemniter investimus, ut eadem ecclesia Moguntina, idem archiepiscopus Moguntinus & successores ejus a modo principatum ipsum teneant & possideant & ad honorem nostrum & imperii illam foveant & conservent, salvo jure quod inde debetur imperio &c. But for this title, see more anon in the enumeration of the states of the empire, where you shall find some *landgraves* and *Burggraves* as well as *graves* that are not *princes* in this sense, and some other, princes, or equal to princes, and yet called only lords or *heeren*.

The third use of the title of *prince* I find in ^e some expressions of the lawyers of the empire, where they divide the states. The states they say, consist of three parts, the *electors*, the *princes*, and the *free cities*. And in the second member, they include all whatsoever that have any voice in the *reichstag* or parliament of the empire, besides the electors, which yet no man doubts but are princes also, and the greatest. And they that have voice there are barons, and all above barons, or lords equal to them. But whereas every prince of the electors hath his single voice, the counts and barons in the empire altogether have but two voices according to that bipartite division of them into *swabish* and *witterawish*. But this use of the title of prince, is only in such expressions of writers; never in the stiles of any but those that are above ordinary counts. For the stiles of all such counts and barons have the honorary inscription, in their titular books, of *dem wolgebohren hern* without *furst*, that is, *admodum generoso domino*, or *right generous lord*, when others write to ^d them besides the emperor. And he writes *dem edlen untern unnd dez reichs lieben getrewen*, N. or to the noble, beloved, and faithful both to us and the empire, N.

There is some example of another notion of prince in the constitutions of the empire, much differing from any of these, as we see it in Charles V. his giving ^e his son Philip then king of England all the duchies, marquises, princi-

¹ Cassiodor. lib. 7. form. 24.

² Consule Meurf. gloss. Graecobarb. in περιγυῖται.

³ Paurmeist. de jurisdic. lib. 2. cap. 10. §. 20, & 21. Matth. Steph.

de jurisdic. lib. 2. part. 1. cap. 6. §. 20. ad §. 3.

⁴ Goldast. constit. imperial. tom. 3. pag. 438. & tom. 4. concil. pag. 225. edit.

⁵ Chronico Sponheimen. sub anno 1232. & in appendice ad annal. Germ.

edit. 1624. a Marquardo Frehero.

⁶ Paurmeist. lib. 2. de jurisdic. cap. 2. §. 21. & 22. Vide Matth. Steph. lib. 2. part. 1. cap. 6.

§. 22, &c.

⁷ Videlicet titular. Buch, & Nolden. synopt. tract. c. 1. §. 61.

⁸ 25. Octob. Goldast. constit. imper. tom. 1. pag. 585.

⁹ Hist. Rom. lib. 7. pag. 166.

¹⁰ Chronic. lib. 1.

palities, counties, (so they are reckoned) baronies, and other possessions of the xvii provinces, and making him *prince* and lord of them. And also the archdutchess in the king of *Spain's* passing of them afterward to her^f is called lady and *princess* of them. But the stile of these used by her, hath consisted only in the other particular titles, as archdutchess, dutchess, marchioness, &c. But also for the name of *prince* in *Germany*; this of *Matthias Stephani* is observable, which he takes indeed from the *Dutch* gloss on the *sachsenspiegel*^g or old laws of *Saxony*. *Inter status imperii* (saith he, speaking of^h such as are the princes of the empire in this third notion of our division) *post imperatorem & regem Romanorum refero electores tam ecclesiasticos quam seculares itemque alios duces, principes, marchiones, & comites, qui realem habent administrationem suorum ducatum, principatum, &c. & proprie dicuntur principes*ⁱ *imperii. Qui enim administratione destituuntur & territorium non habent, illi habent quidem jura principis personalia, at jura realia, seu territorialia non item. Dicit enim de aliquo requirit inesse. Et dicuntur ejusmodi principes absque administratione domicilli. In jure Saxonico vocantur schlechte fursten, item fursten genossen.*

LIV. For that great title of *elector*, which is in the three archbishops of *Mentz*, *Triers*, and *Cologne*, and in the king of *Bohemia*, the *pfaltzgrave* of the *Rhine*, the duke of *Saxe*, and the marquess of *Brandenburg*; the nature of it is well enough known out of the election of the emperor, and especially from the golden bull of *Charles IV.* The original of it hath been variously delivered; some attributing it to pope *Gregory V.* and *Otho III.* others to *Gregory X.* And the discourses of it in *Baronius*, *Schardius*, *Knichen*, *Onuphrius*, *Goldastus*, *Binius*, *Cubachius*, and others of less name, are obvious enough. Neither will I here dispute it after them. Nor if I should, could I make a better conclusion than some lawyers^k of the empire that esteem all such opinions as place the original of the princes electors in this or that particular time, to be grounded only upon meer conjectures, without warrant enough to make a clear inference; and that the truth is, there is no kind of other certainty of it than thus, that by a tacit consent of the states and of the empire (since it came into *Germany*) this *septemviral* election hath been received, and that so the dignity of electorship hath been settled by the same consent upon those three ecclesiastical and four secular princes. But when or at what time this was first so received, is not delivered in any testimony that is certain enough to decide the controversy.

LV. For those other two titles of *capitanei* and *valvasores*; *capitaneus* is taken either pro-

perly or improperly. Properly taken, in the feudal customs of *Lombardy*, it comprehensively denotes counts, and all above counts that have feudal dignities immediately derived from the sovereign. The text of the feuds is, ¹ *dux marchio & comes feudum dare possunt, qui proprie regni vel regis capitanei dicuntur.* (¹⁹⁷) Improperly taken and with a special restraint, it signifies such as being neither dukes, marquesses nor counts, are invested, either by the sovereign, or by some duke, marquess or count, or some state that hath power by infeudation to invest, of some territory or feudal command, or *qui*^m *de plebe aliqua vel plebis parte per feudum sunt investiti.* These are also *capitanei*, but improperly. For all such as have none of those greater titles, and yet have any such territories or commands immediately from either the sovereign or from any of them which have of those greater titles, were more properly according to the *Lombard* customs, *valvasores majores*,ⁿ or the great *valvasors*, or *valvasores regis*. And they were (if at least immediate to the sovereign) the same with the barons or freeheren of the empire. But the better division antiently of feudal dignities among the *Lombards* was generally into *capitanei* and *valvasores*, the first comprehending all those great titles, the other all such as had territory and jurisdiction by feudal right without those titles. So it appears clearly in *Otho*^o *Frisingensis*. The original of the word *capitanei* is plain enough; the signification literally being but as in the common notion. It occurs also often in *Petrus de Vineis*, and the abstract of it is ^p *capetania* with him. (¹⁹⁸) And as *dux* and *comes* came to be annexed to feuds, so did this of *capitaneus* in *Lombardy*. But for *valvasor*, it is not so clear whence it came or what it literally denotes. Some would have it a *valvis*; and originations of that kind are too often rashly admitted. But I have not yet understood any other derivation of it that is at all like a truth beside *Hotoman's* and those that follow him, when they conceive it to be made of *vassus*, or *vassallus*, as *valvasini* also. But how made of *vassus* or *vassallus*, they tell us not. Nor is it worth a further enquiry. And of the feudal dignities of the empire, and of the names of feudal dignities, which are also sometimes made personal, hitherto. And we come to the title of *ritter geschlagen*, or as, we say, a dubbed knight, which is merely personal.

LVI. The nature of a *ritter geschlagen*, a dubbed knight, or the knight of the spur there, is as with us. Nor is the ceremony of making him at this day (for ought I know) different from ours. Regularly the person to be honoured kneels, and the emperor's gentle striking him (for the laying on the sword is rather to be called a stroke, and not a touching or laying it on,

^f Les estats, empires, &c. a Paris 1613. pag. 351.

^g Ad lib. 3. tit. 58. ^h Lib. 2. de jurisd. part. 1. cap. 7. §. 23. ⁱ Vide eum lib. 2. part. 2. cap. 6. §. 50. ubi etiam habet verba glossar. Speculi Saxonici Teutonice quae fufius rem explicant. ^k Paurmeist. de jurisd. lib. 2. cap. 2. §. 38. Petr. Ertiz. de nobilit. ad consul. 18. lit. d. ¹ Lib. 1. tit. 1. ^m Feud. lib. 2. tit. 10. & ibid. Cujacius & videtis Hotoman. diff. feud. cap. 3. & Sigon. hist. de regno Ital. lib. 7. ⁿ Ibid. & lib. 1. tit. 14. & de valvasoribus videtis legg. Sabaudiae lib. 5. cap. 4. Augustae Taur. 1588. ^o De gest. Fred. I. lib. 2. cap. 13. ^p Lib. 6. epist. 22.

as in vulgar speech; and it was, in elder times, a plain stroke; *geschlagen* signifying but as *percussus* and the pronouncing of him to be a knight, creates him. And sometimes the pronouncing only without any use of the sword (at least any such particular use of it, as that it touched those which are created) goes for a sufficient creation. As in that example of *Charles V.* who upon his victory against *Frederick* duke of *Saxony*, created many knights together, only by pronouncing that they should be *todos cavalleros*, or *all knights*.⁽¹⁹⁹⁾ Touching this dignity (which never was extended beyond the person created) we observe specially the antient law of the empire that appointed who should be capable of it, the *privileges* belonging to it, the *original* of it, the *ceremonies* that antiently were used in conferring it, and the *persons* that gave it. None was capable of this dignity, by a constitution of *Frederick II.* (which is also attributed to *Conrad IV.*) but he that was descended from one that was *miles*, which I interpret a *gentleman* or *nobilis*, and not a knight. For *ritter* and *miles* often signify in the old feudal law of the empire, a gentleman, as the word gentleman is signified in *nobilis*, and not a dubbed knight or *ritter geschlagen*, which is interpreted by *miles factus*, or *cingulo militari donatus*; as with us in *England*, *qui suscepit ordinem militiae*, is the dubbed knight, and him generally we call a knight; yet also the word *milites* denotes *gentlemen*, or great free-holders of the country also. And they are called knights in our laws that concern either choice of coroners or of knights of parliament, although they be no created knights. And thence it is that the gentry of the empire generally is called the *ritterschaft*, as if you would say *militia*, whereas yet none is a *ritter* in that sense, as *eques auratus*, or *cingulo militiae donatus* denotes it, but he that is knighted, or in *ordinem militarem cooptatus*. The constitution we speak of is remembered in a dispensation to one that was to be made a knight, his ancestors[†] having not been gentlemen.

Notum facimus (*saieth the emperor*) universis, quod *A. de N.* majestati nostrae humiliter supplicavit, ut cum fieri velit *miles*, & pater suus *miles* non esset, sibi exinde largiri licentiam dignaremur. Nos autem ut fidei suae meritum, & suorum, per imperialis gratiae praemium imperialiter compensemus, supplicationibus ipsius benignius inclinati, de potestatis nostrae plenitudine sibi concedimus potestatem, quod quamquam pater suus *miles* non fuerit, & nostris constitutionibus caveatur, quod *milites* fieri nequeant, qui de genere *militum* non nascuntur, ipse tamen de culminis nostri licentia decorari valeat *cingulo militari*; mandantes, quatenus nullus sit, qui ipsum super hoc de caetero molestare vel impedire valeat aut praefumat.

But *Goldastus* understands it, as if this were a creation of a knight by patent. For the title in him to it is, *de cingulo militari per principem concedendo*. To this may be added that which is by some remembered out of an old constitution in the records of *Lovain*[†] that none should receive this dignity unless he had served thrice in the wars.

LVII. For the privileges of these knights; whereas by the old imperial laws, divers privileges in making of testaments, in being free from imprisonment, and such more (which are collected by divers lawyers, but especially by *Claudius Coteracens* in his *de privilegiis militum*) were due to those that were truly *milites*, and served in the wars, being thereto chosen and sworn with solemnity, as appears in *Polybius*, *Vegetius*, and other good authors that describe the *militia Romana*; it hath been a question among some great doctors, whether all or any of those privileges belong now to knights made in the empire; knights, that being *equites aurati* (and called so from their gilt spurs, which they were wont to have put on at their creation) are also known and express by the name of *milites facti*, or in *ordinem militarem cooptati*. If they lived in the wars, and were truly *milites* by their service, there were (say^u they) no doubt of it. And some also^{*}, expressly, that they ought not to be imprisoned for debt, nor put to torture, by reason of their dignity. But in regard this dignity thus conferred doth not make them a part of an army, nor hath any martial employment annexed to it, the most common opinion is that they have no right to any of those antient privileges. *Soli namque hi qui pro tutela Romani imperii militant, privilegiis militum digni habentur; alii non habentur*, saith *Zoannettus*. And *hinc est*, saith he further, *quod a Caesare creatis militibus auratis quos armatae militiae non incumbere constet, praerogativae militares eo solo nomine nequaquam debentur, secundum veram, communem & receptissimam doctorum omnium sententiam*, and to that purpose he uses divers authorities taken from the doctors. But that privilege antiently granted to all knights within the marquifat of *Namur*, is observable in this place; that there should be no more paid to the marquifs, the best of a knights chattels upon his death, or *melius mobile quod quidem melius cathelum dicitur*, as the words^v are in *Philip* marquifs of *Namur* his grant of it in *mccxii*. He did it, *consuetudines quasdam indecentes, quas contra honorem militare in iuste usurpaverat, iniquas esse decernens*, as the charter also says.

LVIII. (200) The original of these knights in the empire is not to be drawn out of the use of old *Rome*, where the *equistris ordo*, or the

^q Mennen. Delic. Equest. p. 20. ^r Goldast. Confit. tom. 3. pag. 398.

ffit. *Frederic*. de pace tenenda apud *Hotoman*. de feud. disput. cap. 5.

^u Vide *Tiraquell*. de nobilitate. & *Petr. Bellugam Spec. Princ. Rubric.* 20. §. 8.

videtis *Fr. Zoannet*. tract. de imperio Romano §. 68. & seq. & 77.

^v *Petr. de Vineis* lib. 6. epist. 17. & videtis *Con-*

^t Vide *Mennen*. delic. Equest. & *Lipic. Lovan.* lib. 3.

^x *Bald.* ad l. 1. c. tit. qui bonis cedere possint, &

^y Apud *Aubert*. *Miraeum* in *Diplom. Belgic.* tom. 2. cap. 67.

ordo secundus (as *Statius*² calls it) consisted of such as were *equites*. They antiently had their rank only from their *census equestris*, and the censors choice or allowance of them. And some similitude, indeed, is between^a them and the dubbed knights of the empire and of other states, in regard that as those of old *Rome* had relation to the senate, as the next ranks to them, so these to the lords of several states. But neither the censors choice, nor the *census equestris* (which was about *MMMXXV* pounds of our money) nor their *jus aureorum annulorum* had ever any place in these knights. And though in *England* especially (as is hereafter shewed) and in some other places, there be from antient time a kind of *census equestris*, yet it is without any colour of relation to that of old *Rome*. Sometimes also in the declining ages a whole corporation had the dignity of *ordo equestris* given them in *Rome* by the emperor's rescript, as we see in that to the *navicularii*,^b such as had the care of shipping for publick provision, which agrees with nothing that belongs to the solemn giving of it as it hath been a dignity since the *French* empire began. Nor can this dignity have any original in the *milites* or soldiers of the old empire; although they had their *cingulum* & *sacramentum* also, and the addition of *miles* often, and *juratus miles*^c sometimes, occur in those elder times, in such sort as *miles* at this day for a knight. But these things were common to all soldiers. There is also in *Julian's* epistles a grant from him to *Leontius*, that he might use arms: *ὡς καὶ ἑταῶν ἡρώων*, are the words. But the original of this kind of knights is not perhaps to be deduced from any other than *Germans*, and the customs exercised among the *Germans* and other warlike nations of the north. Their use was in publick assemblies, by a solemn giving a lance or target, to confer such a kind of honour. And this was done sometimes by some prince of the state, sometimes by a father or kinsman. *Tacitus* is a witness of it. *Nihil* (saith^d he) *neque publicae neque privatae rei nisi armati agunt. Sed arma sumere, non ante cuiquam moris, quam civitas suffecturum probaverit. Tum in ipso concilio vel principum aliquis, vel pater vel propinquus, scuto frameaque juvenem ornant. Haec apud illos toga, hic primus juven-tae honos. Ante hoc domus pars videntur; mox reipublicae.* (201) Of this nature also was that course of adoption *per arma*, which *Theodoricus* king of the *East Goths* in *Italy*, used to the king of the *Heruli*. For as in later ages, so then also, one prince received the dignity of another. The charter of that adoption is yet extant.

PER arma fieri posse filium (saith^e *Theodoricus*) grande inter gentes constat esse praeconium. Quia non est dignus adoptari nisi qui fortissimus meretur agnoscere. In sobole fre-

quenter fallimur. Ignavi autem esse nesciunt quos judicia pepererunt. Hi enim gratiam non de natura sed de solis meritis habent. Quam vinculo animi obligantur extranei, & tanta in hoc actu vis est, ut prius se velint mori, quam aliquid asperum patribus videantur infligi. Et ideo more gentium & conditione virili, filium te praesenti munere procreamus, ut competenter *per arma nascaris* qui bellicosus esse dignoscere. Damus quidem tibi equos, enses, clypeos, & reliqua instrumenta bellorum, sed quae sunt omnimodis fortiora, largimur tibi nostra judicia. Summus enim inter gentes esse crederis, qui *Theodoricus* sententia comprobaris. Sume itaque arma, mihi tibi que profutura. Ille a te devotionem petit, qui te magis defendere disponit; probat tuum animum & opus non habebit obsequium. Adoptat te talis, de cujus gente tu potius formideris. Noto sunt enim *Herulis Gothorum*, Deo juvante, solatia. Nos arma tibi dedimus: gentes autem olim virtutum pignora praestiterunt. Salutantes proinde gratia competent, reliqua per illum & illum legatos nostros patrio sermone mandamus; qui vobis literas nostras evidenter exponant, & ad confirmandam gratiam, quae sunt dicenda subjungant.

Thus was *Eutherick*, father to *Athalarick*, king of the east *Goths*,^f *factus per arma filius*, by *Justinian*, and another example of it is remembered^g in *Cassiodore*. Neither was this *adoptio per arma*, any thing else but a publication of the prince's judgment touching the person so adopted, and his solemn confirmation of him, under the name of his son, thus to bear and use arms. For it had no such matter in it as the giving any hope of succession or making any civil adgnation between them, as that adoption which was in use in old *Rome* had. A singular example to that purpose is in *Procopius*, where^h *Cabades* King of *Persia* by embassadors importuned *Justin* the elder to adopt his son *Cosroes*, which *Justin* was inconsiderately ready enough to do according to the *Roman* fashion, until his chancellor *Proclus* admonished him, that an adoption done according to these laws of *Rome*, gave also a right of succession, which might so prevent his nephew *Justinian* whom he had before designed for his successor. Therefore *Proclus* advised him, that to satisfy the desire of *Cabades*, and yet to save the succession as he had already designed it, he should return an answer that he would adopt him after the fashion used among the barbarous nations, but not according to the laws of *Rome*, *ἢ δὴ* (as *Procopius's* words are) *ὡς βαρβάρων ἡγεμονίαι, διλοῦνται ἢ γεγραμμένῳ οἱ βαρβάρων τῶς παῖδας ποιῶνται ἀλλ' ἐπὶ τὸν σάβαν*, that it should be done after the custom of the barbarous nations, that did not adopt sons by writing, but by arms. And this answer being returned, the *Persian* (whose purpose indeed was to have gained to his son an expectancy of succession in the *Roman* empire)

² Epist. ad Sylvan. 4. De militibus vero & militum apud Romanos generibus praeter eos, qui de ea re volumina conscripserunt, eaque factis tribuit, videlicet Lud. Charondam, Pithanon, lib. 1. c. 14. ^a Videlicet Bud. ad L. fin. ff. de senatoribus. ^b C. Theod. lib. 13. tit. 5. l. 16. ^c Cod. Gregor. lib. 13. tit. 1. ^d In Germania, & videlicet Avent. in Annal. Boiorum lib. 6. ubi Ludovicum duces Boiorum armis militibus donat Fredericus imperator. ^e Cassiodor. var. lib. 4. For. 2. & videlicet Olauum Magnum hist. septem. lib. 8. cap. 5, 6, 9, & 10. ^f Cassiodor. var. 8. form. 1. ^g Var. 8. form. 9. ^h Persicorum a. pag. 16.

received it rather as a scorn put upon him, than for any satisfaction. ⁽²⁰²⁾ It being clear law among those nations that used this adoption by arms, that no hope of succession could come of it. Neither can I conceive, that the phrase *a rege gentis exteræ arma suscipere*, used by Paul ¹ Warnfred, where he speaks of Alboin, son to Adoin, king of the Lombards, that went to Turisend to receive a knighthood, signifies otherwise than *per arma adoptari*. And in those elder times, both those phrases, and *ἐπομύνηαι* *αἰς βασιλεῖς* *πρωτοί*, or to be adopted after the barbarous custom (that is, the custom of the northern nations) were of the same sense. From this use of those northern nations came the fashion of knighting into the empire, which under Charles the great, and after him, consisted of none else but of those northern, or of such as had upon their incursions been mixed with them, and so received most of their customs. For the girding with the sword, putting on spurs, and the like, which made up but an *adoptio per arma*, have been often used in giving this dignity both in the empire and elsewhere among the posterity of these nations. The antientest use of it as an addition of honour in the German empire, that I have observed, is in the subscriptions to Lietbert bishop of Cambray his charter of foundation of the abbey of *S. Sepulchri* there. In them we read, *signum christiani militis*, *S. Johannis militis*, *S. alterius Johannis militis*, *signum Herisberti militis*, and such more. It is of the year MLXIV.

LIX. But although the original be thence taken, wherein the giving of arms is the chief ceremony of creation, which in the later times (as at this day) became to be for the most part the gentle stroke of a sword with the attestation of the emperor, by a solemn pronouncing the person honoured to be a knight; yet the ceremonies in the times that intercede this original, and the later ages, have been various. The solemnity of girding, a blow on the neck, putting on spurs, and divers holy ceremonies also are found in good testimonies, that concern this dignity in the empire. ⁽²⁰³⁾ And sometimes an oath taken, touching which, more also in the next chapter. Charles the great, in his constitutions (as they are pretended) made for the state of *Frisland*, ordains that the governor there, by girding with a sword, and striking the person created on the ear (as the custom then was) should make knights and give them also an ensign of their knighthood with the imperial crown pictured on it, which shews the use in that age. *Statuimus* (so are the words) *ut si quis ex ipsis sustentationem habuerint vel militare voluerint, dicta potestas* (so was the governors title, as *Podesta* in Italy) *sicut consuetudinis est, manu colapho, sic milites faciat, eisdemque firmiter injungendo præcipiat: ut deinceps more militum sacri imperii aut regni*

Franciae armati incedant; eo quod consideramus si prædicti Frisones secundum staturam corporis & formam eis a Deo & natura datam sic militaverint, cunctis in orbe terrarum militibus, sua fortitudine, ingenio & audacia (dummodo ut prædictum est sint armati) facile præcellent & prævalebunt. Qui Frisones signum suæ militiæ a dicta potestate recipere debent in quo corona imperialis in signum suæ libertatis a nobis concessæ debeat esse depicta, &c. Datum Romæ in Lateranensi palatio anno Dominicæ incarnationis DCCCII. In the testimonies that occur in the story of the following times, the making of knights is often remembered, but rarely with more particular expression of ceremony than the girding. As, Frederick the first held a feast at Mentz, *ut filium suum* (saith ¹ Arnoldus Lubecensis) *Henricum regem militem declararet, & gladium super femur ejus potissimum accingeret.* So the ambassadors of the eastern empire in like words importuned the same emperor to knight Frederick duke of Swaben. *In præsentia sua* (the words of ^m Radovicus) *gladio accingi & militem profiteri postulant & impetrant.*

— *Ut princeps puerum, præsentibus illis, Accingi gladio Fredericum rite juberet,*

saith ⁿ Guntherus. Divers like passages are in the writers of the empire. But the blow on the ear or cheek was also (it seems) in use for the most common ceremony, and is supplied, it seems, or meant by the stroke with the sword. For John de Bekæ a canon of Utrecht that wrote above 60 years past, speaking of the use of his age says, that although other solemnities were omitted, yet that was then used. *Plerique milites moderno tempore* (saith he) *parcimonis intendentes, omisissis sumptuosissimis solemnitatibus, saltem per colaphum, militarem dignitatem accipiunt. Ideoque multi regulam ejusdem ordinis ignorantes, debite militare nesciunt;* whereupon he relates the antienter and solemn form by which the order of knighthood was given to William Grave of Holland, when he was chosen emperor in MCLXXII. whereof more presently. And therein also the stroke on the ear or neck was used. But in that example of the emperor Sigismund his knighting Siguel a French gentleman in France, beside the stroke with the sword, and the girding, his giving him one of his gilt spurs is ^p remembered. Where observe, by the way, this power of knighting exercised by one prince in the territory of another, and that justly (as it was conceived) *quia ex jure consuetudinis sententia* (says du Tilliet) *equites ubique & in imperio & in alieno dominatu institui possunt.* But also oftentimes knights have been created in the empire by the emperors letters patents. *Cum his temporibus* (saith ^{*} Petrus Calefatus a professor of law at Pisa) *ordo senatorius urbis Romæ non invenitur; sequitur ut hodie primum ordinem in civitatibus*

¹ De gest. Longobardorum lib. 1. c. 23, & 24.

apud Favium in Theat. Honoris lib. 3. pag. 529.

vita Avobabi lib. 6.

² Hist. Episc. Ultraject. p. 69.

Nolden. Synopt. Tractat. cap. 2. §. 190.

^k Hanconius de reb. Fris. & ap. Franc. Mennen. in Delic. Equestr. pag. 7. &

^l Hist. Slav. 3. cap. 9.

^m De gest. Frederici I. lib. 1. cap. 6.

ⁿ Till. de reb. Gallic. lib. 2. Mennen. Delic. Equestr. pag. 22. videffis

^{*} Lib. de Equestri dignitate, &c.

(*excepta Venetiarum urbe*) tenere videatur equestris dignitas, quam imperator his verbis, *codicillis suis, concedere solet.* Then he thus adds the form.

TE N. praesenti nostro edicto & de plenitudine nostrae Caesareae potestatis *militem* sive *equitem auratum* facimus & creamus ac titulo & dignitate militari decoramus & ad statum & ordinem militarem assumimus. *Militaris* quoque *cinguli* & baltei decore fascibusque & stemmate *auratae militiae* insignivimus & fortitudinis gladio accingimus ac aliorum militum numero & consortio clementer ascribimus & aggregamus, volentes & decernentes quod deinceps ubique locorum & terrarum pro vero milite habearis & honoreris possisque & debeas pro huiusmodi susceptae dignitatis ornameto *torquibus, gladiis, vestibus, phaleris* seu equorum ornamentis aureis caeterisque omnibus & singulis privilegiis, gratiis, dignitatibus, & franchisiis uti, frui, & gaudere, quibus viri strenui per nos *stricto ense facti* & *creati milites* utuntur, fruuntur, & gaudent, & etiam admitti ad quae illi admittuntur quomodolibet de consuetudine vel de iure.

Sometimes also, giving a shield and the putting on a helm were antiently added to the ceremony, as Goldastus observes upon some old Dutch poets. *Nobilium quondam filii* (saith ⁴ he) *appensione scuti, galeae impositione* & *accinctione ensis* in equestrem dignitatem lecti. These ceremonies were done by the emperors themselves (for the most part) to their subjects, when they knighted them; but by some great bishops to the emperors when they themselves took the dignity. Henry III. per concessionem archiepiscopi Bremensis primum se arma bellica succinxit Goslariae. And to this purpose Hotoxan delivers his general observation; *dandae militiae ritus* (as his ¹ words are) *feudistico quidem instituto hic fuit, ut siquidem imperator in militarem ordinem cooptandus esset, tum episcopo solenni precatione adhibita cingulum ei cum gladio apponerent; sin autem alius, ipse imperator.*

LX, But for the ceremonies in the emperors receiving this dignity; this example of William earl of Holland, the anti-Caesar to Conrad IV. is most observable.

Regula militaris ordinis praescripta Willielmo, cum in regem Romanorum ¹ eligeretur a principibus imperii in comitiis Colonienfibus, anno Domini MCCXLVII.

Quoniam *Wilhelmus* designatus *Romanorum rex* adolescens est *armiger*, visum nobis est, ut cum festinatione praeparentur omnia, quaecunque sunt necessaria, ut secundum ritum *Christiolarum* imperatorum *miles* fieret, antequam *Aquisgrani* diadema regni fusciperet,

& ut secundum christianam institutionem *miles* effectus, & regulam militaris ordinis professus, ex eo disceret, cuiusmodi jugum in ordine suo fusciperit, & quale votum in processione suae regulae emiserit. Itaque ex consensu nostro, praeparatis in ecclesia *Colonienfi* omnibus, post evangelium solemnem missae, praedictus *Wilhelmus armiger* coram cardinale apostolicae sedis legato productus est per regem *Boemiae*, dicentem in hunc modum: *Vestrae reverentiae, pater almius, praesentamus hunc electum armigerum, devotissime supplicantes, ut vestra paternitas votivam ejus professionem fuscipiat, quo militari nostro collegio digne ascribi possit.* Dominus autem cardinalis in pontificalibus assistens ornamentis, eidem *armigero* dixit secundum etymologiam ejusdem nominis, quod est *Miles*: *Oportet, ait, unumquemque militare volentem, esse magnanimum, ingenuum, largisolum, egregium, & strenuum: magnanimum quidem in adversitate, ingenuum in consanguinitate, largisolum in honestate, egregium in curialitate, & strenuum in virili probitate. Sed antequam votum tuae professionis facias, cum matura deliberatione jugum regulae prius audias.*

Ista itaque regula est militaris ordinis. In primis cum devota recordatione dominicae passionis missam quotidie audire; pro fide catholica corpus audacter exponere, sanctam ecclesiam cum ministris ejus a quibuscunque grassatoribus liberare; viduas, pupillos ac orphanos in eorum necessitate protegere; injusta bella vitare; iniqua stipendia renuere; pro liberatione cuiuslibet innocentis duellum inire; imperatori Romanorum, seu ejus patricio reverenter in temporalibus obedire; rempublicam illibatam in vigore suo permittere; bona feudalia regni vel imperii nequaquam alienare, ac irreprehensibiliter apud Deum & homines in hoc mundo vivere. Haec statuta militaris regulae si devote custodieris, & pro virili diligenter adimpleveris, scias temporalem te honorem in terris, & post hanc vitam requiem aeternam in coelis mereri.

Quibus expletis, dominus cardinalis conjunctas manus ejusdem tyronis clausit in missali, supra lectum evangelium ita dicens: *Vis ergo militarem ordinem in nomine Domini devote fuscipere, & regulam tibi verbotenus explicatam, quantum potes, perficere?* cui respondit armiger, *volo.* Et tunc dominus cardinalis subsequenter professionem, armigero dedit, quam idem armiger palam omnibus in hunc modum legit. *Ego Wilhelmus comes Hollandiae, militiae princeps, sacrique imperii vassallus liber, jurando profiteor regulae militaris observantiam, praesentia domini mei Petri, ad velum aureum diaconi cardinalis, & apostolicae sedis legati, per hoc sacrosanctum evangelium, quod manu tango. Cui cardinalis: Haec devota professio peccatorum tuorum sit vera remissio, Amen.* Istit itaque dictis, rex *Boemiae* ictum impexit in collum tyronis ita dicens: *Ad honorem Dei omnipotentis, te militem ordino, ac in nostrum collegium gratanter accipio. Sed me-*

⁴ Ad Winsbeck. poet. German. pag. 402.

¹ Lamb. Schafnaburg. in chronico.

² Disp. de feud. cap. 4.

³ Goldast. constit.

tom. 3. pag. 400. meminere hujusce formulae Snous hist. Batav. li. 7. Dempsterus li. 3. de juramento cap. 19. Menenius in deliciis equestribus pag. 8. & vide potissimum Joannem de Beka in episcop. Ultrajectinis pag. 65. ubi de Ottone III. episcopo agit.

mento, quoniam servator mundi, coram Anna pontifice pro te colaphisatus & illusus coram Pilato praefide, & flagellis caesus, ac spinis coronatus, coram Herode rege chlamide vestitus & derisus, & coram omni populo nudus & vulneratus, in cruce suspensus est, cujus opprobria meminisse te suadeo, cujus crucem acceptare te consulo, cujus etiam mortem ulcisci te moneo.

Quibus ita solenniter adimpletis novus tyro post dictam missam cum stridentibus buccinis, perstreptentibus tympanis, & tinnientibus cymbalis contra filium regis Bohemiae tribus vicibus concurret in hastiludio, & exinde, cum gladiis enitentibus, dimicationis tyrocinium fecit.

Erant autem ei eadem sua electione & curia praefectes.

Petrus Caputii, cardinalis legatusque sedis apostolicae.

Rex Bohemiae cum filiis suis.

Arnoldus de Isenborch, archiepiscopus Treverensis.

Conradus de Hoystaden, archiepiscopus Coloniensis.

Gerhardus, archiepiscopus Moguntinensis.

Henricus de Geldria, electus Leodiensis.

Otto de Hollandia, episcopus Trajectensis.

Cum novem aliis archiepiscopis & episcopis. Marchio Brandenburgensis, cum pluribus ducibus & marchionibus & vassallis imperii.

Thus sometimes before the coronation, sometimes afterward, the emperor, as other kings, took this dignity, wherein the estimation of it is most remarkable. And *ad notitiam vestram perducimus* (saith Conrad king of the Romans, in his edict " for the time of his knighthood directed to those of Palermo) *quod licet ex generositate sanguinis, qua nos a primis componentibus natura decoravit & ex dignitatis officio, qua duorum regnorum nos in folio gratia divina praefecit, nobis militaris honoris auspicia non deessent, quia tamen militiae cingulum, quod reverenda sancivit antiquitas, nondum serenitas nostra suscepserat, die praesentis mensis Augusti, cum solennitate tyrocinii, latus nostrum elegimus decorandum, ut ex hoc aetatis nostrae victoriosae floriditas signa majoris strenuitatis indueret, & originalis nobilitatis gratiam renovaret novae militiae claritudo. Qua etiam die, ut honoris nostri solennia dignis militantium studiorum titulis ornaremus, praeter celebrata magnificae festivitatis, quae tanti boni jocunditas, & personae nostrae magnificentia requirebat, ad locum victoriosi exercitus nostri castra perduximus, & abunde sub foelicitatis futurae praesagio, pace data, plene fidelibus contra hostes nostros continuatis gressibus procedamus.* And for the great estimation of this dignity in the empire; I observe also those words of Giovanni Selino, as they are cited by Alfonso Cecarelli in his history *di casa Monaldesca*; Conradus imperator decoravit illustrissimam domum de Monaldi aurea equestri dignitate, quae summa omnium dignitatum est in imperiali palatio, & vocavit eam collateralem imperii.

LXI. There is also in the pontificale Romanum this form prescribed for the creation of a knight.

De benedictione novi militis.

Miles creari & benedici potest quacumque die, loco, & hora; sed si inter missarum solennia creandus est, pontifex in eo habitu, in quo missam celebravit, aut illi interfuit, in faldistorio ante medium altaris, stans vel sedens, prout convenit, finita missa, id peragit. Si autem extra divina, in stola supra rochetum, vel si sit regularis, supra superpelliceum, id facit. Et primoensem, quem aliquis coram eo genuflexus evaginatum tenet, stans, detecto capite, benedicit, si non sit benedictus, dicens:

Vers. Adjutorium nostrum in nomine Domini.

Resp. Qui fecit coelum & terram.

Vers. Domine, exaudi orationem meam.

Resp. Et clamor meus ad te veniat.

Vers. Dominus vobiscum.

Resp. Et cum spiritu tuo.

Oremus.

Exaudi, quaesumus, Domine preces nostras, & huncensem, quo hic famulus tuus circumcingi desiderat, majestatis tuae dextera dignare benedicere, quatenus esse possit defensor ecclesiarum, viduarum, orphanorum, omniumque Deo servientium, contra saevitiam paganorum, atque haereticorum; aliisque sibi insidiantibus sit terror & formido. Per Christum Dominum nostrum.

Resp. Amen.

Oremus.

Benedic, Domine sancte, Pater omnipotens, aeternae Deus, per invocationem sancti nominis tui, & per adventum Jesu Christi filii tui Domini nostri, & per donum Sancti Spiritus paracleti, huncensem, ut hic famulus tuus, qui hodierna die eo tua pietate praecingitur, visibiles inimicos conculcet victoriaeque per omnia potitus semper maneat illaesus. Per Christum Dominum nostrum.

Resp. Amen.

Deinde dicit, stans, ut prius.

Benedictus Dominus Deus meus, qui docet manus meas ad praelium, & digitos meos ad bellum.

Misericordia mea, & refugium meum: fuscipitor meus, & liberator meus.

Protektor meus, & in ipso speravi: qui subdit populum meum sub me.

Gloria Patri, & Filio, & Spiritui Sancto. Sicut erat in principio & nunc & semper & in saecula saeculorum. Amen.

Vers. Salvum fac servum tuum Domine.

Ref. Deus meus sperantem in te.

Vers. Esto ei Domine turris fortitudinis.

Ref. A facie inimici.

Vers. Domine exaudi orationem meam.

Ref. Et clamor meus ad te veniat.

Vers. Dominus vobiscum.

Ref. Et cum spiritu tuo.

Oremus.

Domine sancte, Pater omnipotens, aeternae Deus, qui cuncta solus ordinas, & recte disponis, qui ad coercendam malitiam reprobis, & tuendam iustitiam, usum gladii in terris hominibus tua salubri dispositione permixisti, & *militarem ordinem* ad populi protectionem institui voluisti, quique per beatum *Johannem* militibus ad se in deserto venientibus ut neminem concuterent, sed propriis contenti essent stipendiis, dici fecisti; clementiam tuam, Domine, suppliciter exoramus, ut sicut *David* puero tuo *Goliath* superandi largitus es facultatem, & *Judam Macchabaeum* de feritate gentium nomen tuum non invocantium triumphare fecisti, ita & huic famulo tuo, qui noviter jugo militiae colla supponit, pietate coelestis vires & audaciam ad fidei & iustitiae defensionem tribuas; & praestes ei fidei, spei, & charitatis augmentum; & da tui timorem pariter, & amorem, humilitatem, perseverantiam, obedientiam, & patientiam bonam, & cuncta in eo recte disponas; ut neminem cum gladio isto, vel alio, injuste laedat; & omnia cum eo iusta, & recta defendat; & sicut ipse de minori gradu ad novum militiae promovetur honorem, ita veterem hominem deponens cum actibus suis, novum induat hominem; ut te timeat, & recte colat, perfidorum consortia vitet, & suam in proximum charitatem extendat, praeposito tuo in omnibus recte obediat, & suum in cunctis iuste officium exequatur. Per Christum Dominum nostrum.

Ref. Amen.

Tunc enssem aqua benedicta aspergit. Si autem ens sit prius benedictus, omnia praedicta omittuntur. Posthaec pontifex sedens, accepta mitra, dat enssem nudum novo militi ante se genuflexo, in manum dexteram, dicens.

Accipe gladium istum in nomine Patris, & Filii, & Spiritus Sancti, & utaris eo ad defensionem tuam, ac sanctae Dei ecclesiae, & ad confusionem inimicorum crucis Christi, ac fidei christianae; & quantum humana fragilitas permiserit, cum eo neminem injuste laedas, quod ipse praestare dignetur, qui cum Patre & Spiritu Sancto vivit, & regnat Deus, per omnia saecula saeculorum.

Resp. Amen.

Deinde ensis in vaginam reponitur, & pontifex cingit militem novum ense, dicens.

Accingere gladio tuo super femur tuum potentissime; & attende quod sancti non in gladio, sed per fidem vicerunt regna.

Ense igitur accinctus miles novus surgit, & enssem de vagina educit, & evaginatum ter viriliter vibrat, & super brachium sinistrum tergit, & in vaginam reponit.

Tunc pontifex dat novo militi osculam pacis, dicens:

Pax tecum.

Et iterum enssem evaginatum in dexteram accipiens, militem novum ante se genuflexum cum ipso ense evaginato ter super scapulas leviter percutit, interim semel tantum dicens.

Esto miles pacificus, strenuus, fidelis, & Deo devotus.

Deinde reposito ense in vaginam, pontifex manu dextera dat novo militi leniter alapam, dicens.

Exciteris a somno malitiae, & vigila in fide Christi, & fama laudabili.

Et milites astantes, imponunt novo militi calcaria; & pontifex sedens cum mitra, dicit antiphonam.

Speciosus forma prae filiis hominum, accingere gladio tuo super femur tuum potentissime.

Surgit pontifex, & versus ad novum militem, stans, & detecto capite, dicit.

Vers. Dominus vobiscum.

Resp. Et cum spiritu tuo.

Oremus.

Omnipotens sempiterna Deus super hunc famulum tuum, qui hoc eminenti mucrone circumcingi desiderat, gratiam tuae bene dictionis infunde, & eum dexterae tuae virtute fretum fac contra cuncta adversantia coelestibus armari praesidiis, quo nullis in hoc seculo tempestatibus bellorum turberetur. Per Christum Dominum nostrum.

Resp. Amen.

His dictis, novus miles osculatur manum pontificis; & depositis ense, & calcaribus, vadit in pace.

But this kind of benediction belongs, they say, only to knights made by the pope, or such as derive their power from him, not to them that are created by lay princes. See before, the making of a knight of S. Peter, where we speak of dukes. There is also in the old *ordo Romanus*, an *ordo ad armandum ecclesiae defensorem vel alium militem*, much differing in form from that in the *pontificale*.

LXII. The persons that give this dignity are seen in the examples hitherto brought, of the ceremonies used at the giving it. And more to that purpose occurs anon, where we speak of dignities given by subordinate princes in the empire. But we add here (that it may be had also with the more obvious passages of civilians touching this matter) that of *Nicholas Upton*, an *English* civilian (who lived in the time of our *Henry VI.*) under this title, *Qui possunt creare milites. Non existentes milites (saith he) aliquando milites faciunt & creant, quales sunt papa & magni barones, non milites. Sed ille miles qui creatur per dominum papam, debet degradari si militaverit contra ecclesiam, ut in l. i. C. de obsequiis. Et in necessitate scutiferi & sacerdotes, qui tamen sunt milites inermis militiae, ut notatur C. de equestri-*

* Greg. Lopez. ad l. 14. tit. 27. Partid. 2. c.

cap. 2. videbis Philoth. Achillin. som. viridarii lib. 1. cap. 123. Petrus Belluga in spec. princ. rub. 20. §. 4. quotidie videmus quod unus miles facit alium militem, &c.

† Et videbis Greg. pap. 7. lib. 9. post epist. 3.

‡ De re militari Ms. lib. 12.

bus dignitatibus l. i. *Sed certe scias quod tales qui sunt milites & a non militibus, creantur vel necessitate vel consuetudine quae habent vim legis, ut ff. de legibus l. de quibus ubi ista materia tractatur per doctores, & specialiter per dominum Bartholum in fine cujusdam repetitionis quam facit in dicta lege de quibus. Necessitate, ut forte aliquis volens esse miles apud sanctum sepulchrum Domini nostri Jesu Christi non reperiens ibi aliquem militem, potest sacerdotem requirere ut ipsum ordinet, ut est multoties visum, quod verum est tam de necessitate quam de consuetudine, ut in dicta lege de quibus per doctores. Et ut dictum est, si sacerdos ibi non fuerit, potest ille ordinandus requirere aliquem scutiferum valentem ut ipsum ordinet. Multi dicunt tamen quod requiritur quod talis scutifer ordinans sit in actibus bellicis & armis antea notabiliter approbatus, & tunc sufficit. Ex quibus jam insurgit quaestio; numquid non ordinatus possit alium ordinare? & quod non sic, probatur per naturam tituli extra. de clerico non ordinato ministrante. Ad quod respondit Bernardus ibidem in c. i. allegans pro se necessitatem ut ibi, cum quo concordat Henricus de Bowychio in c. accedens extra. de purgatione canonica. Sed tu dic breviter, quod officium militare officium est oneris & non honoris maxime ut dicam infra ordine suo; quia miles est servus republicae ut patet in l. milites c. locati & per naturas titularum ff. de re militari & C. lib. xii. de testamento militari c. ff. & Inst. ubi supra patet quod dictum officium militare est onerosum quamvis fuerit in multis privilegiatum ut ibi. Et contraria sunt vera in illis ordinibus per quorum collationem imprimatur character in animam ordinati. In creatione militis nullus imprimatur character. Quare voco illud officium militare proprie & non ordinem ut inferius dicam. Creantur autem milites ut dixi per non milites, consuetudine vel statuto. Ut forte est consuetudo vel statutum in civitate Ierosolima quod hostiarius sive custos officii hostii sancti sepulchri solus creabat milites ibi creandos. Scutifer ibi hostiarius vel custos qui de consuetudine, vel statuto ut praedixi habet exercere ea quae pertinent ad suum officium & sic de facto creati. Pro istis est dominus Bartholus in lege ergo omne ff. de legibus. Et sic habes quales possunt creare milites. And he confounds here, it seems, the knight of the sepulchre (which is commonly taken rather for a regular knight) with him of the spur or the ritter geschlagen. Hereunto we note that of Sir William of Badenfel, a German knight, who in mcccxxxvi. in his pilgrimage to the holy land, made two knights at the sepulchre by girding them with the sword. But whether he mean (for he relates it himself) knights of the spur, or those of the special order of the sepulchre, I know not. His words are, *supra sepulchrum Christi pulchram feci de resurrectione Domini missam celebrari, & aliqui de meis sociis corpus Christi devote susceperunt. Post missam feci duos milites nobi-**

les supra sepulchrum gladios accingendo, & alia observando, quae in professione militaris ordinis fieri consueverunt. That which some civilians have, of doctors that are regent^b or profess by the space of ten years, becoming thereby knights, we reject here as a meer fancy. For clearly this knighthood is gained only from some such creation as hath relation to arms. And although it hath been frequently and justly conferred also on men of the long robe, yet the title of miles, ritter, or the like with the sword or spurs, or such other notes as express arms or military service, shew that the dignity of it self is primarily relative only to acts of the short robe, according to that of our Dan^c Lidgat.

*Eques ab equo is said of very right,
And chevalier is said of chevalrie
In which a rider called is a knight.
Attagoners done also specific
Caballero through all that partie
Is name of wooship, and so took his ginning
Of spoes of gold, and chiefly riding.*

There are also, in the territories to which the dignities of this chapter belong, some special orders of knighthood; as that of the *Annunciata* instituted by Amè count of Savoy in mcccxcix. that *di sangue di salvatore*, in Mantua, begun by Vicentio Gonzaga, duke there, in mdcviii. and some other. But they are with diligence enough delivered in divers writers that have purposely collected them, and are obvious to any reader. Therefore I abstain here from further mention of them.

LXIII. As by the sword girded (which was the most essential part of the ceremony in knight- ing) knights were made; and by a stroke on the ear sometimes, as in divers of the examples before brought; so another dignity was wont to be conferred by delivery of a sword only, with a blow on the cheek or ear, which gave the liberty of bearing a sword or other arms, as in attendance on a knight or a ritter geschlagen, but not of the wearing it girded on as the knight did. These that had this ceremony and liberty of bearing arms in attendance on knights, were *armigeri*, *schilckhaben* or *wapeneren*. For it was not lawful for any other to bear arms, in those elder times, without the especial indulgence of the emperor, although the liberty of bearing them, or the *werhaft machen* (as they call it) be regularly in these later ages communicated to all subjects of the empire whatsoever. *Godaustus* having spoken of the old custom of knight- ing the sons of the gentry; adds, *ministri illi^c ad- juncti alapa & gladio in jus arma ferendi. Nic erat cuius licitum arma portare.* And to this purpose observe that in *Nolden*; *notanda est differentia quae antiquitus* (saith^e he) *in Westphalia observabatur inter nobiles ut ex antiquis instrumentis apparet, hoc modo, Wille- Johan von R. Ritter und Henrich der Knape,*

^a Guil. de Badenfel. Hodeporic. in terram sanctam.

de prof. in ube Constant. l. unic.

^b Mr. of the horse, sheep, and goose.

^c Ad Wint- bek. Poet. Germ. pag. 402.

^d De stat. nobil. tract. cap. 6. §. 72. videbis Befold, de Ord. Equestri §. 3. & quod notat Hotoman.

^e disp. feud. cap. 5. ex speculo Saxonic, de feudis.

Sc. Qui enim reipsa dignitatem equitis auri legitime adeptus erat *der zu ritter geschlagen war*, vocabatur eo nomine *ritter*. Qui vero vir armipotens erat, quem nos *rittermessig* nominamus, vocabatur *armiger*, ein *wapener*. Juniores vero, *die jungengeseßten*, nominati sunt *knapen*. Whence also he observes some subscriptions heretofore used in the empire with the addition of *armiger*; as *Johannes Morsaim* and *Henricus Bock armigeri*. And note this title given before^b to *William* earl of *Holland* (chosen emperor) before he was knighted.

But at this day (and that from some ages past) I think, this title of *wapener* or *armiger*, is grown out of use in the empire. Yet I have here thus remembered it, both as it hath a relation to the *ritter geschlagen*, and because the same title remains in the esquires of other states; of whom, in their due place. The names of *armiger* and *Scutarius* (³⁴⁰) (whence *escuyer* in *French*, and our esquire are made) are very obvious in the memories of the old empire. Especially in *Ammianus Marcellinus* and the *Notitia*. And *Pasquier* finds the titles of gentlemen and esquires in the *Gentiles*^k, and *scutarii* in *Marcellinus*. See his *Recherches de la France livre 2. cap. 15*.

LXIV. As these titles hitherto handled, are created by supreme power in the empire, and are immediate to the same power either as it is in the emperor, or is pretended by the pope; so by some great princes within the territory of the empire, (that, howsoever divers of them exercise a power fully imperial or regal, and be *supremi domini in terra sua*, or *imperatores in patria sua*, both which titles have been used in the styles^l of the dukes of *Lorrain*, yet have titles which are only feudal or subordinate) divers titles of the like name and nature are given, and held under them. This of *Maximilian* king of the *Romans* (under *Frederick III.*) his creation of *Charles* count of *Chimay* into the title of prince of *Chimay*, to him and his heirs of both sexes, may belong to this place^k.

Maximilianus, divina favente clementia, *Romanorum* rex, ac *Hungariae, Dalmatiae, Croatiae*, &c. archidux *Austriae*, dux *Burgundiae, Lotharingiae, Brabantiae, Stiriae, Carinthiae, Carniolae, Lymburgi, Luxemburgi, & Gheldriae*, comes *Flandriae, Haspurgi, Tirolis, Ferretis, Kiburgis, Arthesiae & Burgundiae*, palatinus *Hannoniae, Hollandiae, Zelandiae, Namurci, & Zutphaniae*: *margravius sacri Romani imperii, & Burgoviae*; *langravius Alsatie*: dominus *Frisiae*, *marchae Sclavonicae*, portus *Naonis, Salinarum & Mechliniae*, &c. Nobili *Carolo* comiti de *Chymay*; ex illustribus de *Croy* descendentibus ex vera & legitima progenie seu origine regum *Hungariae*, nostro & imperii sacri dilecto, gratiam regiam, & omne bonum. Illustri, fidelis, dilecte; etsi regalis sublimitas, necnon ejus circumspēcta be-

nignitas univerforum exaltationi studiose confueverit intendere, & ea quae reipublicae conducibilia esse crediderit perpendere, ad illorum tamē sublimationem procurandam prōriori & singulari quodam fervore inclinatur uberius quos firma constantia & inseparatae fidei diuturnitas, evidentibus testimoniis in conspectu regiae majestatis non mediocriter commendant. Sane consideratis multiplicibus & studiosis tuis & progenitorum tuorum obsequiis & nobilium tuarum virtutum industriis quibus tu & progenitores tui solida & integra probitate, cura pervigili, nobis & sacro imperio Romano indefesse claruissē, & complacuisse dinoscuntur, & inantea ferventius clarere & complacere poteris & debes, quanto majoribus honorum praerogativis, larga nostra manu regali, te senties frugalius refectum atque consolatum. Ideoque regalis nostrae majestatis oculis singulari quadam ferventia, in te gratiosius dirigentes, te, tuosque utriusque sexus haeredes, ac eorundem successores legitimos qui de lumbis tuis aut suis descendunt, vel imposterum descendunt, in veros principes illustres principatus de *Chimay*, principum sacri imperii ad hoc accedente consilio, animo deliberato auctoritate nostra regali, motu proprio & ex certa scientia ac de plenitudine potestatis in nomine Domini salvatoris nostri, a quo omnis honor & potestas prodire dinoscitur, elevavimus, ereximus, sublimavimus, atque creavimus, prout elevamus, erigimus, sublevamus, & creamus, auctoritate & potestate praedictis, decernentes, & hoc regali nostro edicto, quod tu & haeredes tui ac eorundem successores legitimi singuli utriusque sexus ex lumbis tuis & suis nati & nascituri ex nunc & inantea perpetuis temporibus quandocunque & quotiescunque casus se obtulerint, titulo principes illustres dicti principatus de *Chimay*, frui, nominari, & appellari possitis, ac in dandis & recipiendis juribus, & in conferendis seu suscipiendis feudis, ac in omnibus aliis conditionem & statum principum illustrium concernentibus, teneri, honorari, & ubique ab omnibus reputari, atque privilegio, honore, gratia, dignitate, & immunitate frui possitis & debeatis, quibus alii sacri imperii principes illustres hactenus jure vel consuetudine freti sunt, nostris tamen & sacri imperii juribus auctoritate & superioritate in praemissis semper salvis. Mandamus igitur omnibus & singulis principibus, ecclesiasticis, & secularibus, ducibus, marchionibus, comitibus, baronibus, militibus, clientibus, officialibus quibuscunque, capitaneis, burgraviis, potestatibus, ancianis, gubernatoribus, praefidis, iudicibus, regibus armorum, haraldis, perfovandis civitatum, oppidorum, villarum, & locorum communitatibus, caeterisque nostris & imperii sacri fidelibus dilectis cujuscunque status, gradus, seu conditionis existant tam in imperio sacro, quam alibi ubilibet constitutis, quatenus te & haeredes tuos ac successores tuos utriusque sexus legitimos praefatos illustres principes nominent, intulēt, & reverenter, vosque dignis honoribus semper prosequantur, cunctis temporibus futuris, ad evitandam nostram & sacri Romani im-

^b §. LIX.^h De Gentilibus, praeter ea quae magis obvia apud scriptores habentur, videbis quae habet Marcus Velserus rerum Augustarum Vindelic. libro 8.^l Francisc. de Rosiers, in diplom. & in Stemm. Lotharingiae pag. 17.^k I. Schobier, en la genealogie de la maison de Croy pag. 59.

perii indignationem gravissimam & quadringenta marcarum auri puri poenas, qui contra facient, toties quoties contra factum fuerit, ipso facto noverrint se irremissibiliter incurfuros, quarum medietatem regalibus fisci seu aerarii, residuum vero partem injuriam passorum usibus decrevimus applicandas. Dat. in civitate nostra imperiali Aquigrani sub regalis sigilli appensione & testimonio literarum ipso die coronationis nostrae Aquigrani habitae. Anno Domini millesimo quadringentesimo octuagesimo sexto, regni nostri Romani anno primo.

This is mistaken by *Aubertus*¹ *Miraens*, who supposes it to be *Maximilian's* while he was emperor. His father *Frederick III.* was then living, and *Maximilian* was not emperor till MCCCXCIII. which is seven years after this creation made by him while he was only king of the *Romans*, or designed successor.

Under the arch duke of *Austria*, is the count or grave of *Hardeck*, under the marquess of *Brandenburg*, the grave of *Honstein*, and under the duke of *Pomerania*, the grave of *Newgarten*. But these are not invested with such royalties as the graves that are included in the general name of the princes of the empire. To this purpose, *Matthias Stephani*, after he hath spoken of the graves that are included in the number of graves, that are immediate to the emperor, and are of the state of the empire; adds also, *sane sunt & alii comites qui non sunt in matriculam relati, & sine regalibus imperii investiti, reperiuntur in aliquibus partibus Germaniae, ut Hardeck sub Austriacis; item, graffen von Honstein, sub electore Brandenburgensi, graffen von Newgarten sub ducibus Pomeraniae, & episcopo Cammenfi. Hi quia regalia integra non habent, & aliis principibus sub sunt, iisdem jura eorum comitum, qui sunt status imperii, non competunt. So Rutgerus*^m *Rulandus* speaking of the *ius archivi*, or having, as it were, courts of record, belonging to graves. *Aut sunt comites imperii*, (saith he) & *ratione regaliorum*, & *quod una statum imperii repraesentant, idem in iis quod in ducibus & marchionibus statuendum erit. In omnibus enim qualitatibus hoc loco requisitis conveniunt. Aut sunt comites non in matricula imperii relati & sine regalibus investiti quales in aliquibus partibus Germaniae, (qui Landstamem vocantur) & in Italia & Lombardia magno numero reperiuntur, & his qui regalia non integra habent & aliis etiam principibus sunt subjecti, jus archivi, nisi specialiter a superiori concessum non habere statuo. Nam in his deficiunt requisita. Primo enim non condunt leges per se, sed statuta suorum dominorum timent, nec creant notarios, quia non imperium immediate, sed alium principem superiorem cognoscunt.*

For the dignities under the duke of *Savoy*; see the old laws of that dutchy printed, where barons, bannerets, and *valvasores* are especially mentioned. And antiently the dutchy of *Bavaria*, before the erection of *Austria* into a

dutchy, had, besides barons and counts, four marqueffes under it, of *Austria*, of *Styria*, of *Isiria*, and *Cambey*, as it hath since had counts and barons. *Hucusque* (saith *Stero* speaking of MCLVI. after our saviour, and others follow him) *quatuor marchiones Austriae & Styriae, Isiriae & Cambensis qui dicebatur de Clozburg, evocati ad celebrationem curiae ducis Bavariae veniebant, sicut hodie episcopi & comites ipsius terrae facere tenentur.* Other like are in other dukedoms. And for the power of giving dignities in a personal count palatine, you have that of *Charles the IV.* to *John de Amatis*, which is before cited out of *Thomas Sagittarius* where we speak of personal counts palatine. And in the *Lumbard* customs of the feuds, we see that dukes, ⁿ marqueffes, and counts might *de plebe aut plebis parte aliqua alios investire*, and so make *valvasores majores*, or give the dignity of the greater *valvasores*, and these also might create under them *valvasores minores* by giving fiefs likewise to be held of them, and the *minores* by a like grant and tenure reserved made *valvasini*, which was the lowest title of feudal gentry. Add hereunto the ceremony of knighting used by these princes of the empire. *Henry* duke of *Saxony* at *Rostolme* knighted *Albert* of *Mikelburg*, when he married *Euphemia* daughter to *Magnus* king of *Sweden*. *Ericus* (saith ^o *Krantzius*) *dux inferioris Saxoniae militari cingulo sponsum Albertum exornavit.* This was in MCCCXXXVI. And *Frederick* duke of *Austria*, made CXL knights upon *S. George's* day at *Vienna* in MCCXLV. *Centum & quadraginta* ^p *juvenes de terra sua nobiles apud Viennam honorifice donavit gladio & cingulo militari.* See before also the charter by which *Castuccio de Antelminellis* was made duke of *Lucca*. That also of *Frederick the II.* his giving to the king of *Austria*, (when he made it a kingdom) power to erect ^a *Carniola* into a dutchy belongs to this place. And pope *Julius the III.* by his bull of divers privileges given to the patriarchs of *Constantinople*, *Alexandria*, *Jerusalem*, and *Aquilegia*, with divers other archbishops and bishops, being of his household chaplains, among the rest, granted to every of them that they might create *milites & equites deauratos octo ac eisdem militibus solita equitum deauratorum insignia concedere*, as the words of the ^r bull are. Other examples to this purpose are enough frequent. For prescription of time and antient grants have settled a power of such creations of dignities in divers princes subordinate in the empire.

LXV. But it rests now that according to our first purpose, in the designation of the titles of the empire, we conclude with designing together summarily the several states of the empire. That we shall do by the enumeration of the feudal titles there, that are immediate to the emperor, according as we find them in *Goldastus*, ^t taken

¹ Diplom. Belgic. tom. 1. cap. 100.

^m De commissariis part. 2. lib. 5. cap. 4. §. 28.

ⁿ Feud. lib. 2. cap. 10.

^o Sueciae

lib. 5. cap. 28.

^p Annal. Austriae, ann. 1245.

^q Petrus de Vineis lib. 6. epist. 26. & de subinfederationibus quibus insigniores tituli

a principibus imperii conferuntur, vide praeter commentarios in jus feudistic. Andr. Knichen ad jus Saxon. verb. duc. cap. 6.

^r Laert.

Cherubin. Bullar. tom. 1. pag. 705. bull. 12.

^t In praefixis constitut. tom. 1.

out of the imperial records. After the emperor and king of the *Romans*, he places the three ecclesiastical electors, and then the four temporal; then some kings, (and he takes them and the rest, he says, out of both the old and later records) the archduke of *Austria*, the great dukes, the patriarch of *Aquilegia*, primates, archbishops, the masters of the *Dutch* order in *Prussia*, bishops, the masters of the *Dutch* order in *Germany*, and *Italy*, of the same in *Livonia*, and of the knights of *S. Johns* in *Germany*; then *abbates principes*, as the abbots of *Fulda*, of *Kenipten* in *Suevia*, of *Murbach* in *Alsacia*, and divers more, then, three *praepositi* or provosts, with the addition of *principes*, as of *Wessemburg* in *Alsacia*, of *Elewang* in *Suevia*, and of *Berchtoldsgad* in *Bavaria*. After these, the abbesses that are titled princesses also, as of *Quindlenbourg*, and of *Gandersheim* in *Saxony*, and some more. But of these kind of abbesses, says *Paumeister*, *et si plerique principum honorem & titulum gerunt tamen quoad locum in concessu, ac dictionem sententiae, pari cum reliquis jure censentur*. After these, in *Goldastus* follow dukes, then *lantgravii qui sunt principes*, as of *Alsacia*, *Thuringen*, *Hesse*, *Leuchtenberg*, and *Franconia*. Next after these follow *marchiones qui sunt principes*, then *principes simpliciter sic dicti*. Under which title he reckons that of *vaivoda*. After these follow *burgavii qui sunt principes*, as of *Norimberg*, *Magdeburg*, *Zorbeck*, and *Missen*. Next *comites qui sunt principes*, or *die gefürstete grafen*. After them, *domini qui sunt principes*, aut *aquiparantur*, under which title he hath *dominus Rostochiensis*, *dominus Stargardiensis*, *dominus Frisiae*, and divers more. Then *abbates*, *qui non sunt principes*, of which the number is very great; then provosts also that are not princes and abbesses that want that title. After them *balivi seu commendatores provinciales ordinum equestrium*. Then *comites* or *graves* in a great number, and *landgraves qui non sunt principes sed in comitum dignitate*, as of *Turgow* and *Walgow*, and such more, and *burggraves, qui non sunt principes, sed in comitum dignitate*, as of *Altenburg* in *Missen*, and *Kurburg* in *Thuringen*, and divers others. Next follow a great store of *barones* and *liberi domini*, and then a few *advocati*, or *vogten* of churches, *qui baronibus aequiparantur*. But I think that title is almost, if not wholly, ended, at least as it is honorary, in the empire. Next to those are *equites*, *ritteren qui baronibus aequiparantur*: and then the free cities, and the rest that are immediate to the emperor.

Those *equites* are there called, *societas Sancti Georgii* in *Suevia*, *ordo equestris* in *Hegovia*, *equites* of *Gerlasse*, *equites* of *Fridberg*, *equites* of *Baden*, *equites* of *Gelnhausen*, *equites aurei velleris in imperio*, *equites* of *Andelw*, *equites* of *Meldingen*, *equites* of *Strondeck*, *equites* of *Frosenberg*, *pincerna* de *Winterstetten*, *nobiles* of *Planitz* in *Misnia*, *nobiles* of *Platho* in *Saxonia*, *nobiles* of *Erenberg*, no-

biles of *Stainach*. But *ritteren* and *equites* among these (saying in that of the golden fleece) denote only some of the gentry ^a of the empire, or of the *adelichen reichs ritterschaft*, as they call it. Not *ritteren geschlagen*, or others of any order of knighthood. But in the other lawyers of the empire, these states of the empire are ranked somewhat otherwise. Those we shall more particularly design in the collection of authorities that concern precedence. For here we took this of *Goldastus*, not for matter of precedence, but chiefly to shew those differences of the titles of *principes*, and *non principes*, and others that *aquiparantur* to a title (as he says) though they have it not.

CHAP. II.

- I. Of titles in Sweden, and especially of making of knights in those northern parts.
- II. The creation and investiture of a duke in Poland.
- III. The investiture of a *vaivoda* by the king of Poland. Of the title of *vaivoda*, of palatinus there, and *boiari* and *armigeri* in Moldavia.
- IV. Of barones in Poland, and boyarones in Leytow, and of other titles in Poland.
- V. Of the titles in Hungary.
- VI. Of those in Bohemia.
- VII. The *titolati*, as princes, dukes, marquesses, and counts, with their coronets, in the kingdom of Naples. The title of archduke once there.
- VIII. The general and distinct notion of the title of barons there.
- IX. The title of knight or *eques auratus* *S. Marci* given by the state of Venice.

After these titles of the empire, we come to those which are in some states that are nearest adjacent to it, or intermixed with the territory of it.

I. The adjacent or intermixed kingdoms wherein any of the like titles have been, have imitated for the most part the customs of *Germany*. *Sweden* hath almost the same names varied from *high Dutch* into *Swedish*, as the same titles in *Spanish*, or in other of the provincial tongues are from *Latin*. The title of *hereditary prince* there ^{*} in the heir apparent, is expressed by *arffurst* of the *Swedes*, *Goths*, and *Vandals*, and a duke they call *hertig* or *hertug*, a count *greffue*, and a baron *früherr*. The same names of *hertug* and *greffue*, the king of *Denmark* uses in his titles, as *hertug udi Slesvig*, *Holsten*, *Stormorn*, or *Opmærken*, *greffue udi Oldenborg* or *Delmenhorst*, duke of *Sleswick*, *Holstein*, *Stormer*, and *Ditmarsh*, count of *Oldenburg* and *Delmenburst*. But in

^{*} De jurisdict. lib. 2. cap. 1. §. 17.

^a Andr. Jon. Gothus Thes. epistolic. lib. 2. cap. 9.

^a De quibus videlicet Besold. disc. politic. cap. 6. Paumeist. de jurisdict. lib. 2. cap. 2. §. 17.

the old laws of Sweden, I find no mention of any secular dignity, (that is not merely officia-ry) beside *ⁱ miles & militaris*, the one, as I conceive, denoting a knight, the other a gentleman; and sometimes *militares militibus similes* occur, which I understand for gentlemen of fit estate, and merit to be made knights. But the making of knights in those northern kingdoms, is sometimes used with more solemnity than only the slight stroke of a sword. The belt, sword, and shield were sometimes given, together with fiefs; and an oath taken by him that was knighted, especially at coronations. The northern kings (saith *Olaus archbishop of ² Upsal*) after they are crowned, use to create *militēs auratos, feudis abundanter distributis, cingulo & ense ac clypeo praeistitis, tali tamen interveniente juramento in manibus alicujus praelati assistentis*. The form of the oath is,

Ego N. opto mihi ita Deum propitium & beatam Virginem ac sanctum Ericum quod volo juxta extremum meum posse per vitam & bona mea defendere fidem catholicam & sanctum evangelium, & tenere ac protegere ecclesiam & ejus ministros in sua libertate & immunitate & stare contra omne quod iniquum est & conservare pacem & justitiam, & defendere pupillos & orphanos, virgines, viduas, & pauperes, & seu fidelis & securus meo regi & regno seu patriae meae, & jussu exhibere & exercere militare statum ad honorem Dei secundum ultimum posse meum; sic me Deus adjuvet, & omnes sancti ejus. Amen.

And by this oath (saith *Olaus*) the knights conceived themselves so bound, that upon publication of any war, against either the infidels (as *Turks*) or schismatics (as those of *Muscovy*) they ever with all readiness, and at their own charge, prepared themselves to be a part of the army. And for that form of the oath by name of God, the blessed Virgin, and Saint *Eric*; it is according to the custom of other solemn oaths antiently used in that state. For the kings there also, at their coronation, were wont to swear ³ thus, *Sic mihi Deus sit propitius in corpore & anima, ac virgo Maria, & S. Ericus omnesque sancti ac reliquiae sanctorum quas manibus teneo, quod omnes & singulos enumeratos articulos tenebo, servabo, &c.*

For the order of the elephant in *Denmark*, and of the sword in *Sweden*, I refer you to the many writers that have collected the orders of knighthood; every of them almost, hath all that I know of those orders. And I am unwilling to transcribe from them. But there came now to my hands, when the press was thus far, the form of a patent testifying the creation of a knight by the king of *Sweden*, which I insert here as the only example that I have seen of that kind. It is of the creation of my worthy friend Sir *Henry Saint-George*, knight, in his late employment thither, when the order of the garter was sent to that king.

N Os *Gustavus Adolphus Dei gratia Suecorum, Gotthorum, Wandalarumque rex*, magnus princeps *Finlandiae, dux Esthoniae & Careliae*, nec non *Ingriae dominus &c.* Significamus vigore praesentium quorum interest aut quomodolibet interesse potest universis & singulis, inprimis hasce nostras visuris, lectoris, auditoris; quod cum serenissimus ac potentissimus princeps dominus *Carolus* eadem gratia *Magnae Britanniae, Franciae, & Hiberniae rex*, fidei defensor &c. consanguineus, frater, & amicus noster charissimus, in arctioris amicitiae nexum, & evidentissimum amoris erga nos sui perpetuo duraturi pignus, praeteritis hisce diebus auream nobis pericelidem ordinis sancti *Georgii*, per legationem solennem offerri curaverit; in eaque nobili viro *Henrico Saint-Georgio* armigero ex heraldis suis ad arma uni, illum locum summo cum honore assignaverit, ut per eum quae ad ritus ejus ordinis absolvendis spectarent, maxima ex parte perficerentur; idcirco, quemadmodum ob multas causas gratissima fuerit nobis praesens legatio: ita vicissim aequum arbitrari sumus, ut legatis ipsis aliquid gratiae & favoris nostri specimen exhiberemus. Quoniam igitur maximum erga bene meritos favorem nostrum, singulari alicujus honoris adorea metiri solemus: atque inter omnes gentes summae semper aestimationis habitata fuit dignitas ordinis equestris, ideoque tam ratio suorum principalium, quam sua ipsius merita postulabant, ut hac cum favoris tessera dignandum conferemus. Quemadmodum enim a mutua quae nobis cum serenissimo *Magnae Britanniae* rege intercedit amicitia, haud alienum videbatur, ut quae nobis legatio equestris dignitatis insignia attulisset, eidem nos vicissim, in suo gradu, equestrum honorem tribueremus: ita maxime conveniebat, ut & legato, ob civilis prudentiae merita, & armigero, heraldoque ad arma, propter bellicae fortitudinis conformitatem, hujus dignitatis praemia darentur: quo posteritati etiam suae constaret, hoc eum, non modo viri fortis brabaeum, sed etiam fideliter administratae legationis encomium, cum laude reportasse. Praeterea tot etiam aliae virtutes nobis ejus personam insinuavere, utpote quod non tantum claris majoribus ortus, verum etiam egregiis animi & ingenii dotibus excultus; in alicuius officii laudabiliter obeundis versatus; multa rerum experientia ornatus, adeoque & regi suo per integrae fidelitatis obsequium charissimus; & omnibus bonis, ob animi moderati laudem, morumque concinnitatem gratissimus esset: ut merito gratia & benignitate nostra tanto digniorem judicaretur, quanto pluribus nobis virtutibus commendatus esset. In castris igitur & conspectu totius exercitus, ritu christianis principibus solenni, motu vero proprio & ex plenitudine regiae potestatis, dictum *Saint-Georgium equitem auratum* creavimus: eumque ad hanc eminentiam eveximus & extulimus; dedimusque ei & in eum contulimus omnes honores, privilegia, immunitates, libertates, jura, praeceminentias & insignia, quae quocunque tempore, juxta cujuscunque loci consuetudinem, mores & ritus, tam imperatori-

ⁱ Raguald. Ingemund. leg. Suec. lib. 2. cap. 8. & 21.
lib. 2. cap. 4.

² Hist. Septent. lib. 14. cap. 7.

³ Raguald. Ingemund. leg. Suecorum

bus *Romanis*, quam aliis regibus, huic praenobili equitum auratorum ordini, in omnibus & quibuscunque praerogativis, gestatione auri, sessione, processionibus, aliisve solennioribus & honoratioribus congressibus, concessa sunt: ita ut apud omnes & inter omnes imperatores, reges, duces, principes, praelatos, liberas republicas, comites, barones, communitates, & quosvis magistratus dignitarios, iis dignitatibus, praeceminentiis, praerogativis, ornamentis, & clementiis, perpetuo, publice, palam & ubique utatur, fruatur, gaudeat, & prae caeteris praefulgeat, coruscet, excellat, nec ullius hominis, cuiuscunque is conditionis fuerit vel dicto vel facto, in iis exercendis aut usurpandis impediatur vel prohibeatur. Et ut dictus *Saint-Georgius* tanto majus benignitatis & clementiae nostrae documentum habeat; paterna ejus insignia cum effectu reassumimus, eaque regia nostra auctoritate in perpetuum rei memoriam augemus, ita ut quem gestat leo ruber tribus insuper coronis flavis regnorum nostrorum insigniis condecoretur; quemadmodum praefens schema * ad vivum demonstrat: quod illi & posteris ejus utriusque sexus ex lumbis ejus legitimo thoro procreati vel procreandi, uti strenuos viros decet in omnibus honestis rebus, insigniis, aulacis, figuris, picturis, tabulis, signis, sculpturis, hastiludiis & quibuscunque aliis actionibus decoris, habeant, possideant, gerant & fiant publice & palam.

Rogamus itaque augustissimos, potentissimos, illustrissimos, reverendissimos, illustres, reverendos, generosos, magnificos, & nobilissimos imperatores, reges, *S. Rom.* imperii electores & principes, liberas republicas, comites, barones, & communitates omnes amice, benigne, & gratiose: nostratibus vero utpote regni nostri principibus, comitibus, baronibus, nobilibus, praelatis, militaribus, & militibus omnibus incolis severe mandamus, & serio injungimus ut nominatum *Henricum Saint-Georgium*, pro equite aurato nobilique agnoscant, habeant, venerentur, & privilegiis, dignitatibus, praeceminentiis, praerogativis, utilitatibus, & honoribus, illi a nobis concessis, penes se & inter suos licite & libere uti & frui, nec in quoquam illi denegari, vel per alios malitiose derogari quidquam pariantur. Sed potius ei convenientem honorem & omnia humanitatis officia in nostri gratiam exhibeant, eundemque digne promoveant. Nostratibus vero secus facturis, & in hanc regiam nostram concessionem, malitiose & contumeliose commissuris, multam quadraginta librarum auri puri irrogamus; eosque a modo condemnamus, ad partem dimidiam nostro fisco, alteram nominato nobili & equiti *Saint-Georgio*, sine ulla requisitione perfolvendam. In quorum omnium fidem, majusque robur, praesentibus manu nostra subscriptis, sigillum nostrum regium scienter appendi jussimus. Actum in castris nostris ad *Dirscaviam* die vicesimo sexto Septembris. Anno millesimo sexcentesimo vicesimo septimo.

II. According also to the fashion of the empire, the giving of some feudal dignities occurs in the memory of *Poland*. The examples I meet with are of the title of duke, and of *vaivod*. *Sigismund* the first, in the treaty at *Cracow*, MDXXX, among other articles, agreed with *Albert* marquis of *Brandenburg*, then master of the *Dutch* order in *Prussia*, to give him divers territories there as duke; *tantum duci in Prussia, in legitimum* (so are the words of the ^b treaty) & *haereditarium feudum conferre, & ejusmodi infundationis literas ab uno fratre ad alios & eorum haeredes tantum super indiviso feudo juxta tenorem transactionis conficere*. And it was agreed further, that if the four brothers, marquesses of *Brandenburg*, *Albert*, *George*, *Casimir*, and *John*, died without issue male, the dutchy should revert to the crown of *Poland*, and that *Albert* should receive investiture by a banner, and do his homage by oath, and his brother the marquess *George* at him the investiture should *suo & fratrum nomine vexillum continere*. This was agreed on *Palm Sunday* in the same year, and upon *Monday* it was performed. For then is the patent dated, that creates *Albert* duke of *Prussia*, according to the treaty. The dignity and territories are given to him and his heirs males of his body (the investiture being *per vexilli nostri traditionem*, as the patent speaks) the remainder to his brothers, the one after the other, accordingly. The tenure is to assist the king, with a hundred horse whensoever he should go himself into the field against an enemy. And of other investitures of the same dutchy, afterward in the nature of a livery to the heirs, other testimonies are. And one is especially observable, that when the banner was delivered to the heir, who had not his right free from the claim of competitors, they were admitted *ad contactum extremitatum vexilli ejusdem*. This was under *Sigismund* the II. in MDLIX. when duke *Albert* was invested, and the marquesses of *Onolzbach*, and *Brandenburg*, *Frederick*, and *Joachim*, laid claim to the dutchy. Other instruments of making feudal ^d dutchies there, are publicly extant. They call a duke *kiaze* or *kiaze*.

III. An example of a feudal *vaivod* (or *voievoda*, as they call it, and *voievodotite* in the plural) is in that of king *Kazimir* the his III. infundation of *Moldavia* to *Stephen*, *vaivod* of *Moldavia*, in September MCCCC-LXXXV. This was not the first creation of the title of *vaivod*, in this *Stephen*, but only an investiture or solemn livery, whereby *Moldavia* was thus received as a fief from the king of *Poland*. It was after a treaty on both sides wherein the *vaivod* (being otherwise under the empire) agreed to both to put himself into the protection of the crown of *Poland*, and also to receive his territory and dignity from the king as a fief. The ceremony was, that the king sitting in state, *Stephanus palatinus* (so they call a

* Here in the Patent the Arms are accordingly expressed.

^b Priluf. stat. Polon. lib. 5. cap. 3. pag. 766. & tom. 1. rer. Polonic. pag. 226. ^c Orat. vicecancel. Poloniae in comitiis Lublini habit. 1559. apud Chytraeum Saxon. lib. 22. ^d Priluf. stat. Pol. lib. 5. cap. 5. & tom. 1. rer. Polonic.

vaivod, whereof more presently: and thus it is described in the records of Poland a majestic regie per magnificos nuncios ad veniendum faciendumque ea quae debet, avisatus & conductus cum omnibus suis armigeris, boiariis vulgariter dictis, eques venit, ad latus vero per universum fidelem habebat, cui banderium quoque magnum sericeum coloris rubri in quo arma terrae Moldaviae pulchre auro depicta erant, praeferebatur. Sui vero omnes terrigenae bona haereditaria in Moldavia habentes, & alii omnes curienses notabiliores banderia parva, quolibet suum equum insedendo, manu tenebant; ipsius & regis clangentibus tubis. Accedensque ad solium M. R. equo descendit, dein banderium manibus corripuit, ac mox cum banderio versus solium processit. Id etiam sui omnes post eum fecere; immediateque solium accedens flexis suo more genibus & capite prono, banderium usque ad terram inclinat, similiterque facientibus subditis tenorem omagii his verbis proferebat. M. R. immota sedente, sed stantibus dominis, his verbis in facie M. R.

Clementissime mihi rex, ego serenitati vestrae omagium facio cum omnibus terris & hominibus meis, & peto tuitionem serenitatis vestrae, & circa jura, in jureque meo, & dignitatibus conservari.

Hic adhuc banderium tenuit, pro genu autem flexione, de ritus sui more, capite inclinato, tacto signo crucis sanctae iusjurandum fecit corporale, his verbis.

Gratiosissime rex, ego omagium praesto, & juro ac etiam promitto fideliter sine dolo & fraude vestrae serenitati, successoribusque serenitatis vestrae regibus & sacrae coronae regni Poloniae cum omnibus terris, baronibus & hominibus meis, fidelitatem, esseque fidelis & obediens serenitati vestrae successoribus & coronae Poloniae regni; sic me Deus adjuvet, & sancta Christi crux.

Mox juramento finito, haec respondit M. R. verba, residens in sede M. suae.

Nos te & terras tuas in nostram protectionem recipimus, & circa omnes dignitates & jura omnia terrarum tuarum tanquam palatinum nostrum relinquimus. His dictis osculata est cum majestic regie.

Osculo facto, recepit banderium M. R. manibus suis de palatini manibus, in manusque marescalli regni illud dedit. Hic primum armigeri omnes, palatini Moldaviae stantes circa solium majestatis, sua banderia parva e manibus in terram straverunt, marescalloque regni praeditto banderium magnum de folio majestatis juxta ac conclusum erat ad thesaurum regium deferente, & parva illa per cubicularios M. regiae collecta iidem ad thesauri locum ferebantur servanda. Noluit quippe palatinus & armigeri consentire, ut intra tractandum diri-

perentur: quin petiit ipsorum ut banderia omagialia honeste servarentur propter majoris amicitiae autoramentum. Quo facto M. R. non longe a se palatinum tanquam amicum & suum omagialem penes se locavit, & confedentibus illis, armigeri ipsius omnes sub hac forma juraverunt, tacta cruce.

Nos barones, vasalli & tota terra Moldaviae praestamus omagium nostro & totius communis terrae Moldaviae nomine, serenissimo principi Domini Kazimiro & successoribus regibus Poloniae, & coronae regni Poloniae, promittimusque & juramus omnem fidelitatem, subjectionem, & obedientiam in perpetuum serenitati suae regno & regibus Poloniae, ita nos Deus adjuvet, & sancta Christi crux.

The oath was taken, some of them laying their hands on the cross, and some holding them over it. In the relation of this ceremony, the titles in Moldavia are (by the way) specially observable, and that *armigeri* or *boiari* (signifying the same) comprehends also the *barones* of that territory. These words *armigeri ipsius omnes sub hac forma juraverunt*, referred to *nos barones vasalli* &c. seems to shew it.

But for this title of *vaivod*; it is a name in those parts that denotes as much literally as *captain*, or *militiae praefectus*, and in *Moldavia*, at that time, was thus feudal; however in the latter times the *vaivod* there hath taken the name of *despote* or *prince*, as supposing (say some) that of *vaivod*, as it is used in the neighbouring kingdoms, of it self to denote too much subjection. See before where we speak of this *vaivod*, as of a prince of the empire. And indeed in *Poland* and the great duchy of *Leitow*, and elsewhere in the members of that kingdom, there are many known also by the name of *vaivods*, which are all ⁵ officary only, and for life, and have commands in the several territories committed to them, somewhat like the lords lieutenants of shires in *England*, and have their *castellans*, like deputy lieutenants under them in all places, except *Cracow*, where the *vaivod* is under the *castellan*, as for a perpetual memory of the dishonourable flight of the *vaivod* of *Cracow* under king *Boleslaw Krzywousti*, from a *Russian* ambush. But these *vaivods* in *Poland* are not at all feudal, nor to be reckoned among titles of honour, but of office. (205) And so it is very antient in those parts, ^h and attributed to the time of near ^h *h* years past. The later *Greeks* made into their language the name *βοήδο*, from it to denote a *vaivod*. So we see in that of *Constantinus Porphyrogenetus* where he speaks of the *vaivod* of *Chazaria*. He says, ⁱ that the first governor or prince there was called a *βοήδο*, which questionless he means for *vaivod*. ^o *Ὀνομα δ' αὖτις ὡς ἡ οἱ λαοὶ μετ' αὐτὸν βοήδο* *ἡγεῖται*, by the name of his dignity, as his successors, he was called *vaivod*. But the historians and lawyers of *Poland*, that ex-

^e Ex archivis Polon. Priluf. stat. Polon. lib. 5. cap. 10. fol. 806. & tom. 1. In rerum Polonic. pag. 254. & de palatinis Poloniae, vide plura apud Cromerum de situ Poloniae lib. 1. & Salomonem Newbegaverum Polonic. hist. lib. 2. ^f Vide Leunclavium Pandect. Turcic. cap. 71. & 174. Cromer. in Polon. lib. 2. ^g De iis consules si placet J. Herborn. stat. Polon. fol. 174. & 239. b. & Priluf. lib. 1. cap. 3. & cap. 6. & Dabrowice in statutis Polonice editis 1600. ex Andrea Prochinichi. ^h Gaguin. circa init. chron. Polon.

ⁱ De administrando Rom. imp. cap. 38.

prefs themselves in *Latin*, usually call a *vaivod*, *palatinus*; which doth not at all literally translate it. But use hath made those two words there to be now equivalent. And this feudal *vaivod* also of *Moldavia*, we see called *palatinus* every where in that relation of the ceremony of his receiving investiture.

IV. In the laws of *Poland* sometimes the secular states are reckoned by the title of *comites*, *barones* (or *panowie*, as they call barons, that is, *domini*; for *pan* is but *dominus*, as in the king's stile among their laws, wherein frequently *Rusky p Pruski p Razowickie p Zundzie pan p dziedzic* occurs for *Russiae & Prussiae, Muscoviae, Samogitiae dominus & haeres*) *milites*, *proceres*, *nobiles*, *burgenses* caeterique *subditi & incolae*, &c. sometimes of *principes*, *barones*, *nobiles*, &c. sometimes of *barones*, *milites*, *nobiles*, &c. These kind of titles in general are frequent in passages that concerning the states there, occur in *Herbort* and *Prilufius*. But the archbishop of *Gnesna* subscribes himself (besides *legatus natus regni Poloniae primas*) *primus princeps*, in his letters to *Baronius*^k touching the translation of his annals into *Polish*: and *Baronius* likewise styles him so in his answer, which is indeed but according to the very syllables used in the description of the rank of their dignities, published in their laws by *Dabrowice*, and printed at *Cracow* in MDC. out of *Jendrzeja Prochnickiego* a canon of *Cracow*, that published the same at *Rome* in the same language.

In the instrument of annexation of the dutchy of *Leithow* to the crown (which was by *Alexander*, alias *Witwod*, great duke of *Leithow* and *Vladislaw* the first, in MCCCC.) duke *Alexander*, saith he, doth it with the assent *omnium baronum, nobilium, procerum, & boyaronum ejusdem terrae*. And *barones, nobiles & boyari ejusdem terrae*, are remembered often in the same instrument, where for *Poland*, *barones & nobiles* are still mentioned. But it seems, that *barones & nobiles* signify there rather the officary palatines and castellans, whom they call *dignitarii*, and other principal gentlemen of the counsel of state, than any particular dignity, as it doth in the empire, and in most other places. And for *boyarones*; the word is used (being the same as *boiari*) both in *Moldavia* (as we see before) and other parts^m of the eastern *Europe*, and denotes those of the gentry rather as interpreting *nobiles*, than as being any other dignity besides it.

For knights; as in other places, so the king makes them there. At that investiture of the *vaivod* of *Moldavia*, before mentioned, the king knighted both all of desert in his own court, and all the *boyari* or *armigeri* of the *vaivod*. *Omnes palatini armigeros, universam denique curiae suae juventutem militiae symbolis insignivit*.

But for honorary titles in the later age, within that which is known properly by the name of *Poland*; *Jendrzeja Prochnickiego* a canon of *Cracow*, in his description of the state of *Poland*, published at *Rome* in MDC. and inserted by *Dabrowice* into his collection of the laws of *Poland*, saith, that *sunt in regno titulo ducali & marchionatus insigniti. Sed qui cum reliquis regni proceribus, comitibus, baronibus, &c. nobilibus jure utuntur communi. Ordo etenim equestris, cum magnam sibi apud suos principes & remp. parasset laudem & merita bellicis artibus ac fortitudine militari, ad eam cum titulatis aequalitatem pervenit, ut aequo jure & ad capeffendos honores & ad liberam novi regis electionem pertineat, unde tanta omnium & par libertas*. So *Cromer* bishop of *Warne* writes, that there is scarce any distinction at all by them. *Est pari dignatione Polonica nobilitas* (saith^o he) *nec est ullum in ea patritiorum comitumve discrimen, exaequata quodam tempore omnium conditione*. But then he adds, *nuper adeo paucis quibusdam parentum vel ipsorummet amplitudine atque meritis & principum beneficio, comitum decus denuo partum est. Ducum qui peculiares haberent dominatus vel territoria nunquam aliud genus fuit apud Polonos quam id quod a Boleslaw Krziwousto principe propagatum fuit, cum is principatum inter liberos divisisset. Verum id jam defecit*. Here he seems to attribute the beginning of feudal dutchies there to this *Boleslaw Krziwousti* that died and left his kingdom so amongst his four sons, that three of them held their several parts as fiefs of the eldest. So he supposes, as I think. And *Solomon Newbegaver*, a *Prussian*, writes to the same^p sense. This *Boleslaw* died in MCCCXIX. And according to that fashion of giving dutchies, some say that^q antiently *Siradia* and *Maffovia*, both as dutchies, were wont to be given to the second son of the king.

V. In the laws of *Hungary*, collected by^r *Stephen Werbeucz*, *barones, magnates, nobiles & proceres regni* are remembered together, and often severally, especially *barones & nobiles*. In the antienter constitutions of the kings of *Hungary*, and that of about 100 years past, *barones, comites & milites* occur, and *duces*^s also. But both *duces* in the elder laws, and *comites* also in the elder and later, most frequently denote officary dignities, and not feudal. For in every of the provinces there (they call them *camitatus*) the king was wont to appoint one by the name of *comes* in *Latin* (to whom a *vicecomes* was to be substitute) as a lieutenant especially for civil government. This was ordained by *Matthias* the first, in MCCCCLXXXVI. Such officary counts are called *comites parochiales* or *parochiani*. But others are expressed by *comites perpetui*. And those I conceive to be feudal.

^k Praefix. tom. 4. Baronii.

^l Herbort, verb. unic. pag. 294, &c. & Priluf. lib. 5. cap. 1.

^m Sigisfund. lib. in Muscovia.

ⁿ Apud Priluf. lib. 5. cap. 10. pag. 807.

^o De situ Poloniae lib. 1.

^p Hist. Polon. lib. 1.

^q Alex. Gaguin. in de-

script. Polon.

^r Werbeucz jur. conf. Hungar. part. 1. tit. 2. part. 2. tit. 4.

^s S. Stephan. reg. decret. lib. 1. cap. 4. &

42, &c.

^t Privileg. S. Stephan. reg. protoabbat. S. Martini, anno Christ. 1001.

^u Matth. reg. decret. 5. cap. 67. & videlicet

Dubrau. hist. Bohemiae lib. 6. sub initio.

dal. Such a one is the count of *Scepusia*, which title was, (I know not whether it continue) in the family of *Zapolya*. *Emericus de Zapolya* in the subscription to one of the decrees of *Matthias* is noted with *comite* * *perpetuo terrae Scepusiensis*. So is *John de Zapolya* also² elsewhere and others. And of this kind of counts, it seems, is that to be understood in *Otho*² *Frisingensis* speaking of Hungary; *hinc est* (saith he) *ut cum praedictum regnum per LXX. vel amplius divisum sit comitatus, de omni justitia ad fiscum regum duae lucri partes cedant, tertia tantum comiti remaneat*. Where we see also the like custom for a third part of the profits of the country courts, to that which was also antiently in *England*, as is hereafter shewed. But whereas in the beginning of *Istbuanfius* his late history of Hungary, there is mention of *Stephanus Zapolianus palatinus comes Scepusiensis*, it is not to be understood as if the count of *Scepusia* were a feudal count palatine in *Scepusia*. There is no such title, I think, in Hungary, as a count palatine of this or that country; but there is an officer of greatest dignity, and of a kind of a general lieutenancy under the king, whom they call at this day *palatinus*, as in their laws and histories in *Latin* he is named. And because this count of *Scepusia* had that office in court, as also his ancestor *Emericus* before him, therefore is *palatinus* joined to his name; but this officary dignity of *palatinus* (as it is usually called in the testimonies that concern it in the later ages) was in the elder times also expressed by *palatinus comes*, as we see in the laws of *Ladislaus* and *Colomann*,³ two antient kings of Hungary, and was justly so expressed in regard of the nature of it, which is in substance, as that of the *comes palatii*, in the *French* empire, whereof enough is already said.

As the name of *comites* with them, is thus both an officary and honorary, or feudal title, so is that of *barones*: which they distinguish into barons in office, and barons not in office. And these last I conceive to be feudal and honorary. *Werbeucz* speaking of the barons and gentry, says they have all equal liberty, exemption and immunity, and the like proceeding in law is used against the one and the other. Nor makes he any⁴ difference betwixt them, save only with this exception, that their homages (as he calls it) or the *weregilds* (that is the price of one slain without fore-thought malice) differ, as also the dowries that they are to leave to their wives. For the homage of a baron is c marks, and of a gentleman or *nobilis* but L. And the widow of a baron in office may demand a c marks for her special dowry as due, *propter ejus desolationem* (as he says) or for her maidenhead, beside whatsoever else is settled on her. But of a gentleman or knight but L. or otherwise according to the value of his possessions;

nor any more of a baron not in office. And in delivery of this law, he uses *magnas* for a baron without an office. *Relicta*, saith he, *baronis plus consequitur ratione dotalitii propter desolationem quam relictæ unius magnatis*. And *si maritus officium baronatus gesserit, tunc mulier ipsa centum marcas, si vero magnas, vel baro solo nomine fuerit & officio baronatus caruerit, aut insignis nobilis vel miles extiterit, &c.* then the widow is to have L marks. But then he tells us whom he means in all this by barons, and makes the word denote all their greater, both officary and feudal, dignities. *Ne autem super officiis* (so are his words) *& nominibus baronatum dubium suboriri possit; eorum nomina hic inferenda existimavi. Sunt itaque veri barones quorum ab antiquo nomina decretis & literis confirmationalibus regis inheri consueverunt. Palatinus regni Hungariae, judex curiae regiae regnorum Dalmatiae, Croatiae, & Sclavoniae banus; waywoda Transilvanus, & Siculorum comes. Banus Zecorinensis. Item thavernicorum, janitorum, pincerarum, dapiferorum, agazonum regalium & reginalium magistri, necnon Thewesensis & Posoniensis comites. Of their palatine, already; and of the name of *vaivod* also, which is the same with *vaivod* mentioned before in Poland. And *banus* in those parts is that officary title of government which in *Constantine* & *Porphyrogenetus*, as I conceive, is called βασις. Perhaps *Hesychius* meant the same where he speaks of *bannas*. *Bannas* (saith he) βασις παρὰ Ἰταλιώταις, ὅδε, μέγας ἀρχων. *Bannas* with the *Italians* signifies king; but some interpret it a chief magistrate. Unless he meant this word *ban*, which he might easily meet with in Italy, as brought from the parts of Hungary, or those near kingdoms which were long since⁵ incorporated to it, I confess with the learned *Meursius* I understand him not. The *tavernicorum magistri*, are there of such nature, as our barons of the *Exchequer*. And for the *comites* last named here; they are officary counts only, and so reckoned among those officary dignities.*

The dignity of knighthood is given there (as in *England* and other places) by gently striking the person honoured on the shoulder. King *Maximilian* at his coronation MDLXIII. knighted divers after that fashion. In *Franciscanorum templo* (saith *Istbuanfius*) *editiore in loco, podium gradibus excelsum, aulaeisque stratum, erectum erat, in quo sedens haud paucos milites & praefectos, equestri dignitate, humeris de more gladio leviter percussis, ornavit.*

VI. The kingdom of *Bohemia* hath from antient time had almost all kind of feudal dignities, and of the greatest also, and knights, as the empire. In an exemplification made by the emperor *Charles* the IV. of *Rodolph* the first, his

* In constit. Hungar. subnexis Bonfinio pag. 113.

² De gest. Fred. I. lib. 7. c. 37.

³ Istbuanf. hist. lib. 6. pag. 84.

⁴ Decret. lib. 7. cap. 3.

⁵ Decret. lib. 1. cap. de equo

donato regi: & videtis Goldast. constit. imper. tom. 3. pag. 403. & decret. Alberti II. imp. Budae edita 1439. art. 2. ibid. pag. 458.

⁶ Werbeucz conf. jur. Hungar. part. 1. cap. 2. part. 3. tit. 5. & part. 1. tit. 93.

⁷ Part. 1. tit. 94.

⁸ Werbeucz juris conf. Hungar. part. 3. cap. 1.

⁹ Historiar. lib. 21. p. 425.

patent of attestation touching the right of electorship which is in the king of *Bohemia*, mention is of counts and dukes in particular, with a general comprehension of the secular estates, by *cæterique duces*, ^h *principes*, *barones*, *proceres* & *nobiles regni Bohemiae*. The antientest creation of a duke there, or livery of a dukedom, that I find expressly mentioned, is under king *John*, about mcccxxx. *Johannes rex Bohemiae, contulit ducatum Oppaviae Nicolao eleganti juveni*. This *Nicholas* was son to another duke *Nicholas* that enjoyed it before him. So *Henry* duke of *Silesia*, upon leaving his whole dukedom to the same *John*, had a part of it given him for life, by the name of a dutchy, with a pension of a thousand marks of silver out of the king's exchequer. *Hinc rex provinciam* (saith one of their ^k old stories) *Glacensem ad tempora vitæ ducis possidendum pro ducatu assignat, sibi que deputat mille marcas argenti annis singulis a fisco regio, quoad vixerit, percipiendas*. And before this time the duke held the whole dutchy of *Silesia* of the king. For the story says, that he treated with the king, *de ducatus sui resignatione*, which supposes, I conceive, a precedent feudal possession of it; as, I think, before that time, there was of other feudal dignities in *Bohemia* after the example of the empire. The same king also made his son ^l *Charles* (that was afterward the fourth emperor of that name) marquis of *Moravia*. Those territories of *Silesia*, *Moravia*, with *Lusatia*, were annexed to the crown ^m of *Bohemia* by the emperor *Henry* the IV. about mxxxx. and of later time have been in the king's stile and possession, where at pleasure also he creates counts and barons. In *Bohemia* & incorporatis provinciis (saith ⁿ *Nolden*) *utpote Moravia, Lusatia, Silesia, &c. summam potestatem obtinet rex & non solum nobiles sed etiam comites & barones creat, quemadmodum in Silesia ad quatuor primarios baronatus nemo admittitur, nisi vel ab imperatore vel rege Bohemiae baro creatus fuerit*. And for barons; the stories of that country mention a creation of some into that dignity above six hundred years since. They tell us that *Hierommirius* duke of *Bohemia* (for until they used a crown royal, the name of duke, and not of king was attributed to the princes of that country, as of divers others in those eastern parts) being, through the loyalty and valour of one *Honora*, rescued from a traiterous assault made on him in a hunting, gave him in fee for a reward the office of chief forester, with all the parts about *Stemben* (where the rescue was made) *primumque* (as *Dubravius* ^o his words are) *inter barones autoritate Caesaris Henrici* (he means the emperor *Henry* the first) *ad eum procerum gradum provehebat, qui nunc barones a quercu in Bohemia appellantur*.

Naples, where the greater nobility is without example so numerous; there are *princes*, *dukes*, *marquesses*, *counts*, and *barons*, all which they call *titolati*, and *Antonius Surgens* in *Latin*, ^p *titularii*. For although all those of the greater titles, are also comprehended under the name of *barons* in a general notion; yet also there is a distinct dignity of barons also, as is anon shewed. And for knights; the like authority and such a kind of ceremony makes them there, as in other kingdoms. The original of the title of *prince* in that state is much antienter than the beginning of the kingdom, which falls about mcccc. when *Roger* duke of *Calauria* and *Apuglia* gained to himself the title of king. For in the time of the *Lombards* when divers feudal dutchies were erected in *Italy* (as is before shewed) that of *Benevento* was the first. And duke *Arechi* the II. of that name (he is called in the *Latin* stories *Aragisus* and *Archis*) and the xiv duke of *Benevento*, much affecting the glory of a greater name than duke, because he had much increased his territories and command, yet daring not to venture on that of king (for *Pipin* and his father *Charles* were then kings of *Italy*) stiled himself *prince* of ^q *Benevento*, and made his bishops anoint him also and crown him, and subscribed his letters and other instruments of state with *scriptum ex nostro sacratissimo palatio*. And thus was he the first that took on him there this title, as it is less than king, and greater than duke. For so it is there, though in *Germany* it be inferior to duke. And although the kings of *Italy* afterward reduced the posterity of this *Arechi* into obedience enough, yet the title of prince continued still in it. This example of the duke of *Benevento*, was followed by divers other; whence the titles of *prince* of *Capua*, *prince* of *Taranto*, *prince* of *Salerno*, and the like. And afterwards when *Naples* was become a kingdom, the kings sons had this title with territories usually given them.

The principality of *Salerno* was sometime appropriated to the dignity of the heir apparent, with the title of *prince* of *Salerne*, which began first in prince *Charles*, son and heir to *Charles* of *Anjou* king of *Naples*, who reigned till mccccxv. But afterward, duke of *Calauria* was the heir apparent's title, and then, *prince* of *Capua*. But of an antient grant of that principality, we have a memory in the rolls of our *Henry* the III. He being at *Bourdeaux*, as tutor ^r to his son *Edmund* king of *Sicily*, then about the age of xi years, recites that, *cum Edmundus Dei gratia Siciliae rex, natus noster de assensu & voluntate nostra dederit & concesserit per cartam suam dilecto avunculo nostro Thomae de Sabaudia comiti pro homagio & servitio suo principatum Capuae cum omnibus appenditiis & pertinentiis suis & omnibus honoribus juribus exactionibus & cum omnibus aliis libertatibus & liberis consuetudinibus ad prin-*

VII. In the territories of the kingdom of

^h Anno 1348. & habetur in rer. Bohemiae vol. edit. a Frehero 1602.

ⁱ Chron. Aulæ regiae, pag. 28.

^k Ibid. pag. 58.

^l Du-

^m AEn. Sylvius de sit. Bohem. cap. 22. sed & vide Goldast. constit. imperial. tom. 1. pag. 345.

ⁿ De

^o Hist. lib. 6.

^p Neapol. illustrat. lib. 1. cap. 23. §. 1. & 7.

^q Hirschempertus apud Leon. Cassin.

^r Scipio Mazzella nella descriz. del regno di Napoli, lib. prim. pag. 99.

^s Rot. Vasc. 38. Hen. III. membr. 2. n. 10, 11.

capitum illum pertinentibus sine aliquo retinemento dicto Thomae & haeredibus suis utriusque sexus imperpetuum possidendum &c. and confirms it, to the end it might have *robur irrevocabile*, and this under his seal that he then used in *Gascoigne*. Such as have this title of prince of *Naples*, may set over their arms a coronet with stones pointed and pearled, almost like that of the earls in *England*, and of this shape.

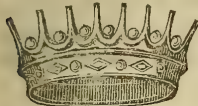


the beginning of the kingdom of *Naples*, the first duke made there, that was not of the blood royal, was *Francesco del Balzo*. He was created duke of *Andri* by queen *Joan* the first. Afterward *Jacopo Marzano* was created, by king *Ladislaw*, duke of *Sessa*; and since that, a very great number have been of the like kind.

The dukes use on their arms a coronet somewhat like that of viscounts in *England*, only pearled without points, of this form.



But also the title of archduke was in this kingdom. For *Charles* the VIII. of *France*, being king of *Naples*, created *Gilbert* of *Bourbon* count of *Mompensier* and his lieutenant general of the kingdom, into the title of archduke of *Sessa*, who to distinguish his dignity from a prince as above it, and a duke as beneath it, put over his arms on a ducal cap the whole form of a prince's crown, excepted only that the points of it were not pearled. In this figure *Scipio Mazella* represents it.



But though the title of duke and prince be thus very ancient there, yet that of *marquess*, which next follows, is of a much later beginning. The first which had this dignity there, was *Cecco dal Burgo*, created *marquess* of *Pescara*, by king *Ladislaw* about 20 years past. A *marquess* there sets over his arms a coronet or circle figured with stones on it, without any point or angle else raised out of it. And it is to be so drawn, that the open part of it be seen as little as may be. *Cerchio di gemme senza cosa veruna di sopra e con pochissima apertura*, as *Mazzella's* words are, that describes both this and the rest.



Next follow the *counts* which had there the same beginning that is opened where we speak of counts in the empire, and the kingdom of the *Lombards*. They may set over their arms the like circle as the *marquesses*, saving that the stones must be omitted.



And this was antiently used there by divers counts. *Un semple cerchio* (saith *Mazzella*) *non in altro de quello del marchese, differente, che dall' essere senza gioce, sicome*

usarano i conti d'Alavilla, d'Aquino, di Contza, di Marsico, di Nola, di Isernia, di Milito, di Potenza, di Troja & altri anticamente. And he makes a catalogue of all the *titolati* of his own time, which was about twenty years past, and sets this coronet or circle over the arms of every of the counts, as well as the other over the arms of the several dignities proper to them.

VIII. All these *titolati* are called there by, a general name, barons. *Distribuantur titularii* (saith *M. Antonius Surgens*) *in comites, marchiones, duces, principes, omnesque appellantur barones.* So *Franciscus Capiblanus*; *baronum nomine comites aliosque titularios comprehendit nos dicimus.* *Nam istud verbum baro est scala & caput dignitatum regaliū.* And comes dicitur *baro ac deinceps caeteri*; inde videmus communi sermone *duces & principes vocari barones de suis terris.* And this, because *dignitas baronalis* (as he says) *stat ut genus*; as also in the *Lombard* customs or the feudal laws, *capitanei & valvasores majores* comprehended those great dignities of duke, *marquess*, and count. Many privileges are due to the *titolati* also, saith *Surgens*, as to appear always by attorney, not to be imprisoned without express assent of the viceroy, not to receive punishment in publick, not to be put to torture, nor suffer death by hanging; to sit in presence of the king, to be covered before the viceroy, and the like. And he calls them *consilarii regis a latere.* And for the counts; *praecedono i conti* (saith *Mazzella*) *ne parlamenti a tutti gli signori e baroni che non hanno titolo.* They precede all other lords and barons that are not *titolati*. For they have there also a great number known by a distinct name of *barons* that are beneath all the *titolati*. And therein the word *baro* keeps a proportion still with the *valvasor* in the feudal laws. For in those laws the great dignities are comprehensively expressed in *valvasores*. And yet *valvasor* more particularly was a feudal dignity of it self also, that is, the dignity of him that hath a fief with jurisdiction from the sovereign or any other of the greater dignities, without any of those titles. The original of the name of these is to be referred to the beginning of feuds. But when or how their name came first into *Naples* or other parts of *Italy*, by changing *Valvasor* into *baro*, I have not yet learned. For the making of them; *Capiblanus*, a great lawyer of that kingdom, says there are two ways; the one by the king's giving a castle or territory with jurisdiction, with the title of barony. The other by his giving leave to a feudatary, or tenant of a territory with jurisdiction, to make a sub-infeudation to others. For although the gift of a territory without the title of barony, makes not a baron, yet if the feudatary have licence given him to make sub-infeudation, by reason of those undertenancies, he is by implication become a baron. Thus *Capiblanus*; whose own words I add here. *In * regno DD. concludunt eos dici barones, qui praeeinentiam jurisdictionis super vasallos habent in terra sibi infeudata.*

[†] Neapol. illustrat. lib. 1. cap. 3. §. 2.

lib. 2. tit. 10.

[†] Ad rubr. de baronibus & eorum officio §. 21, & 32. & ad pragm. 5. num. 63.

[†] Feud.

^{*} Super rubr. de baronibus & eorum officio §. 12, 13, 14, & 34.

Sed intende si expresse ea terra sit in baroniam concessa in investitura. Nam solum feudi quaternati concessio non tribuit dignitatem baronalem, si praecipue data non sit. Nam cum sit dignitas & caput dignitatum, specificè est tribuenda a principe cuius est eas conferre cum ab eo fluant & resuuant. Alias si sine qualitate baroniae terra vel castrum concederetur, ille feudatarius non baro dicitur. Altero modo quis creari potest baro, si rex permittat quod feudatarius aliquis ex terris sibi infensatis ipse alteri subinfendare possit; tunc ob subfenda quae ab eo tenentur, ille dicitur effectus tacite baro. Quae conclusiones non probantur lege feudi, sed ita in regno constitutum reperitur ex observantia quae nostri leges comprobantur. And a little after, unde labuntur asserentes sufficere debere terram cum vasallis ut vocari debeat baro. Nam non omne feudum quaternatum dici potest baronia. Extra dictos casus quis non dicitur baro, ita ut benigna vel poenali appellatione baronis proprie comprehendatur. See also for these of Naples that treatise of Marinus Freccia, de sub-feudis baronum & investituris baronum. In Paulus Merula^y there is an enumeration of the several titolati, and of those that were simply barons. And the titolati are in Mazzella also. The power and jurisdiction of both the titolati and those other barons, are at large in Capiblanco, the decisions of Antonio Capycio, M. Antonius Surgens, Garzia Mastrillo his fourth book de magistratibus, and such more. And for the descents to the sons of them, see especially Thomas Minadoi his repetitio regni constitutionis, in aliquibus, with that de successione filiorum comitum & baronum.

IX. The state of *Venice* gives the degree of knighthood, which is called *S. Mark's*. But called so for no other reason, I think, than because that state, whose great patron *S. Mark* is, gives it. It being otherwise the known degree of knighthood given by supreme princes, or such as have a like power with them, A form of creation of it we have in the conferring it on my noble friend, that great star of learning, Sir *Daniel Heinsius*, a man whose own singular excellence incomparably out-shines all splendor that any such title can add to him. Soon upon the league made between the state of *Venice* and the united provinces, this patent was sent him by the state, under the seal of the state, which is the duke's name with *Dei gratia dux Venetiarum &c.* on the one side; and the whole figure of *S. Mark* and the duke circumscribed with his name iterated and *S. M. Venet.* on the other side.

Antonius Priolo Dei gratia dux Venetiarum. Vere ac sapienter dictum fuit, virtutem adeo esse pulchram, ut si humanis oculis conspici posset, mirificum sui excitaret amorem. Quod quidem satis ex eo probari constat, quod viros virtute praeditos singulari amore prosequimur. Cum igitur *Daniel Heinsius*, egregiae virtutis

vir, omnique liberali disciplina excultus, scriptis suis publice editis, non modo summa eruditionis, sed etiam sui in rempublicam nostram obsequentis animi specimen dederit; aequum est, ut, quem meretur, fructum percipiat: ac nostri pariter erga illum grati animi aliquod extet testimonium: quo fiat ut neque sui in nos devoti affectus eundem poeniteat, & aliis de republica nostra bene merendi praebeatur exemplum. Propterea cum fenatu dignum duximus, ipsum *Danielem*, per oratorem nostrum, penes amplissimos & potentissimos ordines residentem, aureo torque cum numismate nostro donare, ac illum equitem auratum facere & creare, quemadmodum facimus & creamus, tituloque & dignitate decoramus, ac stemmate auratae militiae insignimus, omniaque illi concedimus, concessaque esse volumus quae ad equestrem hanc dignitatem cumulatissime spectant. In quorum fidem has fieri iussimus ac soliti sigilli nostri appensione muniri. Datae in nostro ducali palatio, die x. *Aprilis*, indictione sexta, MDCXXIII.

Antonius Antelmus, secretarius.

It was delivered him by *Marco Antonio Moresini* ambassador from *Venice*, to the states of the united provinces, with this ceremony also of creation added, that the ambassador laid his sword on him kneeling (as the use is in knighting) and put the chain on about his neck, besides the solemnities of a feasting entertainment; all being done in the ambassador's house at the *Hague*. The president of the general States had likewise at the same time the same honour given him. And in behalf of both, *Heinsius*^f made this speech to the ambassador at the receiving it; wherein you may see both his acknowledgment of the height of the dignity, and his manly and generous soul, that hath a just estimation of all such conferred honours.

QUI res vestras, legatorum splendor, *Marce Antoni*, ab aetate omni florentissimas legerunt, sciunt neque majus apud vos deferri cuiquam posse quam quod nobis hodie delatum est, neque posse fieri, quin qui de nobis cogitet, heroas simul tot ac tantos animo percurrat: qui priusquam ad honorem hunc admissi sunt, ad summum prius dignitatis aut virtutis fuerant evecti. Quidam totas acies totaque classes manu ac virtute profligarunt. Porro, cum virtutis magnitudo omnis, omnis splendor, sit ab animo cuiusque, quo, si vere generosus ac erectus sit, ne illi quidem qui nascuntur illustrissimi, cum omni laude sua ac splendore, majus quicquam sibi vindicant; quemadmodum fortasse nihil dignum beneficio hoc vestro polliceri de me ausim, ita animum hunc exhibere vobis possum, qui honorum omnium oblivione supra omnes eo se recepit loco, ultra quem ambitio, ne quidem honestissima, procedit. Eum exhibere, vobis possum, qui honorem nullum eo nomine dignatur, nisi qui ambitionem antevertit, nisi qui a magnis illustrissimisque viris sponte offertur: quem ab ostenta-

^y Cosmog. part. 2. lib. 4. cap. 25.

^f Videfis D. Heinsii gratulationem de foedere inter Venetorum remp. & ordines Belgii foederatos, quae jam extat in orationibus ejus, num 4. edit. 1627.

^z Orat. 6. edit. 1627.

tione & inani histrionia, quam vulgus in his talibus exercet, ad modestiam ac moderationem revocare, illius est profecto, non qui hostem bellica virtute prosligavit, sed qui totum vitae apparatus, intra sapientiae praescriptum ac virtutis continere intellexit. Cum hoc animo, si dignum eo iudicatis, quem in principes non raro contulistis, enitendum nobis erit, ne si sponte oblatum declinemus, illos ipsos quibus ornamento semper fuit, aut rempublicam, qua nihil sapientius in terris extat, contemnamus. Si quid superest post illa, ducum sanguis *Marce Antoni*, principi ac reipublicae renuntiabis, nullos melius honores collocari quam qui eruditis impenduntur. Nam & animum capacem verae laudis huic generi mortalium adesse: neque praeter illos esse qui diuturnitatem beneficio conferre possunt. Quod in iis perit apud quos obliteratur.

C H A P. III.

- I. *The title of dauphin in France.* Le roy dauphin, filz aîné du roy de France; and filz du roy de France; and of the titles of the younger sons.
- II. *Princes du sang, or princes of the blood.* Premier prince du sang, and the mon-sieur; with their chaplets or coronets.
- III. *Other titles of princes, personal and feudal.* The title of captal, capitalis, capitaneus, or capdaw. Of coronets belonging to these.
- IV. *The feudal title of prince of Guyenne, given by king Edward the III. of England, to Edward the black prince for life, and the charter with the king's explanation of it. Something of this prince's government there, and the surrender of his interest.*
- V. *Of the officary titles of dux and comes, and when they became to be of feudal inheritance in France, with the sovereignty that antiently accompanied some of them.*
- VI. *Of the creation and investiture of some antient dukes in France, by the sword, and ducal coronet; with some other principal ceremonies at such investitures.*
- VII. *The form of the creation of John duke of Lancaster into the title of duke of Aquitaine, in the parliament of England under Richard the II. and his investiture by a ducal cap, and a rod of gold.*
- VIII. *Of the coronets of dukes of the later times in France, and the forms of some later creations.*
- IX. *The title of count, as it hath been in the comites majores, and the promiscuous use of it with duke; and the distinction of duke, as greater, from it.*

- X. *Comites minores, or counts of inferior dignity to dukes.*
- XI. *Of the creation or investiture of counts; and of the coronet belonging to them.*
- XII. *Forms of giving the counties of Bourgogne and Flanders, as counties immediate to the crown.*
- XIII. *The form of giving the county of Bigorre, by Edward prince of Aquitaine.*
- XIV. *Other antient and later grants of the honour of count without mention of any rite of investiture.*
- XV. *Of the rite of girding on a sword, mentioned in some charters of creation of counts in the dutchy of Normandy.*
- XVI. *The titular addition of palatine, in France.*
- XVII. *Of the peers of France; and a form of creation of a pairrie.*
- XVIII. *Marquesses; their antient and later creations and their coronet.*
- XIX. *Viscounts; the antient creation of them, the several sorts of them, and their coronet.*
- XX. *The original and nature of vidames.*
- XXI. *Barons; the general and particular signification of the word and title. Their creation. Chastellains. The fillet or coronet of barons.*
- XXII. *Summary positions of law, touching most of the French feudal dignities, out of the code of Henry the IV.*
- XXIII. *Knights or chevaliers and knights bannerets; with the creation of them. Of the right of bearing a banner, or arms in drapeau quarre.*
- XXIV. *Knights bachelors; their creation and the deduction of their name, and the various use of bachelor. And something of their peculiar right of using seals.*
- XXV. *Of knights of the order of the star; of Saint Michael; of the Holy Ghost; and of the golden fleece.*
- XXVI. *Of orders of knighthood of less note; especially that of the fair lady in the green field, instituted under Charles the VI. by Messier Boucicaut mareschal of France.*
- XXVII. *Of esquires there.*

THE subordinate titles in France are those of dauphin, with filz aîné du roy de France, and of filz du roy de France, the mon-sieur, prince du sang, and prince in other acceptations, duke, count, count palatine, pairre, marquis, baron, banneret, chastellain, chivalier or knight, and esquire.

I. The heir apparent of *France*, being a son, is titled *le daulphin*. In the antient times (before this of *daulphin*) no titular distinction appears of the eldest son or heir apparent from the rest of the king's sons there, ⁽²⁰⁶⁾ besides *primogenitus filius*, or as some say, *monseigneur*.

The original of the title of *daulphin*, as thus applied, was from *Humbert* lord of *Vienne*, and of the territory about it (which we now call *la Dauphinè*) or rather *daulphin* of it. For so, antiently ^a in those parts, they called the lords of that territory. And some give this reason why they did so. Because one *Guy* an antient lord there, divers ages since, procured the country to be called *la Dauphinè* or *provincia Delphinalis*, out of a singular desire ^b he had to perpetuate the name of *Dauphin* earl of *Albon* and *Viennois*, to whose son he had married his daughter. And thence the name of *dauphin* was fixed (as they say) upon the lords that succeeded, and *Dauphinè* on the territory which they possessed.

But the beginning of the name there, is not certainly known, though it be known clearly enough, that very antiently the lord of that territory had it attributed to him; as in letters of *Frederick* the II. to his captain in *Sicily*, the count of *Vienna* is stiled *delphinus* ^c comes *Viennae consanguineus & amicus noster*, ⁽²⁰⁷⁾ and in their coats of arms also they gave the *dolphin* denoting as much. But that *Humbert*, which is expressly called the *dauphin* of *Viennois* in his epitaph, which yet remains ^d in a monastery of the *Jacobins* at *Paris*, upon the loss of his only son and heir, being in despair of issue male, when he was overpressed by his enemy of *Savoy*, resolved first to have transferred his whole patrimony to the see of *Rome*; but was afterward dissuaded by the *Dauphinois*, that were much more willing to become subject to the king of *France*, than to the pope. At their request therefore he changed his purpose, and at length so settled it (saith *Æmilius*) that it might continue to that son of *France* always which should be heir apparent to the crown. And that he should be called *daulphin* as the counts of the province before were. *Placuit* (saith ^e he) *fili regum, ut quisque in proximum haeredem regni suscepti essent, delphini vocarentur, juraque Delphinatibus redderent*. ⁽²⁰⁸⁾ Some also say, that it was conditioned that not only the name of *daulphin* but the arms also of the *Dauphinè*, quartered with those of *France*, were to be borne by such as should ^f enjoy it by this gift. The instrument of this gift, they say, was made the xxx. of *March* MCCCXLIX. and so transferred it unto *Charles* son and heir of *John* duke of *Normandy*, son and heir of *Philip* of *Valois*, then king of *France*; the same *Charles* that was afterward *Charles* V. his father, the duke of *Normandy*, being king before him. The gift of it was some six years before intended to *Philip* duke of

Orleans, second son of this king *Philip*. But afterwards it was thus settled upon this *Charles* who was the first *daulphin* and heir apparent together. And some confounding that intent with the estate afterward thus settled, deliver the original of it with such errors as must of necessity follow such a confusion. This *Humbert* had two daughters also, and from them the counts *daulphins* of *Arvergne* (which title was in the dukes of *Bourbon*) were derived. But that of *daulphin* of *Vienne* was the title which the son and heir apparent of the crown had. But for the original of the title of *daulphin* in the sons and heirs or kings of *France*, I add also a testimony of a rabbin that thus delivers it; וקדמו יוא אומברטו דילפנו מיואנה למות ויאמר אלו המלך הנד: הולך בדרך כל הארץ ועתה וזה המלך אשר תעשה עמדי צו את בןך. ותן את הדאולפנאטו אל קארלו בן בני הכבוד לאחוזו: ויאמר אומברטו אלו יהיה שומע בניתינו אם לך כרבך אדוני המלך כן תעשה היום היום מרובים הדומה וזלזלה היה הדלפנאט: למלכי צרפת או לבניהם חבנד עד היום הודא. This is, *And the days of Imberto* (so he calls *Humbert*) *the daulphin of Vienne drew near to his death. And the king (of France) said unto him. Observe, sir, that you are going the way of all the earth. Now command that the friendship or promise that you have made to me be continued or performed by your house, and confer the Dauphinè (or the Delphinato as he calls it) upon Charles my eldest son's son for a possession. And Imbert answered him, God be witness betwixt us that I will this day do according as my lord the king hath spoken. From that time the Dauphinè hath belonged to the kings of France, or to their eldest sons to this day.* This rabbi, is *Jeseph Sacerdos* or *Jeseph ben Joshuah*, and delivers this in his history * of the kings of *France*, and of the house of *Otoman* deduced down to 1553. of our Saviour. And he places it in the beginning, of the reign of *Philip* of *Valois*, as the *French* writers do. This first *daulphin* that was heir apparent (being afterward *Charles* V.) to profess his title of *daulphin*, and the arms of the *Dauphinè*, in his great seal, sits as supported by two *dolphins*. In some of his coins also the *dolphin*, sometimes with the flower de lis, is with the inscription usually *dalphs Viens*, for *Viennensis*, and in other of his monies, he hath the *dolphin* otherwise. And *Charles* VI. hath sometimes a *dolphin* with only *dalphs Vienn.* for the title on it, and sometimes *Carolus Francorum rex*, and *dalphs Vienn.* But in some of *Lewis* XI. the *dolphin* is on both sides quartered with the arms of *France*, and circumscribed with *Ludovicus dalphinus Viennensis* only. Most of the following kings of *France* have it in their monies (as they are published) though I see not the inscription of the title of *daulphin* in them after *Charles* the VIII. But however the kings, while they were kings, thus used the title of *daulphin* in their monies, yet the sons and

^a Paul. Æmilius lib. 8. in Phil. Longo.

^b Duchesne antiq. & recherches liv. 4. cap. 2. Delphinus comes viennensis & Albaniae A. D. 1227. Collut. liv. 6. de ses memoires chap. 46. & Chez du Chesne en les preuves del' hist. de la maison de Vergy liv. 3. pag. 158. ^c Perr.

de Veneis lib. 2. epist. 49.

^d P. Merula lib. 3. part 2. cap. 40. vide ibidem cap. 17.

^e Lib. 9. sub Phil. Valesio; videlicet P. Matth.

ad Guid. papae decif. 233. Theodor. Nihem. histor. 2. cap. 25. dict. Guid. decif. 361. Choppin. de Doman. lib. 3: tit. 3. §. 12. & lib. 1.

tit. 6. §. 12.

^f Du Haillan, du Chesne, &c.

* ספר דברי הוימים Helech, 1. pag. 93.

heirs apparent have been from that first *daulphin* Charles, stiled *daulphins* or *delphini* in *Latin*, and have that territory as their birth-right belonging to their name, after, at least, they be of age to have livery of it. The kings otherwise use, with the name of king of *France*, *daulphin* of *Vienne*, as appears in those coins. Therefore doth *Æmilius* always call *Charles* son to king *John delphinus*, after the *Daulphinè* was in him. And so doth he the other of the sons, being heirs apparent, through his story. So that great lawyer *Guido Papa*, who lived under *Charles* the VII. president of the parliament at *Grenoble*, speaking of *Lewis* son and heir to this *Charles*, afterward *Lewis XI.* calls him *dalpinus Viennensis*. Quia usus (saith^g he) rescriptorum frequens est in hac patria *Dalphinali*, propter residentiam illustrissimi principis domini nostri *Ludovici regis Francorum primogeniti Viennensis dalpini* de praesenti in hac patria *Dalphinali* residentis, &c. And dominus *delphinus*, for^h *monseigneur le daulphin* is often usedⁱ by him. But sometimes also (according to those old coins) he seems to call the king, both king and *daulphin*; the crown and *Daulphinat* being both in one hand; as where he speaks of that statute of the *Daulphinè*, *Si quis per literas*, &c. he says it was made by *William* de *Area* governor of the *Daulphinè* in mccccviii. and confirmed per^k dominum nostrum tunc regem *delphinum* ut patet in camera computorum *Delphinatus*. The king that, being together king and *daulphin*, is understood by him here (if he mean so) is *Charles* the VI. that time being the xxix year of his reign. But I see also that some of the *French* tell us, that the *daulphin* is sometimes called^l *le roy daulphin* for the excellency of his dignity, according to that antient use in *France*, of calling the son and heir king in his fathers life. And so this might be understood of^m *Lewis* the eldest son of *Charles* the VI. who was *daulphin* in that year, mccccviii. but died before his father. And that title of *le roy daulphin* might have had the more use, because the title of *prince daulphin* absolutely is given to such as are of the *Daulphinè* of *Auvergne*. For so it is used inⁿ an edict of *Henry* the III. made when there was no son and heir apparent or *daulphin* of *Viennois*, which is the son and heir's proper title. The *daulphin* (says^o *L'oyseau*) in his stile calls himself, *par la grace de Dieu filz aîné du roy de France, daulphin de Viennois*, and so puts the title of *filz aîné* before *daulphin*, as also he doth before the title of king, when he hath any kingdom in his stile, as it appeareth in the stiles of them that have been kings of *Navarre*, and in *Francis* the II. that being *daulphin* was also king of *Scotland*, as in right of the queen whom he had married. But if the *daulphin* be a duke, he places his title of

duke after that of *daulphin*; as *Henry* the II. being *daulphin*^p under *Francis* the I. stiled himself *daulphin de Viennois, duc de Bretagne, &c.* But *L'oyseau* understands this to have been so in regard that *Bretagne* as other dutchies in *France* (in the later ages) was no sovereign dutchy, but of subaltern jurisdiction, whereas the signiory of the *daulphin* is a signiory sovereign. Indeed in the elder times, when a sovereign dutchy was in the *daulphin*, the title of duke preceded. The first *daulphin* and heir apparent is stiled *Charles duc de Normandie & daulphin de Vienne*, in that confirmation of the treaty at *Bretigny*,^q between *France* and *England*. But *Charles*, the *daulphin* to *Charles* the VI. in the league between him and the duke of *Burgundy* in mccccxix. is^r stiled *daulphin de Viennois, duc de Berry & de Torain & cont de Poytou*. But as that of *filz aîné* in the *daulphin's* title is put before any kingdom that he hath while he is *daulphin*, so *filz du roy de France* (which belongs to all the younger sons) is placed after the title of a kingdom. As *Charles* count of *Anjou*, and a younger son to king *Lewis* the VIII. being king of *Sicily*, stiled himself *roy de Hierusalem, Naples & Sicily, filz du roy de France, comte D'Anjou, &c.* And *Charles* count of *Valoys*, younger son to *Philip* the III. being invested by the pope into the title of king of *Aragon* and *Valence*, stiled himself *roy D'Aragon & de Valence filz du roy de France & count de Valoys*. But if they had no such title nor appenages, they were wont to be called only by their christian names, with the addition of^s *monseigneur*, as *François monseigneur*, *Henry monseigneur*, and the like. And where they have appenages, the^t addition of the appenage is given them also.

But we conclude the title of *daulphin* with that of *Robertus Coenalis*; ^u*Duo tantum* (saith he) *reperiuntur toto orbe Gallicano tituli nulla adjectione decurtati. Rex enim sine pluri eorum lingua appellatur sire; delphinus autem monseigneur. Rursus quemadmodum rex christianissimus omnium consensu appellatur; ita & delphinus Galliarum prorex, tantum non unctus. His accedit quod per universam Galliam archidux omnium in Gallia ducum supremus habetur, non honorarius tantum (uti Austriacus) imo, nisi pusilla vetat aetas, dicacarcha.*

II. The next after the king's sons, or to the king, if he have no sons, are those *princes du sang*, or *princes of the blood*, which being not sons of the present king, have any possibility of inheriting the^x crown. The original of this title (so communicated there as in no place else in christendom) appears not. Some deduce it from the distinction which the younger sons and their heirs, being great dukes and counts, made of

^g Guido Papa libell. de rescriptis in initio. ^h De hoc nomine Delphino attributo, videlicet Carol. L'oyseau des ordres cap. 74 §. 38. ⁱ Decif. 233. & 455, &c. ^k In proem. ad comment. in statut. Delphin ^l L'oyseau des ordres &c. chap. 7. §. 41. ^m V. Tiraquell. de primog. quest. 33. &c. ⁿ Edicts des roys tom. 2. liv. 1. tit. 5. & vide Choppinum ad leg. Andium lib. 1. cap. 65. tit. 6. pag. 447. ^o Des ordres &c. chap. 7. §. 40. ^p Videlicet Bertrand. D'Argentre hist. de Bretagne liv. 13. chap. 70. & 71. ^q Froullart. vol. 1. chap. 212. ^r Ex registr. parl. Paris. apud Tho. Bath. episc. in collectione Ms. de jure regum Angliae in regno Franciae sub Henrico V. scripta fol. 138. in biblioth. Cotton. ^s Item in statutis Delphinat. lib. ut videre est apud Ducianum en les preuves del liv. 8. de l'hist. de la maison de Vergy pag. 379. ^t Pasquier en les recherches liv. 8. chap. 5. ^u Les edicts des roys de France. tom. 2. liv. 1. tit. 4. ^v Perioche 14. pag. 108. ^x Vide Titium de reb. Gall. lib. 2.

themselves from such as were not of the blood, and yet being no less dukes or counts, were stiled princes also, in those times when honorary dutchies and counts in that kingdom were frequent. But if thence were the original, why should the younger sons of these younger sons and all whatsoever of the race that could not shew any likelihood of inheritance, have the title? For they were all *princes du sang*, not all of them dukes or counts. In the elder ages also they are sometimes called *seigniors du sang*, and *domini sanguinis*. The title of prince being omitted, but the memory of their blood being yet so preserved, as it was also, in the ages before the *Carolin* line began, by the wearing of long hair, which was (saith *Agathias*) *ῥοβισμα ἢ γέρας ἐξάρστον τῷ βασιλεὶ γένει, a special ensign and honour of those of the blood royal*; touching which, there are other testimonies in *Gregorius Turonensis*, *Aimoinus*,^a and the like. And *Landulphus*^b *Sagax* speaking of the same note of the lords or princes of the blood of that age, hath this ridiculous passage of it, as if the princes of the blood in those elder times had been bristle-backed as hogs are. *Dicebantur ex genere illo descendere christati quod interpretatur trichorachati. Pilos enim habebant natos in spina veluti porci.* He had it from some of the later *Greeks*. I think from *Theophanes*; and *Cedrenus*^c hath the self same in his *Greek*. *Ἐλέγοντο, ἰαὶθ he, ὅτι ἐκ τοῦ γένους ἐκείνου κατὰ γένους Κερίσται, ὃ ἐμπυλῶνεται, τετραρχάτοι* "Εἶχον γὰρ κατὰ τὴν ῥαχὺν αὐτῶν τρίχας ἐκφυομένας ὡς χοίρει." The *Greeks* (as they often do) so mistook here, that in stead of hair hanging down on the backs of these princes, they conceived they had their hair growing out of their backs as hogs have. When this custom of distinction of princes of the blood by their fashion of hair ended, I have not yet learned.

But, of the princes of the blood at this day, he that is so near that he be the king's next brother, is the *premier prince du sang*, and so^d stiled, and *la second person du France*, and hath the title of the *monseigneur* absolutely, or *monseigneur sans queue* (as they say) or *monseigneur le prince*, as the son and heir apparent hath that of *daulphin*. But if there be no brother, or at least the next heir be not a king's son, then is the title of *premier prince du sang* given by letters of acknowledgement or declaration from the king (which some think needs not in case of a brother) and such a prince hath only the title of his appenage, and not the title of *monseigneur* as a brother hath. The princes of the blood are most eminent both in privileges and place. They are *counseillers nais*:^e *du conseil privé du roy*, or *counsellors born of the privy council*. And if they be much elder than the king, he stiles them his uncles, if near of the same age, his cousins, and if much younger, his nephews. They enjoy also all the privileges due to the peers of *France*; of whom more

presently. They are free from the fees of the seal, from all tolls, from chartels of the duel, and more such which by *du Haillan*, *du Tillet*, and *Loyseau* are more largely delivered.

Their place is considerable either between themselves, or with regard to others. Heretofore divers controversies have been^f between them; whether the dignity of the signiory and feudal titles, or their nearness of blood, and degrees of sanguinity should be the measure of their place. But it hath been at length received clearly, that only by nearness of blood and their degrees they were to be ranked. Their dignity, being only from the blood royal appropriated to them, is above all feudal dignities whatsoever, as the *French* give the reason. The same reason also raises them before all whatsoever other subordinate dignities in the kingdom. For, the eminency of the blood royal in them being such as that among themselves (some of them being always of the greatest feudal dignities also) no regard is had but only to their degrees of nearness to the crown; much more ought no other regard to be had when they are to be ranked with others that have feudal dignities, and are not of the blood. Yet in the latter age between the peers of the blood, and those that were not of the blood, the question was not so clearly settled, but that this edict was made to determine it by *Henry* the third, who gave the place for ever afterward to the peers of the blood.

Henrie^g par la grace de Dieu roy de France & de Pologne, a tous presens & a venir salut. Sçavoir faisons, que pour mettre fin aux procez & differens cy devant advenus entre aucuns princes de nostre sang pairs de France, & autres princes aussi pairs de France, sur la presence a cause de leurdités pairies, & voulans obvier a ce que telles controverses & difficultes n'adviennent cy apres: Nous, apres avoir sur ce meurement deliberé avec la roynne nostre tres-honoree dame & mere, nostre trescher et tresame frere le duc d'Anjou, & es presences de noz treschers & amez cousins le cardinal de Bourbon, duc de Montpensier, & prince daulphin, princes de nostre sang, cardinal de Guise, ducs de Guise, de Nyvernois & du Mayne, archevesque & duc des Reims, les sieurs de Morvilliers, de Lenencourt, de Laussac, evesque de Lymoges, de S. Suplice, de Chaverny, de Biron, de Chavigny, de Pyennes, de Villequier, & autres, tous conseillers en nostre conseil prive avons dit, statué & ordonné, disons, statuons, & ordonnons par edict irrevocable, voulons & nous plaist que d'oresnavant ledites princes de nostre sang pairs de France precederont, & tiendront rang selon leur degre de consanguinité devant les autres princes & seigneurs pairs de France de quelque qualite qu'ils puissent estre, tant es sacres & couronnemens des roys, que es seances des cours de parlement, &

^a De stirpe & orig. domus de Courtney pag. 149. in Francogall.

^b Hist. miscellan. lib. 12.

Faucher. orig. des dignit. liv. 1. chap. 6.

^c L'oyseau des ordres chap. 7. §. 80. & 103.

^d Les edicts des roys de France, &c. tom. 2. lib. 1. tit. 5.

^e Hist. 3. c. 19.

^f De gest. Franc. lib. 2. cap. 12. & videbis Hotoman.

^g Hist. comp. p. 373.

^h L'oyseau des ordres chap. 7. §. 54, 55. &

ⁱ L'oyseau ibid. §. 31. & 61. & Ti-

autres quelconques solennitez, assemblez, & ceremonies publiques, sans que cela leur puisse plus al' advenir estre mis en dispute ne controverse, souz couleur des tiltres & priorite d' erection, des pairies des autres princes & seigneurs, ne autrement pour quelque cause & occasion que ce soit. Si donnons du mandement a nous amez & feaux, les gens tenans nostre cour de parlement a Paris, que noz presente dict, statut & ordonnance, vouloir & intention, ils fassent liure, publier & enregistrer, & le contenu garder, observer, & entretenir de poinct en poinct selon la forme, & teneur, sans y contrevenir ny souffrir y estre contrevenu en aucun manier que ce soit: Car tiel est nostre plaisir. Et a fin que ce soit chose ferme, & stable a toujours, nous avons fait mettre nostre sceele a celsdits presents, faulse en autres choses nostre droit & l'autrui en toutz; donne a Bloys au moys de Decembre, lan de grace mil cinque cens septant seize & de nostre regne le troisieme.

To the princes of the blood, some of the French attribute, for a bearing at least over their arms, this form of coronet raised into flowers *de lis* and roses, as *Favin* interprets them. But, for the coronets or chaplets of princes of the blood, there is not consent enough among the French writers¹ to give



a clear information. Some allow a coronet to none of them but to the king's children: others restraining it from the younger sons; others otherwise. And *Lewes d' Orleans*¹ notes, that, in the *Jacobins* at Paris, the princes of the house of *Bourbon* are so represented (being buried there) that two of them have each on their heads *une ligne de pierreries*, or a circle of stones only, and the third a plain circle without either pearls or flowers. But touching the quality of such of them as live obscured for want of such feudal dignity as might supply them in the nature of appenages, or are otherwise questioned about the pretence of their dignity of blood, there is matter enough at large handled by those famous lawyers *Antonius Peregrinus*, *Polydorus Ripa*, and divers others in that book published at Paris 1607. *De stirpe & origine domus de Courtney*,

But that singular title of our king *Henry* the fifth, belongs to this place. In that famous league mccccxx. between him and *Charles* the sixth of France, it was agreed that, the *dauphin* excluded, he should enjoy the crown of France after the death of king *Charles*, be regent in the mean time, and be stiled also *heritier de France*, or heir of France. Whereupon by his command² his seals in England were so altered, that in stead of the word *Franciae* was cut, *haeres regni Franciae*, or *haeredis regni Franciae*, as the case required. But in his seals he added not that of regent, though *Thomas*

of *Walsingham* tells us, that the proclamation³ concerning it was that he should be hereafter *in suis apicibus stiled rex Angliae & regens vel rector Franciae & haeres apparens regni praedicti*.

III. Besides the title of prince in this of prince of the blood, the same title is otherwise variously given within the territory of France. It is otherwise used, both as personal and as feudal. This personal title of it is either by birth or by creation. By birth the natural sons⁴ of the kings and their issues male, are princes, in respect of whom also the princes of the blood are sometimes called the *princes of the crown*,⁵ as by a note of further distinction, because that addition *du corone* shews expressly the relation they have to the crown which those other *princes* have not. And although those naturally are also of the blood, yet because the first of them by reason of his being illegitimate hath not the civil rights of blood, and so cannot transfer it to his posterity, they have the title only of *princes*.

They that have it by creation, are such as the king vouchsafes to create into this title, as when he giveth it to the son of some other supreme prince, which *L'oyseau* says sometimes⁶ he doth. And so he notes two sorts of *princes* (having the title meerly personal) in France, the one the French princes or natural *princes* (as he calls them) which are the illegitimate sons and their issue male, and stranger princes, or princes naturalized, which are thus created. Both of them (he says) have many of the same kind of preeminencies and privileges that the princes of the blood have. They have precedence of all other great lords of the kingdom that are not princes of the blood. And though they be feudal or titular lords otherwise; yet have they their places from this personal title of *prince* only, saving in case they sit in the parliament as *peers*. For then their place is according to their *pairies*. They are also reputed as born counsellors of estate, and are to be saluted, with the titles of uncle, cousin and nephew, as the *princes* of the blood. And more of this you have in *L'oyseau*. For the feudal title of *prince*; it occurs in divers old instruments attributed to the great dukes and counts there, which in ancient time had their provinces in feudal right, with almost all sovereignty. *Du Tillet* hath examples of the dukes of *Aquitain*, the counts of *Tholouse*, and other such. And in the customaries of⁷ *Normandy* and⁸ *Anjou*, the dukes are called *princes* also. And in the inscription of *Arnaud Squerer* to *Gaston comte de Foix*⁹ in mccccxvi. he is called *treshaute & puissant prince*. Divers more such are obvious. Those kind of great dukes and counts long since ended, as is anon shewed. But as these took to themselves the name of *prince* in regard of their sovereignty, which was little less than regal; so also it is likely, that some of the more emi-

¹ L'oyseau des seigneuries chap. 5. §. 69. Moreau, en la tableau des armories chap. 6. pag. 246, & 247.

des parlemens chap. 11. p. 172.

² Mich. 8. Hen. V. in scacc, ex part. rem. regis, alibi.

§. 86.

³ Idem ibid. §. 99.

⁴ Idem ibid. §. 93.

⁵ Cust. de Norm. chap. 12.

Choppin de jurisd. Andegav. lib. 1. pag. 441. & L'oyseau des Seigniorities chap. 3. §. 88.

⁶ Hist. de Foix, Bearn &c. per P. Oligarhay. vide Bert. d'Argentr. hist. de Bret. lib. 4. cap. 31.

⁷ En les ouvertures

⁸ L'oyseau des ordres chap. 7.

⁹ Cust. d'Anjou part. 2. vide

nent lords that were neither dukes nor counts, and yet had such power, jurisdiction, and privileges, either by prescription or usurpation, that they might also, as well as those dukes and counts, be stiled princes, took to themselves (in those elder times when the regal power was so distracted among the nobility) the title of *prince* which continues in divers lordships, that are *principantes* to this day; as those of ¹ *Orange*, and divers other of less note, as ² *de Croy* in *Champagne*, de *Guemine* in *Bretagne*, de *Creguy*, de *Marcellac*, de *Carenoy*, de la *daulphine d'Avvergne*, de *Chassellailon*, de *Janville*, and others. But the title of *prince*, joined with these, is now reputed so feudal, that it rather belongs to the territory than to the person. *Hoc solum* (saith Choppin) *possessioibus inditum nomen est, feudatariaque possessionum dignitati verius quam personarum celsitudini*. And as those titles (as it is conceived) were assumed, so others have been created by the kings of *France*. The title of *principatus*, or principality, with relation to a territory there given, is as old as *Gregory of Tours*. *Ennodius* (says ¹ he) *cum ducatum urbium Turonicae atque Picavae ministraret ad haec & vici Julienfis atque Benarnae urbium principatum accepit*. There is the very name of the principality of *Bearne*, which, though perhaps it were not then feudal, yet in this passage is testimony enough that it was at least an officary title in those days given by *Childebert*. And such officary titles were afterward made feudal; and *Bearne* also is a principality to this day. And some ² great lords, affecting the plausible name of prince, have procured some of their territories to be made principalities from whence they might be called princes, and also transmit the same title to their eldest sons, as the earls in *England* do the title of their *baronies* or *vicounties*. *L'equivoque d'entre les princes & les seigneurs des principantes* (saith ³ *Loyseau* to the same purpose; and he is so scrupulous about the name, as if none ought rightly to have it, but such as are personal princes) *ou, pour mieux dire, d'entre les princes de race & les princes a cause de leur terre erigee en principauté, est cause, que plusieurs princes que craignent qu'on revoque en dout leur qualité, & plusieurs grandes seigneurs que desirer estre tenus pur princes, sont curieux de faire eriger une de leur terres en principauté; dont par apres ils baillent volontiers le titre a leur filz aisné*, which he says is done *a l'imitation de ce que la plus part des roys de la chrestienté font appeller leur aisné le prince indefiniment*. But I find not the *French* writers agree in the estimation of this dignity. *Du Tillet* (whom also *Loyseau* follows) will have it less than a count, and above a baron; and shews indeed how their principalities were subordinate to ⁴ counties. And therefore he says, that such of the princes of the blood as have gotten such principalities to be erected for

them, have rather lessened their own dignities, which are above all kind of feudal princes, than gained any honorary title worthy of themselves by it. And I remember in an edict of *Charles* the ² *V.* touching composition for crimes, the title of *prince* is ranked in enumeration after *baron*, as *prelate*, *baron*, *prince*, *chevalier*. But for the greatness of the title of *baron*, see what is anon shewed where we speak of the use of it in *France*. And for the title of *prince*, others otherwise. But *Choppin*, though he calls them *minorum gentium principes*, yet in this expression seems to suppose the title equal to the highest feudal dignity. *Principalium feudorum* (saith ⁵ he) *species appellatioque feudisticis legibus incognita, sed a nostris recepta commentitio jure quasi principalis summique feudi simia quodammodo ac imitatrix*. And *Carolus Paschalius* speaking of *duces majores & minores* (he means by *majores*, the first of those ancient dukes of *France* that had all sovereignty in their territories; and by *minores* such as are at this day having no other sovereignty than what is subject to the king's power) makes a like division of *princes*, into *majores* and *minores*. The *majores* to him are the *princes* of the blood, the *minores*, the feudal princes. *Minores principes* (are ⁶ his words) *voco illos qui stemma nequaquam ducunt a regibus, sed quibus est concessus ager, urbs, ditio, feudum, cui nomen principatus, ejusque domino ac possessori permissum ut vocetur princeps propria nimirum ac peculiari appellati, quae talem dominum distinguit ab aliis aliorum feudorum dominis, hoc est marchionibus, comitibus, baronibus. Nempe, hi omnes in hoc sunt similes, ut sint in perpetua clientela atque adeo in ditione regum*. Then he says these *principes minores* are so near equal to the *duces minores*, that it is hard to tell which are the greater. *Hic quoque minor principatus est minori ducatu* (as he writes) *aemulus; neque cui praerogativam des facile dictu est*. And this most especial mark of their greatness he gives, that, for the most part, they use the same kind of *coronet* which the greater princes do, wherein he is deceived, if *Favin* deceive not. For in *Favin* the princes of the blood (which are the same that *Paschalius* calls the greater princes) use a coronet raised into flowers of *lis* and *roses* (or as some would have it oak leaves, or some other leaves) as is before expressed. But for other princes, though sovereign, the coronet in *Favin* or chaplet (as he calls it) is *espanovie de roses*, or blossomed with roses, in this form, and the gold set with stones. Others also say ⁷ that these feudal princes should have only *un circle d'or pur ou esmaille de feuillages*, only a circle of gold enamelled with leaves or such like. Thus *Philip Moreau*; who tells us also that the title of *captall* and *capthalat*, is in some places of *France*, for this



¹ Videfis Choppin. de dominio lib. 3. tit. 6. §. 30. ² Idem de jurisdic. Andegav. lib. 1. tit. 6. pag. 441. vide etiam de doman. lib. 1. tit. 5. §. 10. ³ Hist. Franc. lib. 9. cap. 7. ⁴ Vide Choppin. de jurisd. Andegav. lib. 1. pag. 441. in margine. ⁵ Des seigneuries &c. chap. 5. §. 76. ⁶ Videfis item Choppin. de dominio lib. 3. tit. 6. §. 30. ⁷ Edict. &c. tom. 1. liv. 3. tilt. 85. ⁸ De jurisdic. Andegav. lib. 1. tit. 6. pag. 441. quem interim vide loco libri 3. de dominio jam citato. ⁹ De coronis lib. 9. cap. 23. ¹⁰ Philippes Moreau en la tableau des armoiries de France chap. 6. pag. 245.

of prince and principality; and he brings an example of the counts of *Candalle*, that have the titles of *capitals* of *Buch*, and in *Latin* have been under that name called *principes*. And he adds, that in a glass window of the convent of *Recolez* at *Bordeaux*, there is the picture of one of these *capitals* having on the head a circle of gold enamelled with something wrought upon it. And that the arms of the later lords of *Candalle*, have flowery chaplets, or *sont tymbres de couronnes hautes fleurons*, as his words are. But I see him not add enough to persuade that either the circle put on the head of the one, or the chaplet or coronet on the arms of the other, had place there as belonging to a *captall*. For both that old *captall* and the rest were counts also (as he confesseth) the first of *Benanges*, and the other of *Candalle*. That which he calls *Candalle* is our *Kendall* in *England*, of which *John de Foix*, *captall de la Buch* (or *capdaw* in *English*, as sometimes^d this title is called in our records, or *capitalis*, or *capitaneus* in *Latin*) count of *Longeville* & *Benanges* was created earl by our *Henry* the sixth.

IV. But we cannot omit here the feudal title of *prince* given by our king *Edward* the third, when he made his eldest son *Edward* the *black prince*, *prince* of *Guienne*. It is but touched only, in the stories of either nations, and that but in some of them. We shall therefore the more fully shew it as a singular example of a creation. In that famous treaty of renunciation at *Breigny* near *Chartres*, on the behalf of the two kings *Edward* of *England*, and *John* of *France*; it was agreed^e that the city, castle, and county of *Poitiers*, and all the country of *Poitou*, *Tbovars*, *Belville*, *Xaintes*, and *Xanctogne* with the town and fortress of *Rocheb*, the city and castle of *Agen*, and the county of the *Agenoys*, *Perigort*, *Lymoges*, *Cahors*, *Tarbe*, *Bygorre*, *Gauvre*, *Engolesme*, and all parts belonging to them, together with some other countries, and all that the king of *England* had in *Guienne* and *Gascoigne* should be enjoyed by king *Edward* his heirs and successors, *sans nul resort* & *soveraigntie au royaume de France*, or in such sort that no kind of power or supremacy should be over them in the *French* king, or as it is more at large in the confirmation of the treaty, *en tout franchise* & *liberte perpetuel*, *come seigneur soveraigne*, & *liege* & *voisin au roy de France* & *au royaume de France*, *sans y cognoistre soveraigntie ou faire obeysance, hommage, ressort, & subjection, & sans faire au temps avenir aucun service ou recognisance au roy ou a la couronne de France*, *des citez, countes, chasteaux, pays, terres, isles, lieux* & *personnes devant nommes ou pour aucun d'icelles*. Other particulars be accorded on both parties. King *Edward* within a short time after he had possession according to this treaty (whereunto the *daulphin*, afterward *Charles* the V. was

also party) gave by charter *Guienne* and *Gascoigne* by the name of a principality to the *black prince* for life, and in the same charter created him prince of *Guienne*, and also granted unto him those other castles, towns, and counties, with the government of them, reserving to himself power to erect *Guienne* into a kingdom, and retaining also the resort and sovereignty over both the principality and the rest that was given with it. This charter was dated the XIX of *July* in MCCCLXII, or the XXXVI of *Edward* the third. And besides the charter of creation, there was another dated the same day, of explanation, by which the king more particularly declared the sense of his reservation of resort and sovereignty, and besides of an ounce of gold yearly payable to him by the prince in his palace at *Westminster* on *Easter-day*. This charter of explanation hath thus in it wholly that also of the creation. The margin of the roll^f is, *pro Edwardo principe Aquitaniae & Walliae*.

LE roy a tous ceux qui cestres lettres verront ou orront, salut. Combien que au jour present nos ajons donnee a nostre trescher ainfez fitz *Edward prince de Gales*, le noun, renomee, & tiltre de la *principaltee d'Aquitaigne*, transportantz en sa persone a sa vie tantieusement, toutes les citees, countees, chasteux, terres, pays, villes, fortresses, isles, provinces, & lieux que nous avons & devons avoir per my la paix faite darreirement, entre noz & nostre trescher frere le roy de *France* au pays d'*Aquitaigne* & celles aussi que noz avons & tenons ou devons avoir & tenir en toute *Gascoigne* ensemble homages, ligeances, honores, obeissances, vassault, fees, arrierefiez, services, reconeissances, droitz, mier & mixte empire, & les jurisdictions hautes, moyennes, & basses, falves gardes, advocsons, & patronages des eglises metropolitiques, & cathedrales, abbeyes, priories, monstiers, hospitalz tant seculeres, que reguleres, & de quelcunques autres benefices desglise appartenantz a noz per cause ou occasion de choses dessusdites, devoir, cens, rents, confiscations, emoluments, profitz, reversions, & toutes maneres dez droitz & toutes leur autres appartenances, & appendances aussi entierement & parfaitment come noz les tenions ou aucuns de noz progenitors les tindrent en aucun temps passe, a tenir, desouz nos & nostre seignorie d'*Acquitaigne* per homage liege, sicome cestres choses & autres sont pluis largement compris en nos autres lettres sur ce faites, dont la tenor sensuit.

Edwardus Dei gratia rex Angliae, dominus Hiberniae & Aquitaniae, carissimo primogenito nostro *Edwardo principi Walliae*, salutem. A regali folio, velut a sole distensi radii, singulae temporales prodeunt dignitates ut ex hiis primae sublimitatis integritas minorationis detrimenta non sentiat, sed a suis potius curis & sollicitudinibus relevata tanto securior persistat, in prosperis regatur, & protegatur continue, in

^d Rot. parl. 28. Hen. VI. art. 31. ^e Rot. Vascou. 44. Ed. III. membr. 8. n. 4. Vasc. 4. H. VI. m. 1. n. 1. & saepissime in archivis regis. ^f Froissart. vol. 1. chap. 272. & videfis Paul. AEmil. lib. 9. Th. Walsingham, anno 1360. &c. ^g Rot. Vascou. 36. Ed. III. membr. 18. n. 17.

adversis quanto pluribus & excellentioribus sub-
fidiis fulciatur. Stat tutum tribunal regum mul-
torum principum stipatum potentia. Gaudent
& subditi domini sui principalis personam in san-
guinis & generationis suarum effigie frequentius
intueri, & sibi fore prosperum reputantes quod
ubi eorum dominus principalis per singulas do-
minationis suae provincias non poterit persona-
liter interesse, haereditatem suam futurum, si natu-
ra suum rectum ordinem persequatur, continuatis
temporibus assilire sibi vident, quo transgressorum
insolentiae ex honore & potestate juris sibi tradi-
ti, ad tutelam fidelium, puniantur frequentius,
& aliorum laudabilia & fructuosa obsequia dignae
retributionis commercio compensentur. Hac
igitur consideratione fili noster charissime, nec-
non multis aliis causis rationabilibus excitati; te,
qui nuper in *Aquitaniae & Vasconiae* partibus,
dum in ipsis guerrarum turbatio frequens ingru-
erat, activus pro nobis pulveres & sudores bel-
licos non vitasti, sed sub titulo & vocabulo lo-
cum tenentis nostri nostras sollicitudines & ab-
sentiam tua supplens praesentia prolixo satis tem-
pore supportasti, intendentes vicissitudine gratuita
honore, subscriptarum terrarum & provinciarum
ac totius *Aquitaniae & Vasconiae principatum*,
praesentium literarum nostrarum epigrammate tibi,
de praerogativa potestatis regiae, conferimus
& donamus, volentes & concedentes quod om-
nium & singulorum locorum, terrarum, & pro-
vinciarum hujusmodi sub nominibus & domini
nostri folio & regimine sis de caetero verus *prin-
ceps & principis Aquitaniae* honore, titulo, ap-
pellatione, & vocabulo potiaris libere quamdiu
manseris sub hac vita, etiam si per nos hujusmo-
di provinciae ad regalis honoris titulum & fasti-
gium impostorum sublimentur, quam erectionem
faciendi per nos ex nunc specialiter reservamus.
Et ut collatus honor hujus nominis tibi sit impos-
sibilem favente domino, fructuosus, de mera nos-
tra liberalitate & ex certa scientia damus tibi &
concedimus & in personam tuam duntaxat trans-
ferimus jure & modo quo possumus meliori civi-
tates, castra, villas, terras, loca, & provincias in-
scripta & quicquid juris possessionis & pro-
prietatis habemus vel quovis modo habuimus,
aut progenitorum nostrorum aliquis habuerit ha-
ctenus ad eadem quomodolibet vel in ipsis (di-
recto eorum domino ac superioritate nobis sem-
per specialiter reservatis) videlicet civitatem &
castrum, necnon totam terram & patriam *Pi-
etavensem*, una cum feudo *Thoarcii*, & terra de
Belleville, civitatem & castrum totamque ter-
ram & patriam *Xantonensem* citra & ultra *Ca-
rentonium*, civitatem & castrum totamque ter-
ram & patriam *Agenensem*, civitatem & castrum
totamque terram & patriam *Petragoricensem*,
civitatem, castrum totamque terram & patriam
Limovicensem, civitatem, castrum totamque ter-
ram & patriam *Caturcensem*, civitatem, castrum
totamque terram & patriam *Tarniensem*, terram,
patriam, & comitatum de *Bigorra*, comitatum,
terram & patriam de *Gaura*, civitatem, castrum
terram & patriam *Engolismensem*, civitatem,
castrum, terram & patriam *Ruthevensem*; & in-
super civitatem & castrum *Aquensem*, & villam,
& castrum *Sancti Severi*, ac omnia civitates,

castra, villas, loca, terras universamque patriam
tam *Aquitaniae* quam *Vasconiae*, habendum &
tenendum a nobis sub homagio ligio, (praedictis
dominio directo ac superioritate nobis, ut prae-
mittitur reservari) tibi quoad vixeris, omnia &
singula civitates, castra, villas, loca, terras, co-
mitatus, & provincias supra dicta una cum om-
nibus insulis eisdem adjacentibus, homagiis, li-
geantiis, honoribus, obedienciis, vassallis, feudis,
retrofeudis, servitiis, recognitionibus, juribus,
mero & mixto imperio, & cum jurisdictionibus
altis, mediis, atque bassis, salvis gardiis, advoca-
tionibus, & patronatibus ecclesiarum metropoli-
titarum & cathedralium, tam secularium quam
regularium & aliorum ecclesiasticorum beneficio-
rum quorumcunque ad nos praemissorum occa-
sione vel causa pertinentium seu spectantium,
deveritiis, censibus, redditibus, proventibus, con-
fiscationibus, emolumentis, & proficiis, rever-
sionibus, universisque juribus & pertinentiis ip-
sorum, adeo integre & perfecte sicut nos ea te-
nemus ad praesens tenuimus & habuimus & te-
nuerunt aut habuerunt progenitorum nostrorum
aliqui ullis unquam temporibus retrolapsis. Ad
tuorum insuper honoris & nominis validius fulci-
mentum hanc tibi auctoritatem & potentiam speci-
aliter impertimus de terris, locis, & juribus ante-
dictis, personis bene meritis donandi & conce-
dendi in feudum & domanium perpetuo vel ad
tempus illa videlicet terras & loca, quae de do-
manio nostro antiquitus nullatenus extiterunt
prout tibi placuerit & fore videbitur; faciendi,
cudendi & fabricandi monetas auream & argen-
team, & aliam qualemcunque, ac magistris &
operariis earundem, indulgentias & privilegia
talibus dari solita largiendi, amortizandi & in-
super terras loca & redditus libere aut sub fi-
nantia quae ad manum mortuam dantur ad prae-
sens, dabuntur successoris temporibus vel etiam
relinquantur; nobilitandi etiam personas igno-
biles; senescallos, iudices, capitaneos, consules,
tabelliones publicos, procuratores, receptores,
& quoscunque officarios alios creandi instituendi
& ponendi in singulis locis provinciarum
hujusmodi, & quando & quotiens opus erit in-
stitutos & positos officarios antedictos amoven-
di & loco amotorum alios subrogandi; bannitos
& criminosos quoslibet provinciarum hujusmodi
praesentes praeteritos & futuros ad statum fir-
mam & patriam ac bona eorum mobilia & im-
mobilia restituendi & revocandi & plenam per-
donationem & remissionem de commissis &
committendis criminibus in provinciis antedictis
etiāsi, propterea fuerunt ultimo supplicio con-
demnati, seu condemnandi & fuerunt de provin-
ciis alienis, concedendi dandi & faciendi eis-
dem; quibuscunque civitatibus, castris, villis,
& locis, ecclesiis, ecclesiasticisque personis,
monasteriis, collegiis, universitatibus, & perso-
nis singularibus cujuscunque conditionis existant,
privilegia, immunitates, franchisas, libertates, &
indulgentias perpetuas ac temporales quaslibet
largiendi & etiam concedendi, & concessas eis
antiquitus necnon ipsorum usus & consuetudines
alios (si tamen contraria non fuerint paci & ac-
cordo facto ultimo inter nos & carissimum fra-
trem nostrum regem *Franciae*) auctoritate nostra
confirmandi

confirmandi quando & quotiens super hoc fueris requisitus, & quaelibet alia faciendi & exercendi quae verus princeps provinciarum hujusmodi ad tutelam & regimen eorumdem incolarum & subditorum suorum quietem posset facere vel deberet. Quae omnia & singula supradicta donata, alienata, concessa, largita, autorizata, restituta, revocata, perdonata, remissa, concessa, confirmata, facta, gesta, & expedita per te & deputatos tuos habere volumus & exnunc prout extunc perinde habebunt perpetuam firmitatem ac si ea per nos ipsos gesta facta & expedita ut praemittitur extitissent; & ex habundanti & quatenus opus fuerit pro iporum firmitate majori exnunc prout extunc laudamus, acceptamus & approbamus eadem ac tenore praesentium confirmamus. Datum sub magni sigilli nostri testimonio in palatio nostro Westmonasterii die xix mensis Julii, anno Domini millesimo ccc. sexagesimo secundo, & regni nostri tricesimo sexto.

Nous pur ouster toutes doubtantes & contentions que purroient avenir en ampres sur ceste matire, & a fin que la chose soit le plus clere, per haboundant & dereschief nous reservons a nous & a nostre mageste royale per expresse & per la tenor des presentes, la directe feignorie, toute la foverantee & resort de toute la principaltee d'Aquitaigne, & de Gaseoigne, & de toutes les citees, countees, chasteaux, terres, pays, villes, fortresses, isles, provinces, & lieux & de touz les prelates, contes, viscontes, barons, nobles, & autres subgiz & enhabitantz les dites provinces les queux nous avous dones a nostre dit enifnes filz & tranpportez en sa persone par le tenor de nos letres perdefus encor-pores. Et volons & declarons que la directe feignorie toute la foverantee & le resort adessus touches, soient & demoerent a touz jours a noz & a nostre dite mageste a user les ditz resorts en lieu & temps a sicome bon nous semblera queles nos ne volons ne pensons delaisser ne tranpporter a nostre dit filz per le dit tltre de principaltee ne per autre chose quecunque comprise en nos dites letres. Et a indice overte & clere demonstrance que nostre dit filz tendra & deura tenir desouz nos a nostre dite mageste & per homage liege la quele il nos ad fait de present, toutes les dites choses & chefcun dicelles, il nos devera paier chefcun an a nostre palais de Westmonster, a la feste de Paysques un ounce d'or dont il noz ad desiamis en possession & saifine ensegne a recognissance de nostre feignorie foveraigne la quele chose an nonn d'apport & cens annuele, nous lui imposons & statuons reelment & de fait de certain science & de nostre autorite & pleine puissance, & volons quil le paie as lieu & terme & sicome dessus est dit, reservantz a noz expresse & especiale poissance dattroistre & enoier la dite imposition & cens annuele a paier a noz en autres choses & termes & ailleurs sicome il noz semblera a faire pur temps avenir en contestoiz consideracion & regard a lestat de nostre dit filz & a les charges que luy covendra

de necessite sustenir & porter pur government des pays dessusditz. Donne per tesmoignance de nostre grant Seal a nostre palais de Westmonster le xix jour de Juyl lan de grace, mill. tricesse. sexante & deux, & de nostre regne, trente sisme.

But by reason of an omission of these words, *ac etiam civitatem & castrum Burdegalae ac civitatem & castrum Bajonae*, which should have come immediately after *castrum Severi*, the charter it self was renewed with the same date and an addition of those words. The black prince had divers years possession of it according to this grant, and the king his father had his delegates there, or his judges, *de la souveraintie & du resort* that heard all causes upon¹ appeal from the prince's jurisdiction. The prince styled² himself *princeps Aquitaniae & Walliae*. But in the letter of Charles V. of France, by which he summoned the prince to the chamber of peers or his parliament, for that matter of impositions or *fouage* that he laid on those of *Guienne*, he is styled *prince of Wales and Aquitain*. For the exercise of his power in the principality; see the stories of France; and especially *Bouchet* his annals of *Aquitain*, and *Gabriel de Lurbe* his chronicle of *Bourdeaux*. But about ten years after the creation, he surrendered his whole right to the king his father, who then governed those countries again by lieutenants as he had done before he created him. The surrender was made the fifth of October in³ the XLVI of this king *Edward*, or MCCCLXXII.

V. The same beginnings of the titles of duke and count which are already declared in the first chapter of this book (for the deduction of those titles into such state as they are now in the empire) belong equally to the titles of duke and count in France. Yet other testimonies are, which being more proper for France, were reserved for this place, and may add further light also (if any be yet wanting) to those of the empire. The French kings in the more ancient times (by the French kings, I mean the several kings of territories in France; as not only the chief that are known by the name of kings of France; but those of Burgundy, Aquitain, Bretagne, and some such more) used to commit their provinces sometimes to *patricii*, sometimes to counts. The commission gave them jurisdiction both civil and criminal, and the officary dignities were in the abstract called *ducatus*, *patriciatus* & *comitatus*; and about M years since this was a form of the commission. *Praecipue regalis in hoc perfecta collaudatur clementia, ut inter cunctum populum bonitas & vigilantia requiretur personarum. Nec facile cuilibet judicariam convenit committere dignitatem nisi prius fides & strenuitas videntur esse probatae. Ergo dum & fidem & utilitatem tuam videmus habere compertam ideo tibi actionem comitatus, ducatus, patriciatus, in pago quem antecessor tuus N. usque nunc visus est e-*

¹ Rot. Vasc. 36. Ed. III. membr. 17, n. 16. & membr. 16, n. 15.

² Vasc. 44. Ed. III. membr. 4, & 5.

³ Vide infra §. XIII.

⁴ Rot. Vasc. 57. Ed. III. membr. 2, n. 2.

⁵ Marculph. form. lib. 1, c. 8.

gisse, tibi ad agendum regendumque commissimus, ita ut semper erga regimen nostrum fidem inlibatam custodias, & omnes populi ibidem commanentes, tam Franci, Romani, Burgundiones vel reliquæ nationes sub tuo regimine & gubernatione degant & moderentur & eos recto tramite secundum legem & consuetudinem eorum regas, viduis & pupillis maximus defensor appareas, latronum & malefactorum scelera a te severissime reprimantur, ut populi bene viventes sub tuo regimine gaudentes debeant consistere quieti, & quicquid de ipsa actione in fisci ditionibus speratur, per vosmetipsos annis singulis nostris aerariis inferatur. There is also testimony enough of particulars of these officary dignities in *Gregoriusⁿ Turonensis*, *Aimoinus*, and others that write these elder times, which are before *Charles* the great. Examples of *duces*, & *comites provinciarum* here need not; because they are common. But for *patricius* to be referred to a province; because it is not so obvious, I note one or two. *Salomon* by the name of *patricius Africae* is remembered in *Victor^o Tununensis*. And for *France*; *Amalus patricius provinciae qui Gunthramno Francorum regi parebat*, in *Paulus^v Wanfredus*. And other such were within the territories of *France*. These three officary titles (as it appears by the commission) had the same power in the province annexed to them. So that a *patricius* of a province had but the like office or jurisdiction, as a *dux* or *comes*.

In the following times, from the age of *Marculphus* (out of whose store of precedents of the time we have that form of the commission) the use of the title of *patricius* in the provinces of *France* is rare enough, unless we conceive with some of the *French* that the title of *peers* there was but the same dignity expressed out of *Latin* into *French*, touching which more where we speak of peers. But the titles of *dux* and *comes*, with relation to provinces, are exceeding frequent there in all succeeding ages. Those dignities of *comes* and *dux*, being first at the king's will and only officary, became afterward to be joined with feuds, first for life. And at length they were also, with the feuds, transmitted to heirs. Divers of the *French* place the beginning of the transmission of them to heirs, in the time of *Hugh Capet*, which falls about *cccccl.* of our Saviour. But plainly long before that, some of the greatest counties or duchies, in what was then the kingdom of *France*, were erected, and the titles of count or duke promiscuously attributed to such as had them, and that with estates of inheritance (²⁰⁹).

The county of *Holland* was given by *Charles^a* the simple to *Thierry* and his heirs in the year *ccccxiii.* although afterward^c it came to be reputed a fief of the empire. But for that matter, see especially the most learned *Hugo*

Grotius in his first chapter *de antiquitate reipub. Bataviae*. About the same time *Rollo* had the duchy of *Normandy* given him in like manner. And some are also before these. The foresters of *Flanders* (which were as counts) had that territory, and transmitted both it and the dignity to their posterity. It was first settled upon *Liderique^f* by king *Clothar* the II. and afterward (that dignity being ended in his issue) *Charles* the bald, in *ccccxiii.* created *Baldwin* count of *Flanders*, from whom the dignity, as feudal, was derived to his heirs. (²¹⁰) Divers other like are in those times, which make it clear that the beginning of the transmission of feudal dignities to heirs, was not under *Hugh Capet*. But indeed it is true that first under *Charles* the simple, and afterward under *Hugh Capet*, many of the great feudal dignities of the elder times, became first inheritable, and had little less than supreme power joined with them by reason chiefly of that weakness into which the crown in both those times was fallen. For with divers of those feudal dignities, that then were given or permitted to the possession of such great lords as had gained them, all jurisdiction civil and criminal without appeal, and such a sovereignty, as that nothing was left in the crown save only a supremacy acknowledged by homage, accompanied the possession. And such a sovereignty in duchies and counties, divers dukes and counts there enjoyed until within the later ages, when almost all the ancient duchies and counties, with such sovereignty and jurisdiction, were either by marriages or upon forfeitures, elcheats or otherwise reduced back, and so retained in the crown, that the new grants or creations of those titles, that have followed, have been without any such sovereignty as^g was in those elder times enjoyed in the territories that denominated the lords created. But examples of such sovereignty joined with such titles, continue yet in the counties of *Flanders* and *Burgundy*. And in the later times since that reduction of all territorial sovereignty to the crown; only some few duchies and counties that have been appointed for appenages of the king's younger sons, have, by the ordinances^h of the appenages, such a jurisdiction and sovereignty joined with them, as distinguisheth them from the rest. Yet that is less also than what was in that ancient kind of the greatest dignities. And none of these appenages are to be severed by any grant from the crown; but, upon default of the issue male, they must revert to it, which from the edicts concerning that matter may be more particularly learned. And thus the kings of *France* (as *L'oyseau* notes) have found a means to remove the sovereign titles of duke and count from that greatness which the elder ages gave them, *aux rangs des simples seigneurs suzerains* &

ⁿ Hist. lib. 8. cap. 18. 20. lib. 9. cap. 7. &c. lib. 5. cap. 13.

Nicolaï Viginerii chron. Burgund. pag. 29. sub anno 591.

Auberti Miraei.

^r Vide Johan. de Beka in rebus Ultrajectinis in Hungaria episcopo XL. pag. 19. & episcopo XLII. pag. 89. & episcopo XLV. pag. 100. & episcopo XLVII. pag. 106.

^s Vide Vincent Cabot. disputat. lib. 2. cap. 30. Bertrand. d'Argentre histor. de Bretagne lib. 4. cap. 6.

^t Hujulce rei exemplum expressissimum habetur in ducatu Normanniae apud G. Gemiticensem lib. 7. cap. 45. & 46.

^u Des seigneuries chap. 5. §. 58, 59, &c.

^v Voyez les edicts de royes tom. 2. liv. 1. tit. 4.

^a In chron.

^b De gest. Longobard. lib. 3. cap. 3. & videbis

^c Videbis Jan. Douf. annal. Holland lib. 5. pag. 113. & cod. donationum

^d Marchant. Flandr. lib. 2. Ferreol. Locrius chron. Belgic. tom. 1. pag. 55. &

^e Marchant. Flandr. lib. 2. Ferreol. Locrius chron. Belgic. tom. 1. pag. 55. &

^f Marchant. Flandr. lib. 2. Ferreol. Locrius chron. Belgic. tom. 1. pag. 55. &

^g Marchant. Flandr. lib. 2. Ferreol. Locrius chron. Belgic. tom. 1. pag. 55. &

^h Marchant. Flandr. lib. 2. Ferreol. Locrius chron. Belgic. tom. 1. pag. 55. &

ⁱ L'oyseau

leur

leur offer la qualite de princes, as his words are.

VI. The original and nature of the titles of dukes and counts in France thus generally deduced; we come to the ceremonial part of their creations, and their coronets (being their most remarkable honorary ensigns) with which also some other particulars, out of antient testimony, occur touching the nature of them. And first of the creation of dukes, of the coronets attributed to them, and of other the chief particulars of honour and ceremony concerning them. These are considerable according to that distinction of the antient dukes that were sovereigns in their territories, from those created in the later times, which wholly remain subjects every way to the crown. For those sovereign dukes; by the *sallade* (an antient book written by one *Anthony de la salle*, and thence so titled) they were to be made by a solemn imposition of a rich crown or coronet on their heads, not with less ceremony than the king was crowned, saving only the anointing. And there also it is supposed that he, which is to be created, should be a count or marquis that had four counties, or four baronies for every county. The words are; *Quand ung^r marquis ou ung count a quatre contez ou quatre baronies pour chascun counte, lempereur ou son roy le peult faire duc licetement, & le doit faire en sa meilleure ville que doit estre cite; & d'icelle ou du pais porter le nome de duc ainsi que dit un roy de son royaume, & tout en la propre forme que roy est couronne except d'estre oingt. Doit estre le duc enchappellé d'ung tresrich chappel d'or & de pierres precieuses par le dit prince & le plus digne prelat qui doit faire le service, ou doivent estre que peult autres prelats, princes, counts, barons, benne-rets & autres nobles homes a grant plante pour honorer sa feste.* The same in substance, almost in the very words, is delivered in a little book, titled *la division du mound*, and printed at *Paris* in MDXXXIX. as also at the end of *gesta Romanorum*, published by *Robert Gagwine* long since, where, in the mention of the rich coronet, this addition is *ainsi quil est accustume de faire*, which expressly denotes the known use of giving the dignity by a coronet. But however they speak here of four counties, I have not yet seen warrant enough for any such or any other number of counties out of which a dutchy should be so raised. It is true that in some old annals of France we read that *Pippinus^a rex Grifonem more ducum XII. comitatibus donavit.* And hence will some learned men^b have it, that some custom was (about the beginning of the French empire) to erect a dutchy by making it out of XII counties, as is also before^c noted. But neither the examples of the time before king *Pipin* (those examples are frequent enough

in *Gregorius Turonensis*) nor since justify any constant custom of any number; the counties that were in both the elder and later times under dukes being variously one, two, three, four, five or otherwise, as it happened; as appears in the antient dutchies of *Bretagne*, *Burgundy*, *Normandy*, *Auvergne*, *Bourbon*, and such more, which is also argument enough to disprove all other opinions touching^d any particular number of counties here.

For the coronets of those antient dukes; they were not only circles of gold enrich with stones (as in the *sallade* they are mentioned) but *fleury* also, with flowers evenly and highly raised, or a *hautes fleurons tous d'une hauteur*, or this^e which is before described, as belonging also to such as have the particular dignity of *princes*. This kind of coronet was very antient there, and imposed not only at the first creation, but also when the dutchy descended, as the crowns of kings are at this day, and that by the greatest prelate of the dutchy. A special example thereof is in the dutchy of *Normandy*, where *John* earl of *Moreton* (the same that was king *John* of *England*) was crowned duke of *Normandy* by *Walter* archbishop of *Rhoan*, and was girded with the sword of the dutchy (as the phrase was) and took an oath also as kings do. *Roger de^f Hoveden* thus relates it. *Comes venit Rothomagus & die dominica in octavis paschae, viz. vii. kal. Maii, festo sancti Marci evangelistae, accinctus est gladio ducatus Normanniae in matrice ecclesia per manum Walteri Rothomagensis archiepiscopi. Et praedictus archiepiscopus posuit in capite ducis circulum aureum habentem in summitate per circuitum rosas aureas, & ipse dux coram clero & populo juravit super reliquias sanctorum & super sacrosancta evangelia, quod ipse sanctam ecclesiam & dignitates illius bona fide & sine malo servabit illaesas & rectam justitiam exercebit & leges iniquas destruet & bonas instituet.* *Matthæo Paris*, the author of the annals of *Ireland*, and others, to the same purpose. So also were the dukes of *Bretagne* antiently invested, as appears in the example of the coronation of *monsieur le daulphin Francis* son to *Francis* the first into that title in MDXXXII. where also many particulars occur touching ducal investitures, and that performed according to the customs there which were much antienter than the age of king *Francis*. And therefore I at large relate it, as *Bertrand d'Argentre^g* president of the parliament of *Rennes* hath delivered it.

The dutchy being given him by his father, he came with a pomp fit for such a person into *Rennes*, and before his passage through the gate they call *Mordelaise*, he took his oath in *Latin* (which was interpreted to him) upon holy re-



^a La Sallade fol. 67. a. & chez L'oyseau chap. 5. des Seigneuries §. 46.

Adverf. 1. cap. 8. Douz. annal. Hollan. lib. 5. & Pith. des countes de Champagne & Brie. Choppin de dominio lib. 3. tit. 15. §. 3. &c.

^c Cap. 1. hujus partis §. II. & vide infra §. IX.

^d Videfis Chaffanaeum catalog. glor. mundi part. 5. conf. 46. in comit. Campaniae & Alciat. de singul. certam. cap. 31.

edit. Francofurt.

^e Carol. Paschal. de coronis lib. 9. cap. 22.

^f Hoveden. Annal. part. 2. pag. 792.

^g Histoire de Bretagne liv. 13. chap. 71.

^a App. Aimoin. lib. 4. cap. 61.

^b Videfis P. Pith.

^c Cap. 1. hujus partis §. II. & vide infra §. IX.

^d Videfis Chaffanaeum catalog. glor. mundi part. 5. conf. 46. in comit. Campaniae & Alciat. de singul. certam. cap. 31.

^e Carol. Paschal. de coronis lib. 9. cap. 22.

^f Hoveden. Annal. part. 2. pag. 792.

^g Histoire de Bretagne liv. 13. chap. 71.

liques to defend and preserve the catholick faith and the liberties of the church of *Bretagne*, to maintain the barons and the gentry in their privileges, and as far as in him lay to do intire justice to all his subjects of the dutchy. The like oath also he took between the hands of the viscount of *Roban* who received it in the name of the gentry, and the third estate. This done, the duke, in a ducal robe of cloth of gold, entered into the town, and afterward into Saint *Peter's* church, where after he had heard even-song, he kept a vigil with some of his servants all the night before Saint *Peter's* altar till matins was done, and then retired to repose in his lodgings where he staid till the procession of the church about nine of the clock came for him and received him in the antient habit of a duke of *Bretagne*, that is, a purple coat furred with ermins, and upon it a robe of estate of the same. The chief officers, as the lieutenant-general, he that represented the chancellor, the mareschal, the admiral, and others, having on also their robes of estate. Then the bishop of *Rennes* said this prayer.

Dieu tout puissant & eternel, qui as daigne eslever a la dignitie de duc, ton serviteur *François*, nous te supplions que tu luy donnes la grace de disposer tellement del commun salut de tous, au cours de ce siecle que il ne se desuoye point du sentier de la verite. Par nostre seigneur, &c.

The prayer done, two other bishops in their pontifical habits, and having their crosses and mitres, attended the duke on each side, and the Bishop of *Rennes* with his clergy in their copes (the cross, tapers, and incense preceding them) waited on him to Saint *Peter's* door singing *voicy, J'envoye mon ange qui marchera &c.* and then *escoute Israel tu n'adoreras aucuns dieux estranges, &c.* And the barons and gentry and all the people followed the procession, which being come to the church door, the bishop of *Rennes* said this prayer.

Dieu que cognois que le genre humain ne peut se maintenir par aucune fors sans toy; octroy nous favorablement que ton serviteur *François* le quel tu as voulu establi sur ton peuple soit tellement apuy de ton ayde quil puisse commander & profiter a tous ceux qu'il pourra.

Then immediately the procession went into the church singing, *Seigneur en ta vertu s'esiovira le roy, &c.* and at the entry into the quire, the bishop prayed again.

Tout puissant & eternel Dieu gouverneur des choses celestes & terriennes qui as daigne eslever a la dignite de duc ton serviteur *François*, nous te prions que tu faires qu'il soit muny du don de la paix de l'eglise & delivere de toutes adversitez, & que per ta grace il merite de parvenir aux joyes de paix eternelle par nostre seigneur &c.

The sword in the mean time, and the crown or chaplet being delivered to two of the canons, and the prayer done, the procession went

into the quire, and the duke was led towards the altar before which he kneeled, as also did the bishops that still waited on him; and the bishop of *Rennes* began *veni creator*, which the quire received from him, and then began the short Litany, about the end whereof at the saying of *ut Dominum apostolicum*, the bishop arose and turning himself towards the duke, spake these words there.

Nous te prions exauce nous, a ce que tu daignes benir, conserver & garder cestuy nostre duc.

Then, still with his face towards the duke, he said this prayer.

Dieu que es la gloire des justes, le misericorde des pecheurs, qui as envoye ton fils racheter de son precieux sang le genre humain, qui dissipas les guerres, qui es le protecteur & gardein de ceux qui ont esperance en toy, soubz la volonte de quel tout puissance de seigneurs est reiglee & continue, nous te supplions humblement que tu vueilles tenir dans ce present siege ducal, ce tien present serviteur *François* se confiant en ta misericorde, & que favorable tu luy assistes, a celle fin qui iceluy qui attend estre defendu par ta proteccion, soit plus fort que tous ennemis; fay le seigneur estre bienheureux, vainqueur de ses ennemis & auguste triomphant; environne le de la couronne de justice & de pieté; a fin que croyant en toy de tout son coeur & de toute sa pensée, il te serve, qu'il defende & esleve en honneur ton eglise, & que jamais pour quelques embusches de maux il ne se tourne a l'injustice: Enflamme, seigneur, son coeur de l'amour de ta grace, a ce que aymant la justice & marchant par ses sentiers, apres avoir paracheve le coeurs des ans que tu luy as ordonnez en ce tresexcellent duche, il merite de parvenir aux joyes eternelles par nostre seigneur &c.

From the coming into the quire till the end of this prayer, the canon that had the sword, held it naked on the right side of the altar, and the other the coronet on the left. The bishop now received the sword from the canon, and delivered it naked to the duke, with these words in a loud voice.

Reçois l'espée qui l'est royalement baillée & consacree par nos mains quoyqu' indignes, mais tenons le lieu & autorite des saints apotres. Ce glaive t'est ordonne de dieu par l'office & ministere de nostre benediction, a la defense de nostre mere sancte eglise, punition des meschants & louage des bons, & te souvienné de celui du quel le psalmiste a prophetize, disant, soit ceint de ton glavie ô trespuissant a fin que par cestuy tu exerces la force de justice, & destruiszes par iceluy mesmes avec puissance le fardeau d'injustice, defendes le sancte eglise de Dieu, & ses enfans fideles en combat pour eux, apres en horreur & les faux chrestiens & ennemis du nom chrestien, aydes & defendes debonnairement les veufes & orphelins, restaures ce, qui est ruine, conserves ce qui est restaure, venges l'injustice, maintiennes les choses bien disposees, a fin que faisant ces choses trium-

triumphant in vertus & exerçant glorieusement justice, tu puisses avec le fauveur du monde (la figure du quel tu representes au nom) regner avec celuy a jamais, & quel vist avec le pere & S. esprit au siecle des siecles. Ainsi soit il.

This ended, the bishop said to him.

On vous a baille cest espee au nom de Dieu & de monsieur S. Pierre come anciennement a este fait aux roys & ducs de Bretagne vostre predecesseurs (*for antiently there were kings of Bretagne before it became a dutchy*) en signe de vraye justice, pour deffendre l'Eglise & le peuple, que vous est commis come seigneur droicturier que Dieu vueille que ce soit par telle maniere que vous en puissiez rendre compte au jour de jugement & au soulagement de vous & de vostre peuple.

Then he girded on him the scabbard, and presently after he solemnly set a cap of purple velvet doubled with ermine upon his head, and then also upon the cap a coronet of gold rich with stones, and *a haults fleurons tous d'un hauteur*, or all *fleury* the flowers evenly high raised, *qu'est la couronne* (saith ^h *d'Argentre*) *que les ducs ont porte de puis qu'ils ont laisse le tiltre de roy*, which is about the space of 1000 years. And they of the church (he says) call it *le cercle ducal*, and the bishop thus used the same phrase when it was put on.

Reçoy le cercle ducal, qui t'est mis & impose par nos mains, combien que indignes ton estois sacrees, & entends que telle chose represente la glorie de la saintete & l'honneur & oeuvre de force, & n'ignore pas que par iceluy tu es fait participant de nostre ministere, tellement que comme nous aux choses interieures sommes pasteurs, & gouverneurs des ames intelligents, aussi tu es aux choses exterieurs vray observateur de le honneur de Dieu, & resistant vaillamment aux adversitez de l'Eglise de Jesus Christ, tu es profitable executeur de la charge de duc, la quelle Dieu t'a donnee & qui est commise a ton gouvernement par l'office de nostre benediction que sommes commis au lieu & autorite des apostres & de tous les saints. Soyez veu regnez au profit de lous a ce que orne des pierreries de vertu entre les renommeez combatans, & payre du loyer perpetuel des bien hereux, sans fin tu te glorifies avec nostre Saviour & Redempteur Jesus Christ le quel vit & regne avec Dieu le Pere en unite du Saint esprit &c.

Then he thus spake to him.

On vous a baillee ce cercle au nom de Dieu & monsieur S. Pierre, qui designe que vous recevez vostre puissance de Dieu le tout puissant, que come cercle n'a ny fin ny commencement, du quel averes loyer & couronne perpetuelle en paradis, faisant vostre debuoir par bon gouvernement de vostre seigneurie, a l'exaltation de la foy, protection de l'Eglise & deffense de vos subjects, que vous octroye Dieu per sa sainte grace.

The duke then went to the altar, and there took his oath, which the bishop gave him in this form.

Vous jurez a Dieu, a monsieur Saint Pierre, aux Saintes Evangiles & reliques qui cy sont presentment, que les liberties, franchises, immunities & anciennes customes de l'Eglise de *Rennes*, de nous & de nos hommes tiendres sans les enfreindre de tort, force, violence, inquietations, oppressions, & des toutes quelconques novallitez nous & nos hommes garderes & ferez garder, a vostre pouvoir.

And the duke laying his hand on the altar answered *ainsi soit il*; and then being returned to his place, where he kneeled, the bishop used this prayer.

Nous te prions Dieu tout puissant que il te plaise regarder d'un oeil debonnaire ce tien illustre serviteur *François*, & que tout ainsi que tu as beneit *Abraham, Isaac, & Jacob*, il te plaise luy donner les benedictions de ta grace spirituelle l'arrouant de la plenitude de ta puissance, luy donnant de la rosee du ciel, & graisse de la terre, abondance de vin, froment, huile, & de tous fruits, & de la liberalite de ta fauveur luy octroyant longue vie, a fin que luy regnant nous ayons pour loyer la sante du corps, la paix inviolable au duche, & que la majeste glorieuse du palais ducal reluisse en puissance aux yeux de tout de monde, par *Jesus Christ* nostre seigneur. Octroye nous Dieu tout puissant que ce tien serviteur soit le tres-fort protecteur du pays, consolateur, & conservateur des eglises, & saints monasteres, par grand piete & magnificence ducale, & qu'il triumph de ses ennemis, soit le plus fort des princes pour dompter les rebelles & nations, payennes & heretiques, qu'il soit redoutable a ses ennemis, debonnaire a ses subjects, aux seigneurs, barons, & vausaux amiable, liberal, & magnifique, qu'il soit craint & ayme de tous, & puisse avoir des enfans ducs, lesquels par succession du temps advenir puissent gouverner le duche, & que apres une vie renommee & heureuse en ce monde il obtienne la felicite eternelle, par Jesus Christ nostre seigneur, &c.

Next, the bishop began *te Deum laudamus*, which the quire ended. Then they went out through the great door, and in a procession went round about the church, the duke following them with the sword naked in his hand; and so returning in after them till he came to the altar, where he put off the scabbard which with the sword was delivered to the marshal of *Bretagne*, who held it during the mass. The marshal there is as the constable in most other states, saith *d'Argentre*. In the mean time while the bishop was putting on his chasuble, the duke received the homage of the barons of the country, and of other lords. And the mass of the holy ghost was begun with these prayers.

Prions pour nostre trescheseur duc *François*, affin que nostre Dieu & seigneur luy rende sub-

jects toutes nationz barbarez pour le bien d'une perpetuelle paix pour nous. Nous te prions Dieu tout-puissant qu'estant appaisé par sacrificez salutaires, tu facez que ton serviteur *François* soit tousiours trouve propre pour bien faire la charge et devoir de la dignite de duc, & que soit tousiours agreable au pere celeste per nostre seigneur &c.

Seigneur te prions que cest participation au salutaire sacrifice pussie effacer les taches des pechez de ton serviteur, & le rende suffisant pour gouverner le peuple selon ta volonte, affin que ne soit vancu des enemis tant visibles que invisibles, par le moyen de ce salutaire mistere par le quel mond a este recepte.

But although these testimonies of *Normandy* and *Bretagne* shew clearly that the ducal coronets were raised into flowers, yet there was not such a constancy in the fashion of them as that they were always such or of any other certain fashion. The *French* tell us that in the *Celestines* at *Paris*, where two dukes of *Orleans*, the father and son, are represented, the father hath a coronet fleury as those of *Normandy* and *Bretagne* had, but the son¹ hath it only pointed with rays and pearled. Likewise in those of the princes of *Bourbon*, mentioned before where we spake of the coronets of princes, another difference is; yet they were dukes also.

VII. But although such testimonies be concerning the investiture of antient dukes in *France* with a coronet and sword; yet also we find some invested without either coronet or sword mentioned in their investitures, which consisted only (for ought appears) in the putting on a ducal cap, and the giving of a rod of gold into their hands, besides the delivery of the charter of creation. Such was that investiture whereby *John* duke of *Lancaster* was created by the assent of all the estates in parliament, duke of *Aquitain* for life by his nephew king *Richard II.* of *England*, as king of *France*. He was invested (as the parliament² roll says) *per le mettre de la cappe a son chiefe & per la baille d'une verge d'or*, or *per virgam & pileum sibi praebita manu regis*, as *Thomas* of *Walsingham* remembers it according to the effect of this charter delivered to him by the king's hands.

Richardus Dei gratia rex *Angliae*, & *Franciae*, & dominus *Hiberniae*, charissimo patruo nostro *Jobanni duci Lancastriae*, salutem. Inter gloriolas reipublicae curas & sollicitudines varias regis humeris incumbentes, firmat potissime regale solium effluens a iustitia condigna praemiatio meritum. Ibi namque continue virtus crescit & colitur ubi a debito sibi praemio non frustratur. Cum igitur honor sit virtutis praemium, constat quod virtuosus & strenuus ex regali iustitia debentur fasces honorum, & praemia dignitatum, quae utique si dignis conferantur, non debent simpliciter aestimari donum seu exhibitio favorum, sed potius debita recompensatio meritum. Quid enim in retroactis secu-

lis & foelcium principum temporibus rempublicam amplius provexisse comperimus, quam quod pie regnantes virtuosos & strenuos sub se habebant oneris eis injuncti participes, quos postmodum, juxta exigentiam meritum, honore & distributionibus dignitatum successively fecerunt ex debito regalis iustitiae gloriosos. Quia quod soli non poterant, provida virtuosorum hujusmodi provisione supplebant. Hiis igitur considerationibus inducti, ad te praecariissimum patrum nostrum mentis nostrae aciem dirigentes, actusque tuos virtuosos & praeclara merita quibus te virtutum dominus insignivit, in profundae discussionis liberamine ponderantes, de assensu praelatorum, ducum, magnatum, & aliorum procerum & communitatis regni nostri *Angliae*, in instanti parlamento nostro apud *Westmonasterium* convocato existentium, te praedilectissimum patrum nostrum in *ducem Aquitaniae*, cum titulo stilo ac nomine & honore eidem debitis praeficiamus ac inde praesentialiter per appositionem cappae tuo capiti ac traditionem virgae aureae investimus in praemium eximiae virtutis tuae & attinentiae praedictarum toto vitae tuae tempore possidendum. Et ut clare particulariter & in specie intelligere valeas qualis erga te fuerit & sit nostrae intentionis affectus, de assensu praedicto donavimus & concessimus & tenore praesentium concedimus & donamus tibi *ducatum* praedictum necnon universa & singula civitates, castra, villas, loca, terras, comitatus, & provincias nostra infra eundem *ducatum* existentia habendum & tenendum de nobis ut de rege *Franciae*, & haeredibus nostris ut *Franciae regibus*, sub homagio ligo, ad totam vitam tuam, una cum omnibus insulis eisdem adjacentibus, homagiis, ligeantibus, honoribus, obedientiis, vassallis, questalibus, feudis, retrofeudis, servitiis, cognitionibus, juribus, mero & mixto imperio & cum jurisdictionibus altis, mediis, atque bassis, salvis gardiis, advocacionibus, & praedordinationibus ecclesiarum metropoliticarum cathedralium tam secularium quam regularium & aliorum beneficiorum ecclesiasticorum quorumcunque ad nos praemissorum occasione pertinentium sive spectantium deventis, censibus, redditibus, proventibus, confiscationibus, emolumentis, reversionibus & proficuis, regaliis, regalitatibus, franchesiis, libertatibus, privilegiis, immunitatibus, usibus & consuetudinibus universisque juribus & partium suis quibuscunque adeo plene, integre, & perfecte, sicut ea tenemus & habemus, tenuimus & habuimus, tenuerunt & habuerunt progenitorum nostrorum alicui ullis unquam temporibus retrolapsis, aliquibus concessionibus de quibuscunque officiis per nos seu per progenitores nostros ante haec tempora factis, quas tenore praesentium omnino revocamus, cassamus, & de facto annullamus, non obstantibus. Salvis tamen nobis, ut *Franciae regi*, & haeredibus nostris, ut *Franciae regibus*, directo dominio, superioritate, & resorto *ducatu* praedicti specialiter reservatis. Nolumus etiam quod tu aliquo tempore vitae tuae castrum & dominium de *Froussac*, cuicunque personae dare, alienare vel transferre valeas quovis modo. Immo ea in manibus tuis tanquam eidem *duca-*

¹ See Loys d'Orléans en les ouvertures des parlemens chap. 11. pag. 170. &c. & Moreau en la tableau des armoires chap. 6. pag. 249. L'oyseau des seigneuries chap. 5. §. 46. &c.

² Rot. parl. 13. R. II. memb. 9. num. 21.

tui annexa omnino teneri volumus & reservari. Et ad honoris & nominis tui validius fulciamentum, hanc tibi auctoritatem & potestatem specialiter impertimus, monetam auream & argenteam & aliam qualemcumque faciendi, cudendi, & fabricandi, monetamque jam usitatam seu quancumque imposterum per te cudendam quotiens & quo modo tibi videbitur expediens, mutandi; aliqua consuetudine in contrarium ibidem retroactis temporibus usitata non obstante, ac magistris & operariis earundem indulgentias & privilegia talibus dari solita largiendi & insuper amortizandi terras, loca, & redditus libere aut sub finantia quae ad manum mortuam dantur ad praefens, dabuntur successuris temporibus, vel etiam relinquuntur; nobilitandi etiam personas ignobiles, fenestrallos, judices, capitaneos, consules, tabelliones publicos, procuratores, receptores, & quoscunque officarios alios creandi, instituendi, & ponendi in singulis locis *ducatus* praedicti, & quando opus erit institutos & positos officarios antedictos amovendi & loco amotorum alios subrogandi, bannitos, & criminosos quoslibet provinciarum praedictarum praesentes praeteritos & futuros, ad statum famam & patriam ac bona eorum quaelibet mobilia & immobilia restituendi & revocandi & plenam perdonationem & remissionem de commissis & committendis criminibus in provinciis antedictis etiam si propterea fuerint ultimo supplicio condemnati seu condemnandi, & fuerint de provinciis alienis, concedendi, dandi & faciendi; eisdem quibuscunque civitatibus, castris, villis, & locis, ecclesiis ecclesiasticisque personis, monasteriis, collegiis, universitatibus, & personis singularibus cujuscunque conditionis existant privilegia, immunitates, franchesias, libertates, & indulgentias perpetuas, ac temporales quaslibet largiendi & etiam concedendi; privilegiis per progenitores nostros patriis & subditis *Aquitaniae* conjunctim vel divisim ne a *corona Angliae* separari aut extra manum regiam poni valeant concessis non obstantibus, quae revocare per praesentem concessionem non intendimus, sed duntaxat suspendere usque ad terminum vitae tuae & post tui obitum in suo robore perpetuo duratura esse volumus. Ita semper quod immediate post mortem tuam idem *ducatus* cum omnibus & singulis praemissis ad nos & haeredes nostros integre revertant. Dat. sub magni sigilli nostri testimonio in palatio nostro *Westmonasterio* secundo die *Martii*, anno Domini, millesimo trescentesimo octogesimo nono & regni nostri tertio decimo.

Whether the use of the coronet and sword were committed by reason that the resort and sovereignty is reserved to the king, I determine not. But this is here observable also, that whereas at the coronation of the kings of *England* from ancient time, two gentlemen have always represented the dukes of *Normandy* and *Guienne* in ducal habits, those habits are only a ducal robe and cap without any coronet, though not only the dukes of *England*, but all the nobility to the

viscounts inclusively, that then attend also, wear the coronets belonging to their several dignities. But also we see that the greatest dutchies have been antiently given by the *French* king's charter without mention of any rite at all of investiture; as for example, the dutchy of *Burgundy* by that of king *John* to his son ¹ *Philip* in MCCCLXIII. And of the antient dukes of *France* and such as had their dutchies with sovereignty, thus much in this place; other particulars concerning the title as it hath been the same with count, and the distinction of it from count, being referred to the ninth paragraph where we speak of counts.

VIII. Those dukes of the later and present^m age, though they have not that antient sovereignty nor any such investiture, yet have coronets attributed unto them, and that of the same shape as the antient dukes had. *Carolus Paschalius* a learned writer of *France*, having first divided dukes (as he did princes) into *maiores* and *minores*, shews the great difference of their power and dignity, and at length notes yet that they agree in coronets, and makes a wonder of it. *Ducum*, saith he, *alii sunt maiores alii minores*. *Majores voco illos quorum dignitas proxime accedit ad regiam*. Et *hos quidem duces in tantam magnitudinem & claritatem evectos video ut tot mihi reges videre videor*. *Minores duces sunt illi qui sunt in ditione majoris potestatis, regiae, imperatoriae, pontificiae*. *Istis videlicet dati sunt ducatus, hoc est dignitas & feudum quod hoc nomine demonstratur, ea lege & conditione ut juri & jurisdictioni datoris per omnia subjecti sint haud secus quam quilibet e vulgo*. *Tales fuerunt majores duces in ditione imperatoris antequam darentur eis vicariatus imperii*. *Utriusque tamen ducatus coronae, quod mirere, sunt promiscuae, etsi regis sunt similes*. *Quippe in utrisque lamina aurea quae caput ambit pretiosis quoque lapillis distinguitur*. *Ex hac lamina exeunt flores & folia*. *Certe id quicquid est, nihil aliud est quam materia florea foliacea, frondea, laeta, lascivius, suaeque serie laminam inumbrans*. But this agreement of their coronets (howsoever he speaks of them, as if they might be worn by both) is only in shape not in use. For whereas some dukes that were sovereigns did at pleasure wear them, and received them also at their investitures; these of the later ages, which want that sovereignty, wear the shape of them only on their Arms, not the coronets themselves on their heads, which yet they may doⁿ if they be created into that kind of sovereignty which the antient dukes enjoyed. So *L'oyseau* teacheth us. ⁽²¹¹⁾ But for the nature and forms of creation of dukes in the later ages in *France*, we may especially observe those^o examples of that erection of the barony of *Montmorency* into a dutchy and *pairrie* by *Henry* the II. as also of the barony of *Damville* by *Lewis* the XIII. and the making *Anne de Montmorency*

¹ Chez Favin. en le theatre d'honneur pag. 934.

^m Ducatus recentiores quam plurimos habes apud Choppin. lib. i. de doman. tit.

ⁿ c. 7. ^o L'oyseau des seigneuries chap. 5. §. 53, & 54. ^o Chez A. du Chesne en les preuves du liv. 5. de l'hist. de Montmorency.

p. 286. & 309.

constable of *France*, duke of the first, and *Charles de Montmorency* of the second. In that to *Anne de Montmorency*, after the preamble concerning the merits of the constable and his ancestors, and a recital of divers lordships, beside that barony, being in his possession, and of a revenue fit for the support of a duke.

POUR ces causes (*says the charter*) & autres considerations dessus touches & declares par advis & deliberation d'aucuns princes & seigneurs de nostre sang & linage & autres notables personages de nostre conseil, avoïns par ces presents joint, uny & incorpore & de nos propre mouvement, certaine science, grace & liberalite speciale, plain puissance & autorite royal, joignons, unissons, & incorporons a la dite baronie de *Montmorency*, des vouloir & consentement de nostre dit cousin, lefdites terres & seigneuries d'*Escoven*, *Chantilly*, *Montepillover*, *Champersey*, & autres dessus nomees, leurs dites appartenances & dependances. Et la quelle baronie avec les siefs & arrieresiefs que en tient & possede nostre dit cousin, estant ainsi reduit & augmentee par la moyenne desdites adjunction, union & incorporation, avoïns cree & erige, creons & erigeons en tiltre, nom, dignite, & preeminence de *duche & pairie de France*. Voulons e nous plaist lefdites baronie terres & seigneuries estre dorenavant dites & appelees *duche & pairie* pour en jouyr & user par nostre dit cousin *Anne de Montmorency* & apres son deces par ses heirs & successeurs masses seigneurs de *Montmorency*, a tousiours perpetuellement en tiltre de *duc & pair de France* avec les honneurs, prerogatives, & preeminences appartenants a *duc & pair de France*, & tout ainsi que les autres pairs en jouyissent & tiennent tant en justice seance & jurisdiction que autrement, & soubz le resort de nostre cour de parlement de *Paris*. Et la quelle baronie terres & seigneuries unies & incorporees a icelles, nous avoïns distraites eximies & exemptes distrayons, eximons & exemptons de tous nos autre juges en tous cas, fors & excepte des cas royaux, dont la cognoissance appartiendra a nos juges, par devant lesquels ils avoient accoustume ressortir auparavant ceste present erection. Voulons nostre dit cousin & ses successeurs maslez seigneurs desdites lieux estre dites, nommez, censez, & reputez ducs de *Montmorency* & pairs de *France*. Et que la dite baronie avec les dites terres & seigneuries y jointes & incorporees ils tiennent en tiltre de *duche & pairie* a foy & hommage de nous. De la quelle pairie nostre dit cousin nous a fait des a present, ainsi qu'il est accoustume, le serement de fidelite auquel l'avons receu; a la charge toutes fois qu'en defaut d'heirs masses la dite dignite de *pairie* demeurera esteinte & supprimee, & retournera la jurisdiction en son premier estate tout ainsi que si la dite erection de *pairie* n'eust este fait. Et neantmoins la dite baronie de *Montmorency* avec les dites terres

& seigneuries, jointes a icelle, demeurera au dit tiltre & dignite de *duche* par estre heritage des enfans & heritiers de nostre dit cousin, masses ou femelles ou des ayants cause d'eulx &c.

The like in substance is that of *Damville*, saying that the duchy and pairie are both to be ended upon default of issue male (the pairie being only ended upon such default in that of *Montmorency*) and also a *non obstante* is added, although the barony of *Damville* should be taken in any wife as re-united to the domain of the crown, which is in regard of some edicts there mentioned touching such baronies.

IX. For the title of *count* in *France* (which was also called *quens*, as is before shewed; and other testimonies^a of it are most obvious) it is considerable either as it is known in those that were of the greatest counts or *comites majores*, being antiently the same with *dukes*, or as it is attributed to such as are *less counts*, or *comites minores*; being those that had or now have the title as inferior to *dukes*. Concerning it, as it is in the *comites majores*, we observe here, the promiscuous use of it with *duke*, then how, upon the change of that promiscuous use, the title of *duke* only became to be fixed upon some that before were equally stiled *dukes* and *counts*, and how *count* hath been retained single also by others, and how it hath been yet so reputed in some to be equivalent to *duke*. Of the *comites minores*, we make two kinds; one immediate to the crown, the other feudal to some subject. These kinds declared; we add also what may be fit for this place touching the creation and the most honorary ornaments of the title of *count*.

First, for the promiscuous use of it with the title of *duke*; it is plain enough (in regard of the antientest times of the *French* kingdom) in that before^c cited out of *Marculphus*. And for the ages that have succeeded him; besides what is already noted to^d this purpose in the same titles in the empire; in a charter^e of *Charles* the simple to *Roger* archbishop of *Triers* concerning his right to the abbey of saint *Servace*, *Ricuinus*, *Matfridus*, *Sigardus*, *Otho* and divers more are reckoned under the joint title of *duces ac comites*. And in the inscription of a brief^f to *William* duke of *Aquitain* by *Gregory* the VII. we have *Guilielmo duci Aquitaniae*, and in the body of the letter, *tibi vero Guilielme comes justitiam committo tractandam* &c. Comes also is used frequently by one writer for the same person, which another calls *dux*. That is most especially seen in the stories of the dukes of *Normandy* of about 10 years past. For that great duke *William*, the first king of *England* of the *Norman* race, is sometimes called *comes Normanniae*, sometimes *dux*, as also sometimes *consul Normanniae*, as we see in *William* of *Malmesbury*, *Henry* of *Huntingdon*, *Florence* of *Worcester*, *Jvo Carnotensis*, and others of the elder times. And those kind of counts or dukes were

[†] A Nantes Jul. 1551.
Vergy pag. 224, & 225, &c.
siers in stemmat. Lotharingae pag. 12.

[¶] A Paris Sept. 1610.
[§] V. hujus capituli.
Greg. VII. lib. 2.

^a Voiez du Chesne en lez preuves du liv. 4. de l'hist. de la maison de
[†] Cap. 1. hujus partis §. XXIII.
[‡] A Chr. 923. Francisc. de Ro-
epist. 24. Sed & videlicet append. de officiis regni Galliae subnexam

Bullingeri libris de imperio Romano, cap. de ducibus.

expressly comprehended under the name of *maiores comites*, as *Gulielmus* * *Tyrius* calls *Robert* duke of *Normandy*; and *Baldwin* earl of *Flanders*. So *Alan* the third duke of *Bretagne* sometimes ^y calls himself *comes*, sometimes *dux*, and both *comes* and *dux* together occur also often in the styles of the duke of *Bretagne*. And *Geoffery* third son to *Henry* the second king of *England*, being duke of *Bretagne* in right of his wife *Constance* (daughter to duke *Conan le Petit*) in his assise (as they call it) or ordinance that he made there touching the inheritance of fiefs, first styles himself, ^z *Ego Gaulfridus filius Henrici regis, dux Britanniae, &c.* and then in the end of it, where he testifies his oath to it, his stile is, *Ego Gaulfridus comes Britanniae*. And after his death the dutchess *Constance* stiled her father count and her self dutchess, as *Ego Constantia Conani comitis filia ducissa Britanniae*, which is her title ^a in the foundation of the abbey of *Ville-neufue*. (²¹²) Divers other such examples are of this promiscuous use of these titles which are obvious.

But although *dux* and *comes* were so indifferent, yet at length some great counts and dukes began to conceive that the title of duke was the better, (and that, doubtless, because they saw that *comes* was so equivocal that it denoted in divers particulars, as well meaner lords and such as were subjects to great counts and dukes, as the great counts and dukes themselves) and therefore obtained from the king of *France*, so to fix that name on them, that they might be called dukes only, and no more counts. A singular example of that is in the dutchy of *Bretagne*, where *John* the second duke of *Bretagne*, to whom, as to his ancestors the title had been indifferently attributed, had the single title of duke settled on him, and his territory erected into a dutchy by king *Philip le beau*. This was by a declaration or clause inserted into the letters patents by which the dutchy was made a pairrie. *Et ne possit* (says the ^b king) *in dubium revocari ducem ipsum, qui comes fuit aliquando nostris vocatus in literis, ducem fore & terram Britanniae ducatum existere, ipsumque ducem imposterum debere vocari, auctoritate regia, ex certa scientia declaramus & tenore praesentium, confirmamus. Quod ut ratum & stabile perseveret praesentibus literis litteris fecimus apponi sigillum. Actum Curtraci anno Domini MCCXCVII. mense Septembris.* And this was the first that had the title of duke, as distinguished from count, settled on him. (²¹³) Afterwards some other of the *comites majores* or the great counts that ^c were also equally stiled dukes, either constantly used the name of duke only, and so propagated it to posterity, or else had it likewise fixed on them by letters patents from the king, and so the title of count ceased in them.

Now as *dux* by it self was thus settled upon some which promiscuously were before stiled both dukes and counts, so some others of those great princes being indifferently stiled by those names, or at least, being equal in dignity to such as were indifferently stiled by them, so declined the title of *dux*, that they retained only, and transmitted the title of *comes* to their posterity, which yet both in nature and reputation hath been esteemed no less than *dux*; and that also even in the ages since *dux* was so singled from *comes* in those others which so had the title of *dux* only fixed on them. For example, the county of *Champaigne* was rather (saith *Chassanaeus*) a dutchy, and to be reputed so. *Advertendum est* (so are ^d his words) *quod hic comitatus potius debet dici & esse ducatus quam comitatus*: but he gives his reason, *quoniam sub se habet decem & ultra comitatus* (as it then had thirteen) supposing that ten counties under a count, made the count so equal to a duke, that he should rather be called a duke than a count, which is spoken by him without any sufficient ground, as is before ^e shewed. The reason why he might rather be stiled a duke than a count (after the distinction of those names came into use; as it did about that of the fixing of the title of *dux* upon *John* the XI. duke of *Bretagne*) was, because he had like sovereignty, like largeness of territory, and many honours subordinate unto him as dukes had; notwithstanding which, the title of count, as equivalent, was only retained by the princes of that territory. And the title of duke was attributed to some that had no counts under them, and on the other side not given to some, that having four, five, six, or such like number of counts feudal to them, stiled themselves, and were stiled only counts. For the purpose, the duke of *Orleans* is ^f noted to have none, when the count of *Toulouse* had seven, the count of *Artois* five; and the like more examples are. Such great counts also perhaps were the *graves* of *Holland* (the example may serve both here and for the empire) that had such sovereignty as that they were, in regard of jurisdiction, as *imperatores in suo comitatu*, as ^g some call them. Such also may they be stiled that fall under the first part of our next subdivision of *comites minores*. For though in respect of their rank, by reason of their name of count only so fixed on them, they be justly called *minores*; yet they may as justly be called *maiores*, in respect of their power and sovereignty. And touching the title of count, in the *comites majores*, thus much.

X. Of the two kinds of the *comites minores*, before spoken of, the first, that is, such as occur immediate to the crown, we subdivide into the antienter and later. The antienter are those that having been of the *maiores comites* and every

* De bello sacro lib. 8. cap. 12.

^y Bertrand. d' Argentre hist. Bret. lib. 4. cap. 28. & cap. 63.

^z Bertrand d' Argent.

lib. 5. cap. 30. & vide extremum capituli 31.

^a Id. ib. cap. 15.

^b Bertrand d' Argent. hist. de Bret. liv. 5. chap. 31.

habent verba in Argentraeo: post existere legerem potius, nos jam ipsam terram Britanniae ducatum existere ipsamque &c.

^c Et five typographi five amanuensis (ut fit) oscitantiam hic plane videre mihi videor.

^d Et five typographi five amanuensis (ut fit) oscitantiam hic plane videre mihi videor.

^e Videis Choppin de dominio lib. 1. tit. 5. §. 7. & lib. 1. jurisd. Andegav. cap. 48. §. 2.

^f Vide supra §. VI. hoc capite.

^g Chassan.

^d Cat. glor. mundi part. 5. consil. 46. In appendice veteris editionis de gestis Rom. Gallicae fol. 228.

^e Vide supra §. VI. hoc capite.

^f Philippus Leidus apud Hug. Grotium de antiq. reip. Bataviae cap. 5. quem de isthoc comitatu consulas, si plura velis.

way equal to dukes, in the time when the titles of count and duke were used promiscuously, did afterward (by retaining and using the name of count only, and omitting that of duke, in the times when that of duke only was fixed upon others that so left off likewise the title of count) so lessen themselves from their former dignity, or at least were reputed so much less in honour than the dukes now are, or than they themselves had before been, when both titles were used promiscuously by them, that they were ever afterward taken to be a degree inferior to dukes. But as the sovereign dukes there long since ceased, so almost all these kinds of counts, which were no less sovereign, though their title thus became less. None of these now continue but the counts of *Flanders* and *Burgundy*. For although *Flanders* be so singularly eminent a county, yet it was antiently, after that distinction of county and dutchy came into use, taken to be *ducatus minor*, (in which respect we use the phrases of *comites minores* here) as appears in that of *Froissart*,^h where the purpose was in MCCCXVI. to have made it a dutchy.

The later immediate counts, we call them that are and have been in the later ages created; but without that sovereignty which those antienter immediate counts had. Of this kind many have in these later ages been, and, at the pleasure of the prince, now are created in *France*. By the counts that are feudal to subjects, I mean such as held or have held their counties either of a duke or great count of the kingdom; as the counts of *Aumerle*, *Longeville*, *Tancarville*, *Eu*, and such more were feudal to the dukes of *Normandy*; *de la Marche* *Armignac*, *Perdriac*, and others to the dukes of *Guienne*; and as the counts of *Toulouse* and diversⁱ more such were. But of this kind, at this day, by reason that all the antient sovereign dutchies and counties (except *Flanders* and *Burgundy*) are reduced to the crown, there are none saving some which remain still (as I think) in the county of *Burgundy* and *Flanders*. And an example of a creation in *Flanders* is anon shewed. But in the antient times, very many were of this kind; all deduced out of that custom of above M years since, when officary dukes or those *comites majores* had under them officary *comites* that were *minores*. Examples thereof are in *Gregorius*^k *Turonensis*, *Aimoinus*, and others. When those officary titles were annexed to feuds, then began those feudal counts of this kind, and were sometimes made by the king, and became afterward subordinate to great counts or dukes upon the king's appointing great counts or dukes over divers of them; and sometimes the great counts or dukes (which we understand here for the same in the antient ages) created these less counts in their territories, and in such case they were originally feudal to subjects. Sometimes also the king made them by consent of those dukes. All which more fully appears in the testimonies here

presently brought touching the creation of them.

XI. For the creation, investiture, and coronet of those that were originally of the *majores* and equal to dukes, enough is said where we speak of dukes. For that equally belongs to those great counts, as we see in the example of the count of *Normandy* (which title was equally used as duke) where he received his investiture^l with a coronet of the same kind with a duke's. But perhaps only some of the greatest did use coronets, and not all of those greater counts. For in the description of that war in MCCIV. (which was long before the titles of *dux* and *comes* were singled from each other; the first known example thereof being about xc years after in the duke of *Bretagne*, as is already shewed) made against the eastern emperor *Alexius* by some counts of *France*, as the count of *Flanders*, of *Champagne*, and others, written by *Geoffry Villehardouin*, marshal at that time of *Champagne*, the counts are reckoned by *Dandolo*, then duke of *Venice*, for such as had no coronets. *Sont* (so are the words of the duke) *les plus haultz homes que soient sauns coronne*; to an ambassador (that was a *Lombard* born) sent to them from *Alexius*, tells them; *l'empereur Alexis vos mande que bien set que vos estes la meilles gent que soient sauns coronne &c.* as if in those times these counts had used no crown nor coronets.

But, for the less counts and such as originally had the dignity given them, as it is inferior to that of duke; they were wont to be so created, that their investiture into the name and territory was by a rich diamond or diamond ring, and that only (as some ceremonials of *France* say) where the person to be honoured had at least four baronies, and every barony at least ten gentlemen depending on it; for otherwise, says *Anthony de la Fale*, it were a dishonour to the title of count. Others will have ten^o baronies here. But indeed there is no regard to be had regularly to any certain number. And although in a later edict of *Henry* the III. 1579. it were^p ordained, that no creation of the dignity of a count should be published, unless the count had at least two baronies and three chancelleries, or one barony and six chancelleries, under him united and held of the king, yet the edict was only verified in the parliament of *Rennes*, and not made a general law. But for the elder times, in a little book titled^q *la division du monde*; the words are, *on peut faire ung count quant il a quatre baronies enclavez en un duchie. Le duc le peut faire count, ou le roy, per le consentement de duc.* But the *Sallade* more largely; and says, the prince that doth it may do it by commission granted to any that is above a count. And that the title is to be taken from the chiefest barony that the count hath. *Quant ung vicount ou baron* (so are the words of the *Sallade*) *se veut faire conte il faut que il ait quatre baronies, & chascun baronie ait sous elle au moins dix nobles homes pour luy faire ho-*

^h Hist. vol. 1. cap. 116.

cap. 18. lib. 9. cap. 7.

goriae mundi part 5. consil. 46.

ⁱ De comitibus ducatus Britanniae, vide Bertr. Argent. hist. lib. 1. cap. 13.

^k Vide supra §. VI.

^m Villhardouin. liv. 1.

ⁿ Idem liv. 3.

^o Chassan. catalog.

^p L'oyseau des seigneurs chap. 4. §. 72.

^q Parisiis. 1539.

neur a ses besoins. Adonc son prince il le peut licitement faire count, & autrement il fait tort a la dignite le conte. Et se son prince ny peut estre, per son congie le peut faire ung prince ou marquisse de plus grand dignite que le count, cestascavoir que apres le service de la sollempnelle messe chautee per un prelat ainsi que dit est, le prince ou seigneur que avera la commission. sera assis & recevra l' homage de luy, & ce fait, sera la commission & privilege leue devaunt trestous. Et apres ce per un riche diamant (but this passage is cited in *L'oyseau*, avec un anneau de diamant) ⁽²¹⁴⁾ qui port. seigne d'avoire, l'envestira & mettera en possession de sa conte la quelle serra nome de la plus noble baronie, que il aura, ou seront princes, counts, barons, dames, damoisels, & autres nobles de pleus a son boneur que il povera. The antient rites also used in the investitures of the heirs of the county of *Flanders*, that is, their oath, their being girded with a sword, and some other circumstances related in *Jacobinus* ¹ *Marchantius* may be observable in the disquisition of the antient forms of creation or such investitures upon heirs, as being in the nature of a livery with us, somewhat imitates a creation. And see also more of the *cinctura gladii* hereafter. But, at this day, and in the later times, the creation of a count is wholly or principally in the charter, and the publick delivery of it, which with that of the edict of *Henry* the III. before mentioned is (according to its extent of authority) to be remembered. But there is no coronet (which was of old time given to some, at least of the greater counts, as to dukes) now given, nor may any be worn by any of them. Yet in memory of the sovereignty which in antient time was belonging to the title of count in those greater counts, they have at this day liberty to set a coronet over their arms only. Touching the form whereof I find not the *French* writers agree, as neither do they while they describe the coronets of other dignities. Some of them say that this coronet of a count is a circle of gold gresle ² au dessus des perles grosses & rondes, or filled with a row of pearls on the upper part of it. And so are all the coronets of counts in *Andre de* *Chefne* his histories of the houses of *Chastillon*, *Montmorency*, and *Vergy*. But *monsieur Favyn*, in his theater of honour hath described it to be thus pointed and pearled; of which shape they say also the coronet of *Charles* duke of *Orleans* in the *Celestines* at *Paris* is presented.



XII. For the charters of antient creations of counts in *France*; we have examples in such records of *England*, as preserve divers acts of our kings there, wherein some charters are to immediate counts created by them, or at least

of counties given by them (which I think here the same) as kings of *France*. And other charters also are among those records, made to such as had their honours depending immediately on some mean lordship or principality. Of both kinds we shall add an example or two. With this short charter, *Henry* the VI. created the lord *Beaumont* (the same that was afterward the first viscount in *England*) count of *Bologne*, to him ³ and his heirs males of his body.

REX omnibus ad quos, &c. salutem. Scitis quod nos considerantes bona & gratuita servitia quae dilectus & fidelis noster dominus de *Beaumont* nobis ante haec tempora impendit, & praesertim servitium quod nobis in praesenti viagio nostro in partibus transmarinis pro rescussu & succursu villae nostrae *Calesiae*, dando, faciendo, impendit, de avasamento, & assensu consilii nostri, concessimus praefato domino, comitatum de *Boloigne* cum omnibus villis, castris, fortaliciis, forestis, boscis, feodis, & retrofeodis ac omnibus aliis commoditatibus & emolumentis dicto comitatui pertinentibus sive spectantibus, habendum & tenendum sibi & haeredibus suis masculis de corpore suo exeuntibus eisdem modo & forma sicut antiqui comites de *Boloigne* ea habuerunt & tenuerunt cum omnibus dignitatibus & praerogativis dicto comitatui aliquo modo pertinentibus & dependentibus ab eodem. In cujus rei, &c. Teste *R.* apud civitatem suam *Cantuar.* xxvii. die Julii.

Per breve de privato sigillo.

In the same year, three days after, the county of *Flanders* upon the revolt of *Philip* duke of *Burgundy* and earl of *Flanders*, is thus given (as first forfeited to the crown of *France*) to *Humphrey* duke of *Glocester* for life.

REX omnibus ⁴ ad quos &c. salutem. Quantum sit rebellionis scelus, & quam adversus dominum ligueum vassallus proditorie insurgens poenam luat, jura non solum humana sed & canonica testantur pariter & divina. Hoc enim sacrilegii genus quod laesae majestatis labem secum trahit, nedum patrum delicta percellit in filiis sed & ipsis merito ab haereditate prorsus exclusis, bona quaecunque & feuda delinquentium forisfacta decernit, & ea in ipsum dominum principalem deferri jubet, tanquam legitime confiscata. Cum itaque infidissimus ille *Philippus* vulgari opinione pro duce *Burgundiae* nominatus, qui primaevus a cunabulis, co videlicet a tempore quo nobis jure haereditario & nihilominus secundum pacis tractatum inter recolendissimae memoriae *Karolum* avum nostrum tunc *Franciae* & genitorem nostrum *Henricum* quintum *Angliae* reges initum & conclusum, ac per eundem *Philippum* acceptatum &, jurejurando ad sancta Dei evangelia corporaliter praestito, roboratum, regni *Franciae*

¹ Des Seigneuries chap. 5. §. 49.

² *Flandriae* descript. lib. 2.

³ §. XV.

⁴ Moreau table des armoiries pag. 251.

Loys d'Orleans en l'ouverture des parlemens pag. 170. *L'oyseau* des Seigneuries chap. 5. §. 48. Videtis Paschal. de coronis lib. 9. cap. 23.

⁵ Loys d'Orleans des Parlemens pag. 171. edit. 1620. in 8vo.

⁶ Rot. Franc. 14. Hen. VI. num. 1.

⁷ Rot.

regalia accreverunt, nobis ut vero & indubitato regi *Franciae* ac domino suo supremo per duodecim annos & amplius paruit & obedivit, nosque tam suis scriptis quam gestis pro rege & domino suo hujusmodi supremo apud sedem apostolicam, imperatoriam celsitudinem, partem insuper nobis in regno nostro *Franciae* adversantem, & alios mundi principes & potentes palam publice manifeste & notorie recognovit & sic recognoscere debuit & deberet, perfidissimae rebellionis suae contra nos calcaneum erigere non veritus, & fide qua nobis astrictus erat & quam nobis debuit prorsus derelicta, & subjectione nobis per eundem debita temere, false, nequiter & proditorie, prosligatis, seipsum & suos nostro adversario & inimico capitali ipsius regni nostri *Franciae* usurpatori, fidelitatis vinculo adjungere non metuit, & insuper flagitia flagitiis ac mala malis accumulans, villas, praedia, & castellas ad nos jure coronae nostrae *Franciae* notorie spectantia, suis usurpavit & usurpatibus, & in majorem suae infidelitatis & rebellionis manifestationem, nonnulla castra nostra in marchis nostris *Calesiae* situata violenter & more guerrino destruxit, homines nostros in eisdem inventos neci tradens, villamque nostram *Calesiae* sibi subjugare nequiter insudavit, cujus tamen maliciam in hoc creator noster, cui laudes infinitas semper exolvimus, in dicti rebellis & proditoris infidissimi ac suorum opprobrium perpetuum confundere dignatus est. Quorum omnium & singulorum praetextu & occasione, quae toti mundo adeo notoria sunt quod nulla possunt tergiversatione celari, bona, possessiones, & dominia quaecunque quae idem proditor prius de corona *Franciae* tenuit, ipso jure ad nos tanquam verum regni *Franciae* regem & in fiscum nostrum merito sunt delata. Nos igitur de memoratis bonis, possessionibus & dominiis prout juri & justitiae convenit, disponere cupientes, a comitatu *Flandriae*, qui de nobis in capite tenetur inchoare decrevimus, nostraeque considerationis ad inclitissimum principem, *Humfredum Glocestriae ducem*, avunculum nostrum charissimum, merito dirigentes obtuimus, eidem *Humfredo* duci, qui nobis ab omni tempore fideliter defervivit, & circa jurium nostrorum in partibus *Calesiae* conservationem nec suae personae propriae nec sumptibus immensis parcens, strenuissime militavit, & militat, de praesente comitatum ipsum cum suis juribus & pertinentiis universis, ex nostra mera & spontanea libertate & munificentia regali, concedimus & donavimus, volentes quod idem *Humfredus* dux praedictum comitatum quamdiu vixerit de nobis & successoribus nostris teneat, illumque habeat modis & formis melioribus quibus *Flandriae comites* ipsum comitatum de regni *Franciae* regibus ante haec tempora liberius habuerunt & tenebant, praerogativa dignitate & juribus nostris regalibus in omnibus & per omnia semper salvis. In cujus &c. Teste rege apud *Cantuar.* xxx die Julii.

Per breve de privato sigillo.

XIII. An example of the granting of a county, whose honour immediately depended on some mean principality, is in this of the *black prince Edward* (while he was prince of *Aquitain*) his giving^a the county of *Bigorre* to *John de Grely* capdall de la *Buche*, in tail, reserving yearly at christmas, a falcon and a tercel gentle to be paid at the castle of *Bordeaux*, besides the known services due out of that county.

Edward aïse fitz du roy d'Angleterre, prince d'Aquitaine & de *Gales*, duc de *Cornwallle*, counte de *Cestre*, seignior de *Biscay* & de castre *Dordiales*, faisons sçavoir a touz ceulx qui ces lettres verront ou orront, que por les bones & agreables services que nostre treschere & seal cousin *John de Grely* capital de *Beuch* nous a fait avant ces heures & que luy & les siens feroient per le temps avenir a nous & aux nostres, a nostre dit cousin avons done & otroïe donnons & otroïons per ces presentes par luy & ses heires mascles liegement engendres, la counte de *Bigorre* avec les citties, villes, chasteux, terres, seigneuries, homages, jurisdictions, haute moyene & basse mere & mixte impere, drois, cens, rents, revenues & autres appartenances profits & emoluments de le dit counte; rendant a nous & aus nostres chescun an perpetuellement en nostre chafel de *Bordeaux* a la fest de noel, un faulcon & un tercellet gentil, & faisant a nous & aus nostres, homages liege, serement de feaulte, ressors & les autres devoires que a nous devient estre faitz par la dit counte. En testimoigne des choses fais ditz nous avons fait metre nostre grant seale a ces patentes lettres, donne a nostre citte d'*Engolesme* le vint & septiesme jour de Innig l'an de grace mill trescentz sexante & noef.

In *April* following, this was confirmed under the great seal of *England* by the king his father; *Salvis semper* (as the words of the confirmation are) & reservatis nobis & haeredibus nostris regibus Angliae homagio ligo ipsius *Johannis* & haeredum suorum praedictorum de comitatu praedicto: Nec non superiori dominio & resorto ejusdem comitatus & omnibus aliis donariis ad nos tanquam dominum superiorem inde debitis. And thereupon also a command was sent by the king to all states and officers in that county; *Quod eidem Johanni de Greily tanquam comiti dicti comitatus de Bigorre, in omnibus quae ad comitatum praedictum pertinent, intendentes sint obedientes & respondentes.*

XIV. In these charters hitherto shewed we find no mention of any ceremony of investiture used; neither do we but in few testimonies of particular erection and grants of counties or creation of counts or other dignities there. *Charles* the VI. erected the castle, town and chafellany of *Mortaigne* in the bailliage of *Constantine* into a county by charter, & voulons & avons ordonne (saith^b he) & decerne ordo-

^a Rot. Vasc. 44 Ed. III. memb. 8. num. 4.

^b Meslanges historiques au Troyes 1619. pag. 34. ult. Mail. 1401.

nous & decernons per ces presents, que dorenavant les dites chafstel ville & chafstellenie & leurs appartenances soient dictes reputees & apelles comte, & icelle comte avec ses dictes appartenances jusque a treis mil livres Tournois de terre revenant a present, qui per noz gentz & officiers seront estimees & assizes en bonnes & convenables assietes, au plus pres du dit chafstel & ville de Mortaigne que faire se pourra, bonement & avec telle justice & seigneurie comme ausdits chafstel & chafstellenie appartient d'ancienete avons done & oïctroye, donons & oïctroyons de nostre certain science & grace especialle, & de nostre plein puissance & autorite royale, au dit Pierre de Navarre nostre cousin germain pour luy ses heirs & successeurs a une seule foy & homage, & en noblesse de comte par telle maniere que il & ses dits heirs & successeurs soient puissent & doibuent estre apellez countes de Mortaigne, & jouyr & user de telz droitz, prerogatives, preeminences & libertez & franchises come a countes apartient, & enjouyissent & assent perpetuelement come leur propre chose a toujours perpetuelment. And command is given to the bailey of Constantine or his lieutenant to put the count into seisin of the county. Henry the V. of England gave totum comitatum de Perch in the dutchy of Normandy, to Thomas earl of Salisbury and the heirs males of his body, to hold it by homage, and giving yearly to the king on Saint George's day, a sword in a scabbard at the castle of Cane. Proviso semper quod idem consanguineus noster (as the words are) homines ad arma & sagittarios ad equitandum nobiscum & haeredibus nostris seu locum tenente nostro Normaniae, praesenti guerra, ad quantitatem valoris annui comitatus praedicti ad cussus proprios invenire teneatur, & finita guerra, hujusmodi servitia in hac parte nobis debita impleat & perficiat. So king Henry the VI. first created Gaston de Foix count of Longueville into the title of count Benanges to him and his heirs males of his body. Nomen & omen comitis dicti loci de Benanges liberaliter concedens, and granted him divers lands for the support of his dignity. Quae quidem loca praedictus comes (as the charter says) bene, ut asserit, in obedientiam nostram reducere & redigere proponit, Deo dante. Concessimus insuper comiti trescentas libras sterlingorum de reventione quolibet anno percipiendas & habendas super conquestus quos idem comes super praedictis rebellibus & adversariis nobis faciet aut fieri faciet vel procurabit. Quae quidem tenementa omnia & singula supradicta tam sua quam alia sibi per nos concessa, nec non redditus ecc librarum praedictarum de praedicto comitatu de Benanges esse volumus, & eidem comitati unimus incorporamus & adjungimus. And about seven years afterward, by another patent he created him in like sort, but with the addition of this proviso; Quod si hujusmo-

di haeredes non existant tunc dignitas comitatus cesset, & sit vicecomitatus eisdem modo & forma sicut antea fuit, ac si comitatus factus non fuisset. Both the patents ended with this clause, Quod praesens concessio nostra non trahetur ab aliis in exemplum. So of the first creation of the count and county of Chateau-Porceau, in the great county or palatinate of Champagne, in the charter¹ but no rites of investiture mentioned. It was done upon an exchange made by Gaucher de Chastillon, of Chastillon sur Marne, with king Philip le Beau for this honour and some other inheritance, and that by the consent of Joan queen of France and Navarre, countess palatine of Champagne and Brie. The words of creation in the charter are: Nos vero eidem Galchero tradimus & assignari fecimus pro excambio praedictorum, totam illam terram quam tenebamus apud castrum in Porceano, cum omni jurisdictione alta & bassa, & cum omnibus feodis, retrofeodis, jurisdictionibus, deveris, & redibentiis quibuscunque, & eundem ad homagium recepimus nostrum pro praedictis, & etiam pro fortalicio loci praedicti & pro aliis redditibus, bonis & proveniuntibus, feodis, retrofeodis, quae ibidem quondam tenebat a nobis Jacobus de Mountchaulon miles, quondam dominus dicti fortalicii. Quod fortalicium cum omnibus aliis quae ibidem habebat seu quocunque modo habere poterat idem Jacobus, praedicto Galchero & successoribus suis seu causam ab eo habentibus tradimus & concedimus a nobis & successoribus nostris dominis Campaniae ad homagium ligium in comitatum & baroniam, & tanquam comitatum & baroniam, retentis nobis in praedictis homagio & reforto & tali servitio ratione homagii & feodi quale nobis tenentur praestare & facere alii barones & comites Campaniae similia feoda a nobis tenentes. And in the creation of Robert de S. Aumer vicount d'Aire, into the title of count de Morbeque, and of his lordship of Morbeque into a county by the archduke and archdutchess, as counts of Flanders, there is no mention of any rite of investiture; but after the preamble they say, that they have of their certain knowledge, grace, and liberality, pleiner puissance & autorite souveraine, made and created him, and in the first person, faisons & creons counte, & sa dit terre & seigneurie de Morbeque avec ses appendances & dependances, consistant en tout justice haut moyenne & basse, situee en nostre pais & comte de Flanders, & tenue de nous a cause de nostre cour & chateau du Castel, erigeons en dignite, tiltre, nom, autorite & preeminence de comte. And further out of their favour and puissance absolute they annexed by the charter to the same county, four other fiefs, the lordship of Schenstraete and Ibmeghem, Minqueval, Zenecote and Bourre, and limited the estate of the title and county to him and to

¹ 26 April. in rot. pat. Norm. 7 Hen. V. memb. 63, num. 232.

² 14. Augusti rot. Franc. 11 & 12 Hen. VI. m. 3, n. 1.

pag. 201 l' an du Christ 1303.

rency pag. 254.

³ 8. Feb. 1614.

⁴ 28. Julii. rot. Vasc. 4 Hen. VI. memb. 1, num. 2.

⁵ Chez du Chesne en les preuves du liv. 7. de l'hist. de Chastillon.

⁶ Chez. Andre du Chesne en les preuves du liv. 4. de l'hist. de Montmo-

his heirs of his body begotten, *soient masculés ou femelles, & si longuement, qu'elles prendront alliance de mariage esgale a leur rang & qualite*, and the tenure to be of them and their heirs and successors counts and countesses of *Flanders*; with this caution, that neither he nor his heirs might alien any part of the county thus erected. In like form, was *Nicholas de Montmorencie* baron of *Heversquerque* made count d' *Estaires*, and *Estaires*, with other lordships annexed to it, made a county, without mention in the charter¹ of more rites of investiture. Divers other like are.

XV. But in an antienter charter than any yet mentioned, made by *Robert* count of *Bologne* and *Auvergne*, testifying the grant of the county of *Saint Pol*, by *Hugh de Chastillon* count of *Blois*, to his brother *Guy de Chastillon*; it is remembered that count *Guy* was invested by the counts of *Bologne*, of whom the county of *Saint Pol* was held, according to the usage and custom of the county, *& les avons* (so are the words) *travesti bien & suffisamment selon l'usage & la custume du pais*. What that custom was, appears not: but perhaps the chief rite, when the rites of creation were used, was the girding on a sword, which we find in some charters of creation of counts in *France* both by our *Henry* the fifth and the sixth. As in this of *Henry* the fifth; by which he created *Gaston de Foix*, capdall de la *Buche*, count of *Longueville*, and gave him the county of *Longueville* also, referring yearly a horse, and the service of bearing the king's train on *Trinity sunday*, whensoever he should be in the dutchy of *Normandy*.

REX universis & singulis archiepiscopis, episcopis, abbatibus, prioribus, ducibus, comitibus, baronibus, justiciariis, ballivis, vicecomitibus, praepositis & omnibus ministris & fidelibus suis, salutem. Regalis dignitatis solium & fastigium nedium insignire sed potius augere confidimus, dum inter personas, nobiles, discretas & potentes honorum culmina dispensamus. Credimus namque nostram regiam magnificentiam tanto lucidius ornari & fulciri, quanto viris virtuosis & strenuis ac saltem in partem sollicitudinis regiae consilio praepollentibus ad honorum gradus evocatis, ad directionem boni publici roboratis. Haec quidem in regalis discussionis examine revolventes, ad personam nobilis & praepotentis viri dilecti & fidelis nostri *Guastron de Foix capitalis de la Bugh*, intuitum nostrae considerationis direximus, quem ob reverentiam & honorem instantis solemnitatis sanctae & individuae *Trinitatis*, ac propter virtutum praecellentiam & armorum strenuitatem aliaque diversa probitatis merita ad honoris culmen producere dignum ducimus, & eidem *Guastron* honorem comitis dedimus ac ipsum in comitem de *Longueville* praeficimus, nec non de eisdem nomine & honore per cincturam gladii eundem

Guastron investimus. Et quia crescente status celsitudine, consequenter crescunt diversa sumptus & onera pro statu suo comitis in hac parte decentius sustinendo, totum comitatum de *Longueville* in quantum se extendit cum omnibus pertinentiis & dependentiis suis eidem *Guastron* tenore praesentium damus & concedimus; habendum & tenendum sibi & haeredibus suis masculis de corpore suo exeuntibus de nobis & haeredibus nostris pro homagio quod idem *Guastron* personaliter nobis fecit & reddendo nobis & eisdem haeredibus nostris unum equum singulis annis imperpetuum. Ita semper quod idem *Guastron* & dicti haeredes sui ad portandum trenam nostram & haeredum nostrorum annuatim die solemnitatis sanctae *Trinitatis*, si praesentes in ducatu nostro *Normanorum* personaliter interfuerimus, prompti sint & parati. Hiis testibus, praecharissimis fratribus nostris *Thoma Clarensciae*, *Humfredo Gloucestriae*, ac charissimo avunculo nostro *Thoma Exoniae* ducibus; *Edmundo Marchiae*, *Johanne Huntingdoniae*, *Richardo Warwici*, *Johanne comite Marescallo*, & *Willielmo Suff.* consanguineis nostris charissimis, comitibus; *Johanne de Roos*, *Johanne de Clifford*, *Johanne Beauchamp de Bergavennie*, *Roberto de Willoughby*, *Henrico fitz Hugh* camerario nostro, *Waltero Hungerford* senescallo hospitii nostri, militibus, magistro *Philippo Morgan* cancellario nostro *Normaniae*, magistro *Johanne Kempe* custode privati sigilli nostri, *Willielmo Alington* thesaurario nostro *Normaniae*, & aliis. Dat. per manum nostram apud villam nostram de *Maunte*. xi die Junii.

Per ipsum regem.

About nine days^a after, for a confirmation and explanation of the gift of the county, he hath it given and confirmed, *una cum alta justitia media & bassa, &c.* And in *October* following, the king granted also to him and his heirs liberty to appoint omnimodos officarios de *justitia*, within his county, and took the homage of all persons, qui ei homagium facere debent & tenentur excepto homagio pro terra & dominio de *Basqueville*. But the like rite of girding on a sword is remembered in *Henry* the sixth's charter, by which he created *Alvarez de Almada*, count d' *Avarans* or *Auranches*. Ipsum in militem ac socium & fratrem de *garteria* ex unanimi consensu societatis ejusdem (so says the charter) eligimus & realiter investimus. Eundem etiam dominum *Alvarum* ex nostri abundantiori gratia in evidens testimonium suarum virtutum in comitem d' *Avarans* in ducatu nostro *Normaniae* creavimus & praefecimus, ac de eisdem honore & titulo per cincturam gladii investientes effectualiter insignivimus. The estate was to him and his heirs males of his body begotten.

XVI. Among the dukes and counts of *France*, the title of *palatine* hath been also used. The

¹ Chez du Chefne en mesme le livre pag. 251. 8. Aug. 1611.

en les preuves du liv. 6. de l'hist. de Chastillon. pag. 260.

jam dict. membr. 35. num. 67. 20 Junii.

in rot. Franciae membrana 2.

^a An. Christ. 1292. in festo paschatis.

^m Rot. par. Norman. 7 Hen. V. membr. 35. num. 64.

ⁿ Rot. jam dict.

membr. 13. num. 17. 11 Octobris.

¹ Chez du Chefne

^a Rot.

^m 4 Augusti 23 Hen. VI.

old counts of *Champagne*, stiled themselves *comites palatini*. The same addition of honour hath been in the counts of *Burgundy*. *Philip* duke of *Burgundy* that instituted the order of the golden fleece, stiles himself amongst other titles count *d'Artois*, palatine de *Bourgoyne* and de *Namur* in the charter ^a of institution. *Perot* also palatine de *Bearne* is mentioned in ^r *Froisart*. How this began there, is not agreed among the *French*. The antientest mention of it that remains, is in the stile of *Thebaut* count of *Champagne*. ^t *Theobaldus Campaniae & Briae comes palatinus*, or as the *French* of that time was (being about 60 years since) *Thiebault de Champagne & de Brie cuens palalazins*, which continued in them till the county devolved to the crown. Sometimes also that *Theobald* is called *comes palatinus* absolutely, without addition of the territory, as both in the body and in the subscription of a charter ^u to *Hugh* abbot of *Clugny*, touching the priory of *S. Denis* of *Nogent*. Some of the *French* conceive that the title of *palatine* came not originally here from the *French* kings, but was rather received from the emperors of *Germany*, the princes that received it being in disgrace or in revolt from their own sovereign. But I doubt not but that the title in these had the self-same kind of original, as it had in the feudal *palatines* of the empire, according as is before opened. It was not given to them either by the *French* kings or by any other sovereign, but assumed by themselves, and by others attributed to them for the eminency of their jurisdiction, being not unequal to that of the antient *comes palatii* in the king's court. Neither is it any argument against this deduction of their title, that the office of *comes palatii* is not found in the court of any *French* king after *Charles* the bald, ^x that began about 900. It was never at all (I think) found in the court of any *English* king. Yet the title of *comes palatinus* hath been in *England* also attributed to divers, as is hereafter shewed, where we speak of *English* dignities. And that only, by reason of such eminency of jurisdiction as was greater, and nearer to what was merely royal, than that which any other counts or other great lords had. And although, in *France*, there were divers other counts that had no less sovereignty in the elder times than those of *Champagne*, and the few others that used it; yet doubtless some affectation of magnifying them with a singular note of greatness in their stile (which equally might have been taken by others at their pleasure, without any grant from the emperor or king) was the only cause they had this addition; touching which because there is so much already said in the feudal counts *palatine* of the empire, nothing needs be here further added.

XVII. But, of the *princes, dukes, and counts*, in the elder times, a certain number of twelve were selected by the kings of *France*, and erected into the title of the XII. *pairs* or *peers* of *France*, by which dignity they became the chief counsellors and directors of state, as a body next and immediately advising the king. But their dignity consisted in their being chosen out of the rest into the select number of XII. not in the title of peers.

For all the great lords of the kingdom that held immediately of the king, as of his crown, were *peers* also, as you may see especially in the example of the *sire de Coucy*, which is anon used when we speak of the *French barons*. But out of them, these XII. being chosen were, besides their being *peers* in matters of judgement in the old parliaments, *peers* also in the managing of the whole kingdom, and, while their greatness held, were therein so powerful, that they added ^y a taste of an aristocracy to that great monarchy. Of these antiently, six were lay, and six were ecclesiastical. The lay were, the dukes of *Guienne*, of *Burgundy*, of *Normandy*, and the counts of *Flanders*, *Toulouse*, and *Champagne*. The ecclesiastical, the archbishop of *Rhemes*, the bishop of *Laon* and *Langres*, and of *Beauvois*, *Chalons*, and *Noyon*.

But the dignity of *pair* is supposed in these bishops, not as they are bishops, but as being dukes and counts also; that is, in the first three of them as dukes, and in the other three, as counts. When these began, is very uncertain; for neither is there any sufficient testimony of the elder times to inform us, nor any such consent in the conjectures or grounds of the *French* ^z writers, of the later times, as any way clears it. Some attribute the beginning of them to *Charles* the great, (²¹⁵) some to *Arthur* king of *Great-Britain*. Indeed in the life of king *Arthur* in *Geffery* of *Monmouth*, they are called twelve consuls; and the *dozperes* for the *douze pairs* in the *English* history in verse written by *Robert* of *Glocester*. And *Gervase* of *Tilbury*, in his *Otia Imperialia* dedicated to the emperor *Otho* IV. mentions them with relation of their original to king *Arthur*. Others to *Hugh* *Capet*, and some to king *Robert*, whose reign falls between M. and MXXX. after our Saviour. But some to the antient title of *patricii*; as if such of the lords of provinces as had the title of *patricii*, given them feudally, as others had the title of dukes and counts, had afterward been called *pairs*, from the word *patricii*.

But though *patricius* ^a were wont to be given as an officary title as well as *comes* and *dux*, yet there is not (for ought I have yet seen) one example of it as given feudally. Wherefore I can give no faith to that of the *patricii* here, nor have I yet met with authority enough to

^a Favyn en le theatre d' honneur pag. 944. Vide item l' hist. de la maison de Vergy liv. 5. pag. 183, 185, &c.

^r Vol. 3. chap. 62

^t Videis Choppin de Domanio lib. 3. tit. 20. §. 1. Pithaeum de Comitibus Camp. & Brie, du Chesne antiq. & Recherches lib. 1. cap. 73.

^u Melanges historiques au Troyes 1619. pag. 1.

^x Chez A. du Chesne en les preuves du liv. 1. l' hist. de Chastillon: pag. 2. 14. &c. & Melanges historiques au Troyes 1619. pag. 1.

^y Bibliothe. Cluniac. pag. 542. & 544. & vide pag. 1497.

^z Videis Capit.

¹ Caroli Calvi. edit. a Jac. Sirmundo pag. 180. & pag. 437.

² Videis Pithou des comtes de Champagne & Brie, pag. 5. 0. &c.

³ Voyes Pasquier en les Recherches de la France liv. 2. chap. 10.

⁴ Du Haillan lib. 3. Fauchet des dignities, lib. 2. Hotoman. Franco-

⁵ gall. cap. 14. Guaguin. chron. Franc. lib. 4. cap. 1. Nic. Vignier chron. Burgund. sub anno 898. Choppin. de Domanio lib. 3. tit. 7.

⁶ 3. De Villiers ad Fulbert. epist. 96. Pasquier in les Recerches lib. 2. cap. 10. Rageau des droits roiaux verb. pair de France.

⁷ ^a Vide supra §. V. hujus capit.

persuade me so far as to a conjecture probable enough for their beginning. The name is but the same as *par* in *Latin*, and it had such a kind of relation to the king in government, as *pares curtis* in the feudal laws to the lords court. That parity among themselves, in regard of power and assistance in counsel and government, gave them the name. Whence it is that they were sometimes stiled, *les douze compagnons*, as in the old *romance*, written by *Gualter d^b Avignon*.

*Affez de mal me fit vostre oncle Ganelon
Qui trahit en Espagne les douze compagnons.*

And so were they as the *ομήγεροι*^c or *companions* in honour in the *Persian* empire⁽²¹⁶⁾.

But, of those twelve, the six lay *pairries* long since ended. The county of *Flanders* being transferred to another dominion, and the other five dutchies and counties being at several times returned and united unto the crown. To supply them therefore and preserve the dignity of *pairs*, divers others, and to a greater number, have been^d erected into the honorary title of *pairs* (for the antient real title as it was in those great dukes and counts long since ended) as *Bretagne*, *Bourbon*, *Anjou*, *Berry*, *Orleans*, and such more at the pleasure of the *French* kings. Their place is such that they have claimed it before the princes of the blood,⁽²¹⁷⁾ and have it before all other without question. The privileges belonging to the dignity of a peer both in the parliament of *Paris*, and elsewhere may be learned out of *Du Tillet*, and the decisions^e of the *French* courts, whither I refer you, and only add here a patent of creation of a great duke into this title, which is the antientest that I have met with. It is that of king *Philip le Beau*, in 1297. to *John* the second duke of *Bretagne*, wherein also he fixed the name of duke upon him.

P*hilippus* Dei gratia *Francorum* rex; ad honorem cedit & gloriam regnantium & regnorum, si ad regiae potestatis dirigenda negotia, insignibus viri conspicui praeficiantur officiis, & inclitis personae praeclaræ dignitatis praeferantur, ut & ipsi sua gaudeant nomina honoribus intitulata magnificis, & cura regiminis talibus decorata lateribus a solitudinibus releveretur, pacisque ac justitiae robore, quae regnorum omnium fundamenta constituunt, conservari commodius valeant, & efficacius ministrari: Et per hoc etiam gratiam credimus extolli regnantium & vigorem crescere fidei & devotionis in subditis, si viri, praeclari virtutibus & nitore conspicui meritorum, congruis efferantur honoribus, & fidelium obsequiosa devotio condignis praemiis retributionibus prosequatur, ut & ipsi pro suae meritis probitatis sibi honoris titulos accrevisse congaudeant, & alii eorum exemplo ad similia ferventius animentur. Notum igitur faci-

mus universis tam praesentibus quam futuris, quod nos, attendentes devotionis, fidei, fidelitatis probatae constantiam; nec non prudentiam & proinde circumspeditionis industriam, dilecti & fidelis nostri *Johannis ducis Britanniae* grata & accepta servitia quae nobis in nostris & regni nostri negotiis probatis effectibus impendit diutius, & exhibet incessanter, ac labores etiam & expensarum onera, quae ad nostrum ipsius regni honorem subsistisse dignoscitur; considerantes insuper, quod duodecim parium, qui in praedicto nostro regno antiquitus esse solebant, est adeo numerus diminutus, quod antiquus ejusdem regni status diminutione hujusmodi deformatus multipliciter videbatur, sicque volentes eundem ducem hujusmodi suae probitatis & praecellentium meritorum obtentu honoribus promovere praecipuis, & non minus regni nostri statum veterem dignitatum ornatibus reformare, ipsum de gratia nostra, abundantia, & plenitudine regiae potestatis praefati regni nostri *Franciae*, creamus & promovemus in *parem*, & *paritatis* hujusmodi dignitatem *Britanniae* ducatus annexentes, praesentem tenore statuimus, ut tam ipse quam successor ejusdem ducis *Britanniae* qui pro tempore fuerit *par* ejusdem regni perpetuis temporibus habeatur, & omnigenae paritatis ejusdem, quemadmodum dilectus & fidelis noster dux *Burgundiae*, compar ejus, praerogativa latetur, pro qua quidem paritate nobis homagium praestitit idem dux, ac successores sui *Britanniae* duces, nobis & successoribus nostris *Francorum* regibus praestare perpetuo tenebuntur.

Then follow those words before cited, where we^f speak of fixing the title of duke upon him, and they conclude the patent. Other examples are publick, of erecting *pairries* with dutchies, as in those creations of the dukes of *Montmorency* and *Damville*^h before remembered.

XVIII. The title of marqués was left to this place, because without the preceding knowledge of the title of duke and count, this could not so well be understood. For a marqués hath now most frequently, in the lists of honour, place between a duke and aⁱ count, unless the title of peer or prince added to a count, or some officary dignity make it otherwise. The nature of the stile originally is already opened in the dignities of the empire. And as it is there of much later beginning than the feudal use of *dux* and *comes*, so is it in *France* also. About 1000 years after our Saviour, some great dukes and counts, especially if their territories were frontiers of the kingdom, affected it in their stiles, and others attributed it to them. But, as I conceive, not at first as an honorary distinction, but for a significant denotation of them, as if they should have been in better *Latin* called *comites* or *duces limitanei*, which truly interprets *marchiones*, as is before shewed. Thence

^b Chez Claude Fauch. des dignités lib. 2. Gallic. lib. 2. Lupan. de magistr. Franciae, &c. Bretagne lib. 5. cap. 31.

^c §. IX.

Playdoye 9. pag. 267, &c.

um de auctoritate magni consilii, §. 110, 111, &c. Paschal. de coronis lib. 9. cap. 23. §. sed ut minorum ducum, &c.

^e Xenoph. Cyropaid. 2.

^f Code des decisions forens. liv. 1. tilt. 52.

^h §. VIII. & de Pariatu Francorum, vide, praeter ea quae citantur, Simon Marion

L'oyseau des seigneuries cap. 5. §. 31, & 32.

Vide porro Boerium

^d Videtis du Hayllan lib. 2. Tilium de rebus Bertrand d' Argent. hist. de

Simon Marion

Vide porro Boerium

Vide porro Boerium

is it that the count of Burgundy is antiently sometimes stiled ¹ *marchio Burgundiae*. So pope John the XV. in his letters of credence to Leo archbishop of Triers, touching the concluding of a peace between Richard duke of Normandy, and Ethelred king of England, stiles the duke only by the title of ² *marchio Normanniae*; and Baldwin earl of Flanders, in that age stiled himself, *Baldwynus comes Flandriae* ³ *marchio* & *Philippi Francorum regis ejusque regni procurator* & *bajulus*, or, as some have it, *ballivus*.

Divers more such memories occur; so that in those times not only duke and count, but *marquess* also were titles thus promiscuously used. When this came to be a distinct title (as duke did about the time that it was fixed upon the dukes of Bretagne) clearly enough appears not. But it seems, that about the same time, that duke and count became to be so distinguished, this also was singled out and made a third dignity different ^a from both of them, and inferior to the one, and superior to the other. And so it ceased in the stiles of those great dukes and counts that antiently had used it rather for a signification of their being princes of frontiers, than for an honorary title. And afterwards as counts might be created either by the king or dukes, so might antiently these marquesses, if one ^o of the old ceremonials of France deceive not. And one that had two or three baronies lying together might be (but so doubtless might any other at the pleasure of the king) made a marquess. The words are, *Pour faire un marquis; cest quant il a de terre autant que deux ou trois baronies enclavies en un duche, & peut estre fait par le duc de que il tient*. Where observe by the way, that the author of that ceremonial, required but three baronies for a marquess, though four for a count. And indeed he supposes also such a marquess inferior in dignity to a count, as others in the elder times did also such marquesses as had only territories subject ^p to such counts as had whole provinces. But the author of the *Sallade* says, that a count or a great baron ought to have had at least four or five baronies, and in the least of them ten gentlemen depending on him, and then he might be created a marquess by the king himself, or by a commission to any other in greater dignity than a marquess, and that, upon his homage and his name chosen from the chiefest of his baronies, he was to receive his investiture by a rich ruby or ^a ring with a ruby in it. ⁽²¹⁸⁾ And this dignity he supposes clearly (as it is at this day) superior to a count. The words of the *Sallade* are, *Quant aucun count, ou puissant baron se veut fair marquis, il fault que par raison il ait au moins V ou VI baronies d'ont en la moiere ait dix nobles homes tous ses subjects. Et se plus en a est, & sere son honneur. Et lors par le empereure ou par son roy ou par leur commis, que fault soit duc ou prince de plus*

grand dignitie que marquis, a la grant eglise ou apres le service de la grant messe chaunte per le prelat ou autre que en aura la commiffum, le dit count ou baron luy estant a genoulx devant luy en luy offrant nouvelle homage de ses baronies reduittes a unque seul nom, cestasavoir marquis de la plus noble seigneurie que il avera. Et ce fait, la privilege de la dignite serra la publiquement lene, & lors le dit prince recepuera son homage & foy de luy, & puis l'investira & metre en possession de sa seigneurie de marquis per un tresrich ruby qui porte signe de seigneurie, que li metera au moyen doit. But as here are five or six baronies requisite, so some others suppose ten should have been in this case. But there is not ground to justify either that or any other exact number.

In the later ages, marquesses have been created here as other dignities by the king's letters patent only. And not only the name but the true nature also of a marquess hath been sometimes lately created there; as in that especially of the *sieur d'Aramont* whom Henry the II. made marquess *des Isles d'Or in Provence*. His dignity was ^r *justa ac regno utilis marchia* as Choppinus says, because by reason of a contract annexed to it, he was to maintain certain garrisons and forts in those sea marches of the kingdom. And for the form of a creation of a marquess, see that of Henry the III. by which he made Peter of Montmorency, marquess of Thurie. After the preamble, the king recites, that Thurie (whereof this Montmorency was baron) is one of the antientest baronies of Normandy, of large extent, fair revenue, and great jurisdiction, and then erects *en dignite, tiltre nom* (so are the ^r words of the charter) & *preeminence de marquisate la dite baronnie, seigneurie & haute justice de Thurie, & autres terres & seigneuries que il a au dit pais & quel pourra cy apres acquerir, & si bon luy semble, y adjoindre, de quelques personnes que ce soit.* And appoints, that the whole marquisate be held of the town and vicecounty of Falaise, by the antient services. And that this Peter of Montmorency enjoy it and the title of marquess Thurie to him, *ses hoirs, successeurs & descendants de luy, tant males que femelles legitimes selon l'ordre de primogeniture*. And grants also, that he may appoint officers for administration of justice in the marquisate, with a *non obstante* any edict of reunion.

But as their dignity is between that of a duke and a count, so their coronets to be set over their arms, are as mixed of those of a duke and count, but so that they have four flowers of lefs ^t height than the dukes coronets, and between every of them three such pearled points, as we see in the coronets of counts. The shape of them is thus described in *Favin*. Under Henry the III. in MDLXXIX. in an edict,



¹ Flodoard. Chron. sub anno 921.

² concil. part. 2. pag. 161. Ed. Bin. 1618.

³ Nicol. Vignier. chron. Burgundiae pag. 75.

^a seigneuries, chap. 5. §. 31.

^o L'oyseau des seigneuries cap. 5. §. 50.

^p du Chefne en les preuves du liv. 4. de l'hist. de Montmorency, pag. 238.

¹ Anno 991. apud G. Malmesbur. de gest. regum Angliae, lib. 2. cap. 10. & videfis tom. 3.

² Marchantius & Fercol. Locrius in chron. Belg. pag. 182 & 199.

³ La division du monde a Paris 1539. fol. 61. b.

^r De Domano lib. 1. tit. 5. §. 9.

^t Moreau en le tableau des armories pag. 251.

^a Pour

"Pour le reglement, de seigneuries, de dignite, it was ordained that every marquissate should be composed of three baronies, and of three chasteillaines at the least, or two baronies and of three chasteillaines united and held together under one homage of the king. But this edict was verified only in the parliament of Rennes.

XIX. Viscounts in France (understand only feudal and honorary; ⁽²¹⁹⁾ or at least honorary viscounts; there being at this day, and from ancient time, some that are merely officary, as in Normandy and elsewhere) were wont to be made, if credit be to be given to the *Sallade*, by the delivery of a rod of gold, and giving this title to a baron or banneret, or other great Gentleman that had three or four baronies, on every of which ten gentlemen at the least were depending. *Quant le baron ou banneret (these are the words of the Sallade) ou autre grant noble home a troye ou quatre baniers de son patrimoine ou aqises, dont la moindre doit estre de dix nobles homes ses homes de son, * du roy ou prince, per qui il doit estre vicount, doit estre in place publique assit en l'estate que a luy appartient; & a sez piedz doit estre le vicount a genoulz au quel il requira l'honneur de vicount en luy offrant novel serement de ses dictz baronies, assemble tout in un nom, cestascavoir de vicount; & ce fait, alors son prince par un tres rich ring d'or se metra en possession.* But in the little ceremonial inserted in the *division du monde*; it is printed that he ought to have *cinque comtes* (which doubtless is mistaken for *cinque baronies*) *ou plus enclavies en un duche au pres l'une de l'autre. Il peut estre fait du duc en grant solemnite par le conge du roy. Si le roy est en personne le vicount est plus honorable.* But in an old ceremonial transcribed and communicated to me by my worthy friend master William le Neve, *Tork-herald*, it is said also that a viscount was to be created, *en la forme & maniere & magnificence dun conte, si non que en lieu d'espee l'on luy pend la dague a la poitrine.*

The beginning of this dignity (as it became feudal and hereditary) was in the like kind as of divers counts. When the great dukes and counts, in the ancient times gained to themselves large dominion and sovereignty in their territories, which was afterwards transmitted to their heirs (as is before shewed) divers of them placed in certain towns and divisions of their counties, such governors and delegates under them, as being appointed by the name of *viscounts* or *vice-comites*, did in imitation of their superiours get, either by feudal gift or by usurpation, to themselves also an inheritance in the dominions and jurisdictions of those towns and divisions, and thence also, this settled dignity, which continued to their posterity. And afterwards the like title was feudally given; sometimes by the kings also, having the old dutchies and counties in their own hands. But the jurisdiction usually given with this title was only civil. For such of them, as at this day, have fiefs and jurisdic-

tion (for only some of them have that last) have only that which is civil, or that which they call the *moyenne justice*, being, in the customs of *Amiens*, *Montrueill*, and other parts there about, the self same that (for this reason it seems) is stiled *justice vicomtiere* or *droit de vicomte*. And in *Flanders* and *Picardy*, some lords that have this kind of jurisdiction are called therefore also *seigneurs vicontiers*; yet nevertheless some of them, by usurpation, anti-ently gained to themselves the exercise of criminal jurisdiction also. But there are others of them which have no jurisdiction at this day; but they receive, as in satisfaction for what (as it seems) they were wont to have, the third parts of the profits arising out of the exercise of the king's justice in their territories, as the examples are in the viscounty of *Bourges*, *Cologne*, *Villemenart*, *Saint Georges*, and *Fuisse*. I have not seen any other form of the gift of a French viscounty, than that transcript before² mentioned, wherein *Henry* the VI. of England, as king of France, thus gave the viscounty of *Beaumont* to *John* whom he had before created viscount of *Beaumont*, and his heirs males of his body begotten.

Henry par la grace de Dieu roy de France & d'Angleterre; a la chose publique est expedit & a la mageste royal, chose mout convenable que les hommes vertueux & de noble generation soient, selon leurs merites, exaltez & par dessus auters honnorez & remunerez. Afin que en eulx assavourans le fruit de leurs labeurs, accroisse, magnificence, & bon couraige. Qu'ilz aient raisonnement de quoy soutenir honnorablement lestat & supporter les charges a leur vocation condecens. Et que auters a leur exemple soient curieux & plus volentifs de eveillement eulx employez & envoez dignes de louaigine. Et il soit ainsi que nous maintesfoiz ramenans a nostree memorie l'auncienne noblesse dont par generation est extrait nostre amie & feal cousin *Jehan visconte & seigneur de Beaumont*, les grans & tres notables services que luy & les siens ont, par long temps, faiz a noz nobles progenitours & a nous quil nous fait de jour en jour, & esperons que plus face en temps advenir, au fait de noz guerres & auterement; aions nagaires decore & embelly nostre cousin dessusnomme nostre du noune de *visconte*, & des dignites, preeminences, droiz, honneurs, & prerogatives a estat de *visconte* appartenans; cest un raison que, avec la dite dignite, il ait terre & seignourie que de soi soit intitule & ait nom de *visconte* ensamble possessions & revenues pour honnorablement maintenir son estat & nous servir, selon que a cel dignite appartient: Pourquoy nous, eue consideration a ce que dit est, favoir faisons a tous presens & advenir que par grant & meure deliberation de conseil sur ce eue avec aucuns de nostre sang & lignaige, de nostre grace especial certaine science, & auctorite royall, a nostre dit cousin *Jehan visconte & seigneur de Beaumont*, pour luy & pur ses hoires masses

¹ L'oyseau des seigneuries, chap. 4. §. 72.

² Le roy ou prince, &c.

³ A Paris 1539.

⁴ Pag. 336.

legitimes procrez de son corps en directe ligne, a nous donne, cede, transporte, & delaisse, donnons, cedons, transportons, & delaissons par ces presentes la *visconté de Beaumonte* avec ces appartenances & appendences quelxconques confisques envers nostre mageste royall, par la rebellion & desobeissance de *Jehan* soy disant duc d'Alencon, laquelle a tenue par don royall feu nostre t'schier & tresame uncle *Jehan*, en son vivant, duc de *Bedford*, & par son trespassement retournee a nostre main par reversion pour de la dicte *visconté de Beaumont*, de la quele nostre dit cousin & ses progeniteurs anciennement sont extraiz, & eulx & luy en ont porte de tout temps & encores il meismes en porte les armes; enlamble dez droiz feignoraux, advocations, dignites, & prerogatives, feifs, rents, revenues, heritauges, & possessions appartenans a icelle *visconté* & auters quelxconques ses appartenances; joir & user par nostre dit cousin & ses diz hoirs masses procrez de son corps en ligne directe perpetuellement, hereditablement, & a tousiours comme de leur propre chose; en quelque valeur ou estimation que aient este les choses devant dictes es temps passez, soient a present, ou puissent estre les temps advenir. Pourveu que icelles choses ou aucuns d'eues ne soient de nostre ancien demaine. Ne paravant la date de cestes par nous donnees a auters; que pour la fortification de nostre palais a *Rouen*, icelui nostre cousin de *Beaumont* paiera au receveur sur ce commiz en nostre chancellerie de *France*, la dixiesme partie pour une foiz de la revenue dun tansoulement des choses devant dictes, a lestimation & arbitrage de noz amez & seaulx les gens de noz comptes a *Rouen* & les tresorors & generaulx gouverneurs de noz finances en *France* & en *Normandie*, en regard au temps de l'an mil cccc & dix. Et que nostre cousin de *Beaumont* devant nomme & ses ditz hoires feront les homaiges & services & aussi paieront les chargez, droiz & devoirs, pour ce deux & accoustumez a nous & a auters quel appertendra. Si donnons en mandement par ces meismes presentes a nos dictes gens des compts & tresorors a nostre baillie du *Maine* & a tous nos auters justiciers & officiers, ou a leurs lieux tenents presens & advenir, & a chescun deulx sicome a luy appertendra, que, de la *visconté de Beaumont* & auters choses devant ditz, ils baillent & delivrent desmaintenant, a nostre dit cousin, la possession & saisine sans prejudice, toutesvoies de certain octroy que cy devant par auters noz lettres patent en avons fait pour aucun temps encores advenir a nostre trescher & ame cousin le conte de *Dorset*. Et tantost apres ce que icelui en fera & deslaizy, en facent joir & user pleinement & paisiblement nostre cousin de *Beaumont* & ses ditz hoires perpetuellement, hereditablement & a tousiours par la maniere que dit est, sans leur meiter ou donner ne souffrir estre miz ou donne deslourbier ou empeschement comment que ce soit au contraire. Et

afin que ce soit chose ferme & estable a tousiours; nous avons fait meiter nostre feel a ces presentes; sauf en auters choses nostre droit & lautruy en toutes. Donne en nostre mannoir a *Shene* le xviii^e jour du moys de *Januer*, lan de grace mil. cccc. & quarante. Et le xix. de nostre regne. Ainsi signe, porr le roy, monsieur le duc de *Yorke*, & le conte de *Suffolke*, presens.

Collacion est fait per moy; Gervais.

Of viscounts, *L'oyseau* makes three kinds; the first of those that are immediate to the king, as to his crown; which^a either are created by him, as some have been in the later times, or descended (by all likelihood) from such as being at first by delegation made *vicecomites* under the great dukes or counts of the elder ages, revolting from their immediate superiors and acknowledging the king only, retained yet their former name and dignity of viscounts always. Such a one is the viscount of *Turenne*. But there are few of this kind. The second is of those that held of the king as of some county or dutchy united to the crown, of which the most are. And the third of those which held of counties not in the king's hand. (²²⁰) And their being thus mediate or immediate to the crown, lessens or increaseth their dignity. For the coronets to be used over the arms of viscounts; some of the *French* attribute to them only a circle of gold either plain or enamelled; so^b *Moreau*. But in *Favin* it is a circle or coronet with a row of pearls immediate to the circle, in this form: which is delivered by^c some of them to have been antiently the form of the coronet that the counts, while they were sovereign lords and princes, might wear, and the very same also are still attributed to counts in the late histories of the houses of *Montmorency* and *Chastillon*, written by *André du Chesne*.



XX. As viscounts had thus their original from being subordinate to the great dukes or counts of *France*, so the *vidames* from being so to bishops. And as the one, so the other, being at first merely officary, became at length feudal and honorary. The title of *vidame* is but the *French* of the *Latin* *vicedominus*, which was the proper word for him that exercised delegate jurisdiction under a bishop, as *vicecomes* for one that did so under a duke or count. Divers passages of the elder times make that clear. *Volumus ut frater noster Paschasius*. (saith Saint^d *Gregory*) *vicedominum sibi ordinet & majorem domus quatenus possit vel hospitibus supervenientibus, vel causis quae eveniunt, idoneus & paratus existere*. So in an epistle of *Urban*^e the II. *vicedominus* is reckoned among the *ecclesiasticarum rerum administratores*. And *praepositi* and *vicedomini*, secundum *canones constituuntur*, saith an old *French*^e

^a Videſis Choppin. de doman. lib. 3. tit. 26. §. 7. ^b Tableau des armoiries pag. 25. ^c Loys d'Orleans en les ouvertures des parlemens pag. 170. & 171. ^d Tit. 9. epist. 66. & diſt. 89. c. 2. volumus. ^e C. 1. q. 3. c. 8. ſalvator, ^f Synod. Remenſ. 1. can. 24. VOL. III. G g g g council

council held in DCCCXIII. We see also the word *vicedominus* given to such as were under bishops, in the subscription of the Latin and Greek^g edition of the seventh general council of Nice, where the original is ἐκονομῶν. And *vicedominatus* is for the abstract of this office in a decree of pope^h Innocent the III. To the same purpose, *Bertigrannus episcopus Turonensis* (saithⁱ *Adrevaldus Floriacensis*) *legatos mittit ad sanctum Benedictum Flodegariam archidiaconum & Arderadam vicedominum suum.* (²²¹) Many other like testimonies occur.

But the viscounts and vidames in the extent of their offices (whence the feudal and honorary titles of both are derived) differed especially in two things. Divers viscounts were under one great duke or count, and the place that denominated every of them was that where they resided: But a bishop had but one vidame for his whole bishoprick. Whence it is also, that wherefoever that the vidame resided or had his fief (after such time, as such possession or territory as he had, became to be settled in him either by gift or permission as a fief) his denomination was from the bishoprick only, as the examples are in the vidames of *Rhemes, Amiens, Chartres, Mans*, and other like. The other especial difference is, that whereas the officary viscounts generally had the *moyenne justice* only, (²²²) or that which is civil jurisdiction, or *mixtum imperium*, the criminal, or the *merum imperium*, or *la hault justice* (as they call it) being still reserved in the hands of the superiors that made the delegation to them; (²²³) the vidames or *vicedomini* had both *merum & mixtum imperium*, or both civil and criminal, or *la hault justice* in their delegation to them, because their superiors being clergymen, could not by the canons of the^k church retain the exercise of the *merum imperium*, or such criminal jurisdiction, as inflicts either capital punishment, or any other by which blood is lost (²²⁴).

XXI. The title of *baron* hath both a general and particular signification in *France*. Generally it denotes (at least in the elder times) all the lords, or all such as have the greater honorary titles within the kingdom. But more especially it is confined to the signification of a particular dignity known only by the name of *baron*. The first notion of it is seen in divers places of the old writers of *France*, *Aimoinus*, *Fredegarius*, *Villebardouin*, *Froissart* and such more, that use the word *barons* generally for all dukes, counts, peers, marquesses, and the rest; as also in an old ordinance touching the parliament of *Paris*. *En temps de parlement* (the words^l are) *seront en le chambre des plez li soveraigne & president, certain baron & certain prelat: cestascavoir des barons, li dux de Bourgoigne, le comestable, le count de Saint*

Paul, &c. And in a register of the time of *Charles* the V. the dukes of *Anjou, Berry, Burgundy*, and *Bourbon*, and the counts of *Alençon* and *Estanges* (though all of them were princes of the blood also) are comprehended^m under the name of *barons*. Many passages of the same kind occur. And sometimes *ber* is used for it in the old romancesⁿ and elsewhere. As *noble ber*, & *poissant messiere Henry de Vergie*, in his letters of acknowledgment of homage^o to the dutchy of *Burgundy* in 1329. In this use it signified a noble, stout, brave, or (more literally) manly lord, as those epithets express a secular greatness. Whence it is that the abstract, *barony*, is sometimes used for power and lordship; as *tant de baronie*, or *de barnage*, which is interpreted, *such a power or lordly greatness*, and the like. And *tenir & possider en baronie*, hath been used to hold not only as a baron in a restrained fence, but generally also to hold a fief as a great lord; as appears in the examples collected touching this name in the history of the house of *Montmorency*.

The notion of *baron*, restrained to a particular dignity, is considerable (for the dignity) either in the barons originally and immediately holding of the crown, or mediately. Such as originally and immediately held of the crown, are those of the elder state of *France*. For, when the crown so wasted it self by permission of sovereignty to subjects (as is before remembered) all such great lords, holding of the king, as had gained to themselves territories and jurisdiction differing in extent from those of dukes and counts, and yet had not the titles of either of those or of any other of that nature, nor would assume the name of princes, were stiled barons. And some, it seems, by creation, some by their own assuming it, others also attributing it to them, thus originally acquiring it, transmitted it with their fiefs to their posterity. And an antient writer of *France* speaking of the kingdom of *Jerusalem* in the time of the holy wars calls it *principatus* or *baronia*, because of the narrowness of the extent of it. *Regnum Hierusalem* (saith^q he) *propter sui brevitem, principatum seu baroniam appellamus.* And by that name of *baronia* he also calls the county of *Tripolis*, and *de Roches*, and the principality of *Antioch*. Of this kind of barons were those antient barons of *Montmorency, Coucy, Bourbon, Beavieu*, and some such more. Of the French baronies *Montmorency* was ever reputed the chiefest, and the baron of *Montmorency*, *le premier baron de France*, as it is also expressly said in the charter of creation of *Montmorency* into a dutchy before recited. Thence some call him in Latin *archibaro*, and give the reason of this dignity out of his being baptized in the same font with king *Clodis*. *Archibaronem appellare* (saith^r *Robertus Caenalis*) *solemus Momo-*

^g Tom. 3. Concil. part. 1. §. 1. pag. 521. edit. 1618.
cap. 6. Voyez Pasquier en les Recherches lib. 8. cap. 5.
censuris ecclesiasticis; maxime ubi de irregularitate agunt.

^h De origine domus Courtney. pag. 148. & Voyez du Chesne en les preuves de liv. 4. de l'hist. de la maison de Vergy pag. 183.
ⁱ Voyez, ber, en Ragueau des droits royaux en baron. ^o Chez du Chesne en les preuves du liv. 4. de l'histoir. de la maison de Vergy pag. 240.

^k D'Argentre hist. de Bretagne, liv. 1. chap. 13.

^l Paroich. 14. pag. 108.

^m Extr. tit. de Simonia c. 38. consuler.

ⁿ C. 23. q. 8. c. his a quibus 30. & passim jurisperiti & theologi qui de

^o Regist. ancien chez du Chesne en la maison de Montmorency liv. 1. de l'hist. de la maison de Vergy pag. 183.

^q Gest. Ludov. IV. Lud. Grossi, pag. 149. edit. a P. Pithaeo 1596.

ranciacum, qui id nominis prae caeteris baronibus obtinuit, quod scilicet zelo christianismi accensus, eidem lavacro se immiserit quo rex Clodovaeus protochristianus sacro baptismate ablatus est. And, as some have conceived, it was the first as well in time as dignity. For they say, that there was a time when no other barony besides Montmorency was in France. Nec fuit antiquitus aliqua baronia in Francia quam sua (saith Johannes Galli[†] speaking of the barony of Montmorency, under Charles the VI. whose advocate he was) ante advocaciones & acquisitiones quae de post factae fuerunt a regibus Franciae. But they cite also out of the *Grand Cusumier*,[†] that antiently there were but three baronies in all France; and in that number they omit Montmorency. Bourbon, they say, Coucy and Beavieu. For some particulars of the nature of this kind of barons, there is a special example in *William de^u Nangis*, where he speaks of the *sire de Coucy* under saint Louis. And, because it hath somewhat of the privilege they had in tryal, of the annexation of the title to a fief or territory, and of the transmission of it also, with part of the whole barony, upon partition between brothers, none of which yet seems so clear in it as that any sure assertion touching their dignity may easily be extracted from it; I transcribe it wholly, and leave it to better judgment. Three young gentlemen of *Flanders*, that lived with the abbot of Saint *Nicholas du boys* to learn the French, were cruelly put to death by *Enguerran le sire de Coucy* (for so was his name, but in *de Nangis* a space is left for it) their faults being nothing above hunting in the baron's forest. The abbot assisted with the power of *Gilles de Brun* constable of France (of whose family they say the gentlemen were) complained to the king of it; whereupon that *Sire de Coucy* was called *ad curiam super tali facinore respondendum*. Qui in regis praesentia constitutus dixit se de responsione cogi non debere, volens & petens per pares Franciae, si posset, secundum consuetudinem baroniae judicari. Sed contra eum probatum extitit per curiae retroacta quod terram in baronia non tenebat, quia furent de Bevis, & de Gorneyo, quae a terra de Couciaco per fraternitatis partitionem decisa fuerat, illud dominium baroniae dependebat. Tali igitur altercatione negotio dependente, rex dominum de Couciaco non per pares nec milites, sed per clientes aulicos, fecit capi & domo sua Parisiis, quae *Lupera* dicitur, custodia reservari, diem sibi constituens ad quem omnes regni proceres convenirent. Proceribus vero postmodum Parisiis congregatis, dominoque de Couciaco in medio constituto, rex eum super casu praedicto respondere compulsi. Tunc ille per regis voluntatem omnes barones ibidem consistentes sui generis vel parentelae ad suum consilium convocavit, tantaque fuit ibi sui generis nobilitas, quod rex quasi solus praeter paucos consilii sui remane-

ret. Ipse rex etiam non erat expertus affinitatis illius parentelae. Erat autem regis intentio justum judicium judicare inflexibiliter; ut ad poenam talionis dictus dominus puniretur, & morte consilii damnaretur. Vix tamen ad ultimum precibus & interventu procerum sic fuit ordinatum, quod decem millibus librarum vel circiter vitam suam redimeret, & duas capellanias constitueret pro animabus puerorum ad perpetualiter celebrandum. These antient barons affected rather to be stiled by the names^x of *sire* than baron, as *le sire de Montmorency*, *le sire de Beavieu*, and the like. And the baron of *Coucy* carried, to that purpose, this rhyme^y in his device.

*Je ne suis roy ne prince aussi,
Je suis le sire de Coucy.*

But, of the elder of this kind, there is not (saith^z *Loyseau*) one barony or *sirerie* left. For, they being all of great jurisdiction and territory, have either revolved to the crown, or been erected into dutchies, marquisesates, or counts at the desire of the barons that saw their titles, but the same in expression which was common to so many others that held, not immediately of the crown; but only of dukes or counts, and therefore procured themselves to be honoured with more distinct and superior dignities. Such as originally held mediately of the crown, that is such as were immediately dependent on the dutchies or counties, are many of those that to this day are the baronies of France; and though they are now held of the king, yet they are not held as of the crown, but as of the old dutchies and counties, that have been long since united to the crown. Of these kinds in every dutchy and county there is store enough.

For the antient right of such barons observe that of *Robert* count of *Bologne*, his confirmation of the gift of the county of *S. Pol* (which was held of him) by *Hugh de Chastillon*, to his brother *Guy de Chastillon*, and the settling the conditions of it. All was done by the judgment of the barons of the count of *Bologne*, to whom that right of such judgment belonged. Et furent toutes ces choses (says the charter of^a confirmation) devant dites faites par devant nous bien & suffisament, & a loy & par jugement de nos homes barons de Boullenois qui ce povoient juger & devoient. Cestascavoir monseigneur Guillaume de Coulambers, monseigneur Huon d'Ordre, chevaliers; Huon d'Ancoich seigneur d'Ervy, Anseil de Sanghetim, & Moriaus d'Arwinghe, &c. And in *Bertrand d'Argentre*, the placing of all the barons of *Bretagne* in the duke's parliament, determined by the duke and them upon question, in a parliament held there in *MLXXXVII*. under duke *Alan Fergent*, is at large^b transcribed out of the records of that dutchy. And for the creation of a baron and barony in that dutchy, see that of duke *Francis II*. in *MCDLXXX*. by which^c he

[†] Questio 214. Chez du Chefne in les preuves de l'hist. de Montmorency, pag. 3. anno 1391.

verb. baronie.
^u De Gest. Ludovici regis pag. 441. anno 1256.

^z Des seigneuries chap. 5.

^y Hist. de Bretagne liv. 1. chap. 13.

^x Ragueau des droits royaux

chap. 7. §. 39.

^a Pas-

quoier en les Recherches liv. 9. chap. 5. §. 37.

^b Anno 1292. Chez du Chefne en les preuves

de Simon Maron playdoye 9. pag. 286.

created

created *Francis* his natural son baron of *Avou-gour*, and gave him the barony, reserving only *la souverainete, l'homage & le resort* to him. It is reported in the case of the count *de la Val*, touching the county of *Quintin*, where divers other observable particulars are touching baronies and other feudal dignities of *France*.

The beginning of this kind of^d barons, were for the most part either by creation (which was solemnly done by the old dukes and counts) or by assumption of the title which was the antienter course. That assumption was especially used by the young sons of counts, that receiving part of their fathers inheritance, as it were in appenage, without the honorary title of count, that went only to the eldest, stiled themselves barons of that patrimony. And for the restrained notion of baron, in the antient times especially, thus much.

In the later ages, and at this day, those of the dutchies^e and counties, and such fiefs as are at the king's pleasure newly erected into the title of baronies, are the only territories that give this title. And it is in some others also as merely honorary by the creation^f of the king. But although in some towns the custom be to call the son and heir apparent of the lord, *le baron*, yet that, I conceive, to be rather from the peculiar language of the place only, as the husband of a wife is in the law *French of England*, and the customs of *Picardy*, named baron, or as the inhabitants of divers towns are called barons, than in regard of any honorary expression. The old circumstances of the creation of a baron is not fully agreed on in the ceremonials that belong to those honorary titles in *France*. One says, the person, to be honoured with this dignity ought to have under him a banneret or six knights bachelors, every one of them having six hundred francs rent. Another that he must have four *chastellaines*. Other differences are. But with consent enough they deliver that he was first to be made a banneret. So that he might have *statum baronis & honorem vexilli* as it is said of *Matthew^h de Gournay* a baron of the dutchy of *Guienne* under *Henry the IV.* king of *England*. But touching the dignity of banneret, more anon; although, because it is involved with *baron* in the passages of those ceremonials, the creation of it must here also be transcribed. The *Sallade* to this purpose, thus. *Quant ung chevalier ou escuyer noble de tous ses quatre lignes a la terre de dix chevaliers ou escuyers bachellier, & se veut faire banneret, fault per droit d'honneur que primer ait, de sa patrimony ou acquis, pour estre accompagnez du maynes de IV. ou V. nobles homes continuellement a douz ou a seize chevaux; lors se peut faire banneret par la fazon que l'ensuit. Le roy ou le prince licitement donera banniere & luy coupera la quive de son pennon a la primer bataille ou il se trouvera & le fere la chevalier sil ne l'est. Et lors sera benret. Et sil ne le*

fait en guerre, le peut faire en jour solemnelle feast apres le service devin, luy estant en sa chaire & les bannerets a genoulx. Et sil avance sa seigneurie, perforce que il puisse avoyr ung benret ou six chevaliers chascun de six cens francs de rent sous luy, a lor il peut, per le conge du prince, se dire baron; & autrement le prince que le souffre, seule les termes de raison. At the end of *la division du monde*, there are three battles to be, or three goings into the field, it seems, before the baron was to be made. And of the two preceding battles or goings into the field, at the first, the king is to give him a banner, by reason of which delivery, in the second battle, he hath the dignity of a banneret, and in the third of a baron. *Item pour faire ung baron; (so are the words there) cest quant ung chevalier ou escuyer a la terre de quatre bachelles, cest a dire quatre chastelleins terrennes ayant droit de justice hault moyenne & basse; le roy luy peut bailler banniere la primer bataille de guerre ou se trouva le dict escuyer; & a la deuxiesme il est banneret & la tierce il est baron,* and accordingly is that which is antiently printed at the end of the *gesta Romanorum*, and published by *Robert Gaguin*. But when a barony came to the king by escheat or otherwise, the gift of the barony it self by charter without other rites of creation made the patentee a baron, as we may see in the example of our *Henry the VI.* his givingⁱ the barony of *Montmorency* forfeited to him as king of *France*, to *John* the bastard of *Saint Pol*. And the like may be said of some conveyances of baronies there by common persons. And indeed the latter times have not these old circumstances belonging to the creation of barons. Only the patent of creation, and the king's pleasure declared in it, sufficiently erect any fief into the dignity of a baron. It is true that it is ordained in that edict of *Henry the III.* that every barony should^k consist of three *chastellanies* at the least, which should be united under one homage to the king. But that was only verified in the parliament of *Rennes*.

But for those *chastellanies* remembered here, as also in one of the old ceremonials; they are only the lordships originally of castles or fortresses in places of less note than usually have been raised into baronies. And the lords of them are called *chastellaines*, which is a feudal dignity that follows that of baron. And some give the barons there two singular^l prerogatives, that really also distinguish them from *chastellaines*. One, that barons may inclose the towns of their baronies with walls, and so have *droit de ville close*, which yet for more surety they obtain sometimes from the king. And the *chastellaines* have not this liberty. The other is, that the barons have in their fiefs of barony, *hault justice* or *criminal*, and civil jurisdiction generally, and the *chastellain* only, *la basse justice*, or that which is exercised only in civil

^d Videfis Bertrand, d'Argentr. dicto loco.

^e Idem des seigneuries chap. 7. §. 43.

^f 9 Hen. IV. in rot. Vasc. 15. H. VI. membr. 4. num. 2.

^g La chancellerie du France chez A. du Chesne en l'histoir. de Montmorency, liv. 3. pag. 233.

^h Idem chap. 7. §. 72.

ⁱ L'oyseau des ordres chap. 12. §. 28.

^j 7. Hen. VI. en

^k L'oyseau des seign. chap. 4. §. 72.

actions, or such almost as in the courts baron of England? We speak here of feudal and seigneurial chafsellaines originally made (as other feudal dignities) of such as were officary in the elder times. But in the customs of Poictou, the chafsellain hath la hault justice. But he is distinguished there most especially from a baron, in this; that where a baron, and all above a baron, may bear their arms in a banner, or en drappeau quarre, the chafsellain may only en forme d'esquison, or in a pennon. But the chafsellaines there, are only officary and not feudal, as L'oyseau tells us, they are also in Auvergne and the Dauphiné to this day. But also Carolus Paschalius attributes a kind of coronet to barons, by which, I think, he means the barons of his own country, which is France. Baronibus (saith he) licet gestare non quidem laminam integram & latam, sed tenuiorem ac restrictiorem, ac veluti circulum sive gracile vinculum aureum.

XXII. These feudal and greater dignities of France being thus opened, we conclude them with one of the titles in the codeⁿ of Henry the IV. wherein the nature or state of most of them together, is thus summarily delivered.

De ducatu, marchionatu, comitatu, baroniaque.

I. Ducatus, marchionatus, comitatusque tituli ac praeogativae a solo rege tribui possunt.

But this is spoken with relation only to those parts of France, that are actually in obedience to it. See before §. XIV.

II. Baronia, marchionatu, comitatu, ducatu, a rege cuicumque ac quocumque titulo ac praeogativa concessis, fidei obligatio, clientelaque regi debita, sed & summum de appellationibus judicium excepta intelliguntur.

III. Si quod praedium gentilitium, quod in alterius clientela esset, ducatus, marchionatus, comitatus, baroniaeque nomine appelletur a rege; ut si baronia quae comitem aliquem patronum haberet, ducatus titulo insigniatur, nihil juris antiquo patrono decedit; sed nec fidei clientelaris obsequiosaeque pollicitationis obligatio remittitur; praefessionis tamen honorumque praeogativa aliis in rebus in ampliori dignitatis gradu constitutis defertur.

IV. Ducatus, marchionatus, comitatus, baroniae, si cuiquam de plebe a rege deferantur, nobilitatis jura eidem attribuuntur.

V. Hac praedia a foeminis quoque possideri possunt.

VI. Hoc praediorum genus testamento relinquendi, quam quibus legum municipalium praescriptis morte possessorum deferatur, non licet. Sed nec minores liberi praedii ullis gentilitiis quantumvis insignibus, quae illis vel tota vel ex certa portione venire haereditate debeant, excludi ullis parentum decretis possunt.

Such authorities of laws also, as more at large justify these positions, are added in that code.

XXIII. As barons and some other titles have significations both general and particular, so also hath the title of chevalier or knight. Generally it is applied to all feudal lords; as counts, and barons, together also with the great officers that^o are called chevaliers and seigneurs also indifferently. So in old Gaul, we see the name of equites was as comprehensive in Caesar's expression of the state of that country. But the particular significations of it are in divers orders of chivalry or knighthood, as in knights bannerets, knights bachelors, of the star, of Saint Michael, of the Holy Ghost, and others of antienter but of less note.

Bannerets, (²²⁵) chevaliers a banniere, or milites ferentes^p bannerias have the liberty of^q bearing their arms in the field on a banner, given them. An old creation of them is before^r shewed out of the Sallade, wherein there is a solemn cutting of their pennons or drappeaux quarrez, which are most properly banners. But the delivery of a banner at the first battle was (according to one of the forms of ceremony already shewed) but a preparation, it seems, to the making or being of a banneret which followed at the second battle. That is taken out of la division du monde, where also there is another form of creation of a banneret without any relation to several battles. And as much revenue as will maintain fifty gentlemen at the least under him to follow his banner, is there supposed requisite for such a dignity. Pour faire un chevaliere benneret (so are the words) cest quant il a longement suivy les guerres, & que il a assez terres & revenue tant que il peut tenir & souldoyer cinquants gentils homes, pour accompagner sa banniere. Lors il peut licitement lever l'adit banniere & non autrement, car nul autre home ne puit porter banniere en bataille sil n'a cinquante homes prestz pour batailler. And some say that a banneret need have but xxv gentlemen^t under him, some^t ten. But it is elsewhere also delivered (as in that is before cited out of la division du monde) that he must have fifty; as at the end of the old printed gesta Romanorum in French; where also the cutting of the pennon is expressly required, and the creation is thus attributed to the constable or marshals. The words are, quant un chevalier a longement servy & suivy le guerre, & que il ad terre assez tant que il peut tenir cinquante gentil-homes pour accompagner sa banniere, il doit lors licitement lever banniere & non autrement. Car nul autre home ne doit porter banniere in bataille, s'il n'a cinquante homes d'armes & les archeries & les arbalesters que y appartenit. Et sil les a; il doit a la premier bataille ou il est, apporter ung pennon de ses armes, & doit venire au connestable ou aux marchaux, & requerere quil soit banneret, & s'ilz luy otroyent, doyvent fair sonner les trompes

^m De coronis, lib. 9. cap. 22.
Hisor. Norm. a Ducano edit. pag. 1031.
pud Chop. de domanio lib. 1. tit. 13. §. 14.

ⁿ Hen. IV. codicis a Thoma Cornario editi lib. 8. tit. 2.

^q D'Argentre. hisior. Bret. lib. 1. cap. ult.

^r L'oyseau des seign. chap. 8. §. 6.

^o L'oyseau des ordres chap. 6. §. 112.

^p §. praecedente.

^t Oliv. Marchian.

pour testemoigner, & doit ainsi copier les queues de penon, & lors le doit lever & porter avecques les autres, ou au dessous des barons. This dignity hath been " frequently both personal and patrimonial, or feudal. They are both comprehended in that definition of Ragueau. *Les bannerets sont les vassaux, qui peuvent lever bannière, estendart, cornets, & compagnie des gens, & qui doivent servir avec bannière selon la condition de leur fiefs ou que portoit les banniers en une armée.* John the V. duke of Bretagne exercising royal power, as those great dukes did in most particulars, created *messire Jan de Beaumanoir lord de Boys, de la Motte, and de Tremeretto* into this title, to him and to the succeeding tenants of those places by this * patent in 1433. under king Charles the VII.

JAN par le grace de Dieu, duc de Bretagne, conte de Montfort & de Richmond, a tous ceux que ces presentes letters verront ou oyront salut. Comme de nos droits & souverainetes a nous seulement en nostre duchie appartienne augmenter & accroistre les droicts honeurs & privileges de nos subjects, & soit digne ainsi le faire a ceux par especial que de nous l'ont loyaument desservy, & il soit ainsi que nostre bien aime & feal chivalier & chambellan *messire Jan de Beaumanoir, seigneur du Boys, de la Motte, & de Tremereuc* soit issu & extraict, de toutz ses lineages, de grandes & nobles lignees & extractions, par raison desquelles il a plusieurs grandes & nobles richesses tenues de nous tant prochainement que par moyen, & aussi puissance & faculte, tant de subjects, que de rents & revenues de tenir estat de seigneur a banniere & de jouir des privileges & dignities dont ceux qui ont tenu tiel estat doient & ont accoustume tenir. Sçavoir faisons que nous ayants consideration des dites choses & bons, loyaux, & notables services que nostre dit chambellan & ses predecesseurs ont faitz a nous & aux nôtres, sans reproches, esperant que loyaument il & ses successeurs continueront de bien en mieux; en recognoissance mesmes, & pour partie de remuneration d'iceux & autres causes a ce nous mouvants, aujourd'huy de nostre grace & plénier puissance, par advice & deliberation de nostre conseil, a nostre dit chambellan pour luy & ses successeurs seigneurs des dits lieux & chascun d'eux avons donne & octroy, & par ses presentes donons & octroyons conge, licence & plénier puissance de prendre de luy-mesme, garder, avoir, maintenir en perpetuel, *armes & bannieres* & journees, batailles, enterrements, obseques & tous autres lieux ou il appartient & leur sera convenable comme les anciens barons & bannerets de nostre dit duchie, y mareschal, admiral, presidens, seneschaux, allouez bailiffes, prevosts, procureurs leurs lieutenants, a tous nos autres justiciers & officiers de nostre duchie, a que de ce peut & doit appartenir, & chascun de eux pour ce que luy touche en cometant si mestier est nostre present grace & faire & souffrir nostre dit chambellan & ses dits hoirs & successeurs plénierment jouir, cessants tous empesche-

ments au contraire, car ainsi nous plaist. Et de ce faire nous ordonnons plénier pouvoir & autorite de par nous & mandement special. Mandons & commandons a tous nos feaux & subjects en se faisant de leur obeier & diligemment entendre. En testmoing de ce pour valloir en perpetuel, nous avons fait sceller ces presents de nostre seal en lacs de soie & cire verte. Donne en nostre ville de Rennes le vingt & uniesme de Juellier, l'an mil quatre centz trent trois.

These letters were recognized in the assembly of the three estates of Bretagne at Rennes MDXLI. and registered there, being exhibited by *Jan d'Avagueur seigneur de saint Lawrens*, that challenged place by them. Of such feudal bannerets, is that of an arrest in the parliament of Grenoble in MDLVII. to be understood. *Les gentilhommes, soient seigneurs de place ou autres, sont jurisdictionnels du seigneur banneret dans la jurisdiction du quel ils resident & ne peuvent recourir ailleurs.* And such feudal bannerets were created by John duke of Burgundy, in MCCCCLII. as we see in the example of *Loys de la Vieffville, sieur de Sains*, and *Jacques sieur de Harchies*; the first being created or restored by him as duke of Burgundy, into the title of banneret, by reason of the signiory of Sains that was an antient fief-banneret, the other having his signiory of Harchies, made a fief-banneret by the duke, as he was count of Henault. And so much as concerning the creation of both is related in *Oliver de la 2^e March* we transcribe here. *Au camp du duc de Borgongne pres Ruppelmonde* (so he relates that of the *sieur de Sains*) contre les Gantois l'an 1452. *messire Loys de la Vieffville sieur de Sains* releva banniere & le presenta le roy de armes de la toison d'or, & le dit messire Loys tenoit en un lance le pennon de ses pleins armes, & dist le dit toison; *Montres redoubt & souverain seigneur, voicy vostre humble subject messire Loys de la Vieffville, issue d'ancienne banniere a vous sujette, & est la seigneurie de leur banniere entre les mains de son aïeul, & ne peut ou doit sans mesprendre, porter banniere quant a la cause de la Vieffville, dont il est issu: mais il a par partage la seigneurie de Sains, anciennement terre de banniere: Par quoy il vous supplie (considere la noblesse de sa natiuite, & les services faitz per ces predecesseurs) qu'il vous complaise le faire banneret & le relever en banniere, & il vous present son pennon armoye suffisamment, accompagne de 25. homes d'armes pour le moins, comme est & doit estre l'ancienne coustume.* Le duc luy respondit, que bien fust il venu, & que volontiers le feroit. Then for the *sieur de Harchies*; *Messire Jacques sieur de Harchies en Haynault* (saith he) se presenta aussi devant le dit duc estant en son dit camp, & porta son pennon suffisamment accompagne de gens d'armes siens & d'autres que l'accompagnoient. Celuy messire Jacques requist a son souverain seigneur, come conte de Haynault, que il le fist banneret en la seigneurie de Harchies; luy estant fort vaillant chivalier, & les siens ayans honorablement ser-

* Voyez Monstrelet. tom. 1. cap. 93. Pasquier Recherches lib. 2. cap. 16. The copy is imperfect, it seems, in this place, in du Paz.

* Angustin. du Paz, hist. de plusieurs maisons de Bretagne pag. 721. Code decif. for. liv. 12. titre 2. decif. 5.

Chopp. dom. lib. 1. tit. 13. §. 14. quem videlicet lib. 3. tit. 26. §. 14. & Tilium de rebus Gall. lib. 2.

vie aux guerres. Si luy fuit accord, & fuit fait banneret celuy jour le sieur de Harchies. Ainsi il difference de relever banniere & d'entrer en banniere.

In these examples we see the pennons were. But all the particulars that followed thereof are not related. Yet, it seems, that either the end of the pennons were cut off, or else that some solemn grant was in the creation, that they might afterward bear their arms in a banner, and not be tied to the form of a pennon as before. I know *L'oyseau*^b cites the *Sallade*, as if it justified that a banneret was antiently created by the delivery of a pennon, or *drappeau en escusson*. But that copy of the *Sallade*, that I use, shews that the point of the pennon or streamer was cut off, and so the shape of it altered into a *banniere* or *drappeau quarre*, or a square. For to bear a *banniere*, and to bear arms upon a square, are the same in the elder times. That is plain (besides other testimonies) in the customs of ^c *Poitou*, where the words are. *Le comte vicount ou baron peut porter banniere; que est adire, quel peut en guerre & armoiries porter ses armes en quarre.*

In regard of the antient nearness of bannerets to barons (for before the orders of knighthood, whereof the king is master, in the later ages instituted, there was no dignity between them) and of their having of right of bearing their arms in a *banniere*, (which none by any dignity, which is not officary with relation to the wars, besides themselves and barons, and such as are above barons, might do) some have stiled them ^d *baronets*, as they had a diminutive title of barons. I say, none by any dignity which is not officary with relation to the wars. For the constable, the marshal, the admiral, and some such more might and ought to bear (says both the old ceremonial printed at the end of the old *gesta Romanorum* in French, and the *Sallade*) a *banniere*, though they were neither barons nor bannerets.

XXIV. *Knights bachelors* are such as are raised for their merit, or upon apparent hope of their merit, into a degree next beneath that of bannerets, and above the rank of esquires, being created into it. For the original, enough is already said in the knights of the empire. The creation of them or dubbing as they call it (*donner l'accollee* or *l'accolade*, being to dub a knight, and receive *l'accolade* to be knighted) is from antient time in France, as in divers other countries, by striking (thrice, some say) the person to be honoured. And in some old ceremonials, the pronouncing of these words is added; *Je te fais chevalier au nom de Dieu & de mon seigneur Saint George*, with some others. *Miles esto*, are called the *verba assueta* in giving knighthood, by *Philothens Acbillinus*, a feigned name of a French author under Charles the V. *Rex dedit sibi supra collum*, saith^e he, *dicens verba assueta, miles esto*. And an esquire eminent for his service may, according to the

antient ceremonial, demand this honour as of right due to him. But of these things more particularly. And in this title we consider here, first, the forms of creation that more largely occur of it; secondly, the persons in whose power it is or hath been to confer it; thirdly, the quality of the persons on whom it is conferred; fourthly, the names by which it is stiled, together with the antient memory of the right of using a seal of their own, supposed by some as if that had been proper only to such as had received this dignity.

For the creation, in the *division du monde*, it is thus delivered. *Item comment on doit faire & creer ung chivalier. Quant ung escuyer que a longement voyage & este en plusieurs faitz d'armes, & que a de quoy entretenir son estate, & quil est de grant maison & rich & quil se trouve en un bataille ou reconter, il doit adviser le chiefe de l'arme ou vaillant chivalier. A lors doit venir devant luy & demander; chivalier au nom de Dieu & de Saint George donnez moy le ordre; & le dit chivalier ou chiefe de guerre doit tirer l'espee nue vers le dict demandeur & doit dire en frappant trois fois sur iceuly; Je te fais chivalier au nom de Dieu & de mon seigneur Saint George, pour la foy & justice loyamment garder & l'eglise, femes, vesves, & orphelins defender.* And it is added that if the person that demands this honour, have not a good estate, it is not to be given him, unless competent means, *pur le boneur de l'ordre de chivalier*, be also given him with it. In like manner the form of creation is at the end of the old *French gesta Romanorum*. But in the *Sallade* the creation hath in it the girding on of the sword, and the putting on the gilt spurs, and a memory of bathing, vigils, and other particulars. *Comment ung escuyer se doit faire chivalier. L'escuyer quant il a bien voyage & a este en plusieurs faitz d'armes d'ont il en est sailly a honneur, & quel a bien de quoy maintenir l'estate de chivalier (car autrelment ne luy est bonneur; & luy vault mieux estre bon escuyer que un pour chivalier) dont pour plus honorablement le estre que avoant la bataille, l'assault, ou benniers de princes soient, alors doit requirer aucun seigneur ou preud home chivalier que le face chivalier au nom de Dieu, de nostre dame, & de mon seigneur Saint George le bon chivalier, en luy baillant son espee nue en baisant la. Autres bon chivaliers se font a Saint Sepulchre nostre seigneur pour amour & bonneur de luy. Autres se font a la Saint Katherine ou ils ont leurs devotions. Autres se font que sont baignees en cuves, & puis revestus tout de neuf, & celle nuit vont veiller en l'eglise ou ils doivent estre en devotion jesque apres le grand messe chaunter. Lors prince ou autre chivalier seigneur chivalier luy donera l'accolle & luy ceint d'espee doree; puis luy sont chaussez les esperons dorez.* And he is to make a profession (saith the *Sallade*) to maintain the christian faith, the right of ladies, widows, and orphans. For that of bathing, vigils,

^b Des seigneuries, chap. 5. §. 50. vide eum cap. 8. §. 2, 3, &c.
^c Somn. Viridarii, part. 1. cap. 117.

^d Artic. I.

^e Bertr. d'Argentr. hist. de Bret. lib. 1. cap. 13.

and such like (which are almost the same in the making knights of the bath in England;) they were in some use in the elder times in France, at the giving this order of knighthood, as *du Tillet* also remembers. And in an old book of ches-play, written by a Frenchman, and translated by *P. Caxton* into English, it is said, *when the knights been made, they been bayned or bathed. That is the sign they should lead a new life and new manners. Also they wake all the night in prayers and orisons unto God, that he would give them grace that they may get that thing that they may not get by nature. The king or prince girdeth about them a sword, in sign that they should abide and keepe him of whom they have taken their despences and dignity.* Yet it seems these ceremonies were not so usual in France, but that in some provinces there at least, about 20 years since they were wholly omitted, and utterly disliked, as appears hereafter in a testimony out of *Ingulphus* touching the Normans, where we speak of the knights of England. *Francis the I.* (as *Hadrianus Junius* notes) brought that antient fashion into use again. *Inter virtutis praeemia* (saith he) *apud plerasque gentes fuit equitum, quos illud saeculum, ab aureis ornamentis quae illis attribuuntur, auratos appellat. In quem honoris amplissimi gradum nemo antiquitus optari solebat, nisi quem facinora praeclara & spectata in bello virtus eo merito dignum nobilitassent. Talibus namque solis ut periculorum praeemium, & laborum fructus, ab ipso exercitus duce solenni quodam ceremoniarum ritu, in honos deferrebat, inspectante omni multitudine. Quem morem plane obsoletum ante non adeo longum tempus revocavit in lucem primus Franciscus Galliarum rex, cum in nobili illo contra Helvetios conflictu ipse fortissime dimicans inter primos & fortissimos, ducis pariter & strenui militis munia obiisset, ut nimirum illustris clarique exempli assertor existeret, additis solennibus de more veteri ritibus. At alii hoc seculo inolevere mores quando honores adulterantur, dignitatis equestris gradus adulatoribus, potentibus, & gratiosis hominibus, aut opulentis qui militiam nunquam viderunt, etiam citra spectatae virtutis testimonium, ceu emptitia merx promiscue confertur, perstricto leviter nudo ense humero laevo, idque imperatoris aut ducis manu, additis verbis solenni more conceptis.*

For aids due to the king and other lords when their eldest sons receivethis dignity; there is testimony obvious enough in the French lawyers.

The person that confers this honour by creation (for it is only given by creation, and no man is born to it) is at this day regularly the king only; although the antient custom were that some subject did also do it; and that, not only princes and great dukes and counts, but

some of less note also being knights. For that of princes; the examples are remembered in the French^h writers, of the count of Flanders, Nevers, and such more. For others; they say that the custom, in Provence and Breaucaire, was that the burgeses and tradesmen, (such as might not otherwise receive the dignity at any hand, but by the singular leave of the king) might be knighted both by the barons and the prelates there. And remember also what occurs in that which is before transcribed for the ceremony of making a knight. And we add, that in the old stile and *Protocolle*ⁱ of the chancery of France, the forms of enobling in letters d'ennoblement, have a special clause that the patentee and his heirs males *quandocunque & a quocunque milite voluerit, valeat cingulo militari decorari.*

They that receive knighthood, are of all kinds. (226) The king's sons as well as his subjects have had accession^k of honour by it. And examples thereof are as antient^l as the time of Charles the great. The kings themselves also sometimes received it, as we see in the example of Lewis the XI. who at his coronation was^m knighted by Philip duke of Burgundy, as also Francis the I. by *Piere Baiarde*. Other kings by others. Yet there is a note in *Monstrelet*, that (I know not upon what ground) every son of a French kingⁿ is a knight at his christening, and that it was a meer novelty for the king of France, to receive a knighthood as Lewis the XI. did. But when the antient great dukes and counts did confer it, there was a difference, some say, between those that being before no gentlemen, were honoured with it by the king, and those that had it from the hand of one of those great subjects. For by the king's making of a knight, the person honoured, whether before gentle or not, is both lawfully a knight, and become (they^o say) into the state of a gentleman. But if any of those greater subjects conferred the dignity upon one that was not a gentleman, both the giving of it was unjust, and such as so gave it were to be fined for their offence. To this purpose they have a special example under saint Lewis, of the two sons^p of one Philip de Bourbon that was no gentleman. One of them received the knighthood of the count of Flanders, the other of his son the count of Nevers. For (as the words of the division in *Joannes Galli* are) *non obstante usu contrario ex parte comitis Flandrensis proposito, non poterat nec debebat facere de villano militem sine autoritate regis.* But both the counts and the knights were deeply fined for it by the king; through whose favour yet the knights retained this dignity so unjustly given them. But by some old laws of France (however this distinction held) it seems that if any one being not a gentleman (on the father's side) had by any means received this dignity, he

^f Batav. cap. 19. videfiss Vincent. Lupan. de magistr. Francorum cap. de equi. ordinis.

^{tit.} 26. §. 14. Bertrand. Argent. in consuet. Britan. art. 88. &c.

^{sur} le cust. de Troy art. 1.

^{desis} Aimoin. lib. 4. cap. 17.

^{Choppin.} loco jam citato.

^{2.} decif. 4. & 8.

^{Le} stile & protocole, a Lyon. 1577. pag. 241.

^{Chop.} de dom. lib. 3. tit. 26. §. 13.

^{Vide} Tiracquell. de nobilitate, cap. 8. §. 13.

^{Et} videfiss Joan. Gall. quest. in judic. anni 1180. & cod. decif. lib. 12. tit.

^{Til.} de rebus Gall. lib. 2. L'oyseau des ordres, chap. 6. §. 38. Pithou.

^{Chop.} de dom. lib. 3. tit. 26. §. 13.

^{Hift.} vol. 3. apud

^{Til.} de rebus Gall. lib. 2. L'oyseau des ordres cap. 6. §. 38.

^{Et} videfiss Joan. Gall. quest. in judic. anni 1180. & cod. decif. lib. 12. tit.

was to be degraded,^a and that by his lord's cutting off his spurs upon a dunghil. *Si aucun* (saith an old customier of *Paris* and *Orleans*) *que n'est gentilhomme de par son pere, le fust il de par sa mere, souffroit estre fait chevalier, son seigneur luy peut faire trencher ses esperons sur un fumier*. To the same purpose an old manuscript of the state of *France*. *Si aucuns homes* (so are the words) *estoit chevaliers & ne fuit pas gentix homes de lignage, ne de pariage, toust le faist il de par le mere, si ne porroit il estre par droit, ains le porroit peure li roys ou li barons en cui chastellerie ce serroit & par dessus y fumier trencher ses esperons*.

The more especial name by which these knights are distinguished in the elder expressions of them, is that of *chevaliers bachilers*.⁽²²⁷⁾ The title of *chevalier* (common to all others, and in the general notion of it, to all *chastellaines*, and those that are above them) is plain from the like cause as *ritter* in *Dutch*, *eques* in *Latin*, and the words for a knight, varied only by dialects in the other provincial tongues. *Chival* making *chevalier*, as *eques*, *eques*. But whence that of *bachilior* or *baccalararius* comes appears not so clearly. Some will have it as a compound of *baschevalier* from respect to the *chevalier à banner* or the banneret, under whom these bachelor knights ordinarily served. Others from *batailer*, as if their name had been corrupted from *batailers* or *batalarii*, made thence into *Latin*. Some a *bacca lauri*. Some from *bas eschelou*, as if thence bachelor were made; being the first step or degree both in learning and knighthood. Others otherwise. But the most probable seems to be that origination wherein it is fetched from the name of *buccellarii*, signifying in the declining empire as much as a soldier or military servant always ready for employment or some such thing. Whence being in the later ages joyned with *chevalier*, it denoted this knight which had thus received the first order of knighthood. That *buccellarius* signified so, it appears by sufficient testimonies. In the old glossaries of the Greek lawyers, *buccellarius* (or βακελλάριος) is interpreted first by δ σκοπελλόμενος ἢ φωνήν τινα one sent to kill any man; and then twice by δ παραμένων στρατιώτης or a soldier remaining in service. This name thus applied, began to be in use under *Honorius*, and was received in this signification both among the *Romans*, and some of the *Goths* also. So *Olympiodorus*; τὸ βακελλάριον ὁνομαζέται, saith "he, ἐν ταῖς ἡμέραις Ὀνωρίου ἐφέρετο κατὰ στρατιῶν ὁ μόνον Ρώμιων ἀπὸ αὐτῶν ἢ τοῦ τῶν τιμών. That is, *buccellarius* was a name given under *Honorius* to soldiers, as well among some of the *Goths*, as among the *Romans*. And it was therefore it seems given them, because the chiefest provision of victual, which was made for them, was called βακελλός, *bucellus* or *bucellatum* being a kind of biscuit

cakes or such like. And from this provision of their victual, they had the name of *buccellarii* as well as from *stipendia* the *stipendiarii*. The name being thus, both among the *Romans* and some of the *Goths*, used for a soldier, or one that had made and kept his profession military, became also to denote as much as *cliens*, or *feudatarius*, or one that was bound to serve another as his lord or patron, and defend him as one of his guard. This we see in the laws of the *West Goths*; *Quicumque in patrocinio constitutus sub patrono aliquid adquisierit, medietas ex omnibus in patroni vel filiorum ipsius potestate consistat. Aliam vero medietatem idem buccellarius qui adquisivit obtineat. Quod si buccellarius filium tantummodo reliquerit, &c.* And *Onyla buccellarius Aetii*² is remembered in *Gregorius Turonensis*. And hence is it that in some *Spaniards* it is interpreted by *vassallo*, which generally is one that by tenure is bound to military service. Hence also came the adjective *bachelereux*, or *batchelereux* (for the copies of *Froissart* have it both ways) to signify *hardy* and *adventurous*; both being proper attributes to true knighthood. And as in most other dignities, names, that were at first and yet remain also, of a far larger signification, became afterward significant for especial dignities, as we see in *dux*, *comes*, *miles*, *eques*, and the rest; so *bachelor* or *baccellarius* (which is used by *French* writers) and *baccalaureus* made from *buccellarius*, and denoting at first every soldier, afterward became, if joined to *chivalier*, to signify the first degree of knighthood. And a knight bachelor thus, was one that had this order of knighthood given him, wherein he served still as a *bachelor*. And *banneret* denoted them that might display their banners, and have these knights bachelors serving under them.

But the name of *bachelor* singly of it self was after used in other senses. Sometimes for one that was not yet knighted, but was *militaris ordinis candidatus*, and affected the dignity of knighthood, and to that purpose exercised arms. And in this sense we see the name in the tripartite division of such as had dignity by arms into *bachelors*, *chivaliers*, and *bannerets*, which we find in *Cujacius*, *Choppinus*, *Bertrand de Argentre*, and such more. And as *chivalerie* for knighthood, so *bachelorie* for *bachelorship* was, from this notion of *bachelor*, used among the old *French*. *La ne se pouvoit* (saith *Froissart*, speaking of the brave acts of the *English* at *Bergerac*) *chivalerie ne bachelorie celer*. And from this sense it was, it seems transferred to the first degree taken in the universities, and to those that are *magisterii candidati*, in trades, and to wooers, that have not been married but are *conjugii ac amoris candidati*, as it is used in *Picardy*, and with us in *England*. *Bache-*

^a Chez L'oyseau des ordres chap. 6. §. 8.

² Vide de hac re Lud. Viv. de caus. corrupt. art. lib. 2. L'oyseau des Ordres chap. 6. §. 50. Fauchet. orig. des dignités. Bertrand. Argent. in Confuet. Britan. art. 88. Cuiac. ad lib. 2. de Feud. lib. 7. Choppin de Dom. lib. 3. tit. 26. §. 14. &c.

³ C. tit. de erog. milit. annonae l. 1. & de excothione 2. Constantin. Porphyrog. Them. 6. Eustath. antecessor. *ἐν ταῖς ἡμέραις Ὀνωρίου* §. 5. Vide Alciat. Dip. lib. 3. cap. 20. Turneb. Advers. lib. 24. cap. 26. cap. 15. Vide item C. ad legem Juliam de vi publica l. 10. omnibus & ib. Gothofredum.

⁴ Hist. 2. c. 8. ⁵ For. Judic. apud Lindebrog. in Glossa verb. buccellarius. ⁶ Leg. Visigotho. lib. 5. tit. 3. de patronorum donationibus lib. 1. si quis. ⁷ Vol. 1. chap. 127. ⁸ Ad feud. lib. 2. tit. 7. ⁹ De Doman. lib. 9. tit. 26. §. 14. ¹⁰ Ad Confuet. Brit. art. 88. verb. chivalier. ¹¹ Vol. 1. chap. 104. ¹² L'oyseau des ordres chap. 6. §. 49.

lette being also in *Picardy* attributed to a maid wood, as bachelor to him that woocs. But sometimes as *chivalier* in its general notion, is given to all chastellaines and the greater lords, so bachelor is to such of the sons or other kindred of those great lords that have, besides their expectancy of inheritance in the whole lordship, some portion in present assigned them, with no less jurisdiction in their assigned part, than the great lords themselves had in the whole. Of bachelors in this sense, most especial mention is in the customs of *Anjou*. *Oultre les seigneurs dessusdits, y a au dit pais aucuns autres seigneurs* (say those^h customs) *que ne sont comtes, vicomtes, barons, ne chastellaines, qui ont chasteaux, fortresses, grosses maisons, places qui sont parties des comtes, vicomtes, baronies, ou chastellainies desdit pais, & tiels s'appellent bachiliers.* And these kind of bachelors retained their name still in this notion, it seems, though they were afterward made bannerets. The title of bachelor thus distinguishing them from the chiefest of their houses, and not being given them as any other note of a degree of dignity. *Erant quippe* (saithⁱ *Choppinus* upon those customs) *ex comitum baronumve* (he might have said, *aut castellanorum* also) *stemmae prognati & quum opibus autoritateque valerent, militaria signa efferre a regibus permittebantur.* Inde (so are his words) *bacheliers quibusdam dicti; ou portans banniere en ost, ou chivalier.*

For that of the peculiar right of using a seal of their own; *Husculph de Soligne* lord of *Dol* in *Bretagne*, adds this clause to a charter made by him to the abbey of *Vieuville* about MCLXX. *Et quia^k adhuc miles non eram & proprium sigillum non habebam, quando hanc concessionem fecimus, autoritate sigilli domini Johannis patris mei cartam istam sigillavimus.* Whereupon *Augustin du Paz* notes that it thence seems, that every knight might in those times have seals. *Ce que semble* (says he) *donner a entendre qu' en ce temps la, il n'y avoit, que les chevaliers qui eussent droit d' avoir & user de sceaux.* But *du Tillet* cites an old decision of MCCCXXVI, wherein an esquire is said, *cum equestrem ordinem suscipit, sigillum mutare.*

XXV. In the antienter ages (this order of knighthood, having been made too common by the frequency of giving it) there were selected at several times divers of the most eminent into other orders, whereof sometimes the king, sometimes others were sovereigns. And this, because such as were of most singular merit and eminency, might under the title of knighthood, have a character of such merit above other knights whether bachelors or bannerets; especially where the king was chief of them. These orders I divide into such as are most famous and known, and such as are more obscure, and not very commonly occur in the *French* writers. Of the

first kind, all were instituted by the king, saving that of the *golden fleece*. For although the sovereignty of that be in the kings of *Spain*, yet they have it by the title of duke of *Burgundy*, where it was first instituted under the crown of *France*; and therefore it hath place here. Of the second, some began by the authority of subjects that remained sovereign of them, and some by the kings.

The more famous and known which the kings have instituted, are those de l' *estoile* or of the star, called also of the virgin *Mary*, of *Saint Michael*, and of the *Holy Ghost*. That of the star, or of the virgin *Mary*, is commonly attributed to king *John*; the badge or ensign of it being a star, which the knights wore on their hoods or caps. But this was, they say, within few years so commonly given without merit, and to so many unworthy persons, that *Charles* the VI. (as some say; others, that king *John* himself; and some, that it was *Lewis* the XI.) to take off the pretence of honour that was supposed in it, and so to extinguish it (not by any expresse command laid upon those that had so unworthily obtained it) commanded every yeoman of his guard to wear a star in like fashion, which when the knights saw, they were ashamed of their stars, and presently left the use of them. *Prudenter Carolus VII.* (saith^l *Bodin*) *qui cum equestrem ordinem calamitosissimis reipublicae temporibus cum indignissimis communicatum prece vel pretio fuisse, nec sine gravi contumelia extorqueri posse intelligeret (erat autem ordinis insigne aurea stella pileo innexa) cohortes praefecti vigilum auream stellam pileis consuere jussit; quo editto repente omnes equites aureas stellas de pileis detraxerunt.* And to this purpose, divers. But *monsieur^m Favin* says, he hath learned that it was instituted long before in MXXXII. by king *Robert*, out of his devotion to the blessed virgin, from whose attribute of *stella maris*, the device of the star was taken. He says also that the first number was of xxx, and that the first ceremonies of giving it, were performed on the feast of the birth of the blessed virgin, that is, the virg of *September* in the same year. And that the annual feast belonging to it was kept on that day at *Clichy* (near *saint Denis*) which was then called *Saint Ouy*. The collar also proper to it and other ornaments, he describes, and says the star was worn both on the left side upon the breast, and at the collar also. Other particulars of it are obvious in him.

But this order of the star being ended, that of *saint Michael* succeeded. The *French* for the most part draw the institution of this order principally from a purpose that *Charles* the VII. had to make it, after the apparition of the archangel upon *Orleans* bridge, as the tutelary angel of *France*, assisting against the *English* in MCDXXVIII. For according to that purpose, *Lewis* the XI. at *Ambois*, the first of *August*

^h Art. 63. vide *Chopp.* 16, & *L'oyseau* des Ordres chap. 6. §. 52. ^k Paz l' histoire de plusieurs maisons de Bretagne pag. 523.

chap. 6. §. 43, & 44.

ⁱ Theat. d' Honneur lib. 3. pag. 567, &c.

anno 709.

^l De Jurisd. Andegav. lib. 1. cap. 63.

^m De repub. lib. 5. cap. 4. vide du Haillan. lib. 2. L'oyseau des ordres

ⁿ Vide Favin. Theat. d' Honneur pag. 609. Sigebert.

in MCDLXIX. instituted it; *a la gloire & louange de Dieu nostre createur tout puissant, & reverence de la glorieuse virge Marie, al'honneur & reverence de S. Michael premier chivalier, qui pur la querrelle de Dieu, bataille contra l'ancien enemy de l'humaine lignage, & le fit tresbucher de ciel &c.* as the words of the preamble of his patent of institution are. Then he creates the order by the name of *l'ordre de monsieur S. Michael archange*. The number were appointed xxxvi, though that increased very much afterward at the pleasure of the sovereigns. The cognizance or ensign of this order is, *un collar d'or fait a coquilles laces l'une avec l'autre d'un double laz assise sur chaisnets ou mailles d'or au milieu du quel collier sur un roch aura un image de monsieur S. Michael, que reviendra pendant sur la poitrine*. And this collar both the sovereign and every knight were by the institution bound to wear every day open, upon pain of causing a mafs to be laid, and dispensing vii s. vi d. Turnois, for every offence, having when they were armed, or private. In both those cases, they were permitted to wear the image of the archangel, either on a chain of gold only, or on a silk ribband. A herald also called *mont S. Michael* was appointed for it. And the feast of Saint Michael for the chapters and celebration of it, and divers other laws concerning the succession, ceremonies, oath, and such more that belong to it, are at large both in the ordinances of France, and in ^p *Favin*. Some also add this for the word of the order, *immedi tremor oceani*.

This of *S. Michael* continuing (as it doth to this day) *Henry the III.* in memory of *Whitsunday* (being the feast day wherein he was born, chosen king of Poland, and also called to the kingdom of France) instituted as an additional order to it, that of the Holy Ghost, or, *du benoist Sainte Esprit*. The words of the creation of it are, that he creates and institutes, *un ordre militaire en cestuy nostre royaume (outre celuy de monsieur saint Michel; le quel nous volons & entendons demurer en sa force & vigueur & estre observe tout ainsi que a este de puis sa premiere institution jusques a present) sous le nom & titre du benoist Sainte Esprit &c.* Both this and that of Saint Michael as joined in one, continue to this day, and are communicated without restraint of number. This was in December MDLXXVIII. The particulars that concern it, are at large in *monsieur Favin*, as the ornaments, statutes, names of the knights of the order to this day and such more. The bull of pope *Paul the V.* touching the admission of strangers into it, is in *Laertius Chelubinus*.

(²²⁸) *Favin* also hath at large what belongs to that of the golden fleece, which was begun by *Philip* duke of Burgundy, at his marriage with the lady *Isabel* of Portugal, in *Bruges*, the tenth of January MCCCXXIX. He and his heirs were appointed the sovereigns of it. The

title of the duchy and that sovereignty are both come to the king of Spain; as to his heir.

XXVI. (²²⁹) Of the orders that are more obscure, and commonly occur not, and yet are acknowledged among the French for antient orders of knighthood long since worn out, such as had the king for their sovereign, are those of the *genest*, of the *crown royal*, of the *ship*, and some such like, of all which *Favin* largely enough in his *theatre of honour*. Such of them as had subjects for their sovereigns, are those of the *porcupine*, of the *thistle*, of the *croissant*, of the *ermine*, and some such more, which are also in *Favin* so fully delivered that we here meddle not further with them. But as a supplement to them, we add the memory of those orders of the *dog* and *cock*, attributed to the noble family of the *Montmorencies* (whereof enough is said, and obviously to be read in *Moreau* his *tableau des armories*, *Mennenius*, du *Chefue*, and others) as also that of the *dame blanche a l'escu verd* or of the *fair lady in a green field*, instituted by that brave soldier *Jean de Boucicaut* marshal of France under *Charles the VI.* For, when in that time most grievous complaints were made to the king, by divers ladies and gentlewomen of the frequency of injuries which they daily suffered both in their honours and estates, from such as were so powerful that they could find neither champions nor other friends that durst venture to right them, *Boucicaut* perswaded twelve more to join with himself in making up this order of knighthood for five years, and to bear the device of it. Hereunto they are sworn, and to divers articles also which remain at large in *Mau-chaut sieur de Romainville* his history of *Boucicaut*. As that they should assist all ladies and gentlewomen wronged in their honours or fortunes; answer challenges of arms; supply one another's necessary absence; that if any lady or gentlewoman required the defence or aid of any or all of them, and afterward any knight or esquire should challenge them, they should first to their power right the women; if first they were challenged to arms, and afterward required by any lady or gentlewoman to assistance in defence or aid of her, it should be at their liberty which they would perform first; and some such more. The articles were sealed in an instrument with this title:

A tous haults & nobles dames, & damoiselles & a tous seigneurs, chivaliers, & escuyers, apres tous recommandations font a sçavoir les tres chivaliers, compaignons portans en leur devise, l'escu verde a la dame blanche. It was subscribed by *messire Charles d'Albret*, *messire Boucicaut mareschal de France*, *Boucicaut son frere*, *Francoys de Aubiscourt*, *Jean de Liguers*, *Chambrilac*, *Castelbayac*, *Gaucourt*, *Chasteau-morant*, *Betas*, *Bomcebaud*, *Colle ville*, *Torsay*. Because *d'Albret* was cousin german to the king, therefore *Boucicaut*, though he were head of the order, would not give his own name the first place.

^o Tom. 3. tit. 4.

^p Theat. d' honneur, pag. 616. & videtis Bodin de republ. lib. 5. cap. 4. Sanfovin, &c.

^q S. Mauth. de

la maison de Fr. tom. 1. pag. 352. Favin en le theat. d' honneur pag. 645, &c.

^r Bullar. tom. 3. constit. Paul V. 42. pag. 232. 16

Feb. 1608. vide 44. pag. 233.

¹ Part. 1. chap. 38. & 39.

XXVII. The orders of knighthood thus ended; we conclude here with that of *esquire* or *escuyer*, as they call it. A name not of the same notion now as in antient time. And yet the later application of it proceeds from that which was in the antient time used. For heretofore the division of dignities was such, that after that of gentry, this of *escuyer* followed, and then *bachelor*, *chivalier*, *banneret*, and the rest, in which division as bachelor, (whereof before) denoted one that was in military action, and served as *militaris ordinis candidatus*, but yet had not received the order of a knight bachelor; so *esquire* signified one that was attendant, and had his employment as a servant, waiting on such as had the order of knighthood in matters that conduced to arms, bearing their shields, and helping them to horse and such like, and were so also *militiae* (not *militaris ordinis*) *candidati*: because they served not as bachelors in the field. And thus I understand that of *D'Argentre*, president of the parliament of *Rennes*, upon this list of dignities; *escuyers, bachelors, chivaliers, bannerets, barons*; *hic ordo* (saith he) *ab antiquis honorum traditur quorum fuere militares functiones*. And then *escuyers* are (saith he) such as are *scutarii* in *Marcellinus* and *Procopius*; *qui scutum ducibus aut patronis praeferebant, posterius & stratores, qui dominos in equos tollerent, & equos regerent. Isque primus inter caeteros gradus nobilitatis*. Which last words, I conceive, to be spoken of such dignity as was, in the elder days of *France*, acquired from service either military, or such as had honorary relation to the military dignities, as this of *escuyer* had. For otherwise the title of *esquire* was not *gradus primus*. Birth alone or other legal enobling, gave that of gentry, or nobles, which so was *primus* and beneath this of *esquire*, that added (by reason of the merit of such employment and hope that was in them that were so employed) another dignity to him that was a gentleman. And *Loyseau*; *aussi y a il tresgrand apparence que la vraye & originaire etimologie du nom d'escuyer vient de porter l'escu, mais non le siens ains celui de son maistre*. But after such time as the most of those *escuyers* were, upon special occasion, though not ordinarily, employed also in service as the bachelors were (as it may seem both by that before noted out of *Marcellinus*, in the *wapeners* of the empire, and in divers examples in the stories of *France*) in so much that the dignity was very little differing from bachelors, the name of bachelor at length grew out of use; and all such gentlemen as were either employed in military service, as bachelors were wont to be, or attended on other great soldiers as their servants, having not received the order of knighthood, were called *escuyers, scutarii, scutiferi*, and *armigeri*, which since also (as at this day) in times of peace have been given to all gentlemen of the better note, to set a title of action, or of hope of action upon them. The title of *escuyer*, as the

next beneath knight (the name of bachelor alone being then growing out of use) is antient in that of the *escuyers* and knights in the battle of *Trente* about mccccl. of the part of *messire Jean de Beaumanoir*, against Sir *John Brembre* an *English* knight, and elsewhere in the history of *Bretagne* and in *Froissart*. And in the many grants of lands and offices made by our king *Henry* the V. to the gentlemen of *Normandy*; they have frequently the title of *armigeri*. And *nec licet* (saith an old author of *France* that lived under *Charles* the V.) *simplici scutifero deaurata ornamenta portare vel deferre*. (230)

CHAP. IV.

- I. Principe de las Asturias, the title of the son and heir apparent of Spain. His creation. Principe de Navarre, and de Girona.
- II. The use of dux, and comes, antiently in Spain. The title of duke in Castile, &c. with the crown belonging to it, and the forms of the letters of creation.
- III. The title of marqués there; the patent of creation of it, and of the coronet belonging to it.
- IV. Condes; their creation and coronet. The banner and caldron at their investiture, antiently. Conde palatino.
- V. Vizcondes.
- VI. The title of ricos hombres, and their investiture by a banner and a caldron or pendon y caldera also, as that of condes. Grandes, barons, and castellans.
- VII. The custom of the king's renewing the titular name to the heirs of most of the great dignities in Spain.
- VIII. Cavalleros de espuela dorada, or knights of the golden spur. Their creation, privileges, degradation, out of Spanish writers.
- IX. Cavalleros armados, and cavalleros de alarde, o de premio, o de guerra, o quantiosos.
- X. Laws or pragmatics de las cortesias, and bearing coronets.

IN Spain; the subordinate titles are, the prince de las Asturias, which they usually call the prince of Spain or Castile, duke, marqués, conde, vizconde, baron, rico hombre, and cavallero, or knight, as it signifies (in the more restrained notion, according as *chivalier* also with the French) a knight of an order. For cavallero otherwise in a general notion is applied there to their *hydalgo, infanciones, gentiles hombres*, and, in some places, *scuderos*,

¹ Ad consuet. Brit. art. 88.

² Des ordres, chap. 4. §. 22. qui plura habet de hoc nomine.

³ Argentre lib. 6. cap. 27. & lib. 11.

cap. 2. ⁴ Rot. Norman. 7. H. V. in arce Londinensi.

⁵ Philoth. Achill. somn. viridarii part. 1. cap. 125.

and in *Catalauna* ^a to *bombres de parage*, that are but in the like rank generally to that of gentlemen with us. Although there be no doubt but *escudero* came at first from *escudo*, as *escuyer* in French doth from *escu*, and literally denoted the same that *escuyer* doth.

I. The title of *princepe de las Asturias*, or *prince of the Asturias*, was first settled upon the infant son and heir apparent (the name of *infant* denoting but the king's son, ^b as *enfant le roy* in France; and thence also *infantados* hath been used for the possessions of any of the infants, and in like sense *infanta* is given to the daughters) in MCCCLXXXVIII. when Henry son and heir apparent of John the first, king of Castile, Leon, and Galicia, (afterward king Henry the III.) married the lady Catherine, daughter to John of Gaunt duke of Lancaster. ⁽²³¹⁾ *Ut Asturum principes* (saith ^c Mariana) *vocarentur datum; more ex Anglia translato ubi regum filii majores Walliae principes nominantur; quod ab hoc initio susceptum ad nostram aetatem conservatur, ut Castellae regum majores filii Asturum principes sint, quibus annis consequentibus Ubeda, Biatia, Illiturgiisque sunt addictae.* Yet in common appellation, the title of *princepe d'Esppaña* ^d is given to the son and heir apparent there, as also it is in the title of Salazar of Mendoza his *origen de las dignidades d'Castilla y Leon*, inscribed to the present king, being then prince. In the antienter time (saith the same Salazar) as all the sons were called *infantes*, so the son apparent *infante primero heredero*; and this he saith continued until the time of king John the first.

The ceremonies of creation (saith Salazar) were the king's putting on a robe of state on him, (*un manto*) and a cap or chaplet on his head, (*un chappeo*) and a rod of gold into his hand, kissing him, and pronouncing him to be *princepe d'Asturias*. The prince or heir apparent is called also *prince of Navarre*. So it appears in the title of Philip prince of Spain under king Charles: *To don Phelipe de Navarra hijo primogenito del emperador don Carlos &c.* And touching that principality, you may see more in Armandariz his ^e *recopilacion* of the laws of Navarre.

The title of *prince* or *principado* otherwise, hath been but rare in the territories adjoining, that are now under the king of Castile. In Aragon antiently it was. King Ferdinand of Aragon in MCCCCXIII. created his heir apparent don Alfonso prince of Girona; with the self same kind of ceremony as the prince of Asturias was first created, *estando en su throno* (saith ^f Zurita) *llego el infante don Alonso, y vestiole el rey un manto, y pusojele un chapeo en la cabeza y una vara de oro en la mano, y diole paz y titulo de princepe de Girona por su primogenito.* And this was the imitation of what had been before

done in making the heir apparent of Castile and Leon, *prince de las Asturias*, as that was of the creation of the prince of Wales in England. In the memories also of some other kingdoms of the Spanish territory, the like title of prince is found.

II. In the Roman and Gothick times, the names of *dux* and *comes* were dispersed ^g in the territories of Spain, and used there about DCL. after our Saviour, in like fort as in the old empire, when *dux* denoted one that had military forces with his government, and *comes* as well an office as a meer honour. A singular example thereof (as I can understand it) is in this subscription to the eighth council of Toledo, under king Receswinth.

Item ex viris illustribus officii palatini.

Hodoacrus, comes cubiculariorum, & dux.
Ofilo, comes cubiculariorum, & dux.
Adulphus, comes scantiarum, & dux.
Dabilo, comes & procer.
Aftalaus, comes.
Atanephus, comes & dux.
Ella, comes & dux.
Paulus, comes notariorum.
Tuantius, comes scantiarum.
Euredus, comes & procer.
Ricilla, comes patrimoniorum.
Afrila, comes scantiarum.
Ubenedarius, comes scantiarum, & dux.
Fahdila, comes scantiarum, & dux.
Cunefredus, comes spathariorum.
Frolla, comes & procer.

Comes alone, and *comes* and *procer*, I take here, for merely honorary counts. *Comes* with the addition shews the officary dignity born in the court: and *scantiarum* in the five noted with it signifies as *poculorum* or *epularum*. *Comitem scantiarum* (saith Garsias de Loaysa) ^h *nonnulli poculis; alii universis epulis regis praefectum fuisse contendunt. Hodie vulgari Hispanorum lingua seanciar est bibere.* But in those elder ages *dux* was only officary. For that of *comes*, and the becoming of it both honorary and feudal; more anon. But they commonly say the title of duke, as a distinct dignity and feudal, was not in Castile ⁱ until king Henry II. created his son don Frederick duke of Benevente, about MCCCLXX. And afterward king John the first, son to that Henry, created his younger son don Ferdinand, being infant of Lara, into the title of duke of Pennafiel, which was a Town that he gave him with the title. He was created by the imposition of a crown on his head, not at all *fleurie*. So says Mariana ^k; *corona capiti imposita, nullis extantibus floribus.* But Estevan de ^l Garibay, says, that it was *fleurie*, as at this day the crowns are which the dukes in Spain set over their arms. *Nostra*

^a Vide Joan. Benedict. Guardiola de la nobleza de Esppaña, cap. 29. ^b Salazar de Mendoza orig. de las dignidades lib. 1. cap. 7. vide de filiis regum Gonçal. Gillote in nobilitat. Andaluz. lib. 2. cap. 75. ^c Hist. Hispan. lib. 18. cap. 12. ita etiam Estephán. de Garibay in compendio histor. Hisp. lib. 15. cap. 25. Zurita en les annales de la corona d'Aragon, lib. 10. cap. 46. & lib. 12. cap. 24. &c. ^d See the Pragmatica of 1586. in the Spanish History, pag. 1235. ^e Lib. 5. tit. 17. ^f Annal. de la corona de Aragon. lib. 12. cap. 34. ^g De hisce videfis Marianam, lib. 6. cap. 1. & lib. 8. cap. 2. ^h In concil. Tolet. 8. pag. 459. ⁱ Garibay lib. 15. cap. 27. ^k Histór. 18. cap. 13. ^l Lib. superius dict. cap. 57.

aetate (saith *Mariana*) *non duces sed comites etiam coronam clipeis adiciunt regiae haud ab- similem*. That is, as a royal crown of the elder times, or as it is commonly pictured at this day, without arches. And that such a one was used in the creation of the duke of *Pennafiel*, not only *Garibay* but *Salazar de m Mendoza*, and some others also have affirmed. And they agree that a duke's coronet at this day is *fleurie*, but so to be drawn that the flowers exceed not one another in height. I say to be drawn; for the later dukes there neither wear it at any time, nor are created with it. However *Benito Guardiola* say,ⁿ that a duke generally may wear it on his head as well as arms. But that, it seems, must be understood of the antient dukes which both in *Spain*, *France*, and elsewhere, did wear coronets, not of those of the later times that have the picture of them only over their arms. (232) But see the same *Guardiola* also for other prerogatives belonging to dukes. In the patents of creation in *Castile*, it is only granted that they, and such as have after them the right of primogeniture or *mayorazgo*, shall be called dukes of such a town, which for the most part they possess. A whole example of one, whereby *don Gabriel Manrique conde de Osorno*, was created by *John the II.* in *January* MCCCLI. into the title of duke of *Galisteo*, we add here out of *o Alonso Lopez de Haro*.

DON Juan por la gracia de Dios rey de *Castilla*, de *Leon*, de *Toledo*, de *Galicia*, de *Sevilla*, de *Cordova*, de *Murcia*, de *Jaen*, del *Algarbe*, de *Algecira*, e fennor de *Vizcaya* & de *Molina*, &c. Por fazer bien y merced a vos don *Gabriel Manrique de Osorno*, commendador mayor de *Castilla* mi primo e mi vassallo, e del mi conseo; por les muchos, e buenos, e leales, e altos, e continuos, e fennalados, e agradables servicios que los del vuestro linage fizieron a los reyes donde yo vengo, e vos ave des fecho e faredes a mi de cada dia commuchas gentes de vuestra casa, e estado especialmente en las guerras que yo he avido, en las quales avedes puesto vuestra persona a gran riesgo e peligro de la vida, fasta derramar vuestra sangre; e otro si por la lealtad qui siempre en vos he fallado, lo qual es a mi todo bien cierto e connocido, es mi merced de vos galardonar, e adelautar, porque vuestra persona, e estado e linage sea mas sublimado, e valades mas; por ende por parte de remuneracion, e emienda, e satisfacion de los dichos servicios, de mi proprio motu e cierto ciencia, e poderio real, quiero que de aqui adelante para en toda vuestra vida seades *duque* de la vuestra villa de *Galisteo*, e seades llamado, e vos llamades, *don Gabriel Manrique duque de Galisteo* e conde de *Osorno*, e despues de vuestro fallezimiento aquello e aquellos que de vos descendirén, e vuestra casa e mayorazgo ovieren de aver, e heredar para siempre jamas, e que ayades e gozedes por razon del dicho titulo e dignidad, e vos sean fechas e guardadas las mas cumplidas honras e dignidades, e excelencias, e sublimaciones, e

antelaciones, e preeminencias, e prerogativas, de que gozan, e pueden e deven gozar, assi por derecho e leyes de mis reynos, como por usos e costumbres dellos los otros *duques* que han sido e son de los dichos mis reynos e fennorios, e que podades traer, e traigades todas las insignias, e usar, e exercer todas las ceremonias que per razon del dicho titulo e dignidad de *duque* deve- deo traer, e usar, e exercer. E quiero, e tengo por bien que vos podades llamar, e llamedes *duque* luego, e cada e quando que vos quisiere- des, e que por non lo vos llamar, nin ser assi llama- do, nin los dichos vuestros descendientes lo non perdades, nin vos pueda perjudicar en todo, nin en parte; e que toda via en qualquier tiem- po e logar e fazon que vos, e ellos quisiere- des, vos lo podades llamar, e seades assi llamados, e podades usar e ufedes de todo ello: e si necesari- o e cumplidero vos es, algo e tiro toda obrep- cion, e subrepcion, escrupulo, e qualesquier de- fetos, e otras cosas que emberguen, o puedan em- bargar a esta mi remuneracion que vos yo fago, o qualquier parte della. E por esta mi carta, o por el traslado della signado de escrivano publico, man- do al principe *don Henrique* mi muy caro, e muy amado fijo primogenito heredero, e a los *duques*, *condes*, *marqueses*, *ricosshomes*, *maiestres* de las *ordenes*, *priores*, *commendadores*, e subcom- mendadores, *alcaldes* de los castillos e casas fu- ertes, e llanas, e a los del mi conseo, e ordores de la mi audiencia, e alcaldes, e notarios, e otras justicias, oficiales qualesquier de la mi casa e corte, e chancilleria, e a todos los concejos, al- kaldes e alguaziles, regidores, cavalleros, escu- deros, oficiales, e homes buenos de todas las ciudades, e villas, e logares de los mis regnos, e fennorios, e otros qualesquier mis vassallos, e subditos, e naturales de qualquier estado, o pre- eminencia o dignidad que sean, e a qualquier, e qualesquier dellos que agora son, e seran de aqui adelante, que vos ayan e reciban por *duque de Galisteo*, e vos nombren e llamen de aqui ade- lante para en toda vuestra vida don *Gabriel Manrique duque de Galisteo*, conde de *Osorno*, e despues de vuestros dias aquel e aquellos que vuestra casa e mayorazgo ovieren de aver e he- redar para siempre jamas, e vos guarden, e fagan guardar todas las cosas susodichas, e cada una dellas, segun que las han guardado, e guardan, e deven ser guardadas a los otros *duques* de mis reynos, assi por derecho, como por las leyes, e costumbres dellos, e vos fagan todas las ceremo- nias que por razon del dicho titulo e dignidad, vos deven fazer de todo bien e cumplidamente, en guisa que vos non menguen ende cosa alguna, e que vos non pungan, nin consientan poner en ello, nin en parte dello, embargo, ni contrario alguno, so pena de la mi merced. E mando al mi chanceller e notarios, e a los otros que estan a la tabla de los mis sellos, que vos den e libren, e pasen, e sellen cada que por vuestra parte les fuere pedido mis cartas e privilegios las mas fir- mes e bastantes que vos cumpliere. E desto mande dar esta mi carta firma da de mi nombre, e sellada con mi sello. Dada en la villa de *Ocan-*

^m Origen. de las dignidad. lib. 3. cap. 15, in nobiliario part. 1. lib. 4. pag. 323.

ⁿ Vide Benedict. Guardiolam in tract. de nobilit. Hispan. cap. 46.

^o Alonso Lopez

na a tres dias de Enero, anno del nacimiento de nuestro fennor *Jesu Christo* de mil e quatrocientos e cincuenta e un annos.

YO EL REY.

The same *Lopez*^p hath a like form of the creation of *don Pedro Manrique* into the title of duke of *Naiera* by king *Ferdinand* and queen *Elizabeth*, in MCCCLXXXII. And in *Augustine du Paz*, we have a whole form of the creation of *Bertrand de Guestin* count of *Longueville* (for the good service especially he had done in the behalf of *Henry* the II. of *Castile* against the black prince) into the title of duke of *Molina*. *A fyn que soyas* (so are the words of creation, as they are turned out of the original which was Spanish) *plus honore & vous & ceux qui descendront de vostre lignage plus forts & puissans; nous vous donnons en pur don & en heritage tant pur le present que a tousiours nostre bourg de Molines, aver le chasteau du dit bourg & pouvoir de vous nomer duc de Molines, tant vous que ceux que descendront de vostre lignage.*

III. As in *France*, the empire, and elsewhere, the name of *marchio* was used sometimes antiently as a title so nearly equivalent to *dux* and *comes*, (according to that known identity of signification between those two words) that it was distinguished from them not by any difference of dignity, but by reason only of the situation of the denominating province which was of the marches or frontiers of the state wherein it was used, (as is already shewed) so in *Spain* also there was some like use of it. *Don Bernardino* first conde of *Barcelona*, sometimes titled himself conde, duke and marqués de las *Espannas*, as *Salazar de Mendoza*^q observes out of one of his charters dated in DCCXIV. to the monastery of *san Pedro de Taberna*, in the county of *Ribagorça*. And *Ramont Arnoldo Berenguer* the XI. conde of *Barcelona*, stiled himself marqués de las *Espannas*, without the other titles. So the prince of *Aragon*, *don Raymont Berenguer*, called himself marqués de *Tortosa*. But the use of it, in these and the like, was but as it was given to the dukes of *Normandy*, and the counts of *Burgundy* and *Flanders* (of whom, to this purpose, we have spoken in the marqueses of *France*) not as it was a distinct dignity from those of duke or count.

The first that was created into this title, as a distinct dignity, by the kings of *Castile*, was *Don Alfonso*^r count of *Denia*. For although in the *partidas* (which were written near a c years before the creation of this marqués) there be mention of^s dukes and marqueses, as distinct from *condes*; yet that, I conceive, is to understood, as many other things in the body of those laws, with relation to the practice of other states, not to any use then known in *Castile*. In MCCCLXVI. *Henry* the II. king of *Castile* and *Leon*, made that *Alfonso* marqués of the city of *Villena* (being in a territory which

is the marches of the four kingdoms, *Toledo*, *Aragon*, *Valencia*, and *Murcia*; and so it was truly a marquisate, or *marquisado*, as they call it) and gave him the city and lordship about it with the title. But it is since incorporated in the crown. The next was the marqués of *Santillana*. *Don Inigo Lopez de Mendoza* had that title from king *John* the II. And this was also a marquisate according to the signification and origination of the word. For *Santillana* is in the maritime parts of *Biscay*, and so of the frontiers or marches of *Spain*. In the later times it is become frequent as in other kingdoms. For an example of creation of it, I insert the patent of *Henry* the IV. king of *Castile* and *Leon*, by which he created *Don Pedro Alvarez Osorio*, being before conde de *Trestamara*, into the title of marqués of *Astorga*, in July MCCCCLXV. and gave him the city with the title. Thus I find it in *Lopez de Haro*.

DON *Henrique* por la gracia de Dios, rey de *Castilla* y *Leon*, de *Toledo*, de *Galicia*, de *Cordova*, de *Murcia*, de *Jaen*, del *Algarbe*, de *Algezira*, de *Gibraltar*, e fennor de *Vizcaya* e *Molina*, &c. Como la providencia de Dios nuestro fennor en la corte celestial ordeno dar mas excelencia a unos angelos que a otros, e fizo entre ello diversos grados, jerarquias e coras mas aceptos e cercanos a unos que a otros a su divinidad; assilos reyes e principes, que son sus vicarios en lo terrenal, conviene e pertenece de dar mas excelencia, enálçar, ennoblezer, e sublimar por magnificas mercedes a los mayores, e demas meritos fervidores, para loable, e perpetua recordacion, gloria e honor dellos, e de sus generaciones, e notable es fuerço e exemplo, esperança a los loables fervidores que non de ven de se poner a todo riesgo e peligro, por servicio de los reyes e principes, e ellos cum plen con ello lo que deven, segun razon e derecho divino y humano. Por lo qual considerando como el conde don *Pedro Alvarez Osorio* padre de vos el conde don *Alvaro Perez Osorio* conde de *Trafamara* mi alferes mayor del pendon de la divisa, e de mi consejo, fizo muchos y muy grandes, leales muy notables servicios al rey don *Juan* de gloriosa memoria mi fennor e padre, e a mi; e se quiso esmera en apurar en lealtad entre otros grandes, e mis cavalleros en muchas rosas, especialmente poniendo se a grandes trabais, e a riesgos, e peligros de su persona, e de sus gentes, por delibrar la persona del dicho fennor de rey mi padre, quando estubo opresso en la villa de *Oterdesillas* por el rey don *Juan* de *Navarra*, que aora es rey de *Aragon*, e por el infante don *Henrique* su hermano, e por don *Fadrique* almirante de *Castilla*, e por otros sus sequezes, e por ello puso a si y a sus tierras en grande persecucion e perdicion, e se fizo alaz guerra de los sobredichos. E mas especialmente considerando los muy grandes, leales, esenalados servicios que vos el dicho conde don *Alvaro Perez* su fijo, siguiendo las pisadas del dicho conde vuestro padre, e de otros vuestros progenitores, queriendo

^p Nobiliario pag. 306.

^q Origen de las dignidades lib. 3. cap. 13. & 14. & *Lopez de Haro* pag. 3.

^r Salazar de Mendoza ibidem, Est. Garibay in Hen. II.

^s Partid. 2. tit. 1.

^t Nobiliario, pag. 87.

vos mas cñinar en la dicha lealtad que a mi ayedes fecho è fazedes ende cada dia en muchos cafes fenn aladamente, por que con grande lealtad, e nobleza, e animosidad liberalmente en riempo muy acetable, e a mi muy provechofo, e animando a muchos a mi fèrvicio, fedes venido con muchas è buenas gentes de cavallo e de pie a me fèrvir en la prefente è gran neceffidad en que he eftado contra la muy tirana e mala ufurpacion de mis reynos e fennorios que pretenden ocupar les muy ingratos y difleales que figuen la parcialidad del principe don *Alonso* mi hermano. E porque vuestros fèrvicios fon dignos de muy grande e loable recordacion, e de gran merito e remuneracion e los que yo devo eftimar fer de tanto grado e merito, como fi por vuestra principal mano e caufa yo ganara muchas ciudades, e villas, e fortalezas de los Moros enemigos de vuestra fanta fe, e defendiera mi real persona e eftado, e los dichos mis reynos. E porque en lo fufodicho, è en otros muchos cafes el dicho conde vuestro padre, e vos ayedes recibido muchos e grandes dannos, e gastos, e perdidas de vuestro patrimonio, los quales yo no puedo buenamente fatesfazer, falvo por la merced e forma per esta mi carta contenida, e aun con ella no las fatisfago. E porque los dichos fèrvicios, e cargos, gastos e perdidas fon notorios, affi los claro por notorios, e de tanto merito, como dicho es. E quiero, e mando que dellos ni de parte dellos no feades obligado a hazer prueba alguna, ni contra ellos fea recebida prueba en contra. Por ende porque affi es cumplidero a mi fèrvicio, y al bien publico, e pacifico eftado de mis reynos & fennorios, e a la guarda e defenfiõ dellos e de mi corona y eftado, e persona real, e por hazer bien y merced a vos el dicho conde don *Alvaro Perez*, e porque quede para fiempre grande è especial corona en vuestro linage, de la vuestra tal e tan fingular virtude, e del dicho vuestro padre, e par remuneracion e parte de fatisfaccion de los dichos fus fèrvicios e gastos, e vuestros, por la prefente de mi propio motu e propia e cierta ciencia, e libre e deliberada voluntade aviendo avido confeio fobre ello con los prelados e grandes, e letrados de mi confeio que al prefente fon commigo, y de fu acuerdo e confeio es hago merced e donacion pura, firma, perpetua, e no revocable entre vivos en remuneracion e fatisfaccion, e folucion, en la meior forma que valer pueda, e a vos cumpla de la mi ciudad de *Aftorga* con fu castillo e fortaleza, e aldeas, e tierras, e terminos, e rios, montes, fuentes, prados, pafos, aguas, eftantes, e corrientes, e manantes, con todos fus vaffallos chriftianos, Indios e Moros, de qualquiera ley, eftado, o condicion, que fon e feran, ende vezinos, e con todos fus terminos e diftinto, e mero mifto imperio, e juridiccion alta y baxa, civil y criminal, con las efcrivania y officios, e yantares, martiniegas, penas e calunnias, omecillos, portazgos, peages, barcages, inforcones, fonfados e fonfaderas, martiniegas, e mostrencos, y algarinnos, e otros derechos e cosas qualefquier que fean, o puedan fer anexas e pertenecientes al fennorio e dichos imperios y juridicciones, e tierras, e terminos de la dicha ciudad e fu tierra, con todo lo fufodicho, affi de fecho como de derecho, e ufo e costum-

bre, o en otra qualquier manera, para que fe a todo vuestro propio, libre equito, e defembardo por juro de heredad perpetuamente para fiempre jamas, e lo ayades como bien mereciente, e fea de vuestro mayorazgo, e anexo a aquel que vos quedò del dicho conde vuestro padre, e de vuestro abuelo, e fegun e por la forma e con las claufulas y firmezas del que aqui por encorporado es; effi a vos pluviere de dar otra forma al dicho mayorazgo que tenedes, e alque vos yo otorgo de la dicha ciudad con lo fufò dicho, o a qualquier dellos, lo podais fazer e fagades, para que despues de vuestros dias qued e pertenezca todo o la parte del que vos quifieredes a vuestro hijo mayor varon legitimo, e de legitimo matrimonio nacido que ayedes e ovieredes; despues del a otro vuestro hijo o decendiente que vos quifieredes e nombraredes, e declaredes adelante, e que vaya e torne el dicho mayorazgo o mayorazgos por lineas e grados, e fuccèffiones, e con los vinculos e condiciones, e modos, e instituciones, e fustituciones, e refustituciones, e fumifiones, e cargos que vos quifieredes, e ordenaredes en vuestra vida, o en vuestro testamento, o codicilo, o pofterimera voluntad, aunque folene nofeã, affi varones comohembras e parientes tranfverfales: para el qual mayorazgo o mayorazgos, e difpoficiones, e cada cosa, e parte dello, affi fazer y disponer, e ordenar a vuestra voluntad, vos doy e otorgo plenario poder e autoridad por esta mi carta: e apruevo e confirmo desde aora para entõces de mi cierta ciencia lo que vos ordenaredes e difpuseredes fobre ello en qualquiera manera. E mando que aya efeto, no embargante que los otros vuestros fijos o decendientes, o otros parientes quales ovieredes vos, e los que de vos decendieren, fean fraudados o agravados en fus legitimas partes, que devan aver de vuestros bienes y herencia, o de vuestros decendientes, o de qualquiera dellos, aunque fean defraudados en los alimentos neceffarios. E no embargante que el dicho mayorazgo que vos aora tenedes contenga otras claufulas o firmezas diverfas o contrarias al mayorazgo que vos fizieredes, e ordenaredes, e de qualesquier efeto y firmeza que fea, no embargantes otras qualefquier cosas que a efto embarguen. E por vos mas honrar e fublimar a vos el dicho conde don *Alvaro Perez*, e a los que de vos vinieren, e ovieren de aver el dicho mayorazgo de la dicha ciudad con lo fufodicho, es mi merced, e mando que vos, e despues de vos los dichos vuestros herederos & fuccèffores ayades titulo e honor e dignidad, e ditado de *marques* de la dicha ciudad con todo lo fufò dicho, e con las otras vuestras tierras e fennorios que quifieredes anexar al dicho *marquesado* de *Aftorga*, y que todo ello fea, e fe nombre *marquesado*, vos, e despues de vos para aquel que oviere de aver la dicha ciudad con lo fufodicho por el dicho mayorazgo, e fea vuestro e fuyo propio por juro de heredad perpetuamente par fiempre jamas &c.

The *marqueffes* in *Spain* may fet a coronet on their arms, as it feems by the *pragmatica de las cortesias* of MDLXXXVI. wherein all others befides dukes, *marqueffes*, and *condes* are forbidden to do fo. *Salazar de Mendoza* and *Geronymo*

ronymo de Orrea and others affirm it, though some deny^w it them. They describe the coronet to be *un cerco guarnecido de piedras*, or a circle with rich stones on it, and that it should have *con cinco puntas, dos mas que el conde*, or with five points, which are two more than the *condes* hath.

IV. The title of *comes* or *conde* being here used as an officary or honorary dignity for a long time; at length also such as had in a manner the same power (at least exercised the same) as kings in their territories, were yet stiled *comites* and *condes*, as we see in the antient *condes* of *Castile*, *Aragon*, *Portugal* and *Barcelona*,^x three of which became thence to be kingdoms. And the title indeed was thus used by the lords of these places, as that of *duke* was antiently, in some other parts of *Europe*, by such as wanted nothing but a crown and anointment to give them the title of kings. Afterward, as in the *empire* and *France*, this title became, by degrees, feudal and hereditary. From being officary it became^y feudal among the *Goths* for life, and continued so until about *Ferdinando el Santo*, or the third of that name. He began MCCXV. After that, the title became hereditary, which some attribute to the time of *Alfonso* the X. the author of the *partidas*. But the antientest occurrence of the form of making a *conde* there, is in that of *Don Alvaro Nunnez Osorio*, favourite to *Alfonso* the XI. king of *Castile*, in MCCCCXXVIII. The king created him into the title of *conde de Trastamara, Lemos & Sarria*. The ceremonies were much differing from those that are found either in any other nation, or in *Spain*, in the following times after the creation of this *conde*. The king being placed in the state, a cup of wine with three sops was brought to him. The king then solemnly bids *Don Alvaro* take one, *Alvaro* bids the king in the same phrase; *tomade conde*, and *tomade rey*, were the words. And after this mutual invitation used by them thrice, they eat the three sops together, and then they that stood by saluted *Alvaro* in acclamation, by the name of *conde*. Then a banner and a caldron or caldera, and possessions fit for a *conde* were given him by charter. And this was the creation. But I transcribe it also as it is delivered in *Mariana*. *Osorio* (saith^z he) *amicorum principi abs rege Hispani datum, ut Trastamaræ Lemosii atque Sarrice comes esset. Novum id exemplum fuit, nullis antea in Castellæ regno comitibus. Rudi ceremonia bonos delatus. Hispania literaturæ expertis moris omnis ignara. Tres offæ in vini poculo oblatæ; cum inter se rex comesque tertio invitassent, uter prior sumeret, a rege offa una sumpta, a comite altera. Jus caldarie in castris, in bello, vexilli propriis insignibus distincti datum. In eam sententiam confectis tabulis atque recitatis, consecutus aslantium clamor plaususque. Is instituendi comites ritus fuit.* That

which he calls *jus caldarie in castris*, is named only *caldera* (whereof more when we speak anon of the *ricos hombres*) in the old *Spanish* chronicle of king *Alfonso* that created this *conde* (whence this ceremony is taken) and is joined with *pendon* (for the banner) and *casa y hazienda de conde*, or a house and possessions fit for a *conde*. *Mariana* also, in those words *nullis antea in Castellæ regno comitibus*, supposes, I think, that no *condes* had before been made thus, not that none had been in *Castile* before that time. For clearly others had been^a before made, but at that time indeed none lately; whence it happened that they were ignorant of the antient ceremonies. But this and the truth of that ceremony will best appear by the whole creation, as it is in that old chronicle written by *Juan Nunnez de Villafan*, who was *justitia mayor* to king *Henry* the II. This author says^b that first the king changed the arms of this *Alvaro* from wolves gules, in a field or, into goats sable in a field argent, and created him count. *Y porque avia luego tiempo que en los reynos de Castilla y de Leon no avia conde craduda en que manerr lo harian y la ystoria quenta que lo hizieron desta guissa; y el rey assentose en un estrado, y trueron una copa con vino, y tres sopas, y el rey dixo tomad conde, y el conde dixo tomad rey, y fueslo dice per ambos a dos tres vezes, y comieron de aquellas sopas ambos, a dos luego todas las gentes que estavan alli dixeran evad el conde, evad el conde, y de alli adelante truxo pendon y caldera y casa, y hazenda de conde y todos los que antes le aguardavan, assi como a pariente y amigo quedaron de alli adelante por sus vassallos y otros mas.* Here it appears that when this creation was to be performed, the antient ceremonies were so forgotten (because that for a long time there had been no *conde* made there) that it was much doubted how they should be performed. And for that of *evad el conde*, which some resolve into *be, va el conde*; *Salazar de Mendoza* says, *evad* is an old *Castilian* word, signifying as much as *mirad*, or behold, and so *evad el conde*, is *behold the conde*. He observes also out of this example, that though the fashion of creation in those times were to give *juntamente por insignias el pendon y caldera*, or a banner and a caldron, yet, at this day, a patent only gives the dignity with some town or territory to support the title. A form of the patents that give this dignity, I represent here out of *Lopez de Haro*. It is that whereby *Henry* the IV. in MCCCCLXX. made *Pedro Lopez de Ayala* *conde de Fuensalida*.

DON Henrique por la gracia de Dios, rey de Castilla y Leon, de Toledo, de Galicia, de Sevilla, Cordova, Murcia, de Jaen, del Algarve, de Algecira, de Gibraltar, senor de Vizcaya y Molina &c. Por quanto a los reys, e principes, pertenece honrar, e sublimar, e de-

^w Garibay in Henry II.
de las dignidades lib. 3. cap. 7. sed & lib. 1. cap. 9. §. la ley de &c.
Mendoza en orig. de las dignidad. lib. 3. cap. 1. 2. & seq. &c.
pez de Haro en su nobiliario pag. 513.

^x Videfis Guil. Neubrigenf. de rebus Anglic. lib. 2. cap. 10.

^y Vide Salazar de Mendoza origin.

^z Histor. lib. 15. cap. 20.

^a Videfis Salazar de

^b Nunnez de villafan chronicle, del rey Alfonso XI. cap. 64.

^c Lo-

corar, e fazer graças, e mercedes a sus subditos e naturales, especialmente aquellos que bien e lealmente los sirven: lo qual por mi acatado, e considerado, e a los muchos, e buenos, e leales, e fennalados servicios que vos *Pedro Lopez de Ayala* mi alcalde mayor de *Toledo*, e de mi consejo, me avedes hecho, e fazedes cada dia, e en alguna enmienda e remuneracion dellos; E por vos honrar, e decorar, e sublimar, e poner en estado e porque de vos, e de vuestro linia aya memoria, e seades mas acatados e honrados: Por la presente, de mi propio motu, e y cierta ciencia, e poderio real, de que en esta part, como rey & fennor, quiero usar, e uso, e vos fago, e creo conde de la vuestra villa de *Fuensalida*, e quiero, e mando, que de aqui adelante, vos e vuestro hijo mayor, e los que del vinieren, e vuestra casa e mayorazgo heredaren paren siempre jamas; ayades, e tengades el dicho titulo de conde, de la dicha villa de *Fuensalida*, e que vos podades llamar, e intitular, e nombrar conde, e vos lo llamedes, nombrar y intitular de la dicha *Fuensalida*, e que vos sea fecha salva e ceremonia, e las otras cosas que a los condes de mis reynos se fazen, y acostumbra fazer. Otrofi, que aydes e gozeds, e vos sean guardadas todas las honras, gracias, e mercedes, franquezas, e libertades, preeminencias, dignidades, e prerogativas que han, e gozan, e son guardadas a los otros condes de mis reynos, e seades recibido a todos los actos y cosas que a ellos son, e deven ser recibidos, e por esta mi carta, o por su traslado signado de escrivano publico, manda a la prince sa donna Juana mi muy cara, e muy amada fija, e a los prelados, duques, condes, e marqueses, ricos hombres, maestres de las ordenes, priores, comendadores, e a los de mi consejo, oydores de la mi audiencia, alcaldes e notarios, e a otras justicias especiales, qualesquier de la mi casa, e corte, e chancilleria, e a los mis mariscales, e reyes de armas, farautes, e perfevantes, e a los subcomendadores, alcaydes de los castillos, e casas fuertes, llanas, e a todos los concejos, alcaldes y alguaziles, villas, e lugares de los mis reynos, e fennorios, e a otras qualesquier personas, mis vassallos, e subditos, e naturales, de qualquier estado, e condicion, preeminencia, o dignidad que sea, cada uno dellos, que de aqui adelante vos ayan, e tengan por conde de la dicha *Fuensalida*, e llamen e intitulen don *Pedro Lopez de Ayala*, conde de la dicha villa de *Fuensalida*, e vos reciban a todos los actos o cosas a que los otros condes de mis reynos son, e deven ser recebidos, e vos guarden e fagan guardar todas las cosas susodichas que a los otros condes de mis reynos son e deven ser guardadas; e despues de vos, a los que la dicha vuestra casa e mayorazgo heredaren, e que vos non vayan, ni passen, ni consientan ir, ni passar aora, ni de aqui adelante en tiempo alguno ni por alguna manera, ca yo por esta mi carta os fago, e creo conde de la dicha *Fuensalida*, e vos do el dicho titulo para vos, e los que la dicha vuestra casa e mayorazgo heredaren, segun dicho es, e vos fago par, e igual de los otros condes de mis rey-

nos, para todo lo susodicho, e para cada cosa dello, sobre lo qual mando a mi chancillere notario, e a los otros mis oficiales que estan a la rablea de los mis fellos, que vos den, e libren, passen, e sellen mi carta de privilegio, lo mas firme e bastante que les pidieredes, e ovieredes menester, e los unos ni los otros no fagan endear por alguna manera, fopena de la mi merced, e de privacion de los oficios e de confiscacion de los bienes de los que lo contrario hizieron, para nuestra camara: e demas mando al escrivano que le esta mi carta monstrar, que los emplace, que pur ezcan ante mi en la mi corte, do quier que yo sea el dia que los emplacare, fasta quinze dias primeros siguientes, lo la dicha pena, lo la qual mando a qualquier escrivano publico que para esto fuere llamado, que de al que ende se le monstraré testimonio signado con su signo, para que yo lo sepa, en como se cumple mi mandado. Dada en Segovia a viente dias de Noviembre, anno del nacimiento de nuestro fennor Jesu Christo de mel y quatrocientos y setenta annos.

YO EL REY.

To Juan de Oviedo *secretario del rey nuestro fennor*, la fize escrivir, por su mandado.

The same *Lopez* hath another form at large of the creation of *don Gabriel Maurique* into the title of *conde de Osorno*.

For the coronet which the condes may set on their arms; if we might believe *Mariana* (whose words are before cited in the section of dukes) they are *regis haud absimiles*, and not unlike those of dukes. But *Geronymo de Urrea, Salazar de Mendoza, Lopez de Haro*, and others describe them with *tres puntas o hilo de perlas* (as de *Haro's* words are) and *tres puntas, y mas baja la de en medio*, as out of *Urrea, Mendoza* hath it. But in this form they are for the most part represented over the coats of the condes in *Haro's nobiliario*, and sometimes with fewer pearls, which whether it proceeded from the cutter's negligence or fancy, or whether it be indifferent, I know not.



The title of *conde palatino* also, or count *palatine*, is observed to have been in Spain. *Gonzalo de Guzman, fennor de Torija* was^d called so almost cc years past.

V. *Viscounts*, or *vizcondes*, also in some number occur in the dignities of Spain. ^e It hath the same original as in France. But the Spanish writers say, that the sons and heirs apparent of condes were wont to be stiled *vizcondes*, and that the title was in them as a *mayorazgo*, or right of primogeniture, in regard they exercised their fathers power, and enjoyed his rights in his stead, or *illius vice*. So expressly

^d Alonso Lopez de Haro nobil. gen. lib. 4. pag. 273.

^e Idem ibidem. vide A. de Salazar en l' inventaire de L'Espagne pag. 139.

& si placet l. 2. Parit. 2. tit. 1. Leg. Navarrae lib 5. tit. 17. pag. 218, edit. 1614.

ⁱ Benito Guardiola, ^g Salazar Mendoza, ^h Garribay, and others.

VI. But in the antient times before those greater dignities of the feudal dukes and marquesses came into use, when the title of *comes* was the greatest (whence their name of *conde* was made) the *Castilian* expression, or the *romance* of that country, did not so much stile those *comites* that were feudal, by the name of *condes*, as by that of *ricos hombres*, as if we should say literally *rich men*; but so, that their wealth was not so much denoted in that title as their dignity. For as *Alexio* ⁱ *Venegas* notes, *rico hombre* is the title of dignity, but *bombre rico* is simply for a *rich man*. For every one that was rich, though his territories were as large as the greatest *conde*, was not therefore a *rico hombre*; but a creation of him into that title gave him the dignity, which they prove ^k by that example of *don Alonso Fernandez Coronel*, who being a lord of very large territories, made it a great suit to *don Pedro* king of *Castile*, to be created into the title of *rico hombre*. The ceremony of creation and investiture of this dignity was the same with that of *conde*, as it is before delivered. That *conde* of *Traстамара* being plainly a *rico hombre* of that time. And for so much as concerns the giving of the banner and the *caldera*, or caldron; the stories have express mention of it. That *Alonso Fernandez* was so created; and so was the custom of *Spain*, (saith ^l the story) when the king made any *rico hombre*. So others.

The banner, says *Salazar de Mendoza*, was a testimony of a power given him to lead in the field, and the caldron of his greatness in house-keeping, and ability in maintaining ^m those whom he should lead. And being thus created, he had liberty to take the great title of *don*, as a forename. In those elder times the use being that none but the ⁿ king, the infants and prelates had it otherwise added to their names. But some say that all the *ricos hombres* might not have the name ^o of *don*, but only such as, being not bound to serve in the wars at the king's command, had their own liberty to serve at pleasure. A special mention of this title of *ricos hombres*, as comprehending all the *condes* of the time, and not only the *condes*, but other great lords, is in an old charter of *Mcccxx*, remaining in the monastery of *Sabagun*, ^p where the states are reckoned by *los infantes* & *los praelados* & *los ricos homes*, & *los conceijos* & *las ordines* & *la cancellaria del regno de Castilla* & *de Leon*, & *de Galizia* &c. So in an old law of *Alfonso* the X. ^q *Si algun rico home de nuestro senorio denostare a Dios o a santa Maria* &c. If any *rico home* blasphemed, he was to forfeit one years profits of his lands for the first offence, two years for the second; and for the third, his whole estate in it was forfeited. And in a law of

Alfonso the XII. touching exactions in times of tumult, *establissimos* ^r *otrofi que ningun rico hombre ni cavalliero ni hombre hijo dalgo no tome conducho* &c. where we see no other title for the greater nobility which then consisted in *condes* only, or *ricos hombres*, but only *ricos hombres*. To this purpose, the author of that *De regimine principum*. *Apud Hispanos omnes sub regē principes, divites homines appellantur* & *præcipue in Castella*; which words *Gregorio Lopez* cites upon the *partidas*, and gives the reason thus. *Hujus est ratio* (saith ^s he) *quia rex providet in pecuniis singulis baronibus secundum merita sua; vel secundum complacentiam, hos deprimit, illos exaltat. Ut plurimum n. munitiones & jurisdictiones non habent nisi ex voluntate regis, & inde vocantur divites homines, quia cui in majori summa providetur, ille major est princeps, quia pluribus potest militibus providere*. But here he makes the *ricos hombres* to denote as much as barons. It seems, indeed, in such a sense as baron was used antiently, and sometimes at this day, for all such as have the greater dignities, it might in those times be understood in the *rico hombre* of *Spain*, as also it appears in the law whereon he writes. *Ricos hombres* (so are the words of the law) *segund costumbre de Espanna son llamados los que en las otras terras dizen condos o barones*; as if the author had meant that as *conde* or *baron* was attributed generally to the greatest lords in other countries, so was *rico hombre* in *Spain*. Not that the title of *baron* in its restrained signification, and as it is a feudal dignity beneath *conde*, was denoted by *rico hombre*; but that the title of *ricos hombres* comprehended all the great lords, as that of barons in the more general signification did in other countries, touching which, see more especially in the barons of *France*. Some would have it that *rico hombre* antiently was the same that is now a ^u *grande* in *Castile*. And other opinions touching it are in *Josephus de Sesse*, his decisions of *Aragon*, ^x *Bobadilla* and such more. But the title of *rico hombre* is at this day given to some eminent lords not in *Castile* only, but in *Aragon* and *Navarre* also, and in some other kingdoms in that country. But that of *grande* is an additional dignity not only to all dukes, but to some marquesses and *condes* also, and consists in being covered, and sitting before the king, and some such other respects at court. A few of the marquesses and *condes* have it, and therefore I see no proportion betwixt a *grande* and a *rico hombre*. Some five or six *condes* saith *Salazar de Mendoza*, are used as *grandes*, and some seven or eight marquesses. But he that is created duke is thereby also made a *grande*.

The restrained notion of *baron* or *varon*, as it is a singular dignity, is in *Spain* also; especially in *Catalauna* ^z and *Valencia*, where such as

^f De nobleza de Esp. cap. 42.

^g Orig. de las dignidades lib. 3. cap. 7.

^h Lib. 10. cap. 4.

ⁱ Apud Guardiolum de

nobilit. cap. 40. & Salazar de Mendoza lib. 1. cap. 9.

^k Salazar & Guardiola ibidem.

Vide plura de ricis hominibus, & rica

hombrea Aragonum apud Joseph. de Sesse decis. Arag. 1. §. 36. &c. & alios ibi citatos.

^l Chronica de rey don Pedro. cap. 27.

^m Ita Joseph. de Sesse decis. Arag. 1. §. 62.

ⁿ Lorenzo de Padilla apud Salazar de Mendoza. l. 1. cap. 9.

^o Vide de titulo

don Guardioli. de la nobleza cap. 39.

^p Guardiola de la Nobleza cap. 40. & vide vocabulum condos pro hñce vicissim usurpatum in

don Guardioli. de la nobleza cap. 39.

l. 2. tit. 18. Partid. 3.

^q Partid. 7. tit. 28. l. 2.

^r Recopilat. phil. 2. lib. 8. tit. de los lavantamientos lib. 3.

^s Lib. 37.

cap. ult.

^t Ad. l. 10. tit. 25. de los vassallos Partid. 4.

^u Guardiola de la Nobleza cap. 40.

^x Politic. lib. 2.

cap. 16. §. 21.

^y Origen. de las dignidades lib. 3. cap. 8, 13, & 15.

^z Guardiola de la nobleza cap. 43.

possess the inheritance of signiories with large jurisdiction, but without any other title annexed to them, are called *barons*, as some that have castles in like sort are stiled *castellans*. So also in other provinces of *Spain*.

VII. Touching those great dignities, although some of them are perpetual, and, by the law, upon death transmitted to posterity without any new allowance or investiture from the king; yet others there are, and, it seems, the most, that, upon every death, are received again from the king; but not by any charter of new creation, but only by the kings acknowledgment of them, by adding the titular name in his answer to the heir, who by his own name only, ^a without the addition of his title, signifies to the king the death of his ancestors. And this course remains there, as a relique of the more antient times, when the titles of *condes*, or *ricos hombres* were for years or life only. To this purpose, *Mariana*; *Antiquis temporibus comitum appellati- one provinciarum praefectos honestare mos fuit, annorum numero quibus honeste debere praefinito. Consequenti tempore, regum indulgentia aut imbecillitate, bonos ille dum vita maneret coepit esse proprius; demum ad posterum propagari haereditatis jure. Antiquitatis vestigia in Hispania retinentur, quando procures Hispani non prius paterni principatus a parentum obitu nomen usurpant, neque ducis, marchionis, aut comitis titulos ascribunt quam rege denud annuente, praeter paucas familias quibus jure privato contra facere a regibus est concessum.*

VIII. Their *cavalleros* (besides that general use of the word, wherein sometimes it extends it self to all that are in the state of gentlemen or *hydalgos*) are of three kinds; that I may use the same division which the *Spanish* writers do. First, they have, *cavalleros de espuela d'orada*, or *knights of the golden spur*; secondly, *cavalleros armados*; thirdly, *cavalleros de alarde, e de premio, de guerra, o quantosos*, as they call them.

For the *cavalleros de espuela dorada*, or *knights of the spur*; these things are especially observable out of the antient and later customs. To what persons the title is given; what the cavallero being created was bound to observe; the singular honour and privilege due to him; what, whence, and how he may lose his dignity. ⁽²³³⁾ The persons on whom this kind of knighthood is to be bestowed, are, by the *partidas*, only *hydalgos*, or gentlemen of birth, and that of three descents at least. In the later times one serves; and none also needs if by charter the *hydalguia* or gentry have been conferred on him that is to be created. And the honour of it hath been so esteemed there, that not only to the kings' sons, but also to the kings themselves it hath been thought so necessary,

that they ought not to be crowned until they had received it.

It hath usually been given only by the sovereigns. But there is a story of an embassador of *Juan* king of *Aragon*, that in the name of his master created the son of the *soldan* of *Cairo* into this dignity with the christian ceremonies. And *Ferdinand* son to *John* the I, king of *Aragon*, was knighted at his coronation in *Zaragoza*, by the duke of *Candia*. In the *partidas*, ^b there is a special law touching those that might, or might not give it. None may give it (says that law) that hath not himself received the same order. No woman therefore, though she be a queen or empress, may give it by her own hand, but by commission. None under the age of fourteen years, nor a clerk, nor a monk may give it. But it is said there, that some have held that the king or his son and heir apparent may give it, though they have not received it, and that it is so practised in some countries, because they are the *cabeças de la cavalleria*, or the chiefs or sovereigns of knighthood. But that is not here thought to be reason enough to justify the use. And touching this point more anon in *cavalleros armados*.

For the form of giving it; antiently the ceremonies thereto belonging were, as in other places more than at this day. In the afternoon of the day that it was to be given, the *escudero*, *hydalgo*, or gentleman, that was to receive it, was to be ^b bathed, and therein to have the assistance of other *escuderos* that washed his head, and then had him into a rich bed. Then, by some knights also assisting him, he was to be clothed in rich robes, and so led to the church where he might perform his vigils. There was he to confess and make his prayers for remission of his sins, and for power to observe the duty belonging to the order of knighthood, and for protection in all his adventures; and while he prayed, not at any time to stand on his feet. His vigil past over, and a mass heard, he that was to give him the dignity, came to him, and asked him if he desired to have the order of knighthood. Upon his saying he did, he asked him if he would keep the laws of knighthood, which also granted, he either by himself or some other knight put on his spurs, then girt him with a sword (the more antient course being as it is said in the *partidas*, that he was wholly to be armed, saving his head only, which remained uncovered) then drew it out and put it in the right hand of him that was to be created, and gave him an oath that he should not refuse to die either for the defence of his law, ^k or of his king, or of his country. The oath being taken; he gave him *una pescozada*, or a stroke on the neck, that he might the better remember what he promised, saying, *God assist you in the performance of that which you have promised*. Then both he that created him, as also the rest of the knights present, kissed him. And all o-

^a Sal. de Mendoz. lib. 3. cap. 8, & 13.

Part. 3. & l. 11, & 23. tit. 21. part. 2. & ibid. Lopez de Haro. & vide histor. de ea re fusorem apud Zuritam in Annal. Aragon. lib. 12. cap. 34.

in Partid. 2. tit. 21.

tural, pur su terra.

^b De rebus Hisp. lib. 8. cap. 2.

^c L. 2. tit. 21. Partid. 2.

^d L. 36. tit. 2.

^e Guardiola de la Nobleza cap. 35.

^f Guardiola ibid. sed

^g L. 13, 14, &c.

^h L. 11. tit. 21. part. 2.

ⁱ Pur su ley, pur su fennor natural.

ther knights that met him in the year following were bound to do the like, as giving him a testimony of their faith and love to him; whence it is (say the *partidas*) against the law of knighthood that any knight do another any affront, unless he first send his defiance, challenge or publication of the breach of that band of faith so made between them. The *cavallero* thus created; his sword was to be ungirt from him, either by the king, or by some other person of honour present, who in that action was a *padrino* or godfather in confirmation, and was supposed hereby to confirm the knighthood thus given. This is reported there as agreeable to what was antient, and in *Alfonso* the X. his time. And although the bathing, vigil, putting on spurs, girding with a sword, and the oath so concurred to the making of a knight, yet *cingulo accingere* only was the phrase sometimes used for the giving this knighthood (as in other places also) as we see in the¹ release made by *Alfonso* the X. king of *Castile*, of all his rights in *Gascoigne* to prince *Edward*, son to our *Henry III.* wherein he recites that *cingulo eum accinxerat militari*, which was performed at *Burgos*, in *MCCLV.* and was an act of such honourable estimation in *Castile*, that in some charters of that king *Alfonso* dated the same year, this giving the order to the prince, is noted as a character of the time, by naming the year by it; as in an example of a charter under seal, yet remaining in the monastery of *Santo Benito*,^m *el real de Sabagun*, dated the xxv of *April*, in the era of *MCCXCIII.* (that is, *MCCLV* of our Saviour) *en el anno que don Odoart fijo primero* *el heredero del rey Enrrice de Anglaterra recibio cavalleria en Burgos del rey don Alfonso sobredicho.* But in the later times, as in other kingdoms, so here, much less ceremonyⁿ and scarce any more than the dubbing is used in the giving this order, beside a charter of creation, whereof some memory also is in the *Spanish*^o writers. And thereof, more is anon said.

For, in *MCCCLXXXVI.* by the law of *Ferdinand* and *Isabel*, made at *Madrigal*,^p it was ordained, that it should be at the pleasure of the king to use those old ceremonies or not, in giving this order, and that the dignity should be the same, though they were omitted. Before that time, this antient fashion, it seems, was always^q used. But the knight thus made was bound to give especial honour both to him that created him, and to this *padrino* that ungirded the sword from him. But to him that created him, the reverence was to be such, (says the law in the^r *partidas*) that he might not in any case fight against him, unless it were in defence of his sovereign, which I understand there by *senior natural*. And in that case he was to take singular care that he neither slew him, nor wounded him, except he saw him about to strike his sovereign. Neither might he justly, in act or advice, be any way against him, but on the

contrary was to prevent all injury that he saw towards him, or admonish him of it, unless the matter were such as that it might turn to the damage of his sovereign, or of the father, son, brother, or of any of the next kinsmen to his sovereign in their lives, estates, or honour. For of other things he was not bound to admonish him. The like also says that law he was to observe towards his *padrino* for three years after the order received, and some were then of opinion, that for seven, he was to ride with his sword and cloak in the time of peace, and all armed in the time of war. He was bound to protect ladies, and not to sell or pawn his horse or arms without the command of his sovereign or inevitable necessity, nor venture them at play.

So much honour was given to such knights by the *partidas*,^t that none might sit before them in the church, but kings, prelates, or great lords, or other clergymen that read divine service. The like order was to be observed in giving the *pax* to them. None was to sit at the table with them, or contend in argument with them, unless he were a knight, *escudero ni otro ninguno* (as the words are) or some person very eminent either for his blood or virtue. No man might break the house of one of those knights but by the express command of the king or his *justicia*, or chief justice. For so I understand, *sinon por mandado del rey o por mandado de justitia*, which yet *Lopez* turns into, *nisi justitiae praetextu aut regis mandato*. His horses and arms were not to be taken from him in any suit, unless nothing else were to be found; and in that case also, the horses of his own saddle were privileged. And when any of his goods of his house might be attached, yet that was to be done only, while neither himself nor his wife were present. He was not to be put on the rack, unless it were for suspicion of treason. Neither was he to be put to death as an ordinary person, but to be beheaded. Some other privileges they had. But whether any of these belong to their *cavalleros de espuela dorada*, at this day, I know not. Their lawyers^u dispute of it. And *communiter concluditur* (saith^x *Gregorio Lopez*) *quod milites qui vacant armis pro suo superiore gaudeant privilegio militum. Licet n. ordo* *et solennitas in assumptione militis in usu deserit tamen effectus remansit*. And to this purpose he cites *Cynus*, *Baldus*, and others in *L. 1. C. de juris* *et facti ignorantia*.

The *cavallero* was to be degraded, if being in service he sold his horse or arms,^y or played them away at dice, or gave them to his wenches, or pawned them in a tavern, or stole the arms of any of his fellow knights, or created any man into the dignity of knight, that was not by law to receive the order; or if he professed the exercise of merchandize, or used any sordid manual

¹ Rot. Vasc. 39. Hen. III. m. 12. in arce Londinensi, videlicet Matthaeum Westmonaster, sub anno 1254, &c.

^m Guardiola de la

Nobleza, cap. 35.

ⁿ Lopez ad l. 23. tit. 21. partid. 2.

^o Videlicet Otolarum in summa nobilitatis part. 4. cap. 1. §. 6. de

Johanne de Avecia.

^p Ordinament Castillae lib. 4. tit. 1. l. 3. & recopilat. lib. 6. tit. 1. l. 6.

^q Vide Ordin. tit. eodem l. 7. &

Recopil. eod. l. 5.

^r L. 16. &c. tit. 21. p. 2.

^s L. 23. 24. &c. tit. 21. part. 2.

^t L. 23. 24. &c. tit. 21. part. 2.

^u Vide Didac. Perez ad lib. 4. Ordinament. tit. 1. l. 1.

^v Ad l. 23. tit. 21. Partid. 2. g.

^y L. 25.

trade being not in captivity. And in cases where for heinous crimes he was to suffer death (as for flying from his ranks, forsaking his sovereign or any fort that he held for him, or not giving his own horse to his sovereign, when his sovereigns fell in the field, or not freeing his sovereign from captivity, when it lay in his power, all which were reputed as treason) he was first to be degraded. The ceremony of the degradation being thus. The king commanded an *escudero*, or some gentleman, that he should put on spurs on the knight, and gird him with a sword; and then that he should cut in sunder the belt or girdle behind, and also the spur leathers, which done, he lost the honorary title of knight for ever.

IX. As the *cavalleros de espuela d'orada*, or those of the first part of the division, are *hydalgos*, before they are made knights, so the *cavalleros armados* (as they call them) are such as being before *buenos hombres pecheros*, or not *hydalgos*, and so subject to all taxes and tributes, have received the dignity of *cavallero*, which is given them after the same fashion, as is before described in those *de espuela d'orada*, who for distinction from the *armados* are sometimes called *fidalgos e cavalleros*, or *gentlemen and knights*; as in that old ^z epitaph of one of the family of the *Feyxoos*;

AQUI JAZ FEYXOO ESCUDIERO,
BOÑ FIDALGO E CABALEIRO
GRAN CAZADOR E MONTEYRO.

So *Miguel Perez*, *alguazil mayor* of *Jayen*, buried in mccc. in *Santiago del Arrabal* in *Toledo*, is called, I conceive to the same purpose; *miles famosus probus armis & generosus*. But as the ceremonies have changed ^a in the making the one kind of knights, so in the other. But the *armados* must be made by the king's own hand, and unless they be so, they are not to enjoy any of the *cavalleros* privileges, to which either by charters or otherwise they may pretend. But the reason of their distinction of these knights from the other, and their names are more fully to be opened. We must remember that all that are *hydalgos* there, are free from all taxes and tributes. These *hydalgos* therefore being made knights, have no kind of accession of privilege to that purpose, *quia cum sint nobiles, hoc est*, *hijosdalgo* (as ^b *Otolora's* words are) *etiam citra privilegium sunt immunes ab omnibus collectis & contributionibus*. And therefore when they have charters of their knighthood (which the *Spaniards* call *privilegios de cavalleria*) there is no mention in them of any such freedom. *In hujusmodi privilegiis nulla fit mentio* (saith the same *Spaniard*) *tributorum, quia non consequuntur militiam hanc nisi tantum quoad majores honores & alias nobilitatis praeeminencias, & ad exercendos ipsius militiae actus*; as it appears also in this, that

not only their *ricos hombres*, or the greatest lords, but also the sons of the king, and the kings themselves took upon them this dignity. But as these have the *cavalleria* for accession of honour only, so the other, being before they are knights *bombres pecheros*, or no *hydalgos*, but subject to taxes and tributes, have, together with it, an immunity from taxes and tributes expressly given them in their charters of knighthood, which immunity so given, is the principal character of *los cavalleros armados*. *Isti milites* (says *Otolora*) *per tale privilegium sunt immunes ab omnibus collectis & contributionibus secundum formam & tenorem suorum privilegiorum*; so that they maintain arms and horse, and keep other conditions of that kind ordained by the *pragmatics* of *Madrigal*, and *Zamora*,^c made by king *John* the I. For otherwise they are not to enjoy *la cavalleria ni los privilegios o las exemptiones della*, as the *pragmatica* of *Zamora* saith. And in the proof of this kind of knighthood, and the immunities belonging to it, no testimony is enough unless the *privilegio* or charter^d of it be shewed, and that under the seal of *Spain*. For such as are made knights and have immunities given them by other princes, or, as their law is, such as had charters of *cavalleria* from the emperor *Charles* the V. (being also king of *Spain*) as he^e was emperor, enjoyed nothing by them. Other particulars touching these *cavalleros armados* may be seen in the ordinances of *Castile*, *lib. 4. tit. 1.* and in the new *Recopilation lib. 6. tit. 1.* with *Didacus Perez*, and *Alfonso Azevedo* upon them, and in *Otolora*, and such more of that nation, who dispute touching the particular taxes, and tributes from which they are made free.

That third kind of *cavalleros*, which they call, *de alarde o de guerra &c.* I conceive to be no other than such as are bound (without receiving the order of knighthood) to maintain horse and arms for the king's service, and to shew them in publick musters once or twice a year. These I add here to the other, because I find them to be a part of the division of *los cavalleros* in *Guardiola*, *Otolora*, and the^f laws of *Spain* also. And^g some freedoms they have in regard of that charge to which they are subject. But it seems the title is no more honorary than a tenant by knights service with us in *England*. Neither indeed, as some will have it, is the title of *cavalleros armados* (being no gentlemen before they are created) so great as one that is an *hydalgo*, or a gentleman either by blood or charter. For (says ^h *Otolora*) *licet utrumque privilegium scilicet el de hydalguia y cavalleria conferat jus immunitatis, plenius tamen & uberius providetur per privilegium nobilitatis*. The charters of *hydalguia* or gentry, giving an absolute freedom from all taxes and tributes, but that of *cavalleria armada*, only under the con-

^a Gonçalo Gilrote de Molina, en la nobleza de Andaluzia lib. 1. cap. 103. & lib. 2. cap. 13.

tit. 7. & Recopilat. lib. 6. tit. 1. l. 5. & 6.

decif. Aragon. 1. §. 19. &c.

^b Summ. nobilit. part. 4. cap. 1. §. 6.

^c Ordin. Castellae lib. 4. tit. 1. l. 4. ejusmodi

habetur pragmática in ordinat. Portugalliae lib. 2. tit. 35.

^d Recopilat. lib. 6. tit. 1. l. 7.

^e Ordin. lib. 4. tit. 1. l. 8.

^f Ordin. lib. 9. tit. 1. l. ult. & Recopil. lib. 6. tit. 1. l. 10.

^g Ibid. pag. 282.

^a Videfis ordinat. Castellae lib. 4.

tit. 7. & Recopilat. lib. 6. tit. 1. l. 5. & 6.

^b Guardiol. de la nobleza cap. 35. Joseph. de Sesse

decif. Aragon. 1. §. 19. &c.

^c Ordin. Castellae lib. 4. tit. 1. l. 4. ejusmodi

habetur pragmática in ordinat. Portugalliae lib. 2. tit. 35.

^d Recopilat. lib. 6. tit. 1. l. 7.

^e Ordin. lib. 4. tit. 1. l. 8.

^f Ordin. lib. 9. tit. 1. l. ult. & Recopil. lib. 6. tit. 1. l. 10.

^g Ibid. pag. 282.

^h Videfis Otolora. summ. nobilit. part. 4. cap. 1. §. 7. prope finem.

ⁱ Ibid.

ditions of maintaining of horse and arms, and observing those laws of *Madrigal* and *Zamora*. Yet because the order of knighthood is given with it, we cannot but esteem it honorary where ever it be placed among them. But to this last kind *de alarde*, there is no other honour adherent than only such as may be conceived to be concomitant with a military charge undertaken for the state, which may indeed rather stile them good patriots (if they take care of it) than any way dignify them with a special title of honour.

Neither perhaps is the division of the other two honorary *cavalleros* into those of *espuela dorada* and *los armados*, so justifiable. For plainly the first are truly *armados*, and the *armados* are as truly *de espuela dorada*. The creation of both being with the same ceremonies, though their charters differ. And it had been fitter to divide their *cavalleros* into such as being before gentlemen or *hidalgos* have received the order, and such as have had it being before *hombres pecheros*. But I follow and retain the same that I find in the *Spanish* writers, and, because of their authority, I alter it not. The like titles are in the kingdoms of *Portugal*, *Navarre*, *Aragon*, as in *Castile*; and more peculiarly for their *cavalleros* of *Navarre*, you may see *Armendariz* in his recopilation of the laws of ⁱ *Navarre*, and for those of *Portugal*, the ^k ordinances of that kingdom.

X. The titles thus delivered; we add also something of their laws touching the honorary *attributes* that are to be given in subscriptions, superscriptions and otherwise, to the prince and the other great lords; as also touching the setting of *coronets* over arms. Such swelling attributes had been induced (as it falleth out) through the reigning custom of great flattery there, that by a *pragmatica de los tratamientos y cortesias* ^l under *Philip* the III. in *October* in MDLXXXVI. those attributes are thus restrained. In the title to the prince, he is to be called *señor* only; the subscription thus, *Dios guarde V. alteza*, or *God preserve your bigness*; the superscription *al principe nuestro señor*.

That the *infantes* or *infantas* shall only have the title of *alteza*. The salutation to be only *señor* or *señora*. The subscription as to the prince; the superscription *al señor el infante don N.* or *a la señora la infanta donna N.* But *alteza* used absolutely in speech or writing is to be understood only of the prince or heir apparent.

That the sons in law, and brothers in law of the kings shall have the same title that their wives have, and daughters in law, as their husbands.

That none shall assume to himself the attribute of *excellenza*, or *señor excellent*, or *señoría ilustrísima*, nor give it to any other, saving only to cardinals, and to the archbishop of *Toledo*, as to the primate of *Spain*, although he be no cardinal.

That to archbishops, bishops, *grandes*, and all that may stand covered before the king, the attribute of *señoría* be given, as also the president of the council royal.

That to marquesses, earls, great commanders of the orders of saint *James*, *Alcantara*, *el Calatrava*, and to the presidents of the other councils and chanceries, the title of *señoría* may be given both by writing and word, and to ambassadors which have place in the king's chappel, and not to any other, unless it be to the chief cities of the realm, and to the metropolitan churches to whom they may give that addition, according to former custom.

That all letters from subject to subject (unless it be to the prince, infantes, or infantas, or such as have honour by marriage with them) the writer begin with the matter, without any honorary attribute preceding it. And the superscription is to be, *to the archbishop, bishop, duke, marquis, or conde of such a place*. If to inferior men: *to don N.* or *N.* adding his surname, and the dignity and office that he otherwise holds, which also may be added in the superscription to the archbishops, bishops, dukes, marquesses and condes.

The same *pragmatica* also (by reason that coronets over scutcheons of arms were used by divers, to whom the right of bearing such coronets belonged not) ordained that none besides dukes, marquesses and condes might use them, and they only in the accustomed form.

And every offender against this *pragmatica* is to forfeit ten thousand *maravedies*; one third part to the informer; another to the judge that gives evidence against him, and the third to *pious* uses.

Some other particulars are in it; with exceptions of titles used by servants to masters, and sons to fathers. And because I presume the more curious would gladly see it out of the original, I add it also whole here.

DON *Felipe* por la gracia de Dios, rey de *Castilla*, de *Leon*, de *Aragon*, de las dos *Sicilias*, de *Jerusalem*, de *Portugal*, de *Navarra*, de *Granada*, de *Toledo*, de *Valencia*, de *Galizia*, de *Mallorca*, de *Sevilla*, de *Cerdenna*, de *Cordova*, de *Corcega*, de *Murcia*, de *Jaen*, de los *Algarves*, de *Algezira*, de *Gibraltar*, de las islas de *Canaria*, de las *Indias* orientales y occidentales, islas y tierra firme del mar oceano, archiduque de *Austria*, duque de *Borgonna*, de *Bravante*, y *Milan*, conde de *Abzburg*, de *Flandres*, y de *Tirol*, y de *Barcelona*, señor de *Vizcaya*, y de *Molina*, &c. Al principe don *Felipe*, nuestro muy caro, y muy amado hijo; y a los infantes, prelados, duques, marquesses, condes, ricos hombres, priores de las ordenes, comandadores, y subcomendadores, alcaydes de los castillos, y casas fuertes, y llanas, y a los del nuestro consejo, presidentes, y oydores de las nuestras audiencias, alcaldes, alguaziles de la nuestra casa, y corte, y

ⁱ Lib. 2. tit. * Ordenazones de Portugal, lib. 2. tit. 38.
the history of Spain, lib. 31. pag. 1235.

^l Anton. Herrera part. 3. de la histor. general, lib. 2. cap. 9. and

chancillerías, y a todos los corregidores, asistentes, gobernadores, alcaldes mayores y ordinarios, alguaciles, merinos, prebotes; y a los concejos, y universidades, veintiquatros, regidores, caballeros, jurados, elcuderos, oficiales, y hombres buenos, y otros qualesquier subditos, y naturales nuestros, de qualquier estado, preeminencia, o dignidad que sean, o ser puedan, de todas las ciudades, villas, y lugares, y provincias de nuestros reynos, y señorios, realengos, abadengos, y de señorio, así a los que agora son, como a los que serán de aquí adelante, y a cada uno, y qualquier de vos, a quien esta nuestra carta, y lo en ella contenido toca y puede tocar en qualquier manera, salud, y gracia. Sepades, que aviendo nos suplicado por los procuradores de cortes de las ciudades, y villas, destos nuestros reynos, en las que mandamos celebrar en la noble villa de *Madrid*, el año pasado de mil y quinientos y ochenta y tres, y se dissolvieron y acabaron el de mil y quinientos y ochenta y cinco, fuésemos servido mandar proveer de remedio necesario y conveniente, cerca de la desorden y abuso que avia en el tratamiento de palabra y por escrito, por aver venido a ser tan grande el exceso, y llegado a tal punto que se ayan ya visto algunos inconvenientes, y cada día se podían esperar mayores, si no se atajasse y reformasse, reduziendolo a algun buen orden y termino antiguo, pues la verdadera honra no consiste en vanidades de titulos, dados por escrito, y por palabra, sino en otras causas mayores a que estos no annaden ni quitan. Y aviendo se diversías vezes tratado y platado por nuestro mandado por los del nuestro consejo, y consultado con nos: avemos acordado, proveído, y ordenado en lo suso dicho, lo que por esta nuestra carta y provision se declara, provee y ordena.

Primeramente, como quiera que no era necesario tratarse en esto de nos, ni de las otras personas reales todavía porque mejor se guarde, cumpla, y observe, lo que toca a los demas: queremos, y mandamos, que de aquí adelante, en lo alto de la carta, o papel que se nos escriviere, no se ponga otro algun titulo mas que *señor*, ni el remate de la carta mas, de *Dios guarde la catolica persona de V. M.* Y así mismo no se ponga en la cortesia de abaxo cosa alguna, mas de la firma del que escriviere la tal carta: ni en el sobre escrito se pueda poner, ni ponga, mas de tan folamente, *al rey nuestro señor*.

Que a los principes, herederos, y sucesores destos nuestros reynos, se les escriba en la misma forma, mudando tan folamente lo de *magestad* en *alteza*, y lo de *rey* en *principe*, y al remate y fin de la carta; *Dios guarde a V. alteza*.

Que con las reynas destos nuestros reynos, se guarde y tenga la misma orden y estilo, que con los reyes dellos: y con las princeßas destos dichos reynos, la que esta dicho se ha de tener con los principes dellos.

Que a los infantes, y infantas, destos nuestros reynos, folamente se llame *alteza*, y se les escriba en lo alto, *señor*, y en el fin de la carta se ha de poner, *Dios guarde a V. alteza*, sin otra cortesia. Y en el sobre escrito *al señor infante don N. y a la señora infanta donna N.*

pero quando se dixere, o escriviere absolutamente *su alteza*, se ha de atribuyr a solo el principe heredero y successor destos nuestros reynos. Declarando, como declaramos, que lo contenido en este capitulo no se hade entender, ni es nuestra intencion y voluntad que se entienda con la emperatriz donna *Maria*, mi muy cara, y muy amada hermana, aunque sea infanta de *Castilla*, pues esta claro que se le ha de llamar y escribir *magestad*, y ponerle en el sobre escrito, a *la emperatriz mi señora*: y a sus hijos hermanos del emperador, *nuestro muy caro y muy amado sobrino*, se hara el mismo tratamiento de palabra, y por escrito que esta dicho, se ha de hazer a los infantes destos reynos, y tambien a los archiduques sus tios.

Que a los yernos y cunnados de los reyes destos nuestros reynos se haga el tratamiento que a sus mugeres, y a las nueras, y cunnadas de los dichos reyes, el mismo que a sus maridos. Y quanto al tratamiento que las dichas personas reales han de hazer a los demas, no entendemos innovar cosa alguna, de lo que hasta agora se ha acostumbrado, y acostumbra.

Que el estilo, usado en las peticiones, que se dan en nuestro consejo, y en los otros consejos, y chancillerías, y tribunales: y el que se acostumbra de palabra quando estan en consejo se guarde, como hasta aquí, en todo lo que no fuere contrario a esta nuestra carta y provision, excepto que en lo alto se pueda poner, *muy poderoso señor*, y no mas.

Que en las refrendadas de todas las cartas, cédulas, y provisiones nuestras, pongan nuestros secretarios, *del rey nuestro señor*, en lugar de *su magestad*: y en las refrendadas de los nuestros escrivanos de camara se haga lo mismo.

Que en todos los otros juzgados, así realengos, como qualesquier que sean, y de qualquier calidad y forma, ora se hable en particular, o en publico, las peticiones, demandas, y querrelas, se comiencen en renglon, y por el hecho de que se huviere de tratar, sin poner en lo alto, ni en otra parte, titulo, palabra, ni señal de cortesia alguna: y al cerrar, y concluir se podra dezir: *Para lo qual, el officio de V. S. o de V. M. imploro*, segun fueren las personas, y juezes con quien se hablare: y los escrivanos folamente diran: *por mandado de N. juez*, poniendo el nombre, y sobre nombre folamente: y podran tambien poner el nombre del officio de la tal persona, o juez, y la dignidad, o grado de letras que tuviere, y no otro titulo alguno.

Que a ninguna persona de qualquier estado, condicion, dignidad, grado, y officio que tenga, por grande y preeminente que sea, se pueda llamar por escrito, ni de palabra, *excelencia*, ni *señoría ilustrísima*, ni así mismo se pueda llamar *señoría ilustrísima* a ninguno, sino a solos los cardenales, y al arçobispo de *Toledo*, como a primado de las *Espannas*, aunque no sea cardenal.

Que a los arçobispos, o bispos, y a los grandes, y a las personas que mandamos cubrir, sean obligados todas las personas destos nuestros reynos a llamar *señoría*, y tambien al presidente del nuestro consejo real.

Que

Que a los marqueses, y condes, comendadores mayores de las ordenes de *Santiago*, *Calatrava*, y *Alcantara*, y presidentes de los otros nuestros consejos y chancillerias, se pueda llamar y escribir *sennoria* por escrito, y de palabra, y no a otra persona alguna, excepto a las ciudades, cabeças de reynos, y cabillos de iglesias metropolitanas, que se les podra llamar en sus ayuntamientos, donde huviere costumbre dello, y tambien escrivirle la.

Que a los embaxadores que tienen assiento en nuestra capilla, se pueda assi mismo llamar, y escrivir *sennoria*.

Que en lo que toca al escrivir unas personas a otras generalmente, sin ninguna excepcion se tenga y guarde esta forma, començar la carta, o papel, por la razon, o por el negocio sin poner debaxo de la cruz en lo alto, ni al principio del renglon ningun titulo, ni cifra, ni letra, y acabar la carta diziendo, *Dios guarde a V. S. o a V. M. o Dios os guarde*, y luego la data del lugar, y del tiempo, y tras ella la firma, sin que preceda ninguna cortesía. Y que el que tuviere titulo, le ponga en la firma, y de donde es el tal titulo.

Que en los sobre escritos se ponga al prelado la dignidad ecclesiastica que tuviere, y al duque, marques, o conde, el de su estado: y a los otros cavalleros, y personas, su nombre, y sobre nombre, diziendo al cardenal, al arzobispo, al obispo de tal parte. Y de la misma manera al duque, al marques, al conde de tal parte: y a los demas a *don N. o*, a *don N.* poniendo el sobre nombre, y a cada uno de los nombrados en este capitulo, se podra poner la dignidad, oficio, o cargo, o grado de letras que tuviere.

Que desta orden no se pueda exceptar, ni excepte el vassallo escriviendo al *sennor*, ni el criado a su amo, pero los padres a los hijos, y los hijos a los padres podran sobre el nombre proprio annadir el natural, y tambien entre marido y muger fennalar el estado del matrimonio si quisiere, y entre hermanos el tal deudo.

Que el tratamiento a las mugeres, y entre ellas mismas por escrito, y de palabra, sea el mismo que esta dicho, se ha de hazer a sus maridos.

Que a los religiosos de las ordenes no se llame, ni escriba sino paternidad, o reverencia, segun el cargo que tuviere, y en el sobre escrito se pueda poner con su nombre el cargo, o grado de letras que tuviere, en las ordenes que los usan.

Que lo que en esta nuestra carta y provision se ordena y manda se guarde por todos en estos nuestros reynos y assi mismo escriviendo a los ausentes dellos.

Otrofi, por remediar el gran disorden y exceso que ha auido, y ay, en poner coroneles en los escudos de armas de los sellos y reposteros: ordenamos, y mandamos, que ninguna, ni algunas personas puedan poner, ni pongan coroneles en los dichos sellos, ni reposteros, ni en otra parte alguna donde huviere armas, excepto los duques, marqueses, y condes, los quales tenemos por bien que los puedan poner, y pongan, siendo en la forma que les toca tanfolamente, y no de otra manera: y que los coro-

neles puestos hasta a qui se quiten luego, y no se usen, ni traygan, ni tengan mas.

Y porque mejor se guarde, cumpla, y execute lo suso dicho, ordenamos, y mandamos, que los que fueren, o vinieren contra lo contenido en esta nuestra carta y provision, o qualquier cosa, o parte dello, cayan, y incurran, cada uno dellos por cada vez, en pena de diez mil maravedis repartido en esta manera. La tertia parte, para el denunciador, y la otra tertia parte para el juez que lo sentenciare, y la otra tertia parte para obras pias, y que esto se execute sin remission alguna.

Porque vos mandamos a todos, y a cada uno de vos, segun dicho es, que veays esta nuestra carta y provision, y lo en ella contenido, la qual queremos que tenga fuerça de ley, y prematica sancion hecha, y promulgada en cortes, y como tal la guardeys, cumplir, y executar en todo, y por todo, segun y como en ella se contiene: y contra su tenor y forma no vays, ni passeys, ni consintays ir, ni passar en tiempo alguno, ni por alguna manera, so las penas en que caen y incurren los que pasan, y quebrantan cartas y mandamientos de sus reyes, y *sennores* naturales, y so pena de la nuestra merced, y de los sobredichos diez mil maravedis a cada uno que lo contrario hiziere. Y porque lo suso dicho venga a noticia de todos, y ninguno pueda pretender innorancia, mandamos, que esta dicha nuestra carta y provision sea pregonada publicamente en nuestra corte, y lo en ella contenido se guarde, cumpla, y execute precissa, y inviolablemente, desde primero dia del anno venidero, de mil y quinientos y ochenta y siete; y los unos, ni los otros no fagades, ni fagan ende al por alguna manera, so las dichas penas. Dada en san *Lorenço* a ocho dias del mes de *Otubre*, de mil y quinientos y ochenta y seys annos. Yo el rey. El conde de *Barajas*. El licenciado *Juan Thomas*. El licenciado don *Lope de Gusman*. El licenciado *Ximenez Ortiz*. El licenciado don *Pedro Portocarrero*. El licenciado *Mardones*. El licenciado *Guardiola*. El licenciado *Nunnez de Boborques*. Yo *Juan Vazquez de Salazar secretario de su catolica magestad* la fize escrivir por su mandado. Registrada *Jorge de Olaal de Vergara*. Chanciller mayor *Jorge de Olaal de Vergara*.

EN la villa de *Madrid*, a diez dias del mes de *Otubre*, de mil y quinientos y ochenta y seys annos, delante de palacio y casa real de su magestad, y en la puerta de *Guardalajara* de la dicha villa, donde es el comercio y trato de los mercaderes y oficiales, estando presentes el doctor don *Alonso de Agreda*, y los licenciados *Martin de Espinosa*, y *Pedro Bravo de Sotomayor*, alcaldes de la casa y corte de su magestad, por pregoneros publicos se pregonon la ley y prematica contenida en el pliego antes deste con trompetas. A lo qual fueron presentes los *algaziles de Corte*, *Muxica*, *Velazquez*, y *Francisco de Oro*, y otras muchas personas: de lo qual doy fe *Juan Gallo de Andrada*.

But this *prematica* took not such effect, but that the former use which it endeavoured to prevent, still continued; whence it came that the same king *Philip* about nine years after quickened it with another *prematica*, whereby, for the first offence, twenty thousand *maravedies* are to be forfeited; for the second, forty thousand; and for the third, eighty thousand, besides a year's banishment five miles from the court, or from any other place where the offence shall be committed. The forfeitures to be employed as in the first *prematica*. And such as are not able to pay the forfeitures, are for the first offence to be imprisoned ten days, for the second, twenty, and for the third, thirty; and suffer like banishment, as is before prescribed. And a special command is added, that all judges should take special care to put the *prematicas* in execution, and to proceed *ex officio* upon them, for want of an informer, upon pain of forfeiting the like penalties out of their own estates, and two years suspension of their offices. This was given in *Madrid* the last of *December*, in *MDXCIII.* and printed there by it self the year following. A third followed for the same purpose in *MDC.* for the most part agreeing with the former. But in this of *MDC.* after the words *Calatrava y Alcantara*, follow *y commendador mayor de Montesa y Claveros de las dichas ordenes de Calatrava y Alcantara y a las hijas de los grandes, se pueda llamar y escribir senhoria: y tambien a los presidentes de los otros nuestros consejos y chancillerias, y a los priores, y baylios de la orden de san Juan, y a las ciudades cabeças de reyno, y a las otras que tienen voto en cortes, y a los cabillos de yglesias metropolitanas donde buviere costumbre de llamarsela*; and that the wives of *grandes y de cavalleros de titulo* should have the title of *senhoria*, in like sort as their husbands. This is printed in the *Quaderno de las leyes annadidas a la nueva recopilacion que se imprimio el anno de 1598. at Madrid 1610. pag. 53.* And of the subordinate titles of *Spain*, hitherto.

C H A P. V.

- I. Prince of Wales. *Filius regis primogenitus.* Clyto. Etheling.
- II. Of the two antient titles of earl and baron in England; and the names of ealdorman or earl, and thane, used for the same dignities in the ages before the coming of the Normans. Subregulus, regulus, princeps, dux, heptoga, consul, gerise, in those times.
- III. Of the possessions and profits belonging to the dignities of the Saxon ealdermen and earls. Of their estates in their earldoms, and the relief then payable at their deaths.
- IV. The possessions belonging to thanes, or the tainlands of that time: and the reliefs payable at the death of Thanes. Of the feudal title of vavasor, which after the Normans expressed the middle thane.
- V. Of the jurisdiction that belonged to the dignities of the Saxon ealdormen or earls, and thanes, in the territories which either denominated them, or were possessed by them.
- VI. Of their jurisdiction in the *pitengemoter*, great councils or parliaments of that time.
- VII. Of the title of earl after the coming of the Normans. Of the word comes which expresses it; and the fancy that antiently attributed the reason of that Latin title to an earl's participating the third part of the profits of the county court with the king.
- VIII. Of earls and counties palatin.
- IX. Of the forms of the charters of creation of the title of earl palatin.
- X. Earls, not palatin, but local. Of the several forms of charters of their creation.
- XI. Of their earldoms or honorary possessions and reliefs.
- XII. Of some testimonies that may seem to prove that the antient earls, as earls, had a general power of government in their counties. A just interpretation of those testimonies.
- XIII. Of the girding with the sword, at the investiture of earls. And the antient use of it at investitures, upon or after liveries, or ouster le mains of earldoms.
- XIV. Of the coronets of earls.
- XV. The personal title of earl. Earl marshal. And the personal title of earl palatin antiently used in England.
- XVI. The title of baron used here after the Normans. The various use of the word; and how, for the most part, the honorary barons are expressed without the addition of it.
- XVII. Of the nature and creation of barons, after the coming of the Normans, until about the later time of king John. Of the number of knights fees given by William the first.
- XVIII. The testimonies that shew the temporal barons and baronies of that time, between the coming of the Normans and the later time of king John. And of their reliefs.
- XIX. The beginning of spiritual barons (as barons

barons by tenure) under William the I. and the testimonies that likewise shew who they were in the same space of time.

XX. The chief passages that mention both the spiritual and temporal together as having place and voice in the parliaments, or great councils, in that space of time.

XXI. Of the alteration that fell on the dignity of barons and on baronies about the end of king John.

XXII. Of baronies and barons by tenure and writ, and barons by writ only, after that time, until about the middle of Richard the II. And first of the form of the writs of summons of that time.

XXIII. Of the several kinds of persons summoned as barons by those writs; and most especially of the regular barons, as abbots, and the like.

XXIV. Of discharges of the dignity, given to some regular barons, because they neither held by barony, nor had their predecessors been constantly called to parliaments.

XXV. Of the title of banneret, in that notion wherein it is sometimes used as a synonymy to baron.

XXVI. Of the common opinion that supposes a barony to consist of thirteen knights fees and a third part.

XXVII. Of the title of baron from the middle of Richard the II. to this day. And first of the form of the writ of summons that creates and calls barons; and of the regular barons that were in that time.

XXVIII. Of barons created by patent, and the forms of the patents of creation.

XXIX. Of the title of duke. The beginning of it; the investiture, ensigns, and patent of creation.

XXX. Marquess. The first creation of that title. The investiture, ensigns, and patent of creation.

XXXI. Viscount. The first creation of it. The investiture, ensigns, and patent of creation.

XXXII. A short corollary of the title of peers of the realm attributed to all those parliamentary dignities. And something of their habits, and other general titles given to them. And the title of earls and lords attributed to some that are not peers.

XXXIII. The several notions of knight, miles, and chivaler in England. A division of the honorary title of knight there;

and first of knights bachilers, and of the quality of the persons that have either given or received that dignity.

XXXIV. Of the courtly ceremonies and circumstances antiently and of late used in giving the dignity of a knight bachiler.

XXXV. The sacred ceremonies used antiently at the giving the same dignity.

XXXVI. Of aid to make the eldest son a knight.

XXXVII. Respects of honour both in the antienter and later times given to this dignity legally.

XXXVIII. Of the degradation of a knight bachiler.

XXXIX. Of knights bannerets.

XL. Of the occasion and time of the institution of the order of the garter.

XLI. Of saint George the patron-saint of that order. The chiefest testimonies in the eastern parts, or in the Greek church, concerning him.

XLII. The chiefest testimonies concerning him in the western Church.

XLIII. A consideration how he came to be taken for the patron-saint of the English nation; and of his feast-day.

XLIV. Of the figure usually expressing saint George.

XLV. Of the order of the bath.

XLVI. The title of baronets.

XLVII. Of the title of esquire.

THE subordinate titles in England be divided here into those which are from the *prince of Wales*, to the *baron* inclusively (as *duke*, *marquess*, *earl*, *viscount* or such as have place and voice in the lords house of parliament) and such as have no voice there, as *knights* of several orders, *baronets* and *esquires*. And first of the first kind.

I. ⁽²³⁴⁾ Whence the title of *prince of Wales* was first transferred to the sons and heirs apparent of England, is well enough known, but not so clearly when it began in them. It was transferred from those *princes of Wales* (of north Wales, especially) that, in the elder times being *Welsh*, held the country under the kings of England, by the name of *princes*. Neither was there any other besides them to whom the peculiar title of *prince* was attributed, as it is a subordinate dignity. *Princeps Walliae*, and *dominus Snowdoniae*, was their usual title, as we see especially in the stile of *Llewellyn ap Gruffith*, under king Edward the I. But it is observable that in the articles of peace made between this *Llewellyn* and king Edward the I.

^a Registr. ms. Jo. Pecham arch. Cant. circa extrem. And the history of Wales, p. 340.

in MCCLXXVII. (when the title of *prince* was to be left whole to him, but the most of the territories were to be made subject to the king) he had the homages or signiories of v baronies about *Snowdon* reserved to him, as if the having some barons under him had been so necessary, or at least so convenient, that otherwise he could not well have retained the title of *prince*. So is the purpose of the article concerning those v baronies, as *Walsingham* relates it. *Item quod omnia homagia* (these ⁿ are his words) *Walliae remanent regi praeterquam v baronum qui in confinio Snowdoniae morabantur, quia se principem convenienter vocare non posset, nisi sub se aliquos barones haberet ad vitam suam.*

And it is observable here out of *Walter* the monk of *Gisburn*,* that afterward, when this prince was slain in the wars betwixt the *English* and *Welsh*, his head was sent by the same king to *London*, & sic apposita certa argentea in signum principis, was carried by a horseman through *Chepseide* to the *Tower*, and there set up on a high turret. *Certa* here I presume is miswritten for *serto*, or a coronet, which, by *Gisburn*, was of silver; *Walsingham* and others say, he was so crowned with ivy. But all agree that it was the fulfilling of a witch's prophecy to him, that he should ride crowned through *Chepseide*. But what coronets those princes used, I have not yet learned.

But some place the beginning of this title, in the heirs apparent of *England*, in the xxxix of *Henry III.* So *Polydor*; *Edwardus regis filius* (saith he) *ut maturius ad res gerendas graviores expertus redderetur, fit Walliae princeps, simulque Aquitaniae ac Hiberniae praefectus. Unde natus, ut deinceps unusquisque rex hoc secutus institutum filium majorem natu Walliae principem facere consueverit.* (²³⁵) So some other of our modern writers. And thence the *Spaniards* also note, that the beginning of the title of *prince de las Asturias* with them, was in imitation of this and upon a like occasion there, as the beginning of this was in *England*; and as that began in *Castile* upon a marriage with an *English* lady (as is before shewed) so this in *England* upon the marriage of *Edward* (afterward *Edward the I.*) and the lady *Eli-anor* daughter to *Alfonso* the X. of *Castile*. *Notable concurrence* (saith *Salazar de Mendoza* ^o to that purpose) *que començasse esse titulo en Inglaterra, casando alli infanta de Castilla, y en Castilla casando ella senhora de Inglaterra.* But although *Wales* were given by the words of *una cum conquestu nostro Walliae, as Gascoigne, Ireland*, and some other territories recited in the charter, to this prince *Edward* by *Henry the III.*; yet I find no warrant, that therefore the special title of *prince of Wales*, as it belongs to the son and heir apparent, began in him.

Others place the beginning of this title in *Edward*, son and heir to *Edward the I.* upon that known story ⁴ of the king's fending for

queen *Eli-anor*, being with child, out of *England* to be delivered at *Carnarvan* castle. After she was delivered, he engaged himself (they say) to the *Welsh* that they should have a prince most free from all kind of blemish on his honour, and one that could not speak one word of *English*, meaning this young prince. And it is true indeed, that this *Edward*, son and heir apparent of *Edward the I.* was afterward stiled *prince of Wales*, as we see in the writs of summons of him to the parliaments of the later times of his father. The direction to him ^r is, *Edwardo principi Walliae & comiti Cestriae filio suo charissimo.* (²³⁶) But the first charter of creation that I have seen, is that of king *Edward the III.* to his son and heir apparent *Edward* duke of *Cornwal*, about six years after he was made duke, of which title more anon in its proper place. The charter hath also the chief particulars of the rites of investiture, which were the coronet and ring of gold, and the rod of silver; and with these he was invested *juxta morem*, as the words are; as if, before that time, such as were princes of *Wales* had usually received their principalities by like investiture. But I add the whole form of the charter.

REX archiepiscopis &c. salutem. De serenitate regalis praeceminenciae, velut ex sole radii, sic inferiores prodeunt principatus, ut regiae claritatis integritas de luce lucem profert, ex lucis distributione minoratae lucis non sentiat detrimenta; immo tanto magis regale sceptrum extollitur & solium regium sublimatur, quanto tribunali suo plures subiungunt proceres eminenciae clarioris. Haec autem consideratio condigna nos qui nominis & honoris *Edwardi* ducis *Cornubiae*, & comitis *Cestriae* primogeniti nostri charissimi incrementum appetimus, (in quo potius nos ipsos conspicimus honorari & domum nostram regiam, & subditum nobis populum nostrum speramus per Dei gratiam, sumpta de gloriosis suis auspiciis conjectura, honorifice roborari) allicit & inducit ut ipsum qui reputatione juris censetur eadem persona nobiscum digno praeveniamus honore, & saecunda gratia persequamur: De consilio itaque & consensu praelatorum, comitum, baronum, & communitatum regni nostri *Angliae*, in generali parlamento nostro apud *Westmonasterium* die lunae in quindena paschae proxime praeterita convocato, ipsum *Edwardum principem Walliae* fecimus & creavimus, & dictum principatum sibi dedimus & concessimus & per cartam nostram confirmavimus, ac ipsum de dicto principatu, ut ibidem praeficiendo, praesideat & praesidendo distas partes dirigat & defendat, per sertum in capite, & annulum in digito aureum, ac virgam argenteam investivimus juxta morem, habendum & tenendum de nobis sibi & haeredibus suis regibus *Angliae* imperpetuum, cum omnibus dominiis & terris nostris *Dornwalliae, Westwalliae, Southwalliae*, ac dominio, castro,

ⁿ Tho. Walsingham sub anno 1278.

Pat. 38 H. III. Vasc. membr. 8. n. 25. & Floril. ann. 1254. Item Matth. Paris, fol. 1187. edit. London.

pag. 376.

^t Dorf. claus. 33 Ed. I. m. 12. & 7. 32 Ed. I. memb. 2. &c.

* Ms. cap. 226.

^o Origen de las dignidades de Castilla lib. 3. cap. 23.

^p Vide

⁴ History of Wales, Rot. Cart. 17 Ed. III. num. 27.

villa & comitatu de *Caernarvan*, in dominio, castro, & villa de *Conewaye*, dominio, castro, & villa de *Crukich*, dominio, castro, & villa de *Bellomarisco*, dominio, castro, & villa de *Hardelagh*, dominiis & comitatibus de *Anglesey*, & *Meryonith*, dominio, castro, villa & comitatu de *Kermerden*, dominio, castro, & villa de *Lampadernmar*, dominio & senescalcia de *Cantremaur*, dominio, castro, villa & comitatu de *Kardygan*, dominio, castro & villa de *Emelyn*, dominio, castro, & villa de *Bueli*, dominio, castro, & villa de *Haverford*, dominio, castro, & villa de *Monte-Gomery*, ac omnibus dominiis terris & tenementis quae fuerunt *Resi ap Meredith*, & quae ad manus inclitae memoriae domini *Edwardi* quondam regis *Angliae* avi nostri deventerunt, una cum omnibus aliis dominiis, civitatibus, castris, villis, maneriis, membris, hamelettis, terris, tenementis, feodis militum, vacationibus episcopatum, advocacionibus ecclesiarum, cathedralium & aliarum quarumcunque, nec non abbatiarum, prioratum, capellarum, hospitalium, & aliarum domorum religiosarum, mineris, regalitatibus, liberis consuetudinibus, custumis, prisis, & exercitio omnis iusticiatus & cancellariatus, homagiis, serviciis, redditibus, proficuis, pratis, pascuis, pasturis, wrecco maris, piscariis, moris, mariscis, turbariis, forestis, chaceis, parcis, boscis, wardenis, hundredis, comotis, ragloriis, ringeldiis, wodewardiis, constabulariis, ballivis, forestariis, coronatoriis, reversionibus, feriis, mercatis, wardis, maritagii, releviis, escaetis, & serviciis tenentium tam liberorum quam nativorum ac omnibus aliis tam ad dictum principatum quam ad dictum principatum quoquo modo adeo plenarie & integre sicut nos ea tenuimus seu tenere deberemus, seu possemus, faciendo nobis pro dicto principatu & praemissis omnibus tale servitium quale invenietur celebris memoriae domini *Edwardi* nuper regem *Angliae*, patrem nostrum dicto avo nostro pro praedictis omnibus dum ea tenuit ex concessione dicti avi nostri fecisse. Quare volumus & firmiter praecipimus pro nobis & haeredibus nostris quod praedictus *Edwardus* filius noster habeat & teneat principatum praedictum sibi & haeredibus suis regibus *Angliae* imperpetuum, cum omnibus dominiis & terris *Northwalliae*, *Westwalliae*, *Southwalliae*, ac dominio, castro & villa de *Kaernarvan*, dominio, castro, & villa de *Conewey*, dominio, castro & villa de *Crukich*, dominio, castro & villa de *Bellomarisco*, dominio, castro & villa de *Hardelagh*, dominiis & comitatibus de *Anglesey* & *Meryonith*, dominio, castro, villa & comitatu de *Kermerdyn*, dominio, castro & villa de *Lampadernvaur*, dominio & senescalcia de *Cantremaur*, dominio, castro, villa & comitatu de *Kardygan*, dominio, castro, & villa de *Emelyng*, dominio, castro, & villa de *Bueli*, dominio, castro, & villa de *Haverford*, dominio, castro, & villa de *Monte-gomery*, ac omnibus dominiis terris & tenementis quae fuerunt *Resi ap Meredith* supradicti, una cum omnibus aliis dominiis, civitatibus, castris, burgis, villis, maneriis, membris, hamelettis, terris, tenementis, feodis militum, vacationibus

episcopatum, advocacionibus ecclesiarum cathedralium, & aliarum quarumcunque, necnon abbatiarum, prioratum, capellarum, hospitalium, & aliarum domorum religiosarum, mineris, regalitatibus, liberis consuetudinibus, custumis, prisis & exercitio omnis iusticiatus, & cancellariatus, homagiis, serviciis, redditibus, proficuis, pratis, pascuis, pasturis, wrecco maris, piscariis, moris, mariscis, turbariis, forestis, chaceis, parcis, boscis, wardenis, hundredis, comotis, ragloriis, ringeldiis, wodewardiis, constabulariis, ballivis, forestariis, coronatoriis, reversionibus, feriis, mercatis, wardis, maritagii, releviis, escaetis, & serviciis tenentium tam liberorum quam nativorum, & omnibus aliis tam ad praedictum principatum, quam ad nos in dictis partibus spectantibus quoquo modo, adeo plenarie & integre sicut nos ea tenuimus seu tenere deberemus vel possemus, faciendo nobis pro dicto principatu & praemissis omnibus tale servitium quale invenietur celebris memoriae domini *Edwardi* nuper regem *Angliae*, patrem nostrum, dicto avo nostro pro praedictis omnibus dum ea tenuit ex concessione dicti avi nostri fecisse sicut praedictum est. Hiis testibus venerabilibus patribus, *J. Cantuariensi* archiepiscopo totius *Angliae* primate, *R. Dunelmensi*, & *R. Coventrensi* & *Lichfeldiae* episcopis. *Willielmo de Bohun* Northampton. *Thoma de Bello Campo* Warwic. & *Willielmo de Clynton* Huntingdon. Comitibus. *Thoma Wake* de *Lydel*, *Henricus de Percie*, *Roberto Parmyng* cancellario nostro, *Willielmo de Cusancia* thesaurario nostro, *Randolpho de Stafford* senescallo hospitii nostri & aliis. Datum per manum nostram apud *Westmonasterium*, duodecimo die *Maii*.

Per ipsum regem.

Writs also under the great seal, dated the day following, were sent to *Richard* earl of *Arun-del*, justice of *North Wales*, *Gilbert* lord *Talbot*, justice of *South Wales*, and others to give him seisin of the principality. To divers also that had possessions in *Wales*; commanding them, quod eidem principi tanquam domino suo de homagiis & serviciis suis, ac omnibus aliis ad principatum, dominia, civitates, comitatus, castra & alia terras & tenementa praedicta spectantibus, intendentes sint & respondentes. Since this patent, this title (which, according to the limitation, after the death of any prince created, is preserved in the crown, until a new creation) hath been almost to all the sons and heirs apparent since that time, as also it was to *Richard* of *Bourdeaux*, son and heir to the black prince. But the creations have been with some difference, both in the investiture and in the patents also, from that first form. Sometimes the title of duke of *Cornwall* and earl of *Chester* are given with it, by the same patent and investiture, the rod being of gold, as in that whereby *Henry* the IV. created his son prince *Henry*. De consilio & assensu (saith he) auctum, comitum, baronum, & comitatum regni nostri *Angliae*, in instanti parlamento apud *Westmonasterium* (it was the first year of his reign)

reign) *convocato existentium*, Henricum primo-
genitum nostrum charissimum, principem Wal-
liae, ducem Cornubiae, & comitem Cestriae fe-
cimus & creavimus, & dictos principatum, du-
catum & comitatum sibi dedimus & concessimus,
ac ipsum de iisdem principatu, ducatu, & comi-
tatu, ut ibidem praeficiendo praesideat & prae-
sido dictas partes dirigat & defendat, per-
fertum in capite, & annulum in digito aureum,
& virgam auream investimus juxta morem, ha-
bendum & tenendum de nobis sibi & haeredibus
suis regibus Angliae imperpetuum; quare vo-
lumus & firmiter praecipimus pro nobis & hae-
redibus nostris quod praedictus Henricus filius
noster habeat & teneat de nobis principatum,
ducatum, & comitatum praedictos, sibi & hae-
redibus suis regibus Angliae imperpetuum sicut
praedictum est. *His testibus*, &c. But since
that, the earldom of Chester only is usually joined
with it in the patent. And it hath been re-
solved, that there needs no new creation to the
son and heir apparent of the other title of duke
of Cornwall, to which he is born heir. As in
those whereby, ^a Henry the VI. ^x Edward the
IV. and Henry the VII. created their sons prin-
ces, and in other of the elder times, as also in
that of king James to prince Henry, by which
he created him prince of Wales and earl of Che-
ster in ^y parliament, giving him *nomen, stilum,*
titulum, statum, dignitatem & honorem princi-
patus & comitatus eorundem, and investing him
(ut ibidem praeficiendo praesideat & praesiden-
do dictas partes dirigat & defendat) *per cincturam*
gladii, traditionem & positionem ferti in
capite, & annuli aurei in digito, necnon virgae
aureae in manu, ut moris est, habendum sibi &
haeredibus suis regibus Angliae imperpetuum.
Quare volumus & firmiter praecipimus pro no-
bis & haeredibus nostris quod praedictus Hen-
ricus filius noster habeat *nomen, stilum, titulum,*
statum, dignitatem, & honorem principatus
Walliae, & comitatus Cestriae praedictum sibi
& haeredibus suis regibus Angliae, ut praedictum
est. His testibus &c. ^z *aliis in parlamento*
nostro apud Westmonasterium convocatis &
praesentibus.

The earldom of Chester was once also a prin-
cipality, erected into that title by parliament in
^z *xxi Rich. II.* wherein it was also ordained that
it should be given only to the king's eldest son.
But that whole parliament was repealed by the
^a first of Henry the IV. although the earldom
hath usually been since given with the principa-
lity of Wales.

Besides the title of duke of Cornwall, and
earl of Chester, in England; the titles of duke
of Aquitain, and ^b earl of Pontbieu and ^c Mon-
stroile, and duke of ^d Normandy in France, have
been at several times, before that creation of the
black prince into the title of prince of Wales,
settled on some of the sons and heirs apparent,

who were stiled also by the title of *filius regis*
primogenitus, which they had only when none
of the other titles were fixed on them, as they
have had it also with their other titles in the la-
ter and present ages.

But what we have hitherto spoken of the son
and heir apparent's title, concerns only the times
since about the coming of the Normans. For
in the Saxon times that preceded them, both the
eldest and the rest of the king's sons were called
often *clitones* and *clitunculi*, as it is conceived,
from κλυτός, that is, *illustrious*. (²³⁶) For in
those times the affectation of making words out
of that little Greek they had, was frequent here
in England. As in that reformation of the order
of Benedictines ^f by king Edgar in *cccc-*
lxvi. in the subscription; after the king and the
archbishop of Canterbury, we have *Ego Ead-*
mund clito legitimus praefati regis filius crucis
signaculum infantili floreus aetate manu pro-
pria indidi. And *Ego Eadward eodem re-*
ge clito procreatus praefatam patris munifi-
centiam crucis signo consolidavi. And in an
original charter of king Aethelred to the abbey
of Saint Albans, of lands in Northtune in Rô-
danhangron and elsewhere; after the archbishop
of York's subscription, follows *Ego Aethel-*
stan filius regis cum fratribus meis clitonibus
adplaudens consensi. It is dated in *mvii.* Di-
vers such more occur in the charters and other
memories of those times. Aetheling, athe-
ling, or adeling, also was then used in the same
sense, in Saxon; and in the same sense also, the
use of it continued into the age of Henry the I.
That of Edgar etheling is obvious in all our
annals of those elder ages. And Robert of
Glocester, that wrote about Edward the first,
thus of it in the history of ^g king Harold.

The gode tryewemen of the londe wolde aabbe
ymade king.

The kind eir, the young child Edgar atheling.

Who so were next king by kunde me cluped him
atheling.

Therboze me cluped him so; boz by kunde he was
king.

And Gulielmus adelingus quem Anglici regni
legitimum haeredem arbitrati sunt, is remem-
bered in Ordericus ^h Vitalis, for the son and
heir of Henry the I. This atheling is in ano-
ther place of the same author, from the same rea-
son, called ⁱ Gulielmus adelinus Henrici regis
Anglorum filius, which form of expression of
etheling is often, but corruptly, in the same
author when he speaks of Edgar etheling. And
to this purpose, that of an old writer, among
the laws of Edward the confessor, is specially
observable. *Rex Edwardus Edgarum secum re-*
tinuit & pro filio nutrit. Et quia cogitavit
ipsum haeredem facere nominavit ethelinge
quod nos (it seems the writer was of France) do-

^a Coke Rep. 8. le princes case & le case de duche de Cornovaille, London 1613.

^x Cart. 11 Ed. IV. n. 14, & 15. & rot. parl.

^z Pat. 8 Jacobi regis part. 9. num. 17.

^b Pat. 19 Ed. II. part. 1. m. 25.

^c Ibidem.

^d Polidori, in Hen. I.

^e Flor. Wigorn. sub annis 748, 761, 784, 901, 1016, & 1017.

^f Ms. in biblioth. Cotton. & typis edit. in notis ad Eadmerum pag. 159.

^g Ms. in biblioth. Cotton. in rege Haroldo. vide item leg. Athelstani. r. pag. 71. & Canuti cap. 55.

^h Eccles. histor. lib. 12. pag. 869. b.

ⁱ Eiusdem hist. lib. 4. pag. 522. b.

²³⁶ Vide rot. parl. 31 Hen. VI. num. 48.

²³⁷ 21 Rich. II. cap. 9.

²³⁸ 1 Hen. IV.

²³⁹ Roger de Hoveden part. 1. pag. 436. edit.

²⁴⁰ Ms. in biblioth. Cotton. & typis edit. in notis ad Eadmerum pag. 159.

²⁴¹ Eccles. histor. lib. 12. pag. 869. b.

micellum, i. e. damoisel. Sed nos indiscrete de pluribus dicimus, quia baronum filios vocamus domicellos. Angli vero nullos nisi natos regum. Quod si expressius volumus dicere, in quadam regione Saxonia ling, imago dicitur, æthel Anglice nobilis est; quæ conjuncta sonant nobilis imago. Unde etiam occidentales Saxones, scilicet Excestrenses habent in proverbio summi despectus, hinderling, i. e. omni honestate dejecta, vel recedens imago. This we cite here as it is truly published in Lambard's edition of the Saxon laws. The same passage is very corruptly printed in Roger of ^k Hoveden, and by this may be justly mended. But for the reason of the name of *etheling* here given; it is true, for so much as concerns æthel interpreted by *nobilis*. There is no doubt but æþel in Saxon, so signifies. Whence *athala* is turned by *nobilissima*^l and *Ethelingy* by *nobilium insula*^m in old writers. But for that of making the last termination from *ling*, that should signify *imago*; without question it is a gross mistaking. From æþel, æþeling is made as a patronimic from a primitive, and as *Oiscing*, *Uffing*, *Esing*, from *Oisc*, *Uffe*, and *Ese*, in *Bede* and *Ethelwerd*, to denote such as descend from *Oisc*, *Uffe*, and *Ese*. And, by the same analogy, *Merovingi* and *Carolingi*, are often used for the posterity of the old French kings. And so literally, æþeling is but *nobilis ortu*, *generosus*, δ'γαυὸς or one born of him that is æþel or noble. And for excellency, it was thus absolutely given to the sons of the kings of England, especially in the later times of the Saxons. For in their elder times *nobilis* as it denoted every gentleman was understood by it. For *cum cunctis gentis suae nobilibus* in ⁿ *Bede*, is turned by king Alfred, mid eallum æþelingum his ðe ðe, that is, *with all the ethelings of his nation or people*. And in divers other places of Alfred's translation of *Bede*, *nobilis* is in like manner turned. But for the later times of the Saxons; *William* of *Malmesbury* fully clears it. *Filii regum*^o Anglorum a patribus patronymica sumpserunt, ut filius Eadgari Eadgarum, Edmundi filius Edmundum vocentur, & caeteri in hunc modum. Communiter vero ethelings dicuntur. We add here, that in the laws of *Howel Dda*, king of *Wales*, where mention is of the heir apparent there, whom they called *urthywchpad*, which is interpreted also by *etheling* or *edling* being but the same. *Urthywchpad*, i. e. *edling* (so are the words in my copy) & qui post regem habet succedere, prae omnibus qui sunt in curia post regem & reginam honorabitur. Iste erit vel filius ejus vel frater ejus. Locus ejus est in aula ultra ignem in opposito regis. Inter haeredem & columnam primo loco habet judex sedere, secundo loco ^p offitrad teulu, ex altera parte haeredis, penkert^q patriae, post hunc ex illa parte nullus potest debitum sibi locum vindicare. Pretium haeredis est equale pretio regis, tertia parte ablata. For *etheling* see also the next section of this chapter.

The coroner, and the rest of the habits of state of the prince of *Wales*, as also of the rest of the titles of *England* (as they are at this day and long time have been fashioned and used) are by pictures and otherwise represented in divers that have purposely written, in their ways, of these dignities. And because the pictures of them best express them, we have taken care to have them inserted in the places due to them, as we here represent that of the prince of *Wales*.

II. For those other titles, to the *baron* inclusively; some of them have had their original long since the coming of the *Normans*; others of them are also (though under various names) in the ages that precede the *Normans*. And from those ages, their original must be deduced.

We first here consider them that have the antienter original. They are those two of *earl* and *baron*. And of earldoms and baronies it was wont to be said that the kingdom was^r composed; as, according to the example of the western kingdoms, that of *Jerusalem* also was^r after the holy wars. And first of the *earls* and *barons* as we find them before the settling of the *Norman* monarchy in *England*.

For the time of the *Britons*; we have not testimonies that are of credit enough to shew us sufficiently what dignities were then proportionable to these two. There were *reguli* (as the *Latin* stories call them) subject to the *British* kings, and these had the government of provinces, as the *earls* or *ealdormen*, afterward under the *Saxons*. One *Gorongi* was thus, under King *Vortigern*, a *regulus* or governor of *Kent*, as others were under him in the rest of the island. In *Cantua* (saith *Malmesbury*) omnis justitia sub cuiusdam Gorongi laborabat regimine, qui tamen sicut omnes reguli insulae Vortigerni substernebantur monarchiae. That province or shire was given by *Vortigern* to *Hengest*, who, at first, held it under the king, and was *primus consul & dux de Germania, gentis Anglorum*, as^r *Ethelwerd* says of him.

But in the following ages, under the *Saxons*, the subordinate titles of temporal honour, were that of *etheling*, *ealdorman*, and *thane* or *thegen*. That of *etheling* was sometimes, I think, called also *eorle* (the same that since is written *earl*)⁽²³⁷⁾ which signified as much as *honourable*, *puissant*, or *mighty* (asⁿ some say) and came into *England* with the *Danes*.⁽²³⁸⁾ In their language to this day *etligis* noble or honourable, as *etlig radman*, for *nobilis decurio* in *Saint*^x *Mark*. But afterward, the word *ealdorman* growing out of use (as it denoted the next dignity to *etheling*) this of *earl* was attributed to the self-same persons that before had the dignity of *ealdorman*. And *ealdorman* (which now is written *alderman*) was transferred to divers others of less note which remain frequent among us to this day. And this application of the word *earl* began in the later age of the *Saxons*. But of this more largely. The

^k Annal. part. 2. pag. 608. edit. Francof. lin. 53.

& videlicet Philip. Cluver. German. antiqu. lib. 1. cap. 15.

cap. 3.

^l i. e. Sacerdos familiae, or the chief chaplain of the household.

^m Sanut. Torfell. secret. fidel. part. 7. lib. 3. cap. 1.

ⁿ Encom. Emmae pag. 176.

^o Hist. eccles. lib. 2. cap. 14. lib. 3. cap. 1. &c.

^p Cantor primarius.

^q Lib. 2. cap. 2.

^r See Caimd. in his remains.

^s Hoved. part. 1. pag. 420. edit. Francof.

^t De gest. reg. lib. 1.

^u Braet. lib. 2. cap. 34. §. 1.

^x Cap. 15. vers. 43.

justification

justification of it will be the better had, if we sufficiently interpret this piece of the old law of king *Athelstan*. In a chapter *Be reþum or of weregilds*, or concerning the divers prices of blood of men slain, the degrees both of spiritual and temporal titles, and offices, with those prices are thus reckoned.

Ɔenceþyrceopes 7 eoþles þengild biþ xv Ɔ þymfa 7
Byrceoper 7 ealþermanne viii Ɔ.

Ɔolþer 7 heþgeþeþan iv Ɔurenda 7

Ɔærþeþegner 7 poþulþ Ɔegner ii Ɔ þymfa.

That is, *the weregild of an archbishop and of an earl, is xv m thrimsaes* (a *thrimsa* I take for the third part of their shilling) *of a bishop and an ealdorman viii. m. of a holde, and of a high-gereeve iv. m. of a massethane, and of a worldthane or a temporal thane ii. m.* That of *eorle* here, is indeed in the old *Latin* translation of the *Saxon* laws, which we have in *John Brampton's* ms. history, turned by *comes*, as if it had then signified as afterward it did and now it doth. But I can scarce doubt but that, about *Athelstan's* time, it was received into *English* as a synonymy to *etheling*, and so denoted here the sons and brothers to the king, and not an earl, as that word since, and to this day hath signified the special dignity known by that name. For, though an *ealdorman*, were afterwards stiled an earl, and so there were a kind of identity between those two titles, yet at this time, when *eorle* was distinguished from it, and so far above it, as we see in that account of the *weregilds*, nothing but *etheling* could be understood by it; if at least we take the measure of those times, by what we find in the memories that remain of them. And I am the rather also persuaded to think thus, because in the laws of king *Knout*, the archbishop is expressly joined with the title of *atheling*, as the bishop with that of *ealdorman*, (according as it is here also) and that in a matter of like nature.

Ɔur hya (say 7 those laws) aþceþyrceoper boþ oþþe æþelinger aþcece. geþete þ mis Ɔþym punþan. 7 Ɔur hya leobþyrceop eþ oþþe ealþormanne boþ aþcece. geþete þ mis Ɔþam punþan. that is, *If any man do against his faith given to an archbishop or to an etheling, he shall be fined three pounds; if to a bishop or ealdorman two pounds.* (239) And that translation of *earl* into *comes*, in *Athelstan's* laws, I conceive, proceeded from the ignorance of them that, after the *Norman* monarchy, in their turning the *Saxon* laws, thought that *earle* was used for *comes* in *Athelstan's* time, because it was so afterward, and in their own times. That kind of fault is most common. And upon the like reason also, the *ealdermen* of those elder ages of the *Saxon* times, are sometimes miscalled by the name of *earls*, because those of the later time were stiled so, when that of *ealdermen* was grown wholly out of use, as to this purpose. And of *etheling* or *clwyto* enough is already said. Now for *ealdermen*, which are

joined with bishops in that of king *Athelstan*, and are usually called *aldermanni* in the old *Latin* translations of the *Saxon* laws, they were such as had provinces or counties or other territories under their government. And they are most frequently mentioned in the testimonies of those times, but by various names. The word *ealdorman* is literally but as *senior* or *senator* in *Latin*. But they were also called so (saith an old² author) *non propter senectutem, cum quidam adolescentem essent, sed propter sapientiam*. The name is sometimes expressed by *subregulus* and *regulus*, sometimes by *patricius*, *princeps*, *dux*, and in *Saxon* also by *heþetoga*; by *comes* also and *consul*; nor is it without example that they are called *reges*. King *Alfred*, and *Aethelfred*, *ealdorman* of *Mercland*, join in a grant to the church of *Worcester*, wherein, both in the body of the grant, and in the subscriptions, *Aethelfred* is² called *subregulus* and *patricius Merciorum*. So Ɔ ego Eandert regulus Ɔ ego Ɔhtred regulus are among the subscriptions to one of king *Offa's* charters to the church of *Worcester*. Other like examples are, tho' they occur not very often. But that of *princeps* is most frequent for *ealdorman*, both in the charters of the kings of that time, and in the subscriptions to those charters, and to other instruments; as also is the title of *dux*. Sometimes divers together subscribe by the name of *dux*, sometimes by the name of *princeps*, and sometimes both titles severally occur for persons of the same dignity in the subscriptions of the self-same charter. The fashion of their subscriptions you may see in *Ingulphus*, and in the notes on *Eadmerus*, and specially in the frequent exemplifications of *Saxon* charters that are in the tower of *London*. And some examples are in what is anon brought to other purposes. But though *princeps* in the singular number were so proper to every of them (at their pleasure) yet the plural *principes* is often applied comprehensively to others^b also of less, yet special eminency, as *thanes*, and such more that were *viri primarii*. The expressions of the old writers of stories after the *Norman* times shew that use of the word, and so do divers testimonies of the *Saxon* times. *heþetoga* occurs but rarely for them. *Alfhere*, *ealdorman* of *Mercland*, so known in the *Saxon* stories, is^c called Ɔeþheþe Ɔeþna heþetoga by *Oswald*, archbishop of *Canterbury*, in a *Saxon* charter to the church of *Worcester*. So *Hengist* and *Horsa*, are called heþetogan in a *Saxon*^d annual. And this title it seems signified them as they had military power, or as *duces* in the more proper and ancient sense doth. And the title of *ealdorman* denoted their civil dignity in such sense as *senator*, *senior*, or *seigneur* hath done thro' many ages in most parts of *Europe*. Both the words thus occur in the *Saxon* psalms, alþeþmannum Ɔuda heþetogan heapa, alþeþmannum Ɔabulon 7 alþeþmannum Neþþalim, for that of holy^e *David*, *principes Ɔuda, duces eorum, principes Ɔabulon Ɔ principes Neþþalim*. And divers other

^a Leg. Canut. cap. 55.

^b Apud R. de Hoveden. pag. 607. ed. Francof.

^c Cod. Wigorn. eccles. pag. 18. ms. & pag. 23.

^d Videlic Hen. Huntingdon. lib. 6. pag. 364. ed. Francof. &c. vide porro cartam Aethelulphi regis apud Malmesb. de gest. reg. lib. 2. cap. 2. & Ingulph. pag. 862. ed. Francof.

^e Cod. Wigorn. b. ms. pag. 71.

^f Ms. sub anno 446.

^g Psal. lxxvii. vers. 27. vide

item Psal. xxi. Saxonice & Luc. ix. vers. 22.

passages are in the *Saxon* evangelists and psalms, where those titles are thus used. The title of *comes* and *consul*, for an *ealdorman* of that time, are most obvious in *Florence of Worcester*, *Huntingdon*, *Hoveden*, and others, who either translated their annals out of *Saxon*, or took them from translations. For where they have *comes* or *consul*, the *Saxon* annals have commonly *ealdorman*. And *Alfric*, in his lives of the saints turned into *Saxon*, to express that of saint *George*, that he was *comes Cappadociae*, faith that he was ^f ealdorman on þær reýne Cappadocia: an *ealdorman of the shire or county of Cappadocia*. But the word *comes* is but rare in the additions that occur in subscriptions to the charters of the *Saxon* times, until after the beginning of king *Canutus*. ⁸ Till about that time *dux* or *princeps* is most usually in them for *ealdorman*. Yet sometimes it occurs also among those antient additions. (¹⁴⁰) In a charter of king *Ethelbert* to the church of *Canterbury*, (if we believe the ^h authority) in DCV. *Hocca comes* and *Graphio comes* are mentioned in the subscriptions. In that of king *Ethelbald* of *Mercland* also, for the foundation of the abbey of *Crowland*, as it is in *Ingalphus*, we read ⁱ ego *Egga comes Lincolniae consilium dedi*. ⁱ ego *Leucitus comes Leucestriae assensum praebui*. ⁱ ego *Saxulphus filius Saxulphi comitis corroboravi*. This was in the year DCCXVI. But also in an original ^k charter of that king *Ethelbald*, made some fourteen Years after, he gives land to one *Cyniberht*: by the name of *comes*, and yet calls him also *dux* and *comes*. And some *ealdormen* of the time subscribe also to the same charter, by the title of *comes*. The charter is as antient as any original that I have seen perfect, and is not unworthy to be wholly inserted here.

✠ EGO *Ethilbalt* domino donante rex non solum *Marcersum*, sed & omnium provinciarum quae generali nomine *Sutangli* dicuntur, pro remedio animae meae & relaxatione piaculorum meorum, aliquam terrae particulam, id est, x cassatorum venerando ^l comite meo *Cyniberhte* ad construendum coenobium in provincia, cui ab antiquis nomen inditum est *Hufnerae*, juxta fluvium vocabulo *Stur*, cum omnibus necessariis ad eam pertinentibus, cum campis sylvisque, cum piscariis, pratisque in possessionem ecclesiasticam benigne largiendo trado, ita ut quamdiu vixerit potestatem habeat tenendi ac possidendi cuicunque voluerit, vel eo vivo vel certe post obitum suum relinquendi. Est autem supradictus ager in circuito ex utraque parte supra nominati fluminis, habens ex aquilone plaga sylvam quam nominant *Cynibre*, ex occidentale vero aliam cui nomen est *Moerheb* quarum pars maxima ad praefatum pertinet agrum. Si quis autem hanc donationem violare temptaverit, sciat se in tremendo examine tyrannidis ac praesumptionis suae Deo rationem terribiliter redditurum. Scripta est haec cartula anno ab incar-

natione Domini nostri Jesu Christi septingentesimo tricesimo.

✠ Ego *Edilbalt* rex *Britanniae* propriam donationem confirmavi . . . subscripsi.

✠ Ego *Vvor* episcopus consensi & subscripsi.

✠ Ego *Vuilfridus* episcopus jubente *Ethilbald* rege subscripsi.

✠ Ego *Ethilric subregulus* atque *comes* gloriosissimi principis *Ethilbal* huic donationi consensi & subscripsi.

✠ Ego *Ibracti* indignus abbas consensi & subscripsi.

✠ Ego *Heardbeht frater* atque *dux* praefati regis consensi & subscripsi.

✠ Ego *Ebella* consensum meum accommodans subscripsi.

✠ Ego *Onoc comes* subscripsi.

✠ Ego *Oha* consensi & subscripsi.

✠ Ego *Sigibid* consensi & subscripsi.

✠ Ego *Bercol* consensi & subscripsi.

✠ Ego *Ealdunst* consensi & subscripsi.

✠ Ego *Cusa* consensi & subscripsi.

✠ Ego *Pede* consensi & subscripsi.

Est autem ^m agrum in memorata silva *Moreb* cui vocabulum est *Brochil* quem ego *Edilbalt* rex *Sutanglorum* ⁿ fidele duce atque comite meo *Cyniberhte* in jus ecclesiasticum cum supradicto agro largiendo donavi.

Some other testimonies of *comes*, in this sense, are found in antienter times; as in *Aferius Menevensis* especially that lived under king *Alfred*, and in *Ingalphus*. And *Alfere Merciorum comes*, is remembered in a lease for three lives, made to one *Alfric* by *Oswald* bishop of *Worcester* ^o in DCCCLXIII. But how either this of *comes* or that of *dux* came into use here from the *Romans*, may be understood from that which is already declared touching those titles in the empire. For the title of *rex* attributed to *ealdormen*; *Ethelred ealdorman* of *Mercland*, under king *Alfred*, is called so by ^p *Ethelwardus*, and his *ealdordom* or *earldom* is *regnum* in *Florentius* and *pice* also, which is the same, in some *Saxon* annals. But although the title of *ealdorman* and *comes*, with those other names, then so expressed this dignity of them that had provinces committed to them either in feudal right or otherwise (which is anon more largely shewed) yet both the name of *comes* and *ealdorman* were also otherwise communicated. *Comes* sometimes denoted men of an officary dignity, or counsellors of state only, or personal counts whom they usually called (as I think) *gesper* or *gespermonner*, that is *focii* or *comites* literally. It may be that *comes* may signify so in that charter of king *Ethelbald* before inserted, where it is joyned with *dux* and *subregulus*, as if it meant different titles. Perhaps also *comes*, as in other countries, sometimes signified diversly otherwise. And *ealdorman* designed an officary dignity sometimes of greater eminency than the common

^f Ms. de vitis sanctorum Sax. tit. 13. in extremo.

ⁱ Ingulphus p. 852. ed. Fr. bib. Cotton.

^k Pro comiti ut donatione pro donationi, &c. inferius. ms. pag. 63.

^l Lib. 4. cap. 3.

^m Videffs Ingulph. pag. 893. ed. Fr.

ⁿ Apud Joscelyn. abbi. Furi. in vit. arch. Cant. mss.

^o Compactum est isthoc diploma cum palatio Latino Saxon. ms. anno 730. in

^p Pro ager.

^q Fidelis, &c.

^r Cod. Wigorn.

title of *ealdorman*, as, on the other side, in the later times we see it signifies, and many ages hath signified such also, as are far beneath the antient notion of it. But the subject matter or addition to the word, shewed the notion wherein it was used. For the purpose; among the miracles of *John*, bishop of *Hexam*, about 900 of our saviour, *Bede* hath this^a title. *Ut conjugem comitis infirmam aqua benedicta curaverit*. For *conjugem comitis*, the Saxon translation of *Bede*, which was done by King *Alfred*, hath *gerþmonner þær or the wife of a geseþman*; and in the body of his story, for *villa erat comitis cujusdam qui vocabatur Puch*, the Saxon is *þær rumer gerþer tan þe þær Puh hæten*, or *there was a town of a geseþ called Puh*. And through that whole Chapter *gerþer* interprets *comes*. And in the title of the next chapter, *puer comitis* is *gerþmonner cniht*, and *ecclesiam comitis vocabulo Addi*, *gerþer cniht* is *þær hæten Addi*. Divers other places are in that translation where *comes* is turned by *gerþer*, as *Æþelþeþer gerþ þær cýniger comes Edilred regis*, and such more. But the word *comes* there is never turned into *ealdorman*. But where *Bede* speaks of *principes*, *duces*, or *sub-reguli*, there the Saxon hath always *ealdormen*, as it hath also sometime for *maiores natu*, which was a phrase perhaps used by *Bede* literally to interpret *ealdorman*. *Bede*'s words^f are *rex suis ducibus ac ministris interpret verbi extitit coelestis*, speaking of King *Osvald*. The Saxon there calls the *duces* & *ministri* *hý ealþor-mannum on þe hý ðegnum* or his *ealdormen* and his *thanes*. Other such examples are in him. And where, in the same Chapter he says *misit ad majores natu Scottorum* meaning the chief lords, the Saxon turns þa þenþe he to *Scotta ealþor-mannum*, *he sent to the ealdormen of Scotland*. Now for *ealdorman* signifying an officary dignity of greater eminency than the common notion of it in those times, observe but this old inscription^g antiently at *Ramsay* abbey. It is of one *Alwin* that, being of the blood, was *ealdorman* of all *England*, under king *Athelstan*, and founder also of that Abbey.

HIC REQUIESCIT^h AILWINUS INCLITI REGIS ÆDGARI COGNATUS, TOTIUS ANGLIÆ ALDERMANNUS, ET HUIUS SACRICOE-NOBII MIRACULOSUS FUNDATOR.

(²⁴¹)

This could not but mean that he was somewhat like the antient chief justice of *England*, or chief director of the affairs of the whole Kingdom, or *totius Angliæ vicedominus*, or *princeps*, as *William Fitzosborne*ⁱ earl of *Hereford*, and *Odo* earl of *Kent*, were to king *William* the first, and some others to some succeeding kings. Whence it is also, that in a history of *Ramsay*, he is stiled *Regiæ dignitatis consors*, as some others^j also were in the *Saxon* times, that is,

as they called it, efen hletan þære cýnelicam pe-
opþenre. And, as some say, this *Alwin* was called also *þalfkoning*, or *half king*. (²⁴²) And indeed one history of *Ramsay*^k which we use speaking of his father *Athelstan* that was *ealdorman* of the *Eaþlanges*, says that *ip̃i regi* (he means also king *Athelstan*) *adeo officiosa erat ejus sedulitas, ut ad arbitrium ipsius cuncta regni negotia tractarentur*. Idcirco ab universis *Æthelstanus, þalfkoning, quod est semi-rex dicebatur*. And in another book of *Ramsay*; *fuit in diebus Athelstani regis quidam dux orientaliū Anglorum Æthelstanus þalfkineg, i. e. semirex*. Where^l he hath by his wife the lady *Alfwen* IV sons, *Ethelwold, Alfwold, Ethelst* and this *Alwin*, who was also before he died *ealdorman* of all or most part of his father's ealdorom, and, by all probability, having like power with the king as his father, or like place in State, was called therefore *totius Angliæ aldermannus*. He was also *ealdorman* of *East England*, or of *Norfolk, Suffolk, Cambridgehire*, and some other adjacent parts.

The title of *ealdorman*, continued for those *duces, principes, comites*, &c. until about MXX after our saviour, or the reign of *Canutus*. But, about that time, the word eople, by which the *Danes* called men of like dignity, was attributed to them; and the Saxon *ethelings* were no longer stiled earls, as by a synonymy. And the word *ealdorman* in the former sense soon grew out of use. But that of *eorle*, was antienter in that sense among the *Danes*. For where the *Saxon* annals,^b written in the language of that time, speak of such as, being of the *Danish* part, are *comites*, or *duces* in *Florentius, Huntingdon* and others (and that in the ages long before M. after our Saviour) they call them eople: as *Sýþoc eopl* *jealsi*. *Sýþoc eopl* *reg eonc*. *þ Orþeapn eopl*. *þ Eþæna eopl*. *þ þapolo eopl*. in DCCCLXXI, which is justly translated by *Sidroc senex comes, Sidroc junior comes, Osbernus comes, Freona comes, Heraldus comes*. And divers such examples are. Yet on the other side, the *comites* or *duces* of the *Saxon* part, and of those times that precede *Canutus*, are in the same annals expressed most commonly by *ealdormen*. And whereas earl is sometimes used in some *Saxon* annals of king *Ethelred*'s time, a little before *Canutus*; it proceeded, I presume, from this, that in *Ethelred*'s time the word *ealdorman* was, by some that affected the *Danish* customs and language, rejected, and *eorle* used instead of it. And to both *eorle* and *ealdorman* for some time in those ages, denoted the self same; as perhaps they do also in *Canutus* his Laws. But in his time the *Danish* power increasing here, the name of earl was so fixed on those that were at first called *ealdormen*, that it hath been thence continued to this day, and hath been only used for the same title. Thence is it that the published *Saxon*

^a Histo. eccles. lib. 5. cap. 4. & 5. & vide cap. 10. & lib. 3. cap. 14. & lib. 4. cap. 23. &c.

cap. 3. & vide lib. 1. c. 13.

Scaccarij.

^f Histo. Ramf. apud Camd. Brit. pag. 368.

^g Videfis Guil. Malmesb. de gest. reg. lib. 3. pag. 111. ed. Fr. & lib. 4. pag. 120.

pag. 450. Flor. Wigorn. An. 1067.

^h Ordene. hist. eccles. lib. 4. pag. 506. & 537. & Huntingdon, lib. 6. pag. 371. edit. Franc.

ⁱ Bed. hist. eccles. lib. 3. cap. 14. &c.

^j Ms. in biblioth. v. c. & doctissimi Hen. Spelmanii eq. aurati.

^k Histo. lib. 3. cap. 14. &c.

^l Flor. Wig. ann. 871. alii.

^m Vide leges Canuti. cap. 55. & 69.

ⁿ Histo. Eccles. lib. 3.

^o Obijt anno Chr. 992.

^p Cod. Ramfienfis in archivis Scaccarij.

^q Item Hovedenium ead. edit.

^r Bed. hist. eccles. lib. 3. cap. 14. &c.

^s Ms. in biblioth. v. c. & doctissimi Hen. Spelmanii eq. aurati.

^t Histo. lib. 3. cap. 14. &c.

^u Flor. Wig. ann. 871. alii.

^v Vide leges Canuti. cap. 55. & 69.

fragment of the dignities of those times (for it is to be referred to the later times of the Saxon monarchy) *earls* and *thanes* are spoken of, but no mention is in it of the title of *ealdormen*. And the name of earl was in that age of such dignity, that *William* the first, in his Saxon title of *Normandy*, called himself only *earl of it*, which in that age was translated by *princeps Normannorum*. But he used also the same name for those that were then the *comites* of *England*. And how *comes* and *dux* were indifferent antiently in *Normandy*, is before shewed in the dignities of *France*. In an original charter from him to the abbey of saint *Edmundsbury*, both in the *Latin* and *Saxon*: the *Latin* is, *Willielmus rex Anglorum, princeps Normannorum atque Cenomanensium archiepiscopis, episcopis, abbatibus, & caeteris suis fidelibus*, and the *Saxon* that answers to it. *Willelm Engla kȳng ȝeople ȝep Nopmanðie ȝ opep þa ȝanȝ ic ȝenbe ȝneȝing æpcebeȝcopan ȝ leobȝȝcopan æbboban ȝ ȝeoþlan ȝ eallum ȝeoþeapfullum mannum*. And *Odo comes Cantiae* is interpreted *eopl opep Cent* in the same charter. And from that age to this day those two words only, the *latin comes*, and the *Daniſh* word *eorl*, or *earl*, have exprest with us this title. Those other that antiently occur in the *latin* of the *Saxons*, being never or rarely at all, since the coming of the *Normans* used, for an interpretation or expreſſion of this dignity among us.

In the beginning of the *Norman* monarchy also there was a reason given of the name of *comes*, and such a one as is proper to this kingdom. But of that more anon, when we speak of the time since the *Normans*.

The next of those in King *Athelstan's* Laws, are *holber ȝ hehȝeȝeȝap*, or *holds* and *highgereves*; both which were but officary dignities. The *holds* were captains or commanders in the wars. The *highgereves* were but the high sheriffs of shires, or such territories as were committed to their custody and charge by the king, in such sort as the *custodia comitatus* is at this day given to the sheriffs. *Shire-reeve*, or *shire-gereeve* is but the same word with *shrive* or *sheriffe*. And in those times it seems, that these *Highgereeves* had to the king's use, the custody of such counties or territories as had not any *ealdormen* or *earls* placed in them, or, if they had, were still so subject in all or in part to the king's immediate jurisdiction, that he had high sheriffs there as well as *ealdormen*, which by custom, grant, or special provision sometimes happened. They were exprest in *Latin* by the name of *summi praepositi, vicecomites, and vicedomini*, as we see often in *Ingulphus* abbot of *Crowland*, in *Brampton* and others. (243) But the particle *vice* in those two last names denoted not always a subordination to any *comes* or other *dominus* than the king, no otherwise than at this day *vice* in *vicecomes* doth. As in that of *Horace*, *utar vice cotis*, and as in *vice-cancellarius* in the court of *Rome*, where there is no cancel-

lor, so is *vice* proportionably in that office made by the king. And so was it originally. That is, the king appointed one that might *supplere vicem comitis*, or *vicem domini* in the county that had no *comes*, or *ealdorman*, lord of it. But this is to be understood only of such as were immediate to the king, as at this day, and ever since the *Normans*, all high sheriffs besides those of the antient counties *palatine*, or counties in the nature of *palatine* have been. For also, some *ealdormen*, *earls*, or *comites* of those times, having regal jurisdiction, and being as counts *palatine*, had their *vicecomites* or *ȝeȝeȝap*, subordinate to them, as we see in *Ingulphus*, where one *Norman*, son to *Lefwin* earl of *Leicester* is *vicecomes Edrici comitis*, or sheriff to *Edric Strona* *ealdorman*, or earl of *Mercland* under king *Aethelred*.

After these, in that of king *Athelstan*, follow *meȝȝeȝeȝer ȝ ȝeoþle ȝeȝer*, or *masſetbegues*, and *world thegnes*, that is *spiritual thanes*, and temporal *thanes*. *Presbyteri & seculares* exprests them in the translation in *Brampton*; and in the same laws a *maſs* priest by the name of *meȝȝe pȝeoȝt* is deemed in every degree equal, according to the custom of the *Engliſh*, to a *ȝeoþle ȝeȝne*, or a *secular thane*. The word *thegne* or *thane* signifies but *minister* or *servant*; and so are the translations most frequent, both out of the *Saxon* laws and annals into the *Latin* of elder times, and out of *Latin* into *Saxon*. One example of it is in that before cited out of *Bede*. And divers others are in him; as *minister regis* in him is turned by *cȝeȝinger ȝegn* and *minister regis amicissimus* *cȝeȝinger ȝegn* him *re holberta*. And in *Marianus* and *Florentius* very many like testimonies are. *Quatuor de ministris regis* (say they) in *DCCCXCVI. occiduntur*, which was translated out of this *Saxon* as we find it in the old *Saxon* annals, *ȝeoȝop cȝeȝinger ȝegnar oȝȝlaȝene*. And in the following year there, *ministri regii, Eadulphus in Saxonia regis minister, and Ecgulfus frator regis* are exprest in the *Saxon* by *cȝeȝinger ȝegnar* and *Eadulph cȝeȝinger ȝegn on Suðreaxum*. and *Ecgulf cȝeȝinger hoȝȝ-ȝegn* or *minister*, or *servant about his horse*, in that sense perhaps, as we now say, *the master of the horse*. So in *MXIII. occidentales ministri* in them, are in the *Saxon* *ða ȝeoȝȝenar ȝegenar*, or *thet hanes of the west country*. Other such examples are most obvious. And in the charters of that time the addition of *minister* for a *thane* is most common amongst the subscriptions, after the *principes* or *duces*. (244) And though the word denoted a servant or minister generally (and so divers had the title, as it was merely officary and personal) yet those that were the king's immediate tenants of fair possessions, which they held by personal service, as of his person (or as we now say by *grand serjeanty*, or knight's service in chief) were, I conceive, the *thanes* that had the honorary dignity, and were part of the greater nobility of that time, howsoever those officary dignities of *bold*

* Apud Lamb. in peramb. Kantii, pag. 364. and in *Mils* de nobilitate civili, &c. f. Videſis leges Edwardi ſenioris cap. 2. vide Scyremen in leg. Inae cap. 8. f. Vide eum pag. 870. ed. Franc. h. Hiſtor. Crowland, pag. 811. & 912. ed. Fr. f. Ms. 896. f. Ms. 896.

and *highgereewe* had then precedence of them. That is, they were all the king's feudal *thanes*, and the land held so was called *tainland* or *thaneland*, as afterwards the lands held that made a baron were called a barony, as also they are called to this day. This title continued in the *Saxon* times until the coming of the *Normans*, and it was in some use also after that time. And as the use of the word *baron*, is to this day such that it denotes, in the most honourable sense, only the barons of parliament, and yet is variously communicated to some officers of courts of ordinary justice, to those of the cinque ports, and to the lords of manors; so had *thane* in those times various acceptations. But in the most honourable sense, it denoted the king's *thanes* or tenants by grand serjeanty, or knight's service in chief: who were joined with earls in those times, as afterwards barons were. As we see in the directory of some charters in that time. ✠

Es-þærþ ær þæt mine bysceoper 7 mine eopler 7 ealle mine ðegnes on þan 7cype hƿæpe mine 7ƿeoƿter in Paulu minreþen habbenð land. ✠ *I Edward, king, greet all my bishops and mine earls, and my thanes, in the counties where my priests of the church of Pauls have land; and divers other like occur.* In the Latin used some few years after the *Norman* monarchy settled, this would have been translated (I suppose) by *comitibus* & *baronibus*. For after some years that followed the coming of the *Normans*, this title of *thane* grew out of use, and that of *baron* and *barony* succeeded for *thane* and *thainland*, whereof more anon. Nor were the names of *baron* and *barony* received into any use (as I think) among the *Saxons*. It is true, that in some *Latin* memories of the affairs of the *Saxon* times, we have the word *baro*. Under king *Edward*, son of king *Alfred*; *occisus est Siulf dux, & Sigem dux* & *Edikwold baro regis*, faith *Henry of Huntingdon*; and a little after under the same king; *Turchetel consul subditus est regi omnesque consules & meliores barones qui appendebant ad Bedfordiam*. But the *Saxon* annals^p whence those passages were translated (and that after the *Normans*) have not the title of baron there. Of the first, the *Saxon* words are *ƿearþ Siulp ealdorman oƿlegen. 7 Sigelm ealdorman. 7 E. ƿols cýniger ƿegen*. Where *ƿegen* or *thane* is used for that which the *Latin* of *Huntingdon* calls *baro*. And those words that concern barons in the second are *þa yltertan men þe to ƿeþanƿorða hýpdon, or the chief men of Bedfordshire* (without the name either of *thane* or *baron*) or *nobiles de Bedfordia*, as *Marianus* turns it, and after him *Florentius* retains it. From this use of translation of *thane* by *baro* in the times that followed the *Normans*, those other passages that occur in the *Latin* laws of the *Confessor*^q and of king *Canutus* (as they are^r in the old translation) and such more with *baro* in them, are rightly to be understood. And so is that of *John Brampton*,^s where speaking of

Godwin earl of *Westsex*, being accused as a traitor for being privy to the murder of *Alfred*, brother to king *Edward* the confessor, he says, that the king spake of it to his *comites* and *barones*, assembled in parliament. But I can scarce doubt but that the *Saxon*, whence he had that, was eopla 7 ðegnas, as also that which he calls a parliament, was in the time whereof he wrote, titled a *ƿitenagemot*, or *micel rýnob* which was the same kind of court, which afterward was from the *romance* dialect stiled a parliament. And from the like translation are other like places of the antients to be interpreted. But the whole passage in *Brampton* is^t anon transcribed. But for that of *barones* in the common treatise of *modus tenendi parlamentum*, which is in the title referred to the times of *Edward* the confessor; it requires no such interpretation doubtless. The treatise was written long after the beginning of the *Norman* monarchy, and the title is so false, that it too much disparages the body of the treatise, whereof more anon, where we speak of the times that succeeded the coming of the *Normans*. We add here only, for those names of the *Saxon* dignities, that interpretation of *Latin* into *Saxon*, by *Alfricus* archbishop of *Canterbury*, who lived in the times wherein they were used. *Princeps* (faith * he) ealdorman; *dux* hepetoga oþþe lætæor; *comes*, ealdorman oþþe ƿeƿera (so is it written in the copy I use, and over it, in as old an hand, is *vel ƿeƿera* with a stroke drawn through it) *Clito* ƿelung, *primas* eapobmann, *satrapa* þegen, *praepositus* ƿeƿera oþþe ƿrauert, *dominus vel herus* hlaponð *domina* hlæfƿige. Where observe that he hath not the title of eople or earl, but ealdormann instead of it, which he makes the *Saxon* both for *princeps* and *comes*. The word earl coming into use afterward from the *Danish* language, as is before shewed. Now *Alfricus* died archbishop, after he had held the see thirteen years in *MVI*. And it is most likely that he wrote his grammar, whence this is taken, long before, which I note that you may see how it will agree with our deduction of earl out of *Danish* and later use, into the room of the *Saxon* ealdorman. And of the names of *ealdorman*, *earl* and *thane*, in those *Saxon* times hitherto.

III. The use of those names being thus shewed, before we come further into the times of the *Norman* monarchy, these two things are especially observable touching the *earls*, *ealdormen*, and the *thanes* of the *Saxon* ages. The possessions belonging to their dignities, and their jurisdiction. The possessions of ealdormen or earls, were sometimes the whole territories from which they were denominated, that is, their whole ealdorþomes as they called them, or *earldoms*, or one or more shires committed to them. Sometimes their possessions consisted in some particular territories, the bodies of the shires remaining in the crown. And they had also

^m Videfis notas ad Eadmerum, pag. 170.

^o Huntingd. li. 5. pag. 353. Ed. Fr.

^p Ms.

ⁿ Pat. 18 H. VI. part. 2. memb. 9. n. 12. vide item Cart. 4 Ed. III. membr. 13. &c.

^q Cap. 21. & apud Rog. de Hoveden, pag. edit. Fr.

^r Ms.

^s §. 6.

^t In grammatica ms. penes Lamb. Moreton eq. aurat.

sometimes a third, or some other customary part of the profits of certain cities, boroughs, or other places within the earldom.

But by the way, we first clear the truth of that which is mistaken by divers, concerning the first division of the kingdom into shires or counties. King *Alfred* (they say) first did it, and *Ingulphus*, indeed, affirms it. *Totius Angliae pagos & provincias in comitatus primus omnium commutavit, &c.* Were that true, then no man had a shire or county before *Alfred's* time. And so none of them that had their dignities from shires or counties, must have an antienter beginning than king *Alfred*. But whatsoever *Ingulphus* means by it, it is plain, that *Alfred* was not the first that divided the kingdom into shires or comitatus. Neither were the *pagi* & *provinciae*, which he speaks of, other than *comitatus*, or shires. And before *Alfred's* times these *pagi* had their ealdormen in them. *Ethelwulfus Baroccensis pagae comes*, and *Ceorl Domnaniae comes*, and *Eanwulf Sumurtunensis pagae comes*, for the earldoms of *Berkshire*, *Devonshire*, and *Somersetshire*, under king *Athelwulf*, father to king *Alfred*, are remembered in *Asserius Menevensis*, that lived in king *Alfred's* time. Two of them are also in *Ethelwerd*, a writer of the *Saxon* times, besides *Osric Dorsetum dux*, for the ealdorman of *Dorset*. *Ealhere* or *Alchere* was, at the same time, ealdorman of *Kent*, and *Auda* or *Wuda* of *Surrey*, as we have it in *Hoveden*, *Huntingdon*, and in that *Asserius* also. And *Ingulphus* hath the charter of king *Ethelbald's* foundation of *Crowland*, whereunto the *comites* of *Leicester* and of *Lincoln* subscribe. Besides, the original laws of *Ina* king of *Westsex*, *dcxx*, say, that if an ealdorman¹ were guilty of an escape þolge his rýpe, or he was to forfeit his shire, or perdat comitatum suum, as the old *Latin* translation hath it. How then did king *Alfred* begin the division of shires? Doubtless that passage in *Ingulphus*, for so much as concerns this division, was mistaken by him, while he would tell us of *Alfred's* division of shires into hundreds and tithings, which is true, and is alone without that of the counties judiciously related by *William* of *Malmesbury*,² who might know the truth as well as *Ingulphus* that wrote about *clxx* years after *Alfred*. And *Henry* of *Huntingdon*, and *Godfrey* of *Malmesbury* expressly refer the beginning of the division of counties to the union of the *heptarchy* in the kings of *Westsex*. *Postquam autem* (saith *Huntingdon*)³ *reges Westsaxe caeteris praevaluerunt & monarchiam obtinuerunt, terras per xxxv provincias sibi dividerunt.* That time precedes *Alfred* by about *lxx* years. But the just time of the first division appears not. Yet it cannot be doubted, but that ever since any government was established here, some division was of the kingdom into such parts as

might receive several governors or guardians. No doubt neither, but that time hath variously altered and induced new⁴ shapes into that division, which yet always was fit enough to support the dignities of several ealdormen that had more or fewer parts of the division, according to the pleasure of the kings that created them.

But, for an example of the possessions of the ealdormen, and earls of that time; *Ethelred*, ealdorman of *Mercland* had all that which was the kingdom of *Mercland* to his own use, as an ealdordom and fief given him in marriage with *Ethelfled* by her father king *Alfred*. *Londoniam caput regni Merciorum* (saith *William* of *Malmesbury*) *cuidam primario Ethelredo, in fidelitatem suam cum filia Ethelfleda concessit*, that is, he gave it him to hold of him, or as some⁵ *Saxon* annals of *dcclxxxvi*, express it, he þa he sette Lundenbūþe seþelp to be ealdorman to healþen, which *Asserius* and *Florentius* have by *servandum commendavit*. But the mention of the gift of the chief seat here, implies the gift of the whole territory of *Mercland*, as we see also by that in the same *Malmesbury*, where he says, that after *Alfred's* death, his son king *Edward* was king of *Westsex* and *Mercland*, but so, that he was king of *Mercland* in name only, the whole possessions remaining to ealdorman *Ethelred*. *Duo regna Merciorum & Westsaxonum* (saith he) *conjunxerat*; *Merciorum nomine tenus, quippe commendatum duci Ethelredo tenens*. The estate, I conceive, was no less than inheritance which the donces had in this ealdordom. Although I doubt not but at the pleasure of the king divers were made for life, and perhaps at will also. *Ethelred* enjoyed this of *Mercland* to his death, which was divers years after the beginning of king *Edward*. And his lady *Ethelfled* surviving him, held all of it saving *London* and *Oxford*, with the territories adjoining, which the king her brother took from her. And at her death, she left her daughter the lady *Alfwyn* or *Elfwin* heir of it, whom the king her uncle soon dispossessed of the whole ealdordom. *Unicam filiam suam Elfwinam* (saith *Florentius*)⁶ speaking of *Ethelfled* *ex Ethelredo subregulo susceptam haeredem regni* (so he calls the earldom, because it had been a kingdom) *reliquit*. And *exbaeredavit rex Edwardus, ex dominio Merciae totius, Alfwyn*, says *Huntingdon*, whose story of this lady hath otherwise most gross mistakings. For inheritance in earldoms of that time; see also what⁷ others have of the earls of *Leicester*. But it seems also, that this dignity was in some place in *England* both feudal and inheritable, even from the age of the first coming of the *Saxons* into *England*, which is commonly placed in *ccccxlviii* of our saviour, though by exacter⁸ calculation, it fall *xx* year sooner. For from about that time until *dlxvii* *Northumberland* (that is, all beyond *Humber*, and not only that which we now call

¹ Pag. 870. Ed. Francof. gest. reg. Angl. lib. 2. c. 4. ed. Franc. Luc. 3.

Capud. Brit. pag. 930.

² Lib. 3. cap. 3.

³ Ms. historia.

⁴ De gest. reg. lib. 2. cap. 4. & 5.

⁵ Vide Gamd. Brit. pag. 95.

⁶ Leg. Inae cap. 36. apud Brampton ms. cap. 31. & vide cap. 8.

⁷ Histor. lib. 1. circa initium.

⁸ Ms. 896.

⁹ Sub anno 919.

¹⁰ De

¹¹ Videtis Ingulph. hist. pag. 911.

¹² Tho. Talbot apud

Northumberland) was two ealdordoms, held of the kings of *Kent*. The one all that from *Humber* to *Tyne*, by the name of *Deireland* or *Deira*. The other from thence northward by the name of *Bernicia*. These ealdordoms began in *Otho* brother to *Hengist* king of *Kent*, and *Ebusa* his son, who having conquered by *Hengist's* commission those northern parts, held them as ealdordoms or earldoms of the kings of *Kent*, and by that name transmitted them to their heirs, who used no other title than *ealdorman* or *dux*, or *comes*, or the like, according to the indifferency of those words, and of the rest, that are before shewed to have been synonymies with them, until *Ida* in DLXVII, took on him the name of king of all *Northumberland*. *Illi imperatis insistentes* (saith *Malmesbury*^f speaking of *Otho* and *Ebusa* being sent thither with *Hengist's* commission) *convenientem studiis suis exitum habuerunt. Namque saepe numero cum provincialibus congressi, profigatisque qui resistendum putaverant, reliquos in fidem acceptos placidae quietis gratia mulcebant. Ita cum suis artibus subjectionum favore nonnihil potestatis corrasissent nunquam tamen regnum nomen temerare meditati, ejusdem mediocritatis formam in proximos posteros declinaverunt. Annis uno minus centum Northumbriae duces communi habitu contenti, sub imperio Cantuaritarum privati agebant. Sed non postea stetit haec ambitionis continentia, seu quia semper in deteriora declivus est humanus animus, seu quod gens illa naturaliter inflatiores anhelat spiritus. Anno itaque dominicae incarnationis DLXVII post mortem Hengisti LX ducatus in regnum est mutatus regnavitque ibi primus Ida.* This kingdom there continued until *Tric*, in whom it ended under king *Eldred*, and became again an ealdordom or earldom by his erection. He gave it first to *Osulf*; between whom and *Osac* it was afterward divided; and after their deaths *Waltheof* was earl of it, from whom it descended^g to his sons *Uchtred*, *Eadulf*, and *Cospatric*: The two first (after *Eadulf Cudel* their uncle had by the favour of king *Cnut*, for a time, usurped the earldom) succeeded one the other, and *Eadulf* the younger being slain, king *Hardecnut* seized it, and gave it to *Siward*, who had right to it in behalf of his wife *Elfreda*, earl *Aldred's* daughter. But after his death it was seized into the king's hands, and given sometimes in part, sometimes wholly to *Tostius*, then to *Morcarus*, then to *Coxius* or *Coxo*; but it seems at pleasure. And they enjoyed it successively. Upon the death of *Coxo* (who had so much as is now *Northumberland*) *William* the I. (the rest also being in his hands) conferred the whole honour and territory on *Cospatric*. And the reason why he gave it him (besides that he paid well for it) is expressed by *Roger* of *Hoveden*; *nam ex materno sanguine attinebat ad eam honor illius comitatus. Erat enim ex matre Algitba, filia Uthredi comitis, quam habuit ex Elgiva filia Ethelredi regis. Hanc Algitbam pater dedidit in conjugem Maldredo filio Crinani.* This

reason could have been of no force, unless *Uthred* had been earl of *Northumberland*, to him and his heirs. For, if not, how had this *Cospatric* right to it by being son of *Algitba*, daughter of *Uchtred*? But this king *William* seized it again as forfeited by *Cospatric* for treason in taking part with the rebels at *York*. Then he created *Waltheof* the son of earl *Siward*, earl of it, as one that had indeed right in a nearer degree of descent than *Cospatric* had, as also by father and mother, and therefore also he could not be prejudiced by the forfeiture of *Cospatric*. *Post Cospatricum datus est comitatus* (saith *Hoveden*) *Walthevo Siward comitis filio, qui ei tam ex patris quam ex matris prosapia debebatur.* Where it seems also that *Siward* had the inheritance of it given him, as in right of his wife *Elfreda*. *Fuerat enim Waldeofus* (saith *Hoveden*) *Siwardi comitis filius ex filia Aldredi quondam comitis Elfreda.* And the pretence also why it was no longer permitted to *Waltheof* son of *Siward*, was (according to the frequent exercise of those unsettled times) because^h he was in minority. Therefore *Tosti* son to earl *Godwin* procured it to himself. As others did after him. But in favour of ancient right of inheritance, it returned again to the blood, and next heir of him that had it first given to him and his heirs. Some other such estates were in the earldoms of that time. But these are sufficient examples. And it seems the territories of *Northumberland* were possessed by those earls, as the king held them at the time of the creation.

But some others had not the territories which were comprehended in their denomination, or the profits of them; but only such particular possessions, as were either by name given them, or otherwise by custom annexed to the dignity. *Godwin* was earl of all *Westsex*. But after the death of *Canutus*, half-brother to king *Harold* the I, *consilium inierunt* (saith *Henry of Huntingdon*) *quod Emma reginam cum regis defuncti familia conservaret Westsex apud Winchester in opus filii sui* (he means *Hardecnut*) *Godwinus vero consul dux eis esset in re militari.* Here if *Godwin* had possessed all in *Westsex*, as *Ethelred* did in *Mercland*, *Hardecnut* could not have been king of any thing in *Westsex*. Therefore he had some particular possessions only. The like may be said of some others that occur in the stories of those times.

For the *third parts of profits*, and such like. The city of *Oxford* in the time of *Edward* the confessor, paid twenty pound rent to the king, and six gallons of honey, and ten pound to the earl, with an allowance of a mill there. *T. R. E.* (that is, *tempore regis Edwardi*) *reddebat Oxenford* (so are the words of *Domesday*) *pro theoloneo & gablo & omnibus aliis consuetudinibus per annum, regi quidem xx libras & vi sextarios mellis, comiti vero Algaro x libras adjuncto molendino quem infra civitatem habebat.* This *Algarus* was, under the Confessor, earl of *Mercland*, whereof *Oxfordshire* was a part. *Staf-*

^f Lib. 1. de gest. reg. cap. 3. in Edwardi confessoris anno 12.

^g Vide Roger. de Hoveden. Annal. part. 1. pag. 424, & 434.

^h Vide H. Hunt. lib. 6.

fordshire was also in this earldom, and *reddebat* (saith the same book) *burgum de Stafford de omnibus consuetudinibus x libras denariorum*. *Duae partes erant regis tertia comitis*. And in Nottinghamshire there, under this title. *Hic notantur qui habuerunt socam & sacam & thol, & thaim, & consuetudinem regis x denariorum*; divers names follow, and that of persons of great quality; and then, *horum omnium nemo habere potuit tertium denarium comitis nisi ejus concessu, & hoc quam diu viveret, praeter archiepiscopum & Ulfensc & Godeve comitisam*. This Godeve was mother to *Algarus*, and countess of *Mercland*. The like was in some other earldoms. In *Ipswich*, which was a part of the earldom of *Eastengland*, *regina Edeva ii partes habuit* (so we read in *Domesday*) and *comes Guert tertiam*. And *Norwich* in the same earldom, *reddebat xx libras regi, & comiti x libras*. That *Guert* was the sixth son of earl *Godwin*, and slain with king *Harold* at the battle of *Hastings*. The monks call him *Girthe, Girtha, and Guorthe*. Of *Lewes* in *Sussex* also, *erant ii partes* (so we read in *Domesday*) *regis, tertia comitis*. And *Chichester* *reddebat xv libras, regi x libras, comiti c solidos*. *Godwin* and his son *Harold* had been earls of *Sussex* in the time where the book speaks, as they had been also of *Kent* and *Wessex*. And *pax manu regis, vel sigillo ejus data* (so they reported an ancient custom in *Lincoln*, as we read in the same book) *si fuerit infracta, emendetur per xviii hundredz*. *Unumquodque hundred solvit viii libras*. *xii hundredz* emendant regi & *vi comiti*. And to the same purpose almost the laws of the¹ Confessor. The breach of the king's peace at certain times (as in the viii days of the coronation, and in the greater feast days, or on persons, or places that were under his particular protection) was fineable in *Danelega per xviii hundreda, qui numerus complet clxiv libras, quoniam forisfacturam hundredi Dani Norwegienfes viii libris habebant*. *Multiplicatis igitur viii per xviii sunt cxliv*. *Et hoc non sine causa*. De istis enim octo libris rex habebat c solidos & consul comitatus l qui tertium habebat denarium de forisfacturis. The other ten shillings the dean of the deanery, where the peace was broken, had, saving when it was done in places under his particular protection, signified by his special command (so I interpret *pax data manu regis*) or in the days of coronation, *Christmas, Easter, or Whitfontide*. And *Edwin* son to *Algarus* earl of *Mercland*, and heir to him in *Cheshire* at least, and some other territories that were part of the ancient earldom of *Mercland*, under *Edward* the confessor, so divided the profits of viii salt-pits in *Warmundslow*, ita quod de omnibus exitibus & redditibus salinarum habebat rex ii partes & comes tertiam, as the words also of *Domesday* are. Where, likewise, under the title of *Cheshire*, we read of the city of *Chester*; that in the time of the Confessor, *reddebat haec civitas x marcas*

argenti, & dimidiam. *Duae partes erant regis & tertia comitis, & hae leges erant ibi*.

PAX data manu regis vel suo brevi, vel per suum legatum, si ab aliquo fuisset infracta, inde rex c solidos habebat. Quod si ipsa pax regis jussu ei a comite data fuisset infracta, de c solidis, qui pro hoc dabantur, tertium denarium comes habebat. Si vero a praeposito regis aut ministro comitis eadem pax data infringeretur, per decem libras emendabatur, & comitis erat tertius denarius. Si quis liber homo regis pacem datam infringens in domo hominem occidisset terra ejus & pecunia tota regis erat & utlagh fiebat. Hoc idem habebat comes de suo tantum homine hanc forisfacturam faciente. Cuilibet autem utlagh nullus poterat reddere pacem nisi per regem.

Qui sanguinem faciebat a mane secundae feriae usque ad nonam sabbati, x solidis emendabatur; a nona vero sabbati usque ad mane secundae feriae sanguis effusus xx solidis emendabatur: similiter xx solidos solvebat qui hoc faciebat in xii diebus nativitatis, & in die purificationis S. Mariae & primo die Paschae, & primo die Pentecostes, & die Ascensionis, & in Assumptione, vel Nativitate S. Mariae & in die festo omnium sanctorum.

Qui in istis sacris diebus hominem interficiebat xiii libris emendabatur. In aliis autem diebus xl solidis. Similiter *heinfaram* vel *fozestet* in his festis diebus, vel die dominico: qui faciebat, iv libris emendabatur. In aliis diebus xl solidis. *Hangenuitham* faciens in civitate x solidos dabat: Praepositus autem regis vel comitis hanc forisfacturam faciens xx solidis emendabatur.

Qui *revelach* faciebant vel latrocinium vel violentiam foeminae in domo inferebat, unumquodque horum xl solidis emendabatur.

Vidua si alicui se non legitime commiscebat, xx solidis emendabatur, puella vero x solidis pro simili causa.

Qui in civitate terram alterius faisibat, & non poterat diratiocinare suam esse xl solidis emendabatur. Similiter & ille qui clamorem inde faciebat, si suam esse debere non posset diratiocinare.

Qui terram suam vel propinqui sui relevare volebat x solidos dabat.

Quod si non poterat, vel nolebat, terram ejus in manum regis praepositus accipiebat.

Qui ad terminum quod debebat gablum non reddebat decem solidis emendabatur.

Si quis civitatem comburebat, de cujus domo exibat emendabatur per tres oras denariorum, & suo propinquiore vicino dabat duos solidos. Omnium harum forisfacturarum duae partes erant regis & tertia comitis.

Si sine licentia regis ad portum civitatis naves venirent, vel a portu recederent, de unoquoque homine qui in navibus esset xl solidos habebat rex & comes.

Si citra pacem regis & super ejus prohibitionem navis, adveniret, tam ipsam quam homines, cum omnibus quae ibi erant, habebat rex & comes.

¹ Cap. 31. apud Lambard. sed depravate uti (id genus alia) habentur haec apud Rog. de Hoved. part. 2. pag. 666. Ed. Fr.

Si vero cum pace & licentia regis venisset, qui in ea erant quiete vendebant quae habebant. Sed cum discederent, IV denarios de unoquoque *leſſy* habebant rex & *comes*. Si habentibus martinas pelles juberet praepositus regis ut nullibi venderent donec sibi prius ostensas compararet, qui hoc non observabant XL solidis emendabant.

Vir sive mulier falsam mensuram in civitate faciens, deprehensus, IV solidis emendabat. Similiter malam cervisiam faciens, aut in cathedra ponebatur stercoris, aut quatuor solidos dabat praepositis.

Hanc forisfacturam accipiebant ministri regis & *comitis* in civitate in cujusvis terra fuisset, sive episcopi, sive alterius hominis. Similiter & theloneum si quis illud detinebat ultra tres noctes, XL solidis emendabat.

^k T. R. E. erant in civitate hac septem monetarii, qui dabant septem libras regi & *comiti* extra firmam, quando moneta vertebatur.

Tunc erant XII judices civitatis, & hi erant de hominibus regis & *episcopi* & *comitis*. Horum si quis de *hundret* remanebat die quo feditur sine excusatione manifesta, X solidis emendabat inter regem & *comitem*.

Ad murum civitatis & pontem reaedificandum de unaquaque hida comitatus unum hominem venire praepositus edicebat. Cujus homo non veniebat domus ejus XL solidis emendabat regi & *comiti*. Haec forisfactura extra firmam erat.

Haec civitas tunc reddebat de firma XLV libras & tres *timbreſ* pellium martinarum. *Tertia pars* erat *comitis* & duae regis.

Quando *Hugo comes* recepit non valebat nisi xxx libras: valde enim erat vastata. Ducentae & V domus minus ibi erant quam T. R. E. fuerant.

Hanc civitatem *Hundret* tenuit de *comite* pro LXX libris & una marka auri.

Ipsē habuit ad firmam, pro L libris & una marka auri, omnia placita *comitis* in comitatu & hundredis praeter *Inglefeld*.

Terra in qua est templum S. Petri, quam *Robertus de Rodelend* clamabat ad *Teinland*, sic diratiocinavit comitatus. Nunquam pertinuit ad manerium extra civitatem, sed ad burgum pertinet, & semper fuit in consuetudine regis & *comitis* sicut aliorum burgenſium.

In the laws of the ^l Confessor, we find also; *Manbote Anglorum lege, regi & archiepiscopo tres marcas de hominibus eorum propriis. Sed episcopo ejusdem comitatus & consuli & dapifero regis xx solidos.* And in *Lincolnshire*, we have consuetudines regis & *comitis* remembered in *Domesday*, which must, it seems, be referred to the Saxon times. For that book was begun and ended between the XIV and XX year of *William* the I, and comprehends among other things those ancient customs, which could not have had so late a beginning as the coming of the *Normans*. To these may be added that of *Nottinghamshire* there. *Si tainus habens fo-*

cam & sacam forisfecerit terram suam, inter regem & comitem, habent medietatem terrae ejus atque pecuniae, & legalis uxor cum legitimis haeredibus si fuerint, habent aliam medietatem.

But we conclude here this of the possessions belonging to the dignity of earls in those times of the *Saxons*, with that of the relief due to the king at their deaths, upon the heir's entry, or the hepegeate as those ages called it. *Eopley hepegeate* (say the laws of *Canutus*, or king *Knout*) *þa ƿær to gebyrge, þ ƿinbon, eahta heof ƿeoƿer geƿablobe 7 ƿeoƿer ungerablobe 7 ƿeoƿer helmær 7 iv býrnan 7 ehta ƿƿeƿa 7 ealƿra ƿela geýða. 7 ƿeoƿer ƿƿuþ 7 ƿra hund mancyr goþes.* That is, an earl's relief is eight horse, four saddled, and four unsaddled, four helms, four coats of mail, four spears, as many shields, four swords, and 200 marks of gold.

IV. The possessions of the thanes, or their tainlands, held of the king by the service of personal attendance, were at least five hides of land, if we may give credit to that Saxon^m relation of the dignities of those times. *Eþ ceopl* (so are the words) *geþeah. þ he hefte ƿullice ƿƿ hða ægeneý lande. cƿican. 7 cýcenan belhƿ. 7 bupheate. ƿecl. 7 ƿunþeote on cýrger heale. þonne ƿær he þanonþoþe ðegen ƿiðrær ƿeoþe, that is, if a churl or a country man so thrived, that he had fully five hides of his own land, a church, a kitchen, a bel-house, a borough-gate, with a seat, and any distinct office in the king's court, then was he thenceforth of equal honour or dignity with athane, or athane; or as the old Latin of it is in someⁿ copies, *ſcivillanus excreviſſet ut haberet plenarie v hidas terrae suae propriae; ecclesiam & coquinam, timpanarium, & januam & sedem & fundernotam in aula regis, deinceps erat taini lege dignus.* I cannot understand here the five hides, but for so much land held of the king by the service of that office or some military attendance. Otherwise if he had an office only, or otherwise served the king, and so were a personal thane or servant, yet he was not a feudal and honorary thane, which only is the subject here. And in the same copy where we have that *Latin* translation of the Saxon passage before-cited, occurs also among king *Aethelstan's* laws, *ſi ceoplman provehatur, ut habeat quinque hidas terrae ad utwaram regis* (that is held of the king by knights service) & *occidatur, reddentur ii millia thrymsa.* Which is as much as to say, that he was of like condition or dignity with a thane; for the *weregild* of a thane was *mm thrymsaes*, as we see before out of the printed laws of king *Aethelstan*. Hence also the nature of the V hides may be the better understood, as also by that other description of the quality of a thane among the same^o laws; *Taini lex est, ut ſit dignus reſtitutione testamenti ſui, & ut tria faciat pro terra ſua, expeditionem, burbbotam & brugbotam.* Those two last are the same that commonly occur in the Saxon reservations, by*

^k Tempore regis Edwardi, in Itinerar. Cantii pag. 500. pag. 163.

^l Cap. 12. apud Lambard. Sed videſis Hoveden. pag. 603. Ed. Fr.

^m Leges Aethelſtani in codice ms. quo uſi ſumus in bibliotheca regia ad D. Jacobi p. 143.

ⁿ Apud Lambard.

^o Ibid.

the name of *arcis pontisque constructio* or *estructio*, and with the other are together, I remember, called in some charters to the church of *Canterbury, trinoda necessitas*.

Now a hide of land regularly is, and was (as I think) as much land as might be well manured with one plough, together with pasture, meadow, and wood competent for the maintenance of that plough, and the servants of the family. I know divers of the antients make it C acres. Others ⁽²⁴⁵⁾ give otherwise a certainty to it. But doubtless it was ^p uncertain, and justly is by others called only a plough-land, or so much ^q as belongs to the tillage; whence it must of necessity be various, according to the nature of the soil, and custom of husbandry in every country. Thence is it, that in *Domesday*, such a place *geldabat pro X, XII, XX, &c. hidis*, that is, it paid after the rate of so many hides (for by hides the usual payments of subsidies and aids were in the elder times, and that which was always discharged, was often called *terra non hidata*, as the other *hidata*) but the just value of a hide that might fit the whole kingdom never appears there. And in an old court book of the ^r manor of *Cranfield*, that was of the possessions of the abbey of *Ramsey*, the homage (at a court of survey) *dicunt, quod nesciunt quot acrae faciunt virgata, quia aliqua ndo XLVIII acrae faciunt virgata, & aliquando pauciores. Quatuor virgatae faciunt hidam. Dominica non est hidata. Persona tenet terram sed nescitur quantam. Nihil inde facit domino abbat, quia est elemosyna, non est hidata, &c.* ⁽²⁴⁶⁾ Where we see as *virgata* so *hida* was uncertain. Yet in that uncertainty, the whole content of the town was counted XII hides, which yet *quantum ad regem computabatur pro decem hidis*, as the book says, and that *quatuor virgatae faciunt hidam*, and XLVIII acrae faciunt *virgata*, whence it must follow that CXCII acres, in this place, made a hide. And according to this uncertainty of yard-lands, *ox-gangs*, *selions*, acres, (for they are all to be reckoned also, according to the several customs of countries) hides were of an uncertain quantity. Divers other testimonies might be brought to this purpose. The rest of the particulars that concerns a churle becoming a *thane* in that *Saxon* piece, describes only (as I conceive) the state or fashion of an eminent lord of that time, in having a church for his family and tenants, in keeping a court for them (which may well be meant in the *buphgate* *recl* or *town gate with a seat*) and in keeping a house or entertainment competent to that dignity, which may be understood in the *cycenan* and *belhur* or *kitchen* and *bell-house*. The bell-house may denote the hall, which was the place of ordinary diet and entertainment in the houses of lords. It may well so signify, if the *Saxons* used the like reason in imposing the name on the lord's hall, as some say, the *Italian*, *Spanish*, and *French* have done in calling it *tinello*, *tinelo*, and *tinell*, which in our laws ^t al-

so is retained in *tinell le roy*, for the king's hall. They would have it therefore so named, because the *tin* or tingling of a bell at the times of dinner and supper in it were signified by it. Thus expressly one *Colade Benevento* in his treatise *del governo della corte d'un signore in Roma*, printed many years since in *Rome*. *Il tinello* (saith ^u he) *non men corrotto a tempi nostri ne fatti che nel nome, fui così da maggior nostri chiamato per diminutione (come io mi stimo) da tinno voce latina* (he means, I think, the verb *tinnio*) *quasi tinello, cio è picciol suono che così si dice in quella lingua il suono de metalli; per cioche al sono d'una picciola campana (come ogniun sia) si corre a tinello, il quale è un luogo (perche non lo sapesse) dove in commune si va a mangiare da cortigiani come al refettorio da frati. Et era all' hora di tanto honore il mangiare in tinello quanto e hoggi riputato cosa vile & dishorrevole*. But in the law of the reliefs payable after the death of *thanes*, we have a distinction of them into several ranks, and that according to their tenures, it seems, and possessions: *Sýþþan Lýnnges þegener heþegeate ðe him nýfste. fýrðan* (the words of ^x *Canutus* his laws) *iv hoþr. tpa gerabelode. 7 tpa ungerabelode. 7 tpa rypub. 7 iv rpepu. 7 tpa feala rýðba. 7 helm. 7 býpnan. 7 fýrtig mancef golber. Anð meðempa ðegna. hoþr. 7 hýr gepaða. 7 hýr ræpen. opþe hýr halfrange on þertreþan. 7 on Mýrcan tpa punð. 7 on East Englan tpa punð. 7 Lýnnges ðegner heþegeata innð mð Denum ðe hýr focene hæbbe. iv punð. 7 tpe he to þam cýninge rypðop cýððe hæbbe. tpa hoþr. an gerabelod 7 oþer ungerabelod. 7 i. rypub. 7 tpa rpepa. 7 tpa rýðba. 7 fýrtig mancef golber. 7 je ðe læsse hæbbe 7 læsse mage. rý ii. punð. that is, the heregeat or relief, or *relevatio*. (as the old translation turns it) *of the king's thane, that is next him, is iv horses, two saddled, two unsaddled; two swords, iv spears, as many shields, one helmet, one coat of mail, and fifty marks of gold. Of a meðempa ðegna, or middle thane* (the old Latin in some copies ^y calls him *mediocris homo quem Angli dicunt* *Lerþeþe*, which is corruptly *leslegend* in the published forest laws ^z of *Canutus*; and in the translation in *Brampton's* history, he is called only *mediocris thanus*) *his horse and furniture, and arms, or, according to the custom of Westsex, his half-ange, and in Mercland two pounds, and East-England two pounds. And of the king's thane that hath his soke, by the Danish laws, iv pounds. And if he be nearer the king, two horses, one saddled and the other unsaddled, and a sword and two spears, and two shields, and fifty marks of gold, and if he have less, and be not able, two pounds. And here we see the reliefs of thanes payable variously according to the laws of Westsex, East-England, Mercland, and the Danes. And yet also other differences there were in them, as Domesday witnesses in the customs of Berkshire especially, Nottinghamshire, and Yorkshire, which though they were returned into the Exchequer about twenty years after the conquest (for then was Domesday ^a finished)**

^p Vide Coke relat. part. 9. fol. 124.

^q Vide Matth. Paris, pag. 14. ed. Lond. &c.

^r Videfis cod. Domesday ms. in Hantefcyre.

^s Temp. Hen. III. ms. in biblioth. Cotton. & penes rememorator. regis in Scaccario.

^t 13 Rich. II. cap. 3.

^u Cap. 19.

^v Leg. Canut. reg. cap. 69.

^w Huntingdon. lib. 6. ms. quem olim vidi penes Guil. Crashaw.

^x Constit. forest. § 1, & 2.

^y Videfis proclamationem ad Edmerum, pag. 4. & 5.

yet I presume, were so ancient, that they were provincial laws or customs of those countries also in the Saxon times. For *Berkshire* thanes; *tainus vel miles regis dominicus* (so are the words of *Domesday*) *moriens pro relevamento dimittebat regi omnia arma sua & equum unicum cum sella & alium sine sella. Quod si essent ei canes vel accipitres, praesentabantur regi, ut, si vellet, acciperet.* And in *Nottinghamshire*, *tainus habens plusquam quatuor maneria non dat terrae relevationem nisi regi tantum VIII. libras, si habet sex tantum vel minus, vicecomiti dat relevationem trium marcarum argenti ubicunque manet in burgo vel extra.* And in *Yorkshire*, *relevationem terrarum dant solummodo regi illi taini qui plusquam sexta maneria habuerint. Relevatio est VIII. librae. Si vero sex tantum maneria vel minus habuerint, vicecomiti pro relevatione dat tres marcas argenti.* *Burghenses autem Eboracae civitatis non dant relevationem.*

But of these *thanes*, those only that were feudal, and were properly called cýniger ðegeber or the king's *thanes* that were next him, that is, they that held of the king in chief by knight's service were the honorary *thanes*, and were of the same kind with them, that were after the *Normans*, honorary or parliamentary barons, and their *thainlands* only were the honorary *tainlands*, or such as were afterward parliamentary baronies. How into the place of the king's *thane* that was next him, that of baron succeeded, we shew anon, ^b where we speak of barons after the *Normans*. Now the next feudal title to the king's *thane* is in that *Saxon* law of *heþegeter* or *reliefs*, the *meþemþa ðegen* or *mediocris thainus*, as they called him, who, after the *Normans*, was often stiled a *vavasor*; a name that never was honorary here, but only feudal. And if the middle *thane* were not honorary, we cannot believe that any of the rest beneath him were so. And as the use of baron (as it is honorary) after the *Normans*, explains the nature of the king's chief *thane* in the *Saxon* times, so doth that of *vavasor* the nature of a middle *thane*. To that purpose we first note here the concurrence of the name, and then the use and nature of the title of *vavasor*. For concerning the notation of the word, we say no more than what is noted in the dignities of the empire. The concurrence of the names of middle *thane* and *vavasor*, appears by that in the *French* laws of *William* the first, where, as earl, king's *thane*, and middle *thane* succeeded one the other in the *Saxon* laws; so count, baron, and *vavasor* are used as the interpreters of them. And after the relief of a count or earl, and a baron or king's *thane*, the relief of a *vavasor* is thus ordained. *De releife* ^c *a vavasor a son lige seigneur; de it esfre quite par le cheval son piere* (so I read it) *tel qu'il avoit a jour de sa mort, e per son balbert, e per son baume, e per son escud, e per sa lance, e per s'espee. Sil fust desapeulz qu'il ne out ne cheval ne les armes, per C*

solz. And for so much as concerns the use of this title of *vavasor*, with us, I first observe here some particular testimonies of the use and continuance of it, and then add my conjecture of the nature of it, that for a middle *thane* of the *Saxons*, being the better known, we may the better also know whether any *thane* were honorary or no, beside him that is distinctly called the king's *thane*, in that *Saxon* law of reliefs.

The use and continuance of the name of *vavasor* was such, that from the *Normans*, until the time of *Henry IV.* it was a name known; but feudal only, not at all honorary. In *Domesday*, it sometimes occurs ^d as a synonymy with *liberi homines regis*. And in the laws attributed to *Henry* the first, that are yet preserved ^e in the red book, the persons that are reckoned for those that were to have place in the county court, are *episcopi, comites, vicedomini, vicarii, centenarii, aldermanni, praefecti, praepositi, barones, vavasores, tungrevii, & caeteri terrarum domini diligenter, intendentes ne malorum impunitas, aut gravium pravitas, vel iudicum subversio solita miseros lamentatione conficiant.* And under the title there *de libertate vavasorum; habeant vavasores qui liberas terras tenent placita quae ad wytam vel weram pertinent super suos homines & in suo, & super aliorum homines, si in forisfaciendo retenti vel gravati fuerint.* (²⁴⁷) Other laws also of the same king have this passage, ^f *Si modo exurgat (his) de divisione terrarum, si inter est barones meos dominicos, tractetur placitum in curia mea. Et si est inter vavasores duorum dominorum tractetur in comitatu, & hoc duello fiat nisi in eis remanserit.* And in that instrument of accord ^g between *John* earl of *Moreton*, and *William* bishop of *Ely* and chancellor to *Richard* the first; *concessum est quod episcopi, & abbates, comites, & barones, vavasores, & libere tenentes non ad voluntatem iusticiarum vel ministrorum domini regis de terris & catallis suis disfaissentur, sed iudicio curiae domini regis secundum legitimas consuetudines & assisas regni tractabuntur vel per mandatum domini regis.* Under *Henry III.* also a writ is directed to ^h the sheriff of *Wiltshire*, reciting the death of *Andrew Gifford*, who had delivered up the possession of the barony of *Funtel* in king *John's* time to *Robert of Mandevik, Robert Maudit, William Cumin*, and *William de Fontibus*, *tanquam relictis haeredibus ipsius baronis, retentis in manu sua vavasaribus spectantibus ad ipsam baroniam quae vavasariae sunt de feodo comitis de Clare*, and that the sheriff had seized the *vavasaries* into the king's hand, and therefore he was commanded by it to restore them into the hands of those heirs. And *Bracton* mentions *vavasors* in the like form as the laws of *William* the first do. Speaking first of earls, then of barons, he adds ⁱ *sunt & alii qui dicuntur vavasores, viri magnae dignitatis.* And then playing with the

^b Sect. 16.^c Leg. Will. I. cap. 24, in not. ad Edmer. pag. 180.^f Cod. ms. vet. legum. divif. cap. 8. §. 4.^g Rog. de Hoveden, pag. 700. ed. Fr.^d Ms. Suffol. § 74.^h Clauf. 4 Hen. III. part. 1. membran. 2.^e Ms. in Seacc. ex parte rem. regis.ⁱ Lib. 1. de rer.

word; *Vavafor enim nihil melius dici poterit quam vas fortitum ad valetudinem.* And the author of ^k *Fleta*; *sub regibus sunt comites & barones, duces, milites, magnates, vavafores, & alii subditi ut liberi & servi, qui omnes aetatem xii annorum ad minus habentes ferre tenentur regi fidelitatis sacramentum. Alioquin non habebunt warrantum in terra ejus remanere.* The lands that a *vavafor* held was called a *vavafory*. *Quod dicitur* (saith ^l *Bratton*) *de baronia, non est observandum in vavaforia vel aliis minoribus feodis quam baronia, quia caput non habent sicut baronia.* And that the use of it continued at least until the age of *Henry iv.* appears by that instrument touching the dissolution of the bond of obedience to king *Richard*. For whereas in *Thomas of Walsingham*, it is directed *omnibus & singulis dominis, archiepiscopis, episcopis, & praelatis, ducibus, marchionibus, & comitibus, baronibus, militibus, vasalibus quibuscunque ac caeteris hominibus*; the parliament roll ^m hath the same syllables until *militibus*, and then there follows *vasallis & valvaforibus ac caeteris hominibus*. It is used also in *Chaucer*, that lived in the same time, as a known word. Speaking of his *Frankelin*.

At sessions (saith he) was he lord and sire,
Full ofttime he was knight of the shire;
An antace and a gipsere all of like
Hung at his girdle white as morrow milke.
A sherife had he bene and a coronour
Was no where such a worthy Vavafour. (²⁴⁸)

So some copies have it. Others have *countour* for *coronour*. And, I remember, I once noted out of an old Romant also, *countour* thus rhiming to *vavafour*.

*Sage, e prince, duc e contur,
Baron, demeine vavafur.*

Now for the nature of a *vavafour*; though we perhaps may soon miss in giving an exact definition of him, yet it is plain that he was ever beneath a baron. And it seems he was in the more ancient times only a tenant by knights service, that either held of a mesne lord, and not immediately of the king, or at least of the king as of an honour or mannor, and not in chief, both which excluded him from the dignity of a baron by tenure, as all were until about the end of king *John*, which we anon shew where we speak of barons after the *Normans*. And of the same nature, I conceive, the *middle thanes* of the *Saxon* times to have been, and so no such *thanes* as were honorary, nor their *tainlands* honorary baronies. And of the several possessions belonging to those two dignities *ealdorman* or *earl*, and *thane* in the *Saxon* times, hitherto.

V. Their *jurisdiction* (which remains here to be spoken of) was exercised either in the *territories of the county*, or in the *greatest court* or *council* of the kingdom which was the parliament of that age, called the *tyen gemote* or *micel*

rynos. *Ealdormen* or *earls* had, it seems, jurisdiction in their *ealdordoms*, or *earldoms*, or the territories that denominated them; but so, that if the whole territory were the *ealdorman's* own (as in the case of *Ethelred* *ealdorman* of *Mercland* under king *Alfred*, and king *Edward* the elder, as is before shewed) then the courts held and the profits of the jurisdiction were to his own use and benefit. But if he had not the territory that denominated him, but only some particular revenue in it belonging to his dignity, then it seems his jurisdiction and courts (laying perhaps in those possessions which were his own) were held by him to the king's use and benefit, that is, he commonly supplied the immediate office which the sheriffs have regularly used to do in counties that are not *palatine*. And whereas *Ingulphus* says, that *Alfred* appointed his *justiciarii* and *vicecomites* through his counties; I understand that of such counties chiefly as belonged not to any *ealdorman*, as his possessions. For the government of other counties was sufficiently established by making *ealdormen* of them. And the *scýpagemot* (which was a court kept twice every ⁿ year, as the sheriffs turn is at this day) was held by the bishop of the diocese, and the *ealdorman*, in shires that had *ealdormen*; and by the bishops and sheriffs, in such as were committed to sheriffs that were immediate to the king. And so both the ecclesiastical and temporal laws were together given in charge to the country. And there is express testimony in king *Ethelred's* ^o laws, that the *ealdorman* or *earl* was usually a temporal judge immediate to the king. And to this purpose is that of *Asserius Menevensis*, in his life of king *Alfred*, very observable. He speaking of the administration of justice under that king, calls them who were judges immediate to the king, *comites* and *praepositi*, that is, the *ealdormen* in their *ealdordoms*, and the sheriffs or ^p high-geapeas in their shires or counties. Though according to some especial custom, grant, or provision, a sheriff also or *praepositus* in some places sat together with the *ealdorman*; as in an example anon brought out of the book of *Ramsay*. But of king *Alfred*; *Studebat is quoque* (saith *Asserius*) *in judiciis, etiam propter nobilium & ignobilium suorum utilitatem, qui saepissime in concionibus comitum & praepositorum pertinacissime inter se dissentiebant (ita ut pene nullus eorum, quicquid a comitibus & praepositis judicatum fuisset, verum esse concederet) qui pertinaci dissensione obstinatissime compulsi, regis subire judicium singuli subarabant.* And when in suits therefore that upon appeals (or as upon writs of errors) came before him from his *ealdormen* or sheriffs, he found error and injustice, which they would offer to excuse from their own ignorance, he would with sharp reprehension command them to study better and to make themselves able, or to leave their places. *Aut terrenarum potestatum mi-*

^k Lib. 1. cap. 5. §. 4. ^l Lib. 2. de acq. rer. dom. cap. 39. §. 6. & not. ad Edmer. pag. 166. & 167. Historiam nostram de decimis, cap. 14. §. 1. & leg. Canut. cap. 17. Lambard. & 12. Hen. VII. fol. 17. b.

^m Rot. parl. 1 Hen. IV. art. 52.

ⁿ Vide lib. leg. Edgar. cap. 5.

^o Leg. Ethel-

redi, cap. 6. vide item, leg. Inae, cap. 56. leg. Aluredi, cap. 33. 34. & praefat. leg. Athelstani.

^p Vide leg. Edwardi senioris, cap. 11.

nisteria quae habetis illico dimittat, aut sapientiae studiis (so Asferius reports of him) multo devotius de caetero ut studeatis impero. Quibus auditis verbis, perterriti, veluti pro maxima vindicta correcti, comites & praepositi ad aequitatis discendae studium totis viribus se vertere nitebantur, ita ut mirum in modum illiterati ab infantia comites pene omnes praepositi ac ministri literariae arti studerent, malentes insuetam disciplinam quam laboriose discere, quam potestatum ministeria dimittere. The exact form or nature of the jurisdiction of those earls or ealdormen appears not. Most parts of the state of the Saxon government are so obscure, that we can see only steps or torn relics of them, rather than so much as might give a full satisfaction. Therefore I abstain here from any further general assertion touching the jurisdiction that pertained to the dignity of their ealdormen or lords, and insert only some such cases and other testimonies of those times, as being well considered by better judgments, and compared with the published Saxon laws, may afford perhaps more certain knowledge of the true state of their jurisdiction, both voluntary and contentious, than any conclusion of mine own fancy could warrant. One Siferth of Dunham lying sick at Lindune in the isle of Ely, under king⁹ Edgar, sent for Brithnoth abbot of Ely, and divers of the monks. Aderantque ibi (saith one of the books of Ely) Aluricus de Wictham, Aethelstanus & filius suus Wine, Leovricus, Brihtelmus, Alfelmus de Redewinden, & Aedericus unus de proceribus, Aielwini alderman, & Oswaldus presbyter, & Sexferdus cum filio suo. Tum Brithnothus abbas testamentum hujus Siferthi coram uxore & eorum filia sua coramque omnibus supra memoratis fecit scribi in tribus cyrographis, coramque cunctis fecit recitari, lectumque fecit incidi, unamque partem cyrographi retinuit Siferthus, alteram autem dedit abbati, tertiam vero misit statim per praefatum Brihtelmum Aielwino alderman, qui tunc temporis degebat in Ely (he was ealdorman of East-England, whereof that was part) & petiit ab eo, ut suum testamentum ita stare concessisset, quomodo abbas illud scripserat & ordinaverat apud Lindune coram praedictorum testimonio virorum. Cum itaque Aielwinus alderman hoc audisset, & cyrographum vidisset, remisit illico ad eum Wlnothum de Stowe cum Brihtelmo, sciscitatusque est ab eo quid aut quomodo vellet de testamento suo, qui mox per eosdem renuntiavit ei, sic suum testamentum absque omni contradictione vel mutatione se velle stare, sicuti praefatus abbas illud in cyrographo posuerat. Quod ut Aielwinus alderman audivit, totum concessit ut staret sicuti ipse Siferthus testatus erat. Here we see a kind of probate of a will before the ealdorman, but observe also that this ealdorman was besides aldermannus totius Angliae. And in the same book, Aielwin alderman venit & tenit placitum cum toto hundredo, or cum iii hundredis, or the like often occurs. And in a

case wherein judgment upon default was given under king Edward, that succeeded Edgar, touching the possession of Stany, and the fishing in it, between the abbot of Ely demandant, and one Begmund de Holand, and others tenants, that had disseised the abbey, sine iudicio & sine lege civium & hundretanorum, as the same book says, venit Agelwinus alderman ad Ely, fueruntque Begmundus & alii pro hac causa vocati, & summoniti ad placitum civium & hundretanorum semel & secundo sed & multociens, nunquam vero venire volebant. Abbas tamen non ideo desisteat, sed infra urbem & extra ad placita renovabat, & saepe reiterabat hanc eandem causam, & querimoniam inde populo faciebat. Tandem veniens Agelwinus alderman ad Grantbruge, habuit ibi placitum civium & hundretanorum coram xxiv iudicibus (that number of judges is elsewhere mentioned in the like cases in the same book) subitus Chernigfield prope Heidenberge. Narravit igitur abbas palam omnibus, quomodo Begmundus & cognati praefati viduae (the kindred of one Afsen a widow there before spoken of) injuste diripuerant S. Aetheldrythae Stoney, & quod saepe fuerant summoniti pro illa causa ad placitum nec unquam venire voluerant. Tunc iudicantes statuerunt, ut abbas suam terram scilicet Stoney cum palude & piscatione habere deberet. Statuerunt etiam ut Begmundus & cognati praefati viduae suum piscem de vi annis (the servants of the abbey had formerly made a lease at will to them of the fishing, reserving the rent of MM eels) abbati solverent & persolverent, & regi forisfacturam darent. Statuerunt quoque ut si sponte sua hoc reddere nollent, captione suae pecuniae constanti iustificarentur. Praecepit itaque Agelwinus alderman ut Osketulus & Ofwi de Bere & Godere de Ely eandem terram circuissent, & abbatem super eam duxissent, & hoc totum perfectissent, qui sic fecerunt totumque sic peractum est. Here is a judgment given, and execution upon it by command of this ealdorman. Some other of like nature are in the same book, where also we have the same ealdorman's court held at another time thus expressed, magna concio erat statuta apud Witleford, & convenerunt illic Agelwinus alderman, & fratres sui Alfwoldus & Athelsius, & episcopus Afwi (he was bishop of the diocese) & Wlflad relicta Wlftani, & omnes meliores concionatores de comitatu Grantebrigiae, where a case was adjudged touching the inheritance of Swafham and Berley, within the same ealdor-dom. And in a book of Ramsey, one Alfnoth demanded certain lands in Swafham against the abbot of Ramsey, in a court where the same ealdorman together with one Adric the king's sheriff (which happened, as I conceive, by reason of some special provision, grant, or custom) sat as judges. And the whole case is thus there reported. Quidam Alfnothus filius Godwini eandem terram contra ecclesiam improbe calumniatus, fratrem Adno-

⁹ Cod. Eliens. ms. de operibus B. Adilwoldi episcopi Wintoniensis. Ex Saxonico idiomate versus in Latinum sub Henrico I.
[†] Vide supra §. 2. [‡] Ms. penes v. c. Hen. Spelmanum equitem auratum.

thum, utpotè loci ejusdem (the author means the abbey) praepositum & provisorum cum aliquot fratribus super ea responsurum apud Wendenbiri coram judicibus apparere coegit, cui foro Ailwinus aldermannus & Aedricus regis praepositi judices praesidebant. Lite igitur inchoata & rationibus hinc inde auditis, ex consilio magnatorum qui affuerunt; xxxvi barones (the word barones is used here for thanes, I think. For the author wrote about the time of king Stephen, when *baro* was in use, as it was not in the Saxon times) de amicis utriusque partis pari numero electos ipsi judices constituerunt, qui causam judiciali inter eos sententia dirimerent, quibus ad decernendum exeuntibus, & rem diutius examinantibus, interim idem Alfnothus coram judicibus fratrem Aedthum interrogavit, & Alfwinum monachum qui cum eo venerat, quamratione, & cujus donatoris nomine eandem terram possedissent. Cui frater AEdnothus constanti voce respondens; Illustres viri qui eam quiete & absque omni calumnia tenerat, & libere donare poterat, iusto merae donationis titulo se eam possedisse affirmavit. Quem cum calumniator interrogaret si assertionis suae veritatem corporalis praestationis sacramenti cum praefato monacho socio suo probare auderet, ut omnis deinceps omnino controversia terminaretur, frater AEdnothus de puritate conscientiae securus consensit. Omnibus itaque sententiam approbantibus, solus aldermannus vir probatae prudentiae & discretionis, viros professionis monasticae coram potestate seculari iuramentum praestare debere abjudicans, prorupit in medium se Ramefeienfis ecclesiae advocatum, se possessionum ejus tutorem, se fraternae donationis (for the conveyance under which the abbot claimed, was made by Alfwold brother to this caldorman) & fidei testem, ad se hujus juratoriae cautionis exhibitionem pertinere allegans. Videntes igitur omnes constantiam viri, & fidelitatem cognoscentes, propter reverentiam tam sublimis personae, & propter clarescentiam veritatis iudicio praestandae juracionis necessitatem exemerunt; praefati Alfnothi pro falsa calumnia & religiosorum virorum vexatione injusta, universa tenura & omnibus catallis regis misericordiae adjudicatis. Sed Aedrico regis praeposito & caeteris qui aderant magnatis operam dantibus, idem Alfnothus successum suorum dispendium providens, si tanti viri indignationem erga se consensescere permisisset, eadem terra publice abjurata, & fide coram omnibus interposita, quod nunquam ulterius aliquid calumniae super ea praesumeret machinari, taliter ejus gratiam sibi conciliasse gavisus est. The complaints also of those beyond Humber against their earl Tosti, under the Confessor, belong to this place. Pro immensitate tributi quod injuste acceperat, eum exlegaverunt, as Florentius^c says, or utlageben heopa eopl Tosti (as we read in some Saxon^d Annals) or outlawed their earl Tosti. And they professed se nullius ducis

ferociam pati posse; a majoribus didicisse, aut libertatem, aut mortem, as^e William of Malmesbury, in whom we have comitatum regere to express their jurisdiction in the county. And more particulars are obvious in him, and in other published writers of the affairs of that time, to this purpose. But we omit them, and conclude here with some other testimonies which are not publicly extant. In the life of saint Cutbert, written^f about Henry the first, the criminal jurisdiction of earl Tosti is thus remembered. Dum Tostius comes ille cunctis notissimus in partibus Northamimbris comitatum administraret, quidam pravæ actionis vir nomine Aldan Hamal ab eo comprehensus compedibus artissime constringitur. Multa enim mala fecerat, furtis atque rapinis; homicidiis atque incendiis comitem saepe offenderat, nec unquam prius comprehendendi poterat, cujus parentes & amici compassionis affectu permoti, multa pro eo ne capite plegeretur comiti offerebant, & plura promittebant; and the author goes on with this Hamal's taking sanctuary at saint Cutbert's shrine. Among the old Saxon customs^g of Yorkshire also; pax a comite data & infracta a quolibet ipsi comiti per iv hundredz emendatur; unumquodque viii libris. Si quis secundum legem exulatus fuerit, nullus nisi rex ei pacem dabit. Si vero comes vel vicecomes aliquem de regione foras miserint, ipsi eum revocare & ei pacem dare possunt. And of the jurisdiction of the Saxon earls or ealdormen in their counties, hitherto. That of the thanes, we may conceive to have been of like nature in their tainlands, to that of the jurisdiction of lords in their manors. And what else an earl's interest was in the jurisdiction of the county, may be partly collected from that where we see xxxvi barons (as the writers since the Norman times often call thanes) appointed as delegate judges in that case between Alfnoth and the abbot of Ramsey, before cited, in caldorman Ailwin's county court under king Edgar.

VI. That of their jurisdiction in the greatest court or council, or the witenagemote, consisted either in a deliberative power, which concerned their assenting to new laws, and advising in matter of state, or in a judicial, which was, of giving judgment upon suits or complaints in the same court. For the first; king Ine (of West-sax) about dccxi made his laws mis gepeahste 7 mis læpe of his bishops 7 mis eallum minum ealdermannum. 7 þam yðbertan picum minne þeode. 7 eac mycelpe geyomnunge gøber þeopena, which the old translation renders thus, exhortatione^a & doctrina, of the bishops, & omnium aldermannorum meorum & seniorum sapientum regni mei, multaque congregatione servorum Dei. To this place may belong that of king Ethelbert his ordaining, decreta^b judiciorum juxta exempla Romanorum cum consilio sapientum. And when Edwin king of Northumberland was persuaded to become a christian, he consulted cum

^c Sub an. 1065.^d Ms. an. 1064. anonymi.^e De gest. reg. lib. 2. pag. 83. ed. Franc. & vide leg. Edwardi Confess. cap. 12.^f Ms. anonymus, vide, si placet, Florent. Wigorn. anno 1051. ubi de Godwino comite, &c.^g In Domes-^a J. Brampton hist. Journall. ms.^b Bed. Hist. Eccles. lib. 2. cap. 9.

principibus & consiliariis suis, or with his ealdormannum *þætum* as king *Alfred* turns those words of *Bede*. And then *habito cum sapientibus consilio*, saith he, every one of them gave his voice severally for the bringing of christianity into the kingdom. More such testimonies are in the *Saxon* laws that are published. And *Cynewlf* king of *Wessex* writes^d to *Lullus* bishop of *Mentz*, *una cum episcopis meis necnon cum caterva satraparum*, touching matter of religion in his kingdom, where *satrapae* signifies, it seems, the lay dignities, as *proceres & optimates* often doth. So when under *Ethelulph* king of *Wessex*, that grant of tithe was made to the church in a *þitena-gemote* or parliament held at *Winchester* in *DCCLV*, it was done *praesentibus & subscribentibus archiepiscopis & episcopis Angliae universis, necnon Beorredo rege Merciae & Edmundo Eastanglorum rege, abbatum, & abbatissarum, ducum, comitum, procerum totius terrae, aliorumque fidelium infinita multitudine qui omnes regium chirographum laudaverunt. Dignitates vero sua nomina subscripserunt*, as *Ingulphus* his words are. And under king *Eldred* in *DCCCXLVIII*, the same author says that, *In festo nativitatis B. Mariae, universi magnates regni per regium edictum summoniti, tam archiepiscopi & episcopi, ac abbates, quam caeteri totius regni proceres & optimates Londoniis convenerant ad tractandum de negotiis publicis totius regni*. Where the summoning of a *þitena-gemote* or parliament of that time is also expressly, we see, remembered. Other passages occur in the stories of those ages to this purpose.

Their judicial power in those *þitena-gemotes* may be observed especially in these two cases; the first of a civil proceeding there (and some other such civil proceedings are yet extant) the other of a criminal. That of the civil proceeding was under King *Eldred*, son to *Edgar*. One *Leoffi* had bought lands in the isle of *Ely*, of *Adebold* bishop of *Winchester*, and not only denied to pay for them, but also disseised the bishop of three manors *Burch*, *Undeles* and *Kateringes*, which the bishop recovered by judgment given by the ealdormen and *thanes* in the *witena-gemote*. So I understand this report of the case in an^e ancient book of *Ely*. "Edictur placitum apud *Londoniam*, quo dum duces, principes, satrapae, rethores & causidici ex omni parte confluerant, beatus *AEdelwoldus* praefatum *Leoffium* in jus protulit, & coram cunctis suam causam & injuriam ac rapinam quam ipse *Leoffius* intulerat sanctae ecclesiae ex ordine patefecit. Qua re bene & rite ac aperte ab omnibus discussa, omnes Deo & beato *AEthelwoldo* per iudicium reddiderunt *Burch* & *Undelas* & *Kateringes*. Judicaverunt etiam ut *Leoffius* episcopo totum dampnum suum suppleret & mundam^f suam am redderet, de rapina vero regis forisfacturam emendaret dato pretio genealogiae suae. Post haec infra octavum diem convenerunt

" iterum ad *Northamtune*, & congregata ibi tota provincia sive vicecomitatu, coram cunctis iterum causam supradictam patefecerunt. Quae patefacta ac declarata ut praedictum erat apud *Londoniam*, judicaverunt & isti apud *Northamtune*. Quo facto omnis populus cum iurejurando in Christi cruce reddiderunt episcopo quae sua erant, scilicet *Burch*, & *Undelas* & *Kateringes*."

The case of criminal proceeding, is that against earl *Godwin*. He having had a tryal before the lords, under king *Hardecnut* (coram proceribus regni licet falso se purgarat, saith^h *Brampton*) touching the death of *Alfred*, son to king *Ethelred*, and brother to him that was afterward *Edward* the confessor, had fled out of *England*; and that, as it seems, upon some judgment of banishment, orⁱ at least of an outlawry given against him, and that also in a *þitena-gemote* or parliament. And upon his return, with hope of *Edward* the confessor's favour, he solicited the lords to intercede for him with the king. In the time of his return the *þitena-gemote* or the parliament sate at *London*. *Rex & omnes regni magnates ad parliamentum tunc fuerant*, as *Brampton's*^k words are that relates it. And they super hoc (saith he) consilio inter eos deliberato ipsum coram rege pro gratia obtinenda secum duxerunt, sed statim cum rex eum intuitus esset, de proditione & morte *Alfredi* fratris sui ipsum appellavit in haec verba. Proditor *Godwine*, ego te appello de morte *Alfredi* fratris mei quem prodicionaliter occidisti. Tum *Godwinus excusando respondit*, domine mi rex salva reverentia & gratia vestra, pace, & dominatione, fratrem vestrum nunquam prodidi nec occidi; unde super hoc pono me in consideratione curiae vestrae. Tunc dixit rex, clarissimi domini comites & barones terrae (where barones denotes *thanes*) qui estis homines mei ligii modo hic congregati & appellum meum respondumque *Godwini* audistis; volo quod inter nos in ista appellatione rectum iudicium decernatis & debitam iustitiam faciatis. Comitibus vero & baronibus super hoc adinvicem tractantibus, quidam inter eos iusto iudicio faciendo diversimodo sentiebant. Alii enim dicebant, quod nunquam per homagium, servitium, seu fidelitatem *Godwinus* regi extitit alligatus & ideo proditor suus non fuit, & quod ipsum etiam manibus suis non occiderat. Alii vero dixerunt quod comes, nec baro, nec aliquis regi subditus^l bellum contra regem in appellatione sua de lege potest vadiare, sed in toto ponere in misericordia sua & emendas sibi offerre competentes. Tunc *Leofricus* consul *Cestriae*, probus homo quoad Deum & seculum, dixit; Comes, inquit, *Godwinus*, post regem est homo melioris parentelae totius Angliae, & dedicere non potest quin per consilium suum *Alfredus* frater regis interemptus fuit, unde pro me considero, quod ipsemet & filius suus, & nos omnes XII comites qui amici & consanguinei sui sumus, coram rege humiliter procedamus, onerati cum tanto auro

^e Ibid. lib. 2. cap. 13.

^f Ms. de operibus B. Edelwoldi episcopi.

^h Ms. hist. Journal. pag. 78.

^d Bonifac. Mog. epist. 112.

ⁱ Videlicet Flor. Wigorn. anni 1051.

^e Vide ad extremum voluminis satis grandis de vit. SS. ms. in bibl. Saxonice pax dicitur. Sed & satisfactio, ut hic, ni fallor, interpretatur.

^k Ibid. pag. 77. b.

^l Bataille, or single combat.

Et argento quantum inter brachia sua quilibet nostrum poterit bajulare, illud sibi pro suo transgressu offerendo & suppliciter deprecando. Et ipse malevolentiam suam rancorem & iram comiti condonet, & acceptis homagio suo & fidelitate, terras suas sibi integre restituat & retradat. Illi autem omnes, sub ista forma thesauro se onerantes, & ad regem accedentes seriem & modum considerationis eorum sibi demonstrabant; quorum considerationi rex contradicere nolens, quicquid judicaverant per omnia ratificavit. The circumstances that belong to this case are variously expressed in the published stories of *William of Malmesbury*, *Huntingdon*, *Hoveden*, *Florentius* and others. But it seems by *Florentius*, that this was in the *concilium*, as he calls it, or the *penagemoete* held in MLII or the IX year of the Confessor. For then, he says, was the earl reconciled to the king's favour in that court, though neither he nor any other relate this proceeding as *Brampton* doth. What may perhaps be expected here touching the quantity of earldoms and baronies about the end of the Saxon times, out of the *modus tenendi parliamentum*, is anon added with a further consideration upon it, where we speak of ^m barons.

VII. Having thus gone through the dignities of *ealdorman*, or *earl*, and *thane*, which were honorary and feudal in the Saxon times, we come to the titles of *earl* and *baron*, as they have succeeded them, and be in use with us since the coming of the *Normans*. And first of the title of *earl* or *comes*. For now *comes* only, literally translates our title of *earl*. And since the *Normans*, it is very rare, if we find at all, but I think we find not at all, the title of an earl, as it is a peculiar title, translated in any writer or otherwise by any of those other words which were equivalent for *ealdorman* and *earl* in the Saxon times, besides those of *comes*, *consul* and *dux*. But those two *consul* and *dux* long since grew out of use. *Consul* is often used for *earl* in the time of the first age of the Norman kings, in *William of Malmesbury*, *Huntingdon*, *Hoveden*, and some such more. But about king *Stephen*, this kind of use of that word ended. Only ⁿ *Bracton* that wrote under *Henry the III*, says indeed, that *comites dici possunt consules a consulendo*. *Dux* occurs but rarely for any of our earls, since the *Normans*. *William of Malmesbury* indeed says, that *Walker* bishop of *Durham*, under *William the I*, was ^o *dux pariter provinciae & episcopus*. (²⁴⁹) But *dux provinciae* there may perhaps rather denote *sheriff of Northumberland* than *earl*, whereof more hereafter. And the same monk in his relation of *William the II* his expostulation with *Odo* earl of *Kent*, *Roger of Montgomery* earl of *Arun-del*, and others that rebelled against him, makes him say, that he was very willing they should have all reasonable satisfaction in whatsoever they would demand; only he wished them that

they should take heed that they brought not his father's judgment into question. *Quod si de se putaverint aspernandum, de seipsis caveant exemplum*. Idem enim se regem qui illos duces fecerat. And to this purpose might some passages be remembered out of ^a *Huntingdon* and *Hoveden*, where *Robert* earl of *Glocester* (son to *Henry the I*) is sometimes called *dux*, as he is also by *Geoffrey of Monmouth* in his epistle dedicatory to him. But this is not thus used (as far as I have observed) by any that have written since that remoter age. Neither find I the title of *dux* or *consul* in any legal record or instrument for an *English* earl, since the coming of the *Normans*. But always *comes*, in those kind of testimonies, interpret it. And till about *Richard the I*'s time, it was most frequent for the earls, to use the addition of *comes* to their christian names without their shires, as *Alanus comes*, *Rogerus comes*, *Hugo comes*, and such more, which we see both in *Domesday*, and in many charters of that age. *William the I*, after his victory against king *Harold*, and the *English* earls and *thanes* that took part with *Harold*, (whence it fell out that they forfeited their estates to king *William*, that pretended at least, by the just titles both of gift and inheritance, a right to the crown of *England*) gave most of the earldoms and baronies, or *tainlands* to his *Normans*, though some also to the *English*, and to such as had right derived from the *English*, that were earls in the Saxon times; as we see in that example of *Gospatric* earl of *Northumberland* before ^r cited. But so large was his bounty towards his *Normans*, that (as *Ingulphus* says who lived in court with him) *comitatus & baronias, episcopatus, & praelatus totius terrae suis Normannis rex distribuit. Et vix aliquem Anglicum ad honoris statum, vel alicujus domini principatum ascendere permittit*.

The creations and the nature of our earls have been various since that time. But before we come further to those creations and nature, the opinion or fancy of an age or two after the coming of the *Normans*, touching the name of *comes* with us is observable. An opinion was much received in those ages, that the reason why *comes* expressed an earl, was because he was *comes & socius fisco in percipiendis*, that is, because he had a third part of the profits of the pleas of the county paid him by the sheriff, the other two going to the exchequer for the king; in such a sense as it is used in that of *Cicero*, ^r *socius atque comes tum honoris tum etiam calamitatis*. This we find in that dialogue of *Scaccario* attributed to ^r *Gervasius Tiliburienfis*, that lived under *Henry the II*. *Comes est, (saith he) qui tertiam partem & portionem eorum qui de placitis proveniunt in comitatu quolibet, percipit. Summa namque illa quae nomine firmæ requiritur a vicecomite, tota non exurgit ex fundorum redditibus, sed ex magna parte de placitis provenit, & horum tertiam partem comes percipit, qui ideo sic dicitur, quia fisco socius est & comes in percipiendis*. So in

^m §. XXVI.

ⁿ De rer. divis. lib. 1. cap. 8. §. 2.

^o De Gest. Pontif. lib. 3.

^p Idem de gest. reg. lib. 4. pag.

120. ed. Fr.

^q Hist. lib. 4. pag. 390. & 391. & *Hoveden Annal*. pag. 485. ed. Fr.

^r §. III.

^r Orat. pro Sylla.

^s Ms.

penes camerarios scaccarii.

an ancient book ^u of *Battel* abbey written about king *Stephen*; it is reported, that *William* the first gave the manor of *Wy* in *Kent* to that abbey, *cum omnibus appenditiis suis septem fwillingarum*, id est, *hidarum*, ex sua dominica corona, ita liberum & quietum, sicut ipse liberius & quietius tenuit, vel ut rex dare potuit: and that the dignity of that manor was such, ut cum suo hundredo, viginti duobus hundredis & dimidio ad socnam illius pertinentibus praeesset, de quibus omnibus quotiens ad comitatus, vel ad alias consuetudinales collectiones convenire debent, vicecomes de *Chent*, praeposito de *Wy*, vel ministro ejus, loco & termino designato literis suis sigillatis mandare debet, & ^x ipse deinde consuetudinaliter summonere. Quibus collectis, de omnibus placitis & forisfacturis praedictorum hundredorum praepositus de *Wy* vel minister ejus vadimonia acciperet, & duos denarios similiter. That is, the two parts of the profits of the pleas of the county court, which was given by the king to the abbey; the third part being at the time of the gift in *Odo* bishop of *Bayeux*, and earl of *Kent*. For consuetudinaliter (says the book) per totam Angliam mos antiquitus pro lege inoleverat, comites provinciarum tertium denarium sibi obtinere. And then; inde enim comites dicebantur. Unde quia tunc episcopo *Bajocensi* *Odoni*, fratri scilicet suo, rex *Cantiae* comitatum totum dederat liberum & concesserat, idcirco ecclesiae suae de *Bello* duos quos ipse habebat in dominio suo denarios dedit. Tertio ab episcopo, cui comitatus cesserat, retento. And sometimes in the old creations (as appears anon more largely) the third penny is granted with this immediate clause, unde comes est, and sometimes, sicut comes habere debet in comitatu suo, as if also the counsellor, that drew the patents, had been possessed of the like opinion for the reason of the name. It is true, that this third penny did belong to divers ancient earls since the *Normans*. And somewhat is before shewed for the third part of profits belonging to them, in the *Saxon* times. We see here the earl of *Kent* had it under *William* the first. After, the earls of *Arundel*, of *Oxford*, of *Essex*, of *Norfolk*, of *Devonshire*, and some others likewise antiently had it. And sometimes this third part was collected by another, appointed by the earl to wait on the sheriffs court to receive it, as we see by that close writ of *Henry* III. to the sheriffs of *Lincoln*, in the behalf of *Randal* earl of *Chester* and *Lincoln*, commanding him, that he should receive such a clerk as the earl should authorize by his letters, ad eundem tecum per comitatum *Lincolniae*, & ad recipiendum tertium denarium de placitis comitatus ejusdem nomine comitis *Lincolniae*, ad opus ipsius comitis, sicut eidem illum tertium denarium concessimus. But for the most part, it was reduced to an annual certainty, and was payed sometimes by the sheriff out of the farm of the ^z county, some-

times by *liberate*, out of the exchequer. As the earl of *Norfolk* from those elder times till the thirtieth of ^a *Edward* the first, had xxxviii pounds, vi shillings, viii pence, ut pro tertio denario comitatus *Norfol.* nomine comitis ejusdem comitatus. And as the earls of *Arundel* have had xx marks yearly from ancient time, ut pro tertio denario comitatus *Suffex*, so some other earls had the like yearly certainty, as we see in the pipe rolls of *Henry* II. and some of his successors. And that of the earl of *Lincoln* became to be ascertained ^b to xx pound, not long after that close writ touching the collection of it. But although some earls thus were partakers or socii or comites with the king in taking the third part, yet without doubt that fancy of fetching the reason of their title of comes from this partaking, was nothing but a gross mistaking. Why then were those earls called comites also that had not this third part? For divers had it not. Non omnes comites ista percipiunt (saith an old ^c author) Sed hi quibus rex haereditario aut personaliter concessit. And so also says that author of the dialogue de scaccario. ⁽²⁵⁰⁾ Earls also that had counties palatine, had the whole profits of their counties: whence then were they stiled comites? And besides also, this title of comes was given to the earls among other Latin names in the *Saxon* times, and that many ages before we find any memory of this third part, and so was, I doubt not, brought first no otherwise into use in *England*, than it was in other countries from the example of the *Romans* in the empire. But that fancy touching the word comes, began, as far as I have yet observed, about the time of *Henry* II. And after king *John* I find no memory of the continuance of it. Until his time the charters of creation or liveries of earldoms sometimes have that, unde comes est, with such reference to the tertius denarius, as may persuade us that the fancy continued then. But good authors of those ancient times with us, derive the title of comes no otherwise than the writers of other nations. *Johannes* ^d *Sarisburyensis*, that wrote here under king *Henry* II. says, that comites a societatis participatione dici quisquis ignorat, ignarus est litterarum quas literalis institutio primas tradere consuevit. And *Bracton*, that lived about the end of *Henry* III. speaking of comites in general, but having his eye, doubtless, more especially upon those of his own country, well says that they are called ^e comites, quia a comitatu sive a societate nomen sumpserunt; qui etiam dici possunt consules, a consulendo. Reges enim tales sibi associant ad consulendum & regendum populum Dei, ordinantes eos in magno honore & potestate, & nomine, quando accingunt eos gladiis, i. e. ringis gladiatorum. Ringae enim dicuntur, ex eo quod renes gyraunt & circumdant, & unde dicitur, accingere gladio tuo, &c. Et ringae cingunt renes talium, ut custodiant se ab incestu luxuriae, quia luxuriosi & incestuosi Deo

^u Ms. de situ ecclesiae Belli.

^x Ipsum.

^y Claus. 2 Hen. III. memb. 9.

^z Videfis rot. liberate 2 Joan. I. memb. 3.

claus. 2 Hen. III. m. 8. claus. 4 Ed. II. m. 20, &c.

^a Rot. parl. 3 Hen. VI. art. 1.

^b Pat. 17 Hen. III. m. 9. n. 35, & videfis

claus. 4. Ed. II. m. 20.

^c Apud Camd. Brit. pag. 120. quin vide item pag. 151.

^d Epist. 263.

^e De rer. divif. lib. I. cap.

8. §. 2, 3, & 4. & lib. 2. de acquir. rer. dom. cap. 16. §. 3.

sunt abominabiles. Gladius autem significat defensionem regni & patriae. But of the nature of this title more particularly.

VIII. The title of earl, since the time of the Normans, is either local or personal. Local we call that which is denominated from any county or other territory. As earl of *Chester*, of *Arun- del*, of *Kent*, and the like. Personal, that which hath its being in some great office only, as in that of earl marshal. The local title is either in earls palatine that are local, or in them that are not palatine. And of all these in their order; and first of earls palatine that are local. But we omit here the primary deduction of the name palatine, as it hath relation to a county. It was received here doubtless out of the use of the empire and *France*, and in the like notions as it had in that use; as also the personal title of palatine, as we find it originally in the laws of the old empire, and have before declared it, was antiently, in *England*, attributed by some to such earls as had great offices in court, whereof more anon, where we speak of the personal title of earl. The local earls palatine were of the same nature with those of the *Saxon* time, that had both their earldoms to their own use, and also, under the king, all regal jurisdiction, or *merum & mixtum imperium*, inasmuch as that the king's writ of ordinary justice did not run there. Such was *Ethel- dred*, ealdorman of *Mercland* under king *Alfred*, and his son king *Edward*. For although the name of palatine be not found with us in the *Saxon* times, yet the sense and substance of it was fully in that earldom. For to be earl palatine, or *count de palais*, or *count paleis* (as they are sometimes in our law books called) was to have the title of earl, or the seisin of a county or earldom, and *regalem potestatem in omnibus*, under the king, as *Bracton* well expresses it, where he speaks of granting pardons to felons. *De felone aut probatore nullus prisonam* (saith he) *habere poterit, nec de eo placitum habere nisi ipse dominus rex, cum nullus alius ei possit vitam concedere vel membra. Et haec vera sunt nisi sit aliquis in regno qui regalem habeat potestatem in omnibus, sicut sunt comites paleys* (so we must read; for the word *civitates* interferred here in the print is superfluous, and not *Bracton's*, as his good copies shew us) *salvo dominio domino regi sicut principi, vel si sit aliquis qui de concessione domini regis talem habeat libertatem.* What alteration the later ages made in the jurisdiction of counts palatine, may be most especially seen in the statute of *xxvii Henry* VIII. by which their power of granting pardons, of making writs in their own names, and the like are taken from them.

The most eminent to whom this title is attributed, is the earl of *Chester*. And (as it is commonly said) that earldom was first given, with regal jurisdiction, by *William* the first to *Hugh*

Lupus, as they call him, or *Hugh d' Auranches*; or *de Abrincis*, as he is stiled in *Ordericus Vitalis*. But *Ordericus* says expressly, that king *William* the first gave the earldom to one *Gherbod* a *Flemming*, and afterward (while *Gherbod* was detained a prisoner in *Flanders*) he created *Hugh d' Auranches* earl of it. And if we might rely upon the indifferency of his expression, it seems the earldom was no otherwise in that *Gherbod* than it was in earl *Hugh*. For he^h says first, that *Cestram & comitatum ejus* *Gherbodo* *Flandrensi jamdudum dederat, qui magna & diffilia tam ab Anglis quam a Gallis adversantibus pertulerat.* And then speaking of his being taken and kept as a prisoner, *interea rex Cestrensem consulatum Hugoni de Abrincis filio Richardi cognomento Goz concessit, qui cum Roberto de Malo passu aliisque proceribus feris multum Guallorum sanguinem effudit.* What was given to earl *Hugh*, it seems, he means *Gherbod* also had before him. What special rights the earl's there had before the coming of the Normans, may be observed out of that which is before transcribed out of *Domesday*,ⁱ concerning the earls third penny there. But earl *Hugh* had the county of *Cheshire* given to him and his heirs, *adeo liberam ad gladium sicut ipse rex totam tenebat Angliam ad coronam suam*, as the words of an old^k author are. Yet by this grant, the king's signiory of the lands of the bishoprick, it seems, passed not to him. For in *Domesday*, that was written in the time of this earl, we read that in *Cestresye tenet episcopus ejusdem civitatis de rege quod ad suum pertinet episcopatum. Totam reliquam terram comitatus tenet Hugo comes de rege.* But the regal jurisdiction that followed the grant made to earl *Hugh*, was such, that the earls had their courts both of criminal and civil justice, their barons also as their great council,⁽²⁵¹⁾ and every of these barons had *curiam*^l *suam liberam de omnibus placitis & querelis in curia comitis motis, exceptis placitis ad gladium ejus pertinentibus.* Where his *jus gladii*, or *dignitas gladii* is expressed; as also in that of the county of *Flint*; *comitatus Flint in pertinet ad gladium Cestriae.* And *Henry Bradshaw*, a monk of saint *Werburgis* in *Chester*, about the beginning of *Henry* VIII.ⁿ speaking of this earl *Hugh*, and of his dignity in the earldom, says, that to him

—— the king gave for his inheritance
The countie of Cheshiere, with the appurtinance,
By victorie to winne the foresaid earldome,
Freely to governe it as by conquest right;
Made a sure charter to him and his succession
By the sword of dignitie, to hold it with might.
And to call a parliament to his will and sight,
To ordze his subjects after true justice;
As a prepotent prince, and statutes to devise.

And to this day, the county palatine of *Chester* (it being always preserved in the crown as a county palatine, when there is no prince of

^f De corona, lib. 3, cap. 8. §. 4.
idem pene apud Camden. Brit. pag. 464.

^g Cap. 24.

^h Hist. ecclesiast. lib. 4, pag. 522. an. 1070.

ⁱ Rot. inflex. pat. 18 Hen. VI. part. 2. membr. 34.

^k In vita sanctae Werburgae, cap. 16.

^l §. 3.

^m Ms. &c.

ⁿ Antiq. schedae apud

Wales; and it is given to the prince of *Wales* when he is created) hath had chamberlains who supply the place of chancellor, justices before whom the causes, that of their nature should otherwise belong respectively to the king's bench and common pleas, are triable; a baron of the exchequer, a sheriff, and other officers, proportionably to those of the crown at *Westminster*.

But although the county be frequently called a county palatine, as well in our laws as in common language, (or *comitatus palatinus*, or *palatinus*, or *palantine*, or *counterpaleis*, corruptly for *countie paleis*, as sometimes in our law^o books) and truly be one, and since the first gift hath continued one, (unless you except that short time while it^p was a principality) yet neither in the creations of the earl (as you see before, where we speak of the title of prince of *Wales*) nor in his summons to parliament, nor in any other writ to him is he stiled *palatinus*, though the name be justly otherwise given him. Neither do I see testimony to persuade me that, when the first creation was made of earl *Hugh*, he was created by the name of a palatine. But his earldom being given him with such a kind of regal jurisdiction as counts palatine of territories in foreign parts had, hath been therefore since called a county palatine, and he and his successors palatines; as it happened also in other countries. Neither have I observed the word *palatinus* until about *Henry II.* to be so applied with us. In his time, it seems, *Joannes Sarisburiensis* understood the earls of *Chester*, and some other, that having regal jurisdiction also in the marches of *Wales*, were stiled palatines, in that passage of his of the increasing power of the *Welsh*. Speaking of the most corrupt and effeminate manners of the court of that time; *dum hoc faciunt* (saith^q he) *milites gloriosi, Nivicolinus indomitus insolescit, inermes Britones intumescunt, (252) ipsosque qui dicuntur palatini comites, & regum sanguine gloriantur, fere ad deditionem compellant & quasi tributarios faciunt*. But the first time that in express words I find the earl of *Chester* called *comes palatinus*, is in the memory of the coronation of queen *Elleanor*, wife to *Henry* the third; *comite Cestriae gladium S. Edwardi* (saith *Matthew Paris*) *qui Curtein dicitur, ante regem bajulante, in signum quod comes est palatinus, (253)*.

Upon like reason, as those of *Chester*, were the ancient earls of *Pembroke*, palatines, being *domini totius & comitatus de Pembroch*, and holding *totum regale infra praecinctum comitatus sui de Pembroch*, as the old records say, yet these were not often called so. The same is to be said of the bishops of *Durham*, that have from ancient time had *omnia jura regalia & omnes libertates regales infra libertatem suam Dunelmensem*, that (say the counsel of bishop *Anthony Beke* in his assigning of errors in parliament, upon a judgment of seizing his liberties, given against him by the justices in eire of

Northumberland under *Edward* the first) a *tempore conquestus Angliae & antea*, yet there he pleaded not in express words, that he was *comes palatinus*, although in other cases since he be sometimes so stiled; as under *Edward* the III. *Thomas* bishop of *Durham* to an information against him for a contempt in not certifying a record, pleads^t *quod ipse est comes palatinus & dominus regalis cujusdam terrae vocatae le bishopricque de Duresme, & habet omnia jura regalia quae ad comitem palatinum & dominum regalem pertinent, per se, justiciarios & ministros suos exercenda, &c.* So he is called *un counte palys*, and *count de paleys* in other^u pleadings in our year books. But it was never used in the bishop's stile for ought I have observed; although the seals, that I have seen of the bishops (being round not oval as those of other bishops and of abbots) have on the first side the form of a bishop sitting in his chair, circumscribed with the bishop's name, *Dei gratia episcopus Dunelmensis*, and on the reverse an armed man on horseback, his sword drawn, and the bishop's arms sometimes of his family, sometimes of his bishoprick on the shield, circumscribed with the like words, which shape on the reverse is expressed, *tanquam comitis palatini*, saith learned^x *Camden*, who writes also that soon after the coming of the *Normans*, this bishoprick was a county palatine, that is, had the right and jurisdiction of a county palatine, which I believe rather than that plea of bishop *Beke*, where it is supposed that the regal jurisdiction there (whence the title of count or county palatine was afterward begotten) had been in the bishop, as well before the coming of the *Normans*, as afterward. There is colour to think that the palatine jurisdiction began there in bishop *Walcher*, whom king *William* the first made both *episcopus* and *dux provinciae*; that he might fraenare rebellionem gentis gladio, & reformare mores eloquio, as *William* of^y *Malmesbury* says. (254) For we see also that before *Walcher* was bishop, the county by the name of *comitatus Dunelmensis* was in lay hands. *Anno tertio regni sui* (saith *Ordericus Vitalis*) *Gulielmus rex Dunelmensem comitatum Roberto de Cuminis tradidit, qui mox cum militibus quingentis civitatem confidenter adiit*. But I think rather that *dux provinciae* denotes there only the sheriff of the county, or one that hath *ciram comitatus* only, as *Hoveden* saith *Walcher* had, howsoever he be commonly taken for an earl of *Northumberland* in that age. The story also of *Hugh de Pusaz*, bishop of *Durham* under *Rchard* the first, is observable while we think of the beginning of this county palatine. He bought the earldom of *Northumberland* of the king, who being merry with him at his creation, said he had done a wonder, in making a young earl of an old bishop. Was he then an earl, or his bishoprick an earldom, or county palatine, before this

^o Vide lib. intrat. tit. jurisdiction. 1. & tit. appell. in proces. 1. 19 Hen. VI. fol. 12. 31 Hen. VI. fol. 11. 21 Hen. VII. fol. 33. 7 Ed. VI. cap. 10. Stanford. lib. 2. pag. 68. D. ^p 21 Rich. II. cap. 9. ^q De nugis curialium lib. 6. cap. 16. ^r Plac. parlam. 18 Ed. I. fol. 11. & 19 Ed. I. fol. 25. ^s Plac. parlam. 21 Ed. I. fol. 59. ^t Pasch. coram rege 46 Ed. III. Northumb. Rot. 42. ^u 5 Ed. III. fol. 58. a. 17 Ed. III. fol. 56. a. vide *Blak.* 14 Ed. III. tit. error. 6. ^x Brit. pag. 600. & videlicet pag. 607. ^y De gest. pontif. lib. 3. pag. 277. ed. Franc. ^z Hist. ecclesiast. lib. 4. pag. 512. C.

creation? And some speak ^a of the creation of *Pufaz*, as if there had been some kind of perpetual annexing of an earldom in *Northumberland* to that church. Yet his creation was but for life. *Matthew Paris* and some others expressly say so. But however, the bishop of *Durham*, and the earls of *Chester* and *Pembroke*, were together accounted under *Henry* the III. three especial lords of the kingdom, that had like regal jurisdiction. For when a *nuper obiit* was brought against *John Scot* earl of *Chester*, by other the coheirs of *Randal* earl of *Chester*, and the summons was made upon some of his lands in *Northamptonshire*, he ^b pleaded *quod noluit respondere ad hoc breve nisi curia consideraverit, & consideratione parium suorum per summonitionem factam in comitatu Northamptoniae de terris & tenementis in comitatu Cestræ, ubi brevia domini regis non currunt. But quia usitatum est hucusque* (saith the roll) *quod pares sui & alii qui libertates habent consimiles, sicut episcopus Dunelmensis & comes marescallus* (that is, the earl of *Pembroke*) *respondent de terris & tenementis infra libertates suas per summonitionem factam ad terras & tenementa extra libertates suas. Ideo considerationem est quod respondeat.* And touching this county palatine of *Durham* in the later ages, see *Rot. Parl.* 7 *Ed. VI.* & *Rot. Pat.* 7 *Ed. VI.* part. 8. & *1 Mariæ cap. 3.*

By reason also of the received notion of palatine or palantine in this sense, wherein it expresses the having regal jurisdiction, some other counties have been stiled counties palatine, or palantine, though the lords of them have not had that title of earl palatine attributed to them. The dutchy of *Lancaster* is called a county palatine, yet that name came to it only after it became a dutchy. For king *Edward* III. in his patent of creation of *Henry* the first duke of *Lancaster*, for life, gave him ^d also all liberty belonging to a county palatine, with relation to the palatine earldom of *Chester* for example, excepting some particulars. The like was afterward to *John* of *Gaunt* the next duke. And those liberties and *jura regalia* were annexed afterward to the dutchy for ever by act of parliament in the beginning of *Henry* IV. And it is, to this day from this original, as a county palatine, though in the hands of the king. (²⁵⁵) Upon like reason was the name of county palatine fixed on the bishoprick of *Ely*, and on *Hexamshire*, which was, under queen *Elizabeth*, united ^e to the county of *Northumberland*.

But also for the same reason, some other earls that had regal jurisdiction in their territories, besides those that are commonly known by the title of palatine, have been stiled so with us, as *Hugo de Belesmo*, (that was earl of *Shrewsbury* under *William* II.) in some records ^f of the time of *Edward* the first, is called a palatine.

And from the like reason perhaps did *John* earl of *Warren* and *Surrey*, under *Edward* III. stile himself *comes palatii*, which title, in those syllables, I never saw elsewhere attributed to any of our earls. I find it on his seal annexed to a conveyance of the ^g castle and town of *Reygate*, of *Dorking*, and *Beckesworth* in *Surrey*, of the castle and town of *Lewes*, of *Cokefield*, *Cleyton*, and divers other manners in *Sussex* and in *Wales*, made to the king in fee. But whether it were used by him with relation to his earldom of *Strathern* in *Scotland*, or to that of *Surrey*, I cannot clearly judge. The first part of the seal that remains (for it is broken) hath himself armed on horseback, and is circumscribed with SIGILLUM JOHANNIS COMITIS WARRENIAE ET SURR The part of the reverse that remains, hath him sitting on a throne of justice, and is circumscribed with MITIS WARRENIAE ET STRATAERNIAE ET COMITIS PALACII.

IX. For the forms of the charters of creation of the title of earl palatine; that of the earl of *Chester* in the patent to the prince of *Wales* shews somewhat. But it is there intermixed with the principality, whose investiture serves also for this of the earldom. Neither is the title of palatine expressed in any of the patents of such creation. The first and antientest charter by which this title was expressly given, is, I think, that of *Edward* III. to *Lawrence* lord *Hastings*, who was made by it earl palatine of *Pembroke*, but not without such right of blood as perswaded the lawyers of that time to conclude the title due to him. The case was thus; *William de Valence* earl palatine of *Pembroke* in fee, had issue *Aymer de Valence* who succeeded him in the earldom, and four daughters, the ladies *Isabel*, *Joan*, *Agnes*, and *Margaret*. *Aymer* dying without issue of his body under *Edward* II. his inheritance descended to his sisters and their issues, among whom *Lawrence* lord *Hastings* was lineal heir to the eldest sister the lady *Isabel*, wife to *John* lord *Hastings* his grandfather. And about sixteen years after the death of *Aymer*, *Edward* III. thus recognized the right of this *John* lord *Hastings* the heir to *Isabel*.

REX ^h omnibus ad quos &c. salutem. Scia-
tis quod circumspeditionis & elegantiae
praefagium quae ex aptis consanguinei nostri
charissimi *Lawrencii de Hastings* juventutis
auspiciis concepimus, merito nos inducunt, ut
ipsum in hiis quae honoris sui debitam conser-
vationem respiciunt, pronis favoribus prosequa-
mur. Cum itaque haereditas bonae memoriae
Adomari de Valencia comitis *Pembroch*, ⁱ ut
dicitur *palatini*, pridem sine haerede de corpore

^a Videtur Guili. Nubrig. lib. 4. cap. 5. & lib. 5. cap. 10. & du Chesne. hist. d'Angleterre liv. 12. pag. 538. ^b Frag. placit. temp. Hen. III. in arce London. orta est lis ista 14. Hen. III. quod satis constat ex placit. 18 Hen. III. Rot. 14. ibid. Initium est placiti quod habetur 27 Hen. III. tit. Briefe. 881. & 23 Hen. III. tit. partition. 18. ^c Eadem ratio legis in commentariis juris nostri, nempe, 1 Ed. III. fol. 14. a. 18. Ed. II. tit. assise. 382. 24 Ed. III. fol. 33. 30. Hen. VI. fol. 6. 35 Hen. VI. fol. 30. 45 Ed. III. tit. visne 50. &c. ^d Pat. 25 Ed. III. part. 1. m. 18. & Plowd. in comment. fol. 215. ^e 14 Eliz. cap. 13. & vide 3 Hen. VIII. cap. 2. ^f Placit. coronae in hundredo de Stotelden in com. Salop. 20 Ed. 1. apud Vincent. pag. 17. sed non reperio in loco citato. ^g Apud Caneford. 1 April. 20 Ed. III. ^h Rot. Pat. fact. hominibus Angl. & Vasconiae 13 Ed. III. membran. 12. ⁱ Depravate hic legitur apud Camdenum Brit. pag. 513. ut dicitur jampridem &c. omisso vocabulo palatini.

fuò procreato decedentis ad sorores suas fuerit devoluta, inter ipsas & earum haeredes proportionabiliter dividenda; quia constat nobis quod praefatus *Laurentius* qui dicto *Adomaro* in partem haereditatis succedit, est ex ipsius *Adomari* sorore seniori descendens, & sic peritorum assertionem quos super hoc consulimus, sibi debeatur praerogativa nominis & honoris, justum & debitum reputamus ut idem *Laurentius* ex seniori sorore causam habens, assumat & habeat nomen *comitis Pembrociae*, quod dictus *Adomarus* habuit dum vivebat, quod quidem nomen quantum in nobis est, sibi confirmamus, ratificamus, & etiam approbamus; volentes & concedentes ut dictus *Laurentius* praerogativam & honorem *comitis palatini* in terris quas tenet de haereditate dicti *Adomari* adeo plene & eodem modo habeat & teneat sicut idem *Adomarus* illas habuit & tenuit tempore quo decessit. In cuius &c. *T. R.* apud montem *Martini* XIII die *Octobris*. Anno XIII &c.

Per ipsum regem.

But although this *John* lord *Hastings* were thus created or expressly declared an earl palatine, yet neither himself, nor any of the succeeding earls there, while it was a county palatine, were stiled palatines in summons to parliaments, or in any other expression, for so much as I have observed. Some things more also concerning earls palatine occurs in what we shall next deliver touching local earls which are not palatine.

X. The nature of local earls that being not palatine, were made since the coming of the *Normans*, will best appear by their charters or patents of creation, confirmation, restitution, or livery, with some antient testimonies of that kind; the observation of their honorary possessions or earldoms, with their reliefs, and of the chief ornaments used at the investiture, or otherwise mentioned as belonging to them. Of these severally; and first of their charters or patents of creation, confirmation, restitution, or livery, and the antient expressions of that kind.

Among the forms of charters made of this dignity, we find none before the time of queen *Maud*, unless we conceive that of *William* the first to *Alan Fergent* duke of *Bretagne*, of the lands, towns, and the rest of the inheritance of earl *Edwin* in *Yorkshire* to be a creation of him into the title of earl of *Richmond*. The words are thus, as we find them expressed in a charter pictured under seal, and as delivered by king *William* to duke *Alan* kneeling, in a book ^k of *Richmond*, of the time of *Edward* the III.

EGO *Gulielmus* cognomine *bastardus*, rex *Angliae*, do & concedo tibi nepoti meo *Alano Britanniae comiti* & haeredibus tuis imperpetuum, omnes villas & terras quae nuper fuerunt comitis *Edwini* in *Eboraschiria*, cum feodis militum & aliis libertatibus & consuetudinibus ita libere & honorifice sicut idem *Edwinus*

eadem tenuit. Data obsidione coram civitate *Eboraci*.

This date falls in the third year of his reign. And some of the *French* ^l take this for the instrument by which the earldom of *Richmond* was first settled in the dukes of *Bretagne*. I dispute it not. What possessions this *Alan* had afterwards in *Yorkshire*, appears in *Domesday*. But somewhat also of the nature of the forms of creation of earls in times before queen *Maud*, seems to be summarily denoted in the various expressions of the writers of those elder times, when they speak of the creation of earls within the time that precedes her. *Comitatum dedit, commisit comitatum N, comitem or consulem praefecit, or instituit, or Arundellum or Northumbriam dedit, or donavit*, and such like occur for creations of them in *Ingulphus*, *Ordericus*, *William of Malmesbury*, and the rest of that kind; sometimes also *comitatum N. cum omnibus terris eidem pertinentibus donavit*, is found in them for a creation; as in that example of *William* the first his creation of *Simon of Senlis* a *Norman*, earl of *Huntingdon*. Other passages of this kind are anon cited, where we speak of the earldoms of the earls of those times. But I have not observed a creation noted among those writers with any other kind of particulars, until the time of king *Henry* the first, who (as it is in the book of the abbey ^m of *Ford*) gave to *Richard de Redueris* or *Rivers*, first *Tiverton*, and then the honour of *Plimpton* with other places belonging to the same honour, and *in comitem* (as the words are) *Devoniae, tertium denarium annui exitus ejusdem comitatus illi concedendo, cum consequenter creavit*. And to this add also that of the creation of *Robert* earl of *Glocester*, natural son to king *Henry* the first. The king, having speech with *Mabile* the sole daughter and heir of *Robert Fitz Hayman* lord of *Glocester*, told her (as it is reported in that old *English* rhithmical story of *Robert of Glocester*) that

— he seold is sone to her spousing abonge,
This maid was theragen, and with said it long.
The king of fought her suith ynou, so that atten
ende
Mabile him answered, as gode masde and hende,
Sir, heo seðe, wel ichot, that your hert ope me is,
Hore þor mine heritage than þor my sulve nois;
So vair eritage as ich habbe, it were me grete
shame,
Cloz to abbe an loverd, bote he had an toname.
Sir Robert le Fitz Haim, my faders name was,
And that ne might nought be his that of his kunne
nought nas.
Therefore, sir, þor godes love, ne let me no mon owe
Bote he abbe an twoname war thoru he be iknowe.
Damossele, quoth the king, thou seist well in this
case
Sir Robert le Fitz Haim, thy fader twoname was;
And as vair twoname he shall abbe, gif me him
may bise
Sir Robert le Fitz Rey is name shall be.

^k Ms. item apud Camden, in *Brigant*, pag. 591.
Damnonii, pag. 151.

^l Berrand, d'Argent, *Hist. de Bretagne* liv. 4. chap. 38.

^m Apud Camd. in

Sire, quoth this maid tho, that is a vaire name
As who seith, all his life and of great fame.
Ac wat thold is soune hote thanne and bi that of
him come?
So ne might hii hote, whereof nameth gone.
The king understood that the maid ne sede no
outrage
And that Gloucestre was chief of ire heritage.
Dameseile he sede tho, thi loverd shall have a name,
Aoz him and doz his heirs vaire without blame.
Aoz Roberd earle of Gloucestre is name shall be
and his
Aoz he shall be earle of Gloucestre and his heirs
i wis.
Sire, quoth this maid tho, well liketh me this
In this forme ichole that all my gode be his.
This was earle of Gloucestre first I made there
Ac his Roberd of all thuike that long biuoz were ;
This was endebe hundred yere and in the nith
yeeer right
After that ure loverd was in his moder a hight.⁽²⁵⁶⁾

But the antientest charters of express creation
of the title of *comes*, that at this day remain,
are those of queen *Maud*. As this to that
great lord *Geoffery of Mandevile* for the earl-
dom of *Essex*.

EGO ⁿ *Matildis* filia regis *Henrici & An-*
glorum domina do & concedo *Gaufredo*
de *Magnavilla* pro servitio suo & haeredibus
suis post eum haereditabiliter ut sit *comes de Es-*
sexia, & habeat tertium denarium vicecomita-
tus de placitis, sicut comes habere debet in co-
mitatu suo, &c.

Neither is this charter against those that say
king ^o *Stephen* created him. The civil wars of
that time are well known. And this lord being
sometimes of the queen's part, sometimes of king
Stephen's, was created, it seems, by both, as
some others were. The same queen also, for
the great service that *Milo* (who was lieutenant
to her brother *Robert* earl of *Glocester* in his
earldom, and otherwise of very great power in
the kingdom) had done her in those her wars
against ^o king *Stephen*, & quia *ejusdem* *Milonis*
praecipue *fruebatur consilio*, & favebatur *aux-*
ilio, utpote quae eatenus nec unius diei victum
nec mensae ipsius apparatus aliunde quam ex
ipsius munificentia sive providentia acceperat
(as this *Milo* himself related to him that wrote
the continuation of *Florentius*) made him earl
of ^o *Hereford* by this patent, which is yet pre-
served under her great seal.

M*atilda* imperatrix *Henrici* regis filia &
Anglorum domina archiepiscopis, episcopis,
abbatibus, comitibus, baronibus, iusticiariis,
vicecomitibus, praepositis, ministris & omnibus
fidelibus suis, *Francis*, & *Anglis* totius *Angliae*
salutem. Sciatis me fecisse *Milonem de Glo-*
cestria, comitem de *Hereford*, & dedisse ei mo-
tam *Hereford*, cum toto castello in feudo, &
haereditate sibi & haeredibus suis ad tenen-

dum de me & haeredibus meis. Dedi etiam ei
tertium denarium placitorum totius comitatus
Hereford. Dedi etiam ei tria maneria in ipso
comitatu de meo dominio videlicet, *Mawardi-*
nam & *Luggewordinam* & *Wiltonam* cum om-
nibus appenditiis suis. Dedi etiam ei haia *He-*
reford & forestam de *Trivela* cum hoc quod ad
hoc pertinet. Dedi etiam ei servitium *Roberti*
de *Chandos* & *Hugonis* filii *Willielmi* & *Ri-*
chardi de Coremil, & omnia feuda eorum ubi-
cunque ea habeant. Et haec omnia supradicta
dedi & etiam concessi in feudo & haeredita-
te sibi & haeredibus suis ad tenendum de me
& haeredibus meis. Hanc autem donationem
feci ei apud *Oxinsford* die sancti *Jacobi* apo-
stoli, videlicet octava die ante festum sancti *Pe-*
tri ad vincula, pro servitio suo quod mihi fece-
rat, & ita quod tunc habebam in captione mea
^r apud *Bristol* regem *Stephanum*, qui Dei mise-
ricordia & auxilio *Roberti comitis Glocestriae*
fratris mei & auxilio ipsius *Milonis* & aliorum
baronum meorum captus fuit in bello apud *Lin-*
colniam die purificationis *S. Mariae* proximo
ante praedictum diem *S. Jacobi* apostoli. Quare
volo & firmiter praecipio, quod haec omnia su-
pradicta teneat de me & haeredibus meis ipse &
haeredes sui, ita bene & in pace & honorifice &
plenarie & libere & quiete in bosco & in plano,
in forestis & fugaciis, in pratis & pasturis, in
aquis & molendinis, in stagnis & vivariis, in
viis & semitis, in foris & feriis infra burgum &
extra, in civitate & extra, & in omnibus locis
cum foca & facha, & *Coll* & *Ceam* & *Infan-*
gentheof, & cum omnibus consuetudinibus & li-
bertatibus, & quietudinibus sicut unquam aliquis
comes melius, & honorabilius, & quietius, & li-
berius, & plenarius, aliquod tenementum vel do-
minium de me in *Anglia* vel unquam tenuit de
aliquo antecessore meo. Teste *Theobaldo* archi-
episcopo *Cantuariensi*, & *Roberto* episcopo *Lon-*
donensi, & *Alexandro* episcopo *Lincolniensi*, &
Bernardo episcopo sancti *Davidis*, & *Nigello*
episcopo *Eliensi*, & *David* rege *Scot*, & *Roberto*
comite *Glocestriae*, & *Reginaldo* comite *Cornu-*
biae, & *Roberto* *Reginaldi* filio, & *Brientio* fi-
lio comitis, & *Umfrido* de *Bobun*, & *Alex.*
de *Buch*, & *Johanne* filio *Gisleberti* marefcalco,
& *Pagan* de *claris vallibus*, & *Roberto* de *Cur-*
ceo, & *Radulfo* *Paganello*, & *Willielmo* de
Doura, & *Elia* *Giffard*, & *Walkenio* *Maminot*,
& *Ernulf* de *Hesding*, & *Gisleberto* de *Lasceio*
apud ^r *Oxinsfordiam*.

That also of the same queen to *Aubry de*
Vere (afterward earl of *Oxford*) is observable.
She granted and restored to him divers lands,
and among them the tower and castle of *Col-*
chester. And made him earl of *Cambridge*, un-
der condition, that if he could not enjoy it, he
might choose either to be earl of *Oxford*, *Berk-*
shire, *Wiltshire*, or *Dorsetshire*. Et praeter
hoc do ei (as the words are in the antient book

^o In thesaur. Cotton. & apud Camd. & in ord. Angl. pag. 120.
gis Stephani pag. 932. & continuat. ad Florent. Wig. an. 1139. & 1140.
Britae lib. 1. cap. 2. Auctor gestorum regis Stephani pag. 956. Florentius sub anno 1141.
fecto D. Jacobi anno reparaatae salutis 1141. sive 6 Stephani regis. Id constat ex Florentio & Hovedeno sub annis 1141. Nonnulli ma-
le miscentes annos salutis atque eos qui ab initiis Stephani deducuntur, in 1140 temere conjiciunt captivum regem, quod idem ipsum
est, ac si etiam hoc instrumentum illuc retro traherent.
creatum Milonem scribitur.

^o Videfis Hoveden. sub anno 1143.
^r Videfis gesta re-
^o Memineris hujus creationis, Giraldu in itineraio Cam-
brie lib. 1. cap. 2. Auctor gestorum regis Stephani pag. 956. Florentius sub anno 1141.
^r Confectum est instrumentum hoc in
Id constat ex Florentio & Hovedeno sub annis 1141. Nonnulli ma-
le miscentes annos salutis atque eos qui ab initiis Stephani deducuntur, in 1140 temere conjiciunt captivum regem, quod idem ipsum
est, ac si etiam hoc instrumentum illuc retro traherent.
^r Atqui anonymus auctor gestorum Stephani regis, pag. 956. Wintoniae

of evidence belonging to the earls of Oxford) & concedo quod sit comes de Cantebruggescire, & habeat inde tertium denarium sicut comes debet habere. Ita dico, si rex ^u Scotiae non habet illum comitatum. Et si rex habuerit, perquiram illum ei ad posse meum per escambium. Et si non potero, tunc do ei & concedo quod sit comes de quolibet quatuor comitatuum subscriptorum, viz. Drenfordscyre, Berksyre, Wiltscyre, & Dorsetscyre per consilium & considerationem comitis Glocestriae fratris mei & comitis Gaufridi & comitis Gilberti. Et teneat comitatum suum cum omnibus illis rebus quae ad comitatum suum pertineant. Ita bene & in pace & libere, & quiete, & honorifice, & plenarie sicut unquam aliquis comes melius vel liberius tenuit vel tenet comitatum suum. Then, after some other lands given him, haec omnia tenementa (saith she) concedo ei tenenda haereditarie in omnibus rebus sibi & haeredibus suis, de me & haeredibus meis. Quare volo & firmiter praecipio, quod ipse Albericus comes & haeredes sui teneant omnia tenementa sua ita bene & in pace, & libere, & quiete, & honorifice, & plenarie, sicut unquam aliquis comitum meorum melius vel liberius tenuit vel tenet, &c. This was confirmed also by the prince her son, using the title of *Henricus filius filiae regis Henrici, relictus haeres Angliae & Normaniae*.

King Stephen made very many earls, and much wasted the crown revenue on them. Multos comites qui ante non fuerant (saith William of Malmesbury) insinuit, applicatis possessionibus & redditibus, quae proprio jure regi competebant. A form of one of his creations I have not seen. But those of queen Maud are also of his time. But an example of a restitution or livery of an earldom in his time, is in that of his restoring the borough of Hereford, and the castle & totum ^x comitatum de Herefordscyre (excepting the lands of the bishoprick and other churches) to Robert earl of Leicester, and his heirs, with this, that he should hold it bene & in pace, & libere, & quiete, & honorifice, in bosco & in plano, &c. Cum omnibus aliis rebus & libertatibus quae ad omnia praefata pertinent, cum quibus Gulielmus filius Osborni unquam melius, vel liberius tenuit. That William Fitz Osbern was made earl of Hereford by William the first. Divers of the earls made by king Stephen were afterward called imaginary and false earls. For Henry II, at his resumption of the old possessions of the crown, in the beginning of his reign, deposuit quosdam imaginarios & pseudo-comites (saith the author of a chronicle of Normandy) quibus rex Stephanus omnia pene ad fiscum pertinentia minus caute distribuerat. To the same purpose the book ^y of the abbey of Waverley.

For the time of Henry II, the most known creation is that of Aubry de Vere, earl of Guisnes, into the title of earl of Oxford, whose po-

sterity enjoy it to this day. He could not be earl of Cambridge, because David king of Scotland had that earldom; and so according to the meaning of queen Maud's charter to him before mentioned, he chose to be of Oxford. The original, under seal, I have seen among the evidences of the earls of Oxford, and thence I transcribe it.

Henricus rex Angliae & dux Normaniae, & Aquitaniae, & comes Andegaviae, archiepiscopis, episcopis, abbatibus, comitibus, baronibus, justiciariis, vicecomitibus, ministris, & omnibus fidelibus suis totius Angliae, Francis & Anglis salutem. Sciatis me dedisse & concessisse comiti Alberico in feodo & haereditate, tertium denarium de placitis comitatus Drenfordscyre ut sit inde comes. Quare volo & firmiter praecipio, quod ipse & haeredes ^z sui habeant inde comitatum suum, ita libere, & quiete & honorifice sicut aliquis comitum Angliae liberius, & quietius, & honorificentius habet. Testibus T. cancellario, Hugone comite de Norff. Rogero comite de Clare, comite Patricio, Richardo filio Gisleberti, Henrico de Essex constabulario, Richardo de Hum constabulario, Richardo de Lucy, Waltero filio Roberti, M. Biscet dapifero, Warino filio Geraldi camerario, Richardo de Carvilla, Willielmo de Lanval, Hammone Peccato, apud Dour. in transitu regis.

By such a form, the same king created or confirmed Hugh Bigot earl of Norfolk. ^a Sciatis me fecisse Hugonem Bigot comitem de Norfolk. Et volo & praecipio quod ipse & haeredes sui ita libere, & quiete, & honorifice teneant de me & de meis haeredibus, sicut aliquis comes Angliae melius vel liberius comitatum suum tenet. The charter hath also a confirmation of his right in all his lands. And it seems it was rather a confirmation of the dignity also than a creation. For it is plain, that in king Stephen's time, this Bigot was not only earl of Norfolk, but was acknowledged to be so by a just title, in that composition between ^b king Stephen, and Henry II. before he came to the crown. For therein it is agreed that William son to king Stephen should have all the county of Norfolk; the third penny, unde Hugo Bigot erat comes, excepted. ⁽²⁵⁷⁾ Neither is this that follows with the word dedisse, to William de Albineto, earl of Arundel, under the same king, to be otherwise interpreted than as a confirmation, which in those times little differed, in the stile of the chancery, from a creation.

Henricus rex Angliae & dux Normaniae, & comes Andegaviae. Archiepiscopis, episcopis, comitibus, baronibus, justiciariis, vicecomitibus, ministris, & fidelibus suis totius Angliae, Francis & Anglis salutem. Sciatis me dedisse Willielmo comiti Arundel, castellum de Arundel, cum toto honore Arundelli & cum

^x Inde ipsum diploma totum habetur nunc excussum apud Aug. Vincent. pag. 397.

^u Videtis Camden. Brit. pag. 393.

^z Ex

vet. tabulario ducatus Lancast. apud Aug. Vincent. pag. 237. & videtis Camden. Brit. pag. 473.

^y Ms.

^z Ad masculos restrin-

gebatur haec dignitas, sub Rich. II. vide rot. parl. 16 Rich. II. & rot. cart. de anno 15 Rich. II. & decisionem in parlamento 1

Caroli regis de ilthoc comitatu. ^a Cart. antiq. S. n. 13. ^b 19 Stephani regis apud Hollinshed. histor. Angl. pag. 62. & Camd. Brit.

351. ^c Cart. inflex. 5 Ed. III. membr. 1. pro Richardo comite Arundel, & de com. Hereford. Videtis Camd. Brit. pag. 473.

omnibus

omnibus pertinentiis suis; tenendum sibi & haeredibus suis, de me & haeredibus meis in feodo & haereditate, & tertium denarium de placitis de *Suthlex* unde comes est. Quare volo & firmiter praecipio, quod ipse & haeredes sui haec praedicta habeant & teneant, bene & in pace & honorifice, & libere, & quiete & haereditarie in dominiis, in militibus, in feodis, & in forestis, in bosco, & plano, in pratis, & pascuis, in viis, & semitis, in burgo, & extra, in aquis & piscaturis, & in omnibus locis cum omnibus libertatibus & liberis consuetudinibus, praedicto honori & castellarie pertinentibus, sicut rex *H.* avus meus honorem illum habuit quando eum in suo dominio habuit. Teste *Theob.* archiepiscopo *Cant.* *Hillario* episcopo *Ciceftren.* *N.* episcopo de *Ely* & cancellario, *Willielmo* fratre regis, *Rogero* comite *Cornubiae*, *Hugone* comite de *Norfol.* *Henrico* de *Essex* const. *Richardo* de *Hum.* const. *Richardo* de *Lucy*, *War.* fil. *J.* camer. *Joscel.* de *Balliolo*, *Roberto* de *Dunestonvilla*, *Roberto* de *Curci*, apud *Westmonasterium*.

For he was earl^d before this charter, and stiled also sometimes of^e *Suffex*, sometimes of^f *Chichester*, which at that time denoted but the same person. For also the county of *Suffex* was sometimes called the county of *Chichester*, unless *comitatus* were used for a diocesis; as in that of *John* of *Salisbury*, who lived under this king *Henry* II. In *comitatu* *Cicestriae* (saith^g he) *diutius benefissime versatus est*, speaking of one *Gauterius*, a gentleman that had lived long in *Suffex*, in his letters to pope *Adrian* IV. This king *Henry* also made such a charter to *Roger* son^h and heir to *Milo* earl of *Hereford*, as that of queen *Maud* was, which before is inserted. A confirmation also, livery, or restitution of the dignity of the earl of *Norfolk*, is made byⁱ *Richard* the first, to *Roger Bigot* in the same words that *Henry* the II. confirmed it to *Hugh* father of *Roger*, and another to *William* earl of *Arundel*,^k according to that also which he had received from the same king *Henry*.

So in the beginning of king *John*, *William* de *Ferrariis* hath livery or restitution of his earldom of *Derby* in this^l form.

Johannes Dei gratia rex *Angliae*, dominus *Hiberniae*, &c. Sciatis nos reddidisse & concessisse & presenti carta confirmasse dilecto nostro *Willielmo* de *Ferrariis* comiti de *Dereby* tertium denarium de omnibus placitis placitatis per vicecomitem in toto comitatu de *Dereby*, tam in *Dereby*, quam extra, unde ipse comes est, sicut unquam aliquis antecessorum suorum illum melius habuerit, tenendum sibi & haeredibus suis de nobis & haeredibus nostris imperpetuum. Et ipsum tanquam comitem propria manu gladio cinximus. Teste *W. London* & *H. Sarum* episcopis, *G.* filio *Petri* comite *Essex.* *Ranulpho* comite *Cestriae*, *W. Marefcallo* co-

mite de *Pembroc*, *Willielmo* de *Baies*, *Willielmo* filio *Alani*. Datum per manus *H. Cantuariensis* archiepiscopi cancellarii nostri apud *Northampton*. vii die *Junii*, regni nostri anno primo.

And his charter to *Henry* of *Bohun*, earl of *Hereford*, is observable, wherein he^m grants to him *xx libras de tertio denario comitatus Hereford annuatim percipiendas, unde eum fecimus comitem Hereford*, & ipse nobis cartam suam fecit, quod ipse vel haeredes sui nihil clamabunt unquam de nobis vel de haeredibus nostris quos de uxore desponsata habuerimus, per cartam *H. regis patris nostri quam ipse habuit in hac forma*. Then the whole charter made to *Roger* earl of *Hereford*, is recited, wherein (as in that of queen *Maud* to *Milo*) the third penny of the pleas of the county is given him among divers other things. Haec autem carta (saith king *John* in this to earl *Henry*) praedicti regis *H. patris nostri, deposita est in prioratu Winton. per manum Godefridi Wintoniensis episcopi frangenda & destruenda, si haeredem de uxore nobis desponsata habuerimus, sin autem, idem Henricus de Bohun, vel haeredes ipsius recuperabunt praedictam cartam ad faciendum inde quod sibi melius viderint expedire*.

For the time of *Henry* the III, we observe here especially that of his granting, and confirming the earldom of *Lincoln* to *John* de *Lacy*. *Randol* earl of *Chester* and *Lincoln* seized in fee of his dignities, granted that of the earldom of *Lincoln* to his sister the lady *Hawise* de *Quency* by this deed.

Ranulphus comes *Cestriae* & *Lincolniae* omnibus praesentibus & futuris, praesentem cartam inspecturis vel audituris, salutem in Domino. Ad universitatis vestrae notitiam volo pervenire me dedisse, concessisse & hac praesenti carta mea confirmasse dominae *Hawisae* de *Quency* forori meae charissimae comitum *Lincolniae*, scilicet quantum ad me pertinuit, ut inde comitissa existat; Habendum & tenendum de domino meo rege *Angliae* & haeredibus suis eidem *Hawisae* & haeredibus suis libere, quiete, plene, pacifice & integre jure haereditario, cum omnibus pertinentiis suis & cum omnibus libertatibus ad praedictum comitatum pertinentibus. Et ut praesens scriptum perpetuitatis robur optineat, illud sigilli mei appositione roborare duxi. His testibus venerabilibus patribus *T. Winton.* & *Alexandro Coventr.* & *Lichf.* episcopis, *R. Mariscallo* comite *Pembrochiae*, *W. de Ferrariis* comite *Derby*, *Stephano* de *Segrave* justitiario *Angliae*, *Simone* de *Monteforti*, *W. de Ferrariis*, *Phil.* de *Albiniaco*, *Henrico* de *Aldith*, *Willielmo* de *Cantilupo*, & aliis.

It is transcribed from the original, yet under seal. She was thence stiled comitissa *Lincolniae* in that nuper obiit brought by her other coparceners after her brother's death, which is before

^d Vide Matt. Paris an. 1139. Camd. Brit. pag. 221.

^e Transactio inter Stephanum r. & Hen. Normaniae ducem apud Hollinsh. hist. Angl. pag. 63. col. 1.

^f Cart. 1 Joh. part. 2. num. 40. m. 6.

^g Cart. antiq. B. n. 20.

^h Cart. Stephani r. in rot. part. 2 H. VI. part. 3. m. 18. pro abbate de

ⁱ Rich. I. cart. antiq. S. n. 14.

^k Cart. antiq. X. num.

^l Cart. 1 Johan. part. 2. mem. 6. n. 40. 28 April.

ⁿ men-

mentioned out of the plea rolls of that time. But, at her request, the king granted the same earldom (which it seems, she herself had first granted, that so the king's grant might enure as a confirmation) to her son *John de Lacy*. And the grant is thus remembered in the rolls of that time.

REX ad instantiam *Hawisae de Quency* dedit & concessit *Johanni de Lascy*, constabulario *Cestriae*, illas viginti libras quas R. quondam comes *Cestriae* & *Lincolniae* recepit pro tertio denario comitatus *Lincolniae*, & quas praedictus comes in vita sua dedit praedictae *Hawisae* forori suae. Habendas & tenendas, nomine comitis *Lincolniae* de rege & haeredibus suis ipsi *Johanni* & haeredibus suis qui exhibent de *Margareta* uxore sua, filia praedictae *Hawisae* imperpetuum. In cujus &c. Teste rege apud *Northampton* xxii die *Novembris*.

A form of a creation also of the same king's time we have in his charter to his son *Edmund*, by which he gives him the earldom of *Leicester*, after the death of *Simon of Montfort*.

HENRICUS, &c. * Militibus liberis hominibus, & omnibus aliis tenentibus de comitatu & honore *Leycestriae*, senescalcia *Angliae*, & de omnibus terris & tenementis quae fuerunt *S. de Montforti* quondam com. *Leycest.* salutem. Sciatis quod dedimus & concessimus *Edmundo* filio nostro praedicta comitatum, honorem, senescalciam, terras & tenementa quae fuerunt praefati *Simonis* inimici nostri, exceptis dominiciis nostris, habendum & tenendum de nobis & haeredibus nostris eidem *Edmundo* & haeredibus suis imperpetuum, faciendo servicium inde debitum & consuetum. Et ideo vobis mandamus quod eidem *Edmundo* tanquam domino vestro in omnibus quae ad praedicta comitatum, honorem, senescalciam, terras & tenementa pertinent, de cetero intendentes sitis & respondentes, sicut praedictum est. In cujus, &c. Teste, &c. (258).

Under the words *comitatus Leycestriae*, the dignity of earl is here comprehended. And the high stewardship of *England* here mentioned, was taken to be afterward as a parcel of this earldom, or annexed to it in those ancient earls. *Rex Henricus* (saith *Henry of Knighton*, canon of *Leicester*, speaking of this creation) dedit comitatum *Leycestriae* cum honore de *Hincley*, & senescatu *Angliae*, *Edmundo* filio suo. This honour of *Hincley* and the office of high steward of *England* came first to the earls of *Leicester*, by *Robert Blainchemains*, earl of *Leicester*, his marriage with *Parnel* one of the daughters and coheirs of *Hugh Grentemaisvill* under *Henry the II.* *Robertus* ove les *Blainchemains* (saith the same *Knighton*) tertius post conquestum desponsavit *Petronillam* filiam *Hugonis Grentemevill* (the name is *Grentemaisvill* often in *Domesday*) cum qua accepit totum honorem de *Hincley* una cum senescatu *Angliae*

ex dono ejusdem *Hugonis*. But afterward at the coronation of *Henry IV.* (who was earl of *Leicester* before he came to the crown) dictus dominus rex (as we read in the claim-rolls of his first year) ut in jure comitatus *Leycestriae*, cui officium senescalli pertinet, idem officium commisit *Thomae filio suo* in coronatione praedicta faciendum.

For a form of the time of *Edward the I.* I add this of the earldom of *Richmond* to *John* duke of *Bretagne*.

EDWARDUS, &c. archiepiscopis, &c. salutem. Sciatis quod cum comitatus *Richemund*, castra de *Richemund* & de *Bowers*, & omnes terrae & tenementa, quae *Johannes* quondam dux *Britanniae* defunctus in *Anglia* tenuit, per mortem ipsius ducis ad manus nostras jam devenierint, dedimus & concessimus, & hac carta nostra confirmavimus pro nobis & haeredibus nostris, dilecto nepoti & fidei nostro *Johanni de Britannia* comitatum praedictum castra & omnes terras & tenementa praedicta cum pertinentiis, habendum & tenendum de nobis & haeredibus nostris, eidem *Johanni*, & haeredibus suis, comitatum praedictum, nomine comitis, castra & omnes terras & tenementa praedicta cum feodis militum, advocacionibus ecclesiarum, domorum religiosarum & hospitalium, serviciis libere tenentium, liberis chaceis, & warrennis, una cum omnibus libertatibus, & liberis consuetudinibus, ad comitatum, castra, terras, & tenementa praedicta pertinentibus, ac caeteris pertinentiis suis universis, per servicia inde debita & consueta imperpetuum, adeo libere & integre sicut praedictus dux pater suus ea de nobis tenuit in vita sua. Quare volumus & firmiter praecipimus pro nobis & haeredibus nostris, quod praedictus *Johannes* habeat & teneat de nobis & haeredibus nostris, sibi & haeredibus suis, comitatum praedictum, nomine comitis, castra & omnes terras, & tenementa praedicta, cum feodis militum, advocacionibus ecclesiarum domorum religiosarum & hospitalium, serviciis libere tenentium, liberis chaceis, & warrennis, una cum omnibus libertatibus & liberis consuetudinibus, ad comitatum, castra, terras, & tenementa praedicta pertinentibus, ac ceteris pertinentiis suis universis, per servicia inde debita & consueta imperpetuum, adeo libere & integre sicut praedictus dux pater suus ea de nobis tenuit in vita sua sicut praedictum est. Hiis testibus venerabili patre *W. Coventr.* & *Lichf.* episcopo, *Henrico de Lacy* comite *Lincol.* *Thoma* comite *Lancast.* *Radulpho de Monte-bermer* comite *Glocestriae* & *Hertford.* *Humfredo de Bobun* comite *Hereford* & *Essex.* *Adomaro de Valencia*, *Roberto de la Ward*, senescallo hospitii nostri & aliis. Datum per manum nostram apud *Lanertost*, decimo quinto die *Octobris*.

Per breve de privato sigillo.

Under *Edward the II.* these two are observable. The one to his brother, *Thomas of Bro-*

* §. 8. Pat. 17 H. III. memb. 9. num. 35.

* Pat. 49. H. III. m. 2. n. 7.

P Ms.

q Cart. 34 Ed. I.

memb. 4. num. 19. videlicet item renunciacionem comitatus *Norfolciae* sub Ed. I. in rot. parl. 3 H. VI. art. 1.

therton,

therton, of the earldom of ^r Norfolk. The other to Andrew of Harclei, of the earldom of Carlisle.

EDwardus, &c. archiepiscopis, &c. salutem. Sciatis nos dedisse, concessisse, & hac carta nostra confirmasse *Thomae de Brotherton* fratri nostro charissimo, totum jus & honorem & dominium quae *Rogerus le Bygod*, quondam comes *Norfolciae*, & marescallus *Angliae* habuit, & quae ad manus celebris memoriae domini *Edwardi*, quondam regis *Angliae* patris nostri, per concessionem, redditionem, remissionem, & quietam clamationem ejusdem comitis devenerunt, & in manu nostra existunt, habendum & tenendum eidem *Thomae* & haeredibus suis de corpore suo legitime procreatis, de nobis & haeredibus nostris, cum omnibus & singulis ad ea spectantibus, quocunque nomine censentur; adeo integre, sicut praefatus comes ea habuit & tenuit die concessionis, redditionis, & quietae clamationis praedictarum imperpetuum. Et si contingat quod praedictus *Thomas* obierit sine haerede de corpore suo legitime procreato, tunc post decessum ejusdem *Thomae* praedicta jus, honor, & dominium, cum omnibus pertinentiis suis ad nos & haeredes nostros integre revertantur. Quare volumus & firmiter praecipimus pro nobis & haeredibus nostris, quod praedictus *Thomas* habeat & teneat sibi & haeredibus suis de corpore suo legitime procreatis, praedicta jus, honorem, & dominium quae praedictus comes habuit, *nomine comitis*, in comitatu praedicto, & quae ad manus dicti patris nostri per concessionem, redditionem, remissionem, & quietam clamationem praedictas devenerunt, & in manu nostra existunt, de nobis & haeredibus nostris, cum omnibus & singulis ad ea spectantibus, quocunque nomine censentur, adeo integre sicut praedictus comes ea habuit & tenuit die concessionis, redditionis, remissionis, & quietae clamationis praedictarum imperpetuum. Et si contingat quod praedictus *Thomas* obierit sine haerede de corpore suo legitime procreato, tunc post decessum ejusdem *Thomae*, praedicta jus, honor, & dominium cum omnibus pertinentiis suis, ad nos & haeredes nostros integre revertantur, sicut praedictum est. Hiis testibus venerabilibus patribus *W. Wigorn.* *J. Norwic.* & *J. Bathonens.* & *Wellen.* episcopis, *Gilberto de Clare* comite *Glocestr.* & *Hertford.* *Johanne de Britannia* com. *Richmond.* *Adomaro de Valencia* com. *Pembrochiae.* *Hugone le Despens.* *Henrico de Bello Monte.* *Nicholao de Segrave,* & aliis. Datum per manum nostram apud *Westmonast.* xvi die *Decembris*.

And he had other charters of the same date for the castles, towns, mannors, ^r boroughs, honours and lands that were also surrendered to king *Edward* the I, (as the earldom was) by earl *Rogerus le Bigod*. That of the earldom of *Carlisle* is in these words.

EDwardus &c. omnibus ad quos &c. salutem. Sciatis quod pro bono & laudabili servicio quod dilectus & fidelis noster *Andreas de Harcla* nobis nuper impendit, *Thomam* tunc comitem *Lancastriae*, & alios ipsius fautores nobis subditos inimicos & rebelles nostros debellando, & divina opitulante clementia, devictos nobis reddendo, dedimus ei & concessimus, pro nobis & haeredibus nostris, viginti marcas de exitibus comitatus nostri *Cumbriae*, per manus vicecomitis comitatus illius qui pro tempore fuerit, percipiendas, & habendas sibi & haeredibus suis masculis de corpore suo legitime procreatis, *sub honore & nomine comitis Karlioli, ipsumque Andream gladio cinximus in comitem dicti loci.* Et pro statu hujusmodi uberius manutenendo, concessimus pro nobis & haeredibus nostris providere eidem *Andreae* & assignare mille marcas terrae & redditus per annum, videlicet quingentas marcas in comitatu *Cumbriae* & *Westmorlandiae*, & libertatibus adjacentibus, & quingentas marcas in *Marchia Walliarum*; habendum & tenendum eidem *Andreae* & haeredibus suis masculis sicut praedictum est. Concessimus insuper eidem *Andreae* mille marcas singulis annis ad scaccarium nostrum ad quatuor anni terminos, videlicet in tribus septimanis paschae, in quindena nativitatis sancti *Johannis* baptistae, in quindena sancti *Michaelis*, & in octabis sancti *Hilarii* percipiendas, quousque nos vel haeredes nostri dictas mille marcas terrae vel redditus per annum sibi fecerimus assignari. Ita tamen quod cum portio aliqua de dictis mille marcatis terrae vel redditus sibi fuerit assignata, extunc tantum decadat de dictis mille marcis ad scaccarium nostrum sibi assignatum, sicut praedictum est. In cujus, &c. Per R. apud *Pontem-fractum* xxv die *Martii*.

Per ipsum regem, nunciante magistro

Roberto de Baldock.

Afterward, under *Edward* the III, those preambles expressing the conveniency of advancing persons of merit to honour, or the merit of the person created, or both, (which from thence to this day have for the most part continued in use) began to be prefixed to the creations of earls. In his eleventh year, when many were made in parliament (the black prince being then also created duke of *Cornwal*) three of them, *William* of *Clinton*, earl of *Huntingdon*, *William* of *Bobun*, earl of *Nottingham*, and *Robert Ufford*, earl of *Suffolk*, had the self-same syllables in their preambles, that the black prince had in his charter of the duchy of *Cornwal*, which (sofomuch as concerns the title) is anon inserted, where we speak of dukes. No difference at all is between them, until the names occur after those words, *nostraeque considerationis intuitu ad personam dilecti & fidelis nostri*. But whereas the charter to the black prince, hath a little after *intimius convertentes*; in the earls *intimius* is omitted. Neither have I seen a

^r Cart. 6 Ed. II. num. 30.
6 Ed. II. num. 31, & 32.

^f Pat. 15 Ed. II. part. 2. membr. 22. & Cart. 15 Ed. II. membr. 2. n. 7.

^f Cart.

^v Cart. 11 Ed. III. num. 41, 49, & 52.

preamble to a creation, used with us, before this time. And some others were then created, and with a like kind of patents to those of the three before named, saving that their preambles differed. One example we add here. *Hugh of Audley* earl of *Glocester* had this * charter.

Edwardus, &c. archiepiscopus, episcopus, &c. salutem. Sciatis quod, cum ad attollenda regalis sceptri fastigia, & regiminis negotia potentius & consultius dirigenda, concesserimus, ad requisitionem praelatorum & procerum, ac communitatis regni nostri in instanti parlamento nostro apud *Westmonasterium* convocato convenientium, numerum comitum & personarum illustrium in eodem regno, duce Domino, foeliciter adaugere; nos ad probitatem strenuam, claritatem generis, & providentiam circumspiciam dilecti & fidelis nostri *Hugonis de Audele*, nec non ad obsequia placida quae nobis in opportunitatibus tam liberaliter quam gratanter praestitit, personae vel rerum dispendiis non vitatis, gratiae considerationis intuitum dirigentes, ac sperantes quod honoris adjectio probitati suae gratum adjiciet incrementum, ipsum de definito dicti parlamenti consilio in comitem *Glocestr.* praefecimus, & de statu comitis, per *cincturam gladii*, de munificentia regia, investivimus, ad nomen & omen comitis dicti loci sibi & haeredibus suis perpetuo retinendum. Et ut juxta tanti nominis decemiam possit honorificentius se habere, dedimus, concessimus, & hac carta nostra confirmavimus, eidem comiti & haeredibus suis viginti libratas redditus de exitibus com. *Glocestr.* singulis annis, ad festa Paschae & sancti Michaelis, per aequales portiones percipiendas, per manus vicecomitis illius qui pro tempore fuerit, imperpetuum. Quare volumus & firmiter praecipimus pro nobis & haeredibus nostris, quod praedictus *Hugo* & haeredes sui, praedictas viginti libras redditus de exitibus comitatus praedicti, singulis annis ad festa praedicta pro aequalibus portionibus percipiant, per manus vicecomitis comitatus illius qui pro tempore fuerit, imperpetuum, sicut praedictum est. Hiis testibus venerabilibus patribus, *J.* archiepiscopo *Cantuar.* totius *Angliae* primatice cancellario nostro, *H.* episcopo *Lincoln.* thes. nostro, *D.* episcopo *Winton.* *Johanne de Warrenia* comite *Surriae*, *Hugone de Courtenay*, comite *Devon.* *Thoma Wake de Lydel*, *Rogero de Grey*, *Roberto de Ufford* senescallo hospitii nostri, & aliis. Datum per manum nostram apud *Westmonasterium* decimo sexto die Martii.

Per ipsum regem.

Thus the patents about that time after the clauses of creation and investiture (which were of the same sense in all; usually, in the same words) gave the earl, for his better support, some revenue, most commonly out of the profits of his county. And sometimes the revenue, for support of the dignity, was given, *sub nomine*

& honore comitis pro tertio denario comitatus illius, as in the creations of some other earls in that age; as of *William of Clynton*, earl of *Huntingdon*, *William of Bobun*, earl of *Northampton*, and of *Edmund of Langley*, earl of *Cambridge*. And sometimes great possessions in lands, were given to the same purpose, as in that to *John of Gaunt*, by which he was created earl of *Richmond*. *Ipsum* ^a in comitem *Richmund* praefecimus, & eum de comitatu *Richmond* per cincturam gladii sollemniter investivimus. Et cum deceat, ut honori tanti nominis correspondeat sufficientia facultatis, dedimus & concessimus pro nobis & haeredibus nostris, & hac carta nostra confirmavimus, eidem comiti, castra, maneria, terras, tenementa, & omnia alia loca ad praedictum comitatum pertinentia; habendum & tenendum eidem comiti & haeredibus de corpore suo exeuntibus, una cum libertatibus & praerogativis omnimodis, tam regalibus quam aliis, quas *Johannes nuper dux Britanniae* & comes *Richmond*, habuit in comitatu, castris, maneriis, &c. And to strengthen his title in the earldom thus given him, he had afterward a release from *John* ^a duke of *Bretagne*.

Under *Richard II.* divers times, lands, as well as rents of good value, are assigned in the patents, *pro statu comitali decentius* & ^b *honorificentius sustentando* & *manutenendo*, as the words sometimes are. Sometimes also the yearly rent of xx pounds, or the like, out of the profits of the county, is given to him that is created, ^c *sub nomine comitis*. But the most observable patents of this time are those two at his coronation; the one to *Henry Percy*, earl of *Northumberland*, the other to *John of Mowbray*, earl of *Nottingham*. In both of which, it is granted, that the lands whereof they were seised, or should afterward purchase, should be held *sub honore comitali*, and as parcel of their earldoms. In that to the earl of *Northumberland*, after the clauses of creation and investiture, which in this, and others of that age, were commonly *nomen & honorem comitis dedimus*, & *ipsum* in comitem *N.* praefecimus, ac de eisdem nomine & honore per cincturam gladii investimus, habendum, &c. or the like, xx pounds yearly is given to him out of the profits of the county, *sub nomine comitis Northumbriae*, payable at certain feasts. *Volentes ulterius* (saith the ^d king) *de gratia nostra speciali, quod omnia castra, dominia, maneria, terra & tenementa quae eidem Henricus jure haereditario vel acquisitione propria praeantea tenuit & possedit, vel imposterum est habiturus, sub honore comitali, & tanquam parcella dicti comitatus, jure aliorum in omnibus semper salvo, de cetero tenentur.* The same sense (almost the same syllables) is in that to the earl of *Nottingham*. And afterward, in his creation of *Michael de la* ^e *Poole*, earl of *Suffolk*, the annuity of twenty pounds assigned for his support (according to his

* Cart. 11 Ed. III. num. 34. vide ibid. num. 50, 55, 68, & si placet rot. parl. 36 Ed. III. num. 37.

n. 47, &c. & cart. 36 Ed. III. num. 8.

claus. 35 Ed. III. membr. 39.

^b Joh. Holland comiti Huntingdon, cart. 11 Rich. II. num. 25. comiti Rutland, cart. 13 Rich. II. num. 5.

^c Cart. 1 Rich. II. comiti Buckingham, &c.

^d Cart. 1 Rich. II. num. 3.

^e Vide cart. 11 Ed. III.

^a Dors. membr. 4.

^e Cart. 9 Rich. II. num. 29.

estate in the honour) out of the profits of the county, is given *pro corpore filio seu titulo comitatus praedicti*. But I have not observed another, of any king's time, with those kind of clauses in them. The patents of creation of divers other earls under this king *Richard*, are extant in the rolls. And about the end of his reign, five earls have one and the same short preamble. It is but, *considerantes probitatem strenuam, & providentiam circumspectam, ac geminatam morum & generis claritatem dilecti & fidelis nostri N.* This is the preamble to the creations of *Thomas le Despenser*, earl of Gloucester, *Ralph de Neville*, earl of Westmorland, *Thomas de Percy*, earl of Worcester, *William Lescrope*, earl of Wiltshire (that were^f created in his *xxi* year) and *John of Beaufort*, earl of Somerset,^g created in his twentieth. And in the later ages also, the self-same form of preamble (for so much as concerns the advancement of men of merit) hath been used in several patents.

About the end of *Henry IV.* *Thomas Beaufort*, brother to the king, is created, (the clauses of his creation and investiture being as others of the same age, and like those before cited out of the earl of Northumberland's patent) into the title of earl of Dorset, and twenty pounds yearly are assigned for support of the honour given,^h *sub nomine comitis Dorset*. And the self-same occurs in a creation of the earl of Northumberlandⁱ under *Henry V.* which words I find not used in any creation of a later time.

But, if the person created were of a greater dignity before his creation, then the title was given him, in this age, without any clause of ceremonial investiture, and so (it seems) without any actual investiture, as in that of *Henry VI.* to *John duke of Somerset*, made earl of Kendal. He only grants to him^k *nomen, stilum, titulum & honorem comitis de Kendal, ultra nomen ducis Somerset, & haeredibus masculis de corpore, &c.* And so *Edward IV.* created his Nephew, *John*, son and heir of *John duke of Suffolk*,^l earl of Lincoln, and *George duke of Clarence*, earl both of Salisbury and^m Warwick by several patents; without any mention of a ceremony of investiture. The same king created prince *Edward*, earl both of March and Pembroke, by several patents of the same date, *ut ibidem praeficiendo praesideat, & praesidendo easdemⁿ comitatum partes ac marchias dirigat & gubernet*, and gives the honour, stile and name of earl of each of those earldoms, without mention of any ceremony of investiture in either of them. Sometimes also (though rarely in the age we speak of) no express mention is of it in the patent, although the title be given to one of an inferior dignity; as in that by which *Edward the IV.*^o created *Henry viscount Bourchier*, earl of Essex. And when in the beginning of *Richard the III.* *Wil-*

liam viscount Berkley was made earl^p of Northingham, his patent was first so drawn, without any mention of a ceremony of investiture. But he had another of the same date, wherein an usual clause of the ceremony of investiture of that time was inserted, and a *vacat* was set on the enrolment of the first, *quia aliter inferius*. But regularly, the whole charters of other creations in that age, consisted only of the preambles, the clauses of creation and investiture, which were sometimes, *ipsum comitem N. cum^q titulo, filio, loco, & sede, nomine, autoritate, & honore eodem debito praeficiamus, erigimus, & ordinamus, & creamus, ac per cincturam gladii realiter investimus, habendum & tenendum eadem titulum, &c.* Sometimes, ^r *ipsum per cincturam gladii comitem N. praeficiamus, erigimus, & creamus, eique nomen, statum, dignitatem, honorem, praecminentiam, & stilum comitis N. damus & imponimus, habendum, &c.* or the like, and the assignment of a rent of xx pounds out of the profits of the county, for the most part (though sometimes more^t were given) for the support of the dignity, besides the clauses, *quare volumus & firmiter praecipimus*, that the person created should enjoy his honour and rent, or^u *feodum* (as the rent is sometimes called) according to the charter, and a *non obstante aliquo statuto, actu, &c.* both which are, but sometimes only, added. Neither find I any other clauses in the time that follows, until the *xxi* year of *Henry VIII.* saving that in the creation of *Edward Courtney* earl of Devonshire, under *Henry^x VII.* after the clauses of creation and of investiture, very many castles, manors, hundreds, and other possessions are given him (but no annual rent or creation-money, as they now call it) and then the *habendum* comprehends together both the honour and those possessions, which were given him to hold, *in tam amplis modo & forma prout Thomas pater Thomae nuper comitis Devon. aut aliquis alius comes Devon. ante haec tempora habuit & gavisus fuit*. But in *xxi* of *Henry the VIII.* after those clauses of creation and investiture used in that time, and the *habendum*, in the patent of^v creation of *Robert Radcliffe viscount Fitzwalter*, into the title of earl of Sussex, follows, *volentes & per praesentes concedentes, pro nobis haeredibus & successoribus nostris, quod praefatus Robertus & haeres sui praedicti nomen, statum, gradum, dignitatem, stilum, titulum, & honorem praedictum, successive gerant, & habeant, & eorum quilibet gerat, & habeat. Et per nomen comitis Sufflex successive vocitentur & nuncupentur, & quilibet eorum vocitetur & nuncupetur; quodque idem Robertus & haeres sui praedicti successive, ut comites Sufflex, in omnibus teneantur, tractentur, & reputentur, & eorum quilibet habeat, teneat, & possideat sedem & locum*

^f Cart. 21 R. II. num. 21. & 19.

^g Cart. 20 R. II. num. 1. eadem ipsa vocabula in proem. diplomat. quo creatus est Edmundus comes Cantii, habentur cart. 5 Ed. IV. num. 18.

^h Cart. 13 H. IV. mem. 3. num. 2.

ⁱ Cart. 3 H. V. num. 6.

^k Cart. 21 H. VI. membr. 44. num. 45. & vide Cart. 9. & 10 Rich. II. mem. 1. num. 1. de Johanne duce Britanniae creato in comitem Richmondiae, & cart. 15 Ed. IV. memb. 12. num. 13.

^l Cart. 7 Ed. IV. num. 4.

^m Cart. 12 Ed. IV. num. 11. & 12.

ⁿ 19 Ed. IV. mem. 10. num. 9. & 10. Julii 8.

^o Cart. 1 Ed. IV. part. 2. num. 1.

^p Cart. 1 Rich. III. membr. 1.

^q Cart. 5 Ed. IV. num. 18.

^r Cart. 5 Ed. IV. num. 18.

^s Cart. 5 Ed. IV. num. 18.

^t Cart. 5 Ed. IV. num. 18.

^u Cart. 5 Ed. IV. num. 18.

^v Cart. 5 Ed. IV. num. 18.

^w Cart. 5 Ed. IV. num. 18.

^x Cart. 5 Ed. IV. num. 18.

^y Cart. 5 Ed. IV. num. 18.

^z Cart. 5 Ed. IV. num. 18.

^{aa} Cart. 5 Ed. IV. num. 18.

^{ab} Cart. 5 Ed. IV. num. 18.

^{ac} Cart. 5 Ed. IV. num. 18.

^{ad} Cart. 5 Ed. IV. num. 18.

^{ae} Cart. 5 Ed. IV. num. 18.

^{af} Cart. 5 Ed. IV. num. 18.

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in parliamentis nostris haeredum & successorum nostrorum infra regnum nostrum Angliae, inter alios comites, ut comes Suffex; necnon dictus Robertus & haeredes sui praedicti gaudeant & utantur, & eorum quilibet gaudeat & utatur, per nomen comitis Suffex, omnibus & singulis talibus juribus, privilegiis, immunitatibus ad statum comitis in omnibus rite & de jure pertinentibus, quibus caeteri comites dicti regni nostri Angliae, ante haec tempora, melius honorificentius & quietius usi sunt, & gavisi, seu in praesenti gaudent, & utuntur. And then it is concluded with the yearly annuity of twenty pounds out of the profits of the counties of *Surrey* and *Suffex*. And in that age sometimes the annuity or creation-money was also given,² not out of the county, but out of other profits. And when the title was taken from a town or a^a city, the annuity was (as at this day) given either out of the county, wherein the town was seated, or out of the same county with some other, or out of some port, or otherwise at the pleasure of the king. But from that time of *xxi Hen. VIII.* that clause of *volentes, &c.* as in that to the earl of *Suffex*, or the like, hath been for the most part inserted in the forms of creation of earls. And about the end of this king *Henry* the *VIII.* that use began of creating the person, to be honoured with the title of earl, into a baron first (if before he were none) as we see in the example^b of *Sir William Parre*, who by several patents of the same date, having also the self-same preambles (for also oft-times the patents of several persons have had the self-same preambles) was created first baron of *Horton*, and then earl of *Essex*.

Under *Edward* the *VI.* the clause of investiture (after that of creation) is sometimes, *ipsumque N. hujusmodi statu, stilo, titulo, honore, & dignitate per cincturam gladii insignimus, investimus, & realiter nobilitamus, & unam capam honoris & dignitatis, atque circulum aureum super caput suum ponimus, habendum, &c.* And sometimes, *ac ipsum N. in hujusmodi statu, titulo, honore, & dignitate comitis N. per gladii cincturam, capae & circuli aurei impositionem insignimus, investimus, & realiter nobilitamus per praesentes, habendum, &c.* which last clause or stile of investiture hath continued in use to this day. The several clauses of former times, and the several introductions of them being thus opened, we conclude here with the usual form of the clauses of creation that are in patents of the present age. After the king's stile, and a preamble consisting, for the most part, of the conveniency of advancing men of merit to honour, and of the merits of the person to be honoured with the title of earl, the patent goes on with

SCiat is igitur nos de gratia nostra & speciali, ac ex certa scientia, & mero motu nostris praefatum *N.* in comitem *A.* nec non ad statum, gradum, dignitatem, & honorem comitis

A. creximus, praefecimus, constituimus, & creavimus, ipsumque *N.* comitem *A.* tenore praesentium, erigimus, praeficimus, constituimus & creamus per praesentes, eidemque *N.* nomen, statum, gradum, stilum, dignitatem, titulum & honorem comitis *A.* imposuimus, dedimus, & praebuimus, ac per praesentes imponimus, damus & praebemus, ac ipsum *N.* hujusmodi nomine, statu, gradu, stilo, dignitate, titulo & honore comitis *A.* per gladii cincturam & capae honoris & circuli aurei impositionem, insignimus, investimus, & realiter nobilitamus, per praesentes. Habendum & tenendum eadem nomen, statum, gradum, stilum, dignitatem, titulum & honorem comitis *A.* praedicti, cum omnibus & singulis praeheminentiis, honoribus, ceterisque nomini, statui, gradui, stilo, dignitati, titulo & honori comitis pertinentibus sive spectantibus, praefato *N.* & haeredibus masculis de corpore suo exeuntibus, imperpetuum. Volentes & per praesentes concedentes, pro nobis haeredibus & successoribus nostris, quod praefatus *N.* & haeredes sui masculi praedicti nomen, statum, gradum, stilum, dignitatem, titulum, & honorem comitis *A.* successive, gerant & habeant, & eorum quilibet gerat & habeat, & per nomen comitis *A.* successive vocitentur & nuncupentur, & quilibet eorum vocitetur & nuncupetur, & quod idem *N.* & haeredes sui masculi praedicti successive ut comites *A.* teneantur, tractentur, & reputentur, & eorum quilibet tractetur, teneatur, & reputetur, habeantque, teneant, & possideant, & eorum quilibet habeat, teneat, & possideat successive sedem, locum, & vocem in parliamentis & publicis comitiis ac consiliis nostris, haeredum, & successorum nostrorum infra regnum nostrum *Angliae*, inter alios comites, ut comes *A.* Nec non dictus *N.* & haeredes sui masculi praedicti gaudeant & utantur, & eorum quilibet gaudeat & utatur, per nomen comitis *A.* omnibus & singulis juribus, privilegiis, praeheminentiis, & immunitatibus statui comitis in omnibus rite & de jure pertinentibus, quibus caeteri comites dicti regni nostri *Angliae* ante haec tempora, melius honorificentius & quietius, & liberius, usi & gavisi sunt, seu in praesenti gaudent & utuntur. Et quia, crescente status celsitudine, necessario crescant sumptus & onera grandiora, & ut idem *N.* & haeredes sui masculi praedicti melius, decentius, & honorificentius statum, honorem, & dignitatem praedictam comitis *A.* ac onera ipsi *N.* & haeredibus suis masculis incumbant, manuteneant & supportare valeant, & quilibet eorum valeat, ideo, de uberiori gratia nostra dedimus, & concessimus, ac per praesentes pro nobis haeredibus & successoribus nostris, damus & concedimus praefato *N.* & haeredibus suis masculis praedictis, viginti libras feodi, sive annuales redditus singulis annis percipiendas, &c.

Either out of the county, out of the customs, or subsidies of some port, or out of some other revenue, according to the pleasure of the king.

² Pat. 29 H. VIII. part. 1. Edwardo Seimour com. Hartford.

^b Pat. 35 Hen. VIII. part. 15. membr. 24.

VI. part. 4. comiti Pembroke.

^a Pat. 30 H. VIII. part. 2. Hen. dom. Dawbney. com. Bridgewater.

^c Pat. 1 Ed. VI. part. 6. membr. 19. & 3 Ed. VI. part. 7. com. Wilts.

^d Pat. 5 Ed.

This kind of form is used in creation of earls at this day. Neither doth the form much differ (for so much as concerns this title) when, by the same patent, the title of baron, or of duke is given together with it. When the title of duke is given with it, then the form of this creation, extended only to the end of the clause *volentes*, &c. which is concluded with *gaudent & utuntur*,^e precedes in the patent, in those few examples that have been lately of that nature. The persons created being earls of other places before, and so having in their new creations, no creation-money added to their new earldoms. And when that of baron is given with it, then after the preamble and clauses of creation of a baron, this of an earl without any other preamble succeeds, according to the form before shewed. The estate limited, at this day, is usually to the heirs males of the body begotten, antiently the limitation was sometimes in fee, sometimes to the heirs of the body, and for life also.

XI. The honorary possessions of an antient earl of this kind, or his earldom, was called his honour, in such a sense as at this day we use the word, honour, for a predial possession; as we say honours, castles, and manors. And *honor comitis Gloucestr. honor comitis Eustachii, honores comitum*, and the like, to this purpose, occur in ^f *Domesday*, in the old pipe^g rolls, and elsewhere frequently. It is the same with *comitatus*, when *comitatus* signifies the body or predial possession, which is the earldom, of one of those antient earls that were not palatine. For the earldom of a palatine earl, that is local, is designed by *comitatus*, either as it denotes a shire or an earldom. For his shire and earldom, or honorary possession, are, for the most part, the same thing. Such an earldom of that age is stiled also sometimes *baronia*,^h or *honor capitalis*. For the word *baro* likewise, in a more comprehensive signification, denotes an earl also; whereof more anon in the title of barons. These honorary possessions consisted usually of castles, manors, and other lands held in chief by common knight-service, or grand serjeanty, or by both. For both were sometimes reserved together, besides the third penny, whereof enough is said already. But that which we find in some antient authority touching the estimate of an earldom by a certain number of knights fees, and the title of *pares comitum* from that estimate, is a mere vanity. Thereof, more anon; where we speak of barons. I add here only, that no record of any court that I have yet seen (though the mention of earldoms be very frequent in them) gives any testimony that tastes of any such matter. And we find expressly that some great menⁱ had many more knights fees than twenty; and yet were never thought to have possessed earldoms. When the honorary possessions of earls, or their earldoms, were in the king's

hand by reason of an escheat, or otherwise, they were usually distinguished from other lands of the crown, by the name of *honores comitum*, in that accompts made of them. And when any new earl was created of such an earldom remaining in the king's hand, the possessions, by the name of the *honor comitatus*, were commonly given him. And if an earl were to be made of an earldom not yet so known, then possessions were added, at the creation, to create an earldom also. Some light to this matter may be had out of the antient creations before noted. And an example or two concerning it, we shall give here. Under *William the I.* there was no earl of *Staffordshire*. But the *honor comitum* is thus mentioned in *Domesday*. *In burgo de Stafford habet rex in suo dominio xviii burghenses, & viii vastas mansas. Praeter has habet rex ibi xxii mansas de honore comitum. Harum quinque sunt vastae, aliae inhabitantur*—*Roger comes* (he was then earl of *Arundel* and *Shrewsbury*) *habet tres mansas, quae jacent ad Halam. Ipse comes habet intra murum xxxi mansas. Ex his x sunt vastae. Hugo filius ejus tenet de comitatu v mansas, & pertinent ad Gurbeldre. Robertus de Stafford habet xiii mansas de honore comitum, & pertinent ad Bradley. Ex his iv sunt vastae. Wilhelmus filius Anselmi habet de comitatu iv mansas quae pertinent ad Pennam manerium comitis. Ex his una tantummodo est hospitata.* And in *Hoveden* we read, that *Richard the I.* gave the earldom of *Glocester*, to his brother, *John*, afterward king of *England*, with *Isabel* one of the daughters and coheirs of *William* earl of *Glocester*. Of what nature and value that earldom then was, appears in the pipe^k roll of the same time, under the title of *honor comitis Glocestre*. *Hugo Bardulf* (lays the roll) *reddit compotum de xlii libris xiii solidis & sex denariis de veteri firma honoris comitis Glocestriae. Et idem de cccxx libris & xviii solidis & ix denariis de firma maneriorum ejusdem honoris de tribus partibus anni antequam rex daret eundem honorem Johanni fratri suo. Et de xxxii libris de tertio denario comitatus de dimidio anno.* And in the same roll also, under the title of *Lancastria* (the earldom whereof was also then given to this lord *John*) the accompt is of fifty pounds paid to him *de quarta parte anni*; & *a modo totum*. Other like passages for the nature and value of antient earldoms, are frequent both in story and the rolls. And for the tenure of these earldoms, I add an example or two out of the records^l of the time of king *John*. *Comes Essex Pleisetum tenet cum honore comitis per lx milites. Comes Albricus* (the earl of *Oxford*) *tenet Pengham cum honore per xxx milites*, and such more are obvious. And the chief seat or castle of the earldom so held, was called *caput*^m *comitatus*. And in this sense is *comitatus integer* used for a whole

^e Pat. 21 Jac. I. ducibus Richmond, & Buckingham. mag. Hen. II. lib. rub. scacc. ms. pag. 61. & 152, &c.

^f In *Staffordshire*.

^g Rot. mag. 1 Rich. I. Rot. honorum, & saepius in cor.

^h Lib. rub. scacc. ms. pag. 64, 75, 108, & 149. Glanvil. lib. 9. cap. 4. Mag. cart. cap. 31, &c.

ⁱ Vide Camd. Brit. pag. 488. de Nigello de Albenie qui 120. feoda militaria tenuit sub Henrico I. &c. sed innumera ejusmodi testimonia habentur apud Alexandrum Salopuburiensem in lib. rub. scaccarii. Et vide infra §. XVII. XVIII.

^k Rot. mag. 1 Rich. I. Rot. honorum.

^l Inquit temp. Joh. r. in lib. rub. ms. scaccarii, fol. 335. b.

^m Malmesb. novell. lib. 2. p. 184.

ed. Franc. & Bracton. lib. 2. cap. 34. §. 1. fol. 76.

earldom, in the grandⁿ charter, in ° *Braeton*, and elsewhere. And *servitium quartae partis unius^p comitatus*, and the like, from the same sense, occurs, for the service of a fourth part of an earldom. And upon the death of every ancient earl that had such honorary possessions (whereof his earldom consisted) his heir being of full age, was at his livery to pay a c pounds for a relief to the king, as we see by the grand charter, before which, however this and that of barons also, be there called *antiquum relevium* (as perhaps, by the most usual^q composition, they were long time before the grand charter was agreed on; and in that sense also *iusta & legitima relevatio* may be understood in the laws of Henry the I. in *Matthew Paris*) yet the reliefs, both of earls and barons, were not, in practice, reduced to that certainty,^r until that charter was fully settled. And if the same person died seised of several earldoms, his heir paid for each earldom a several relief of a c pounds; and so also proportionably for the parts of an earldom.

But for those earldoms and reliefs; we insert here some most observable testimonies out of the rolls. Under Henry the III, *John de Plessetis* was earl of *Warwick* for life, the remainder to his aunt *Alice*, the wife of *William Maudit*, baron of *Hanslap* in fee. She had issue *William Maudit*, and died, and then *John de Plessetis* died also. Her son *William* was heir to the earldom, and upon security given to the escheator for his relief of a c pounds, had his livery. *Rex cepit homagium* (saith the record) *Willielmi Maudit de Hanslep*, de castro, honore, manerio de *Warwicke*, & manerio de *Builes*, & de omnibus aliis terris & tenementis de quibus J. de Plessetis quondam comes *Warwicke* obiit seiscitus, tanquam pertinentibus ad honorem comitatus *Warwicke*, & quae ad dictum Willielmum jure haereditario debent pertinere, & ei castrum, honorem, maneria, terras, & tenementa reddidit. Et mandatum est Willielmo de *Wepplond* escaetori citra *Trentam*, quod accepta a praefato Willielmo securitate de c libris regi reddendis ad scaccarium pro relevio suo, eidem Willielmo &c. plenam &c. T. iv die Aprilis. And that also of *John de Bohun*, earl of *Essex* and *Hereford*, because it gives light to the nature of honorary possessions, and the payment of reliefs both of this and some other dignities, deserves a place here. *John de Bohun* (son and heir of *Humfrey de Bohun*, son and heir of *Humfrey de Bohun* earl of *Essex* and *Hereford*) being called in the exchequer about the beginning of *Edward III*, to answer to the king for the reliefs due for his inheritance upon his father's death, venit per *Richardum de Wy* (so are the words of the roll) attornatum suum, & dat domino regi ccli libras ii solidos iii denarios pro relevio praedicti *Humfredi patris sui de terris & tenementis praedictis*, videlicet c libras pro comitatu *Essex*, c libras pro comitatu *Hereford*, xxii libras

iv solidos v denarios ob. pro tertia parte feodorum, quae quondam fuerunt *Ada de Portu*, qui eadem feoda tenuit per baroniam; xxii libras iv solidos v denarios ob. pro tertia parte honoris de *Beghnok*, qui honor teneitur de rege per baroniam (& quae quidem duae baroniae *Ada de Portu* & *Beghnok* quondam fuerunt *William de Breaus antecessoris praefati Humfredi patris sui inde ut dicit*) & x marcas pro tertia parte quintae partis comitatus marescalli, quae quidem comitatus *Essex* & *Hereford*, tertiam partem feodorum, tertiam partem honoris, & tertiam partem quintae partis comitatus marescalli, dicit praefatum *Humfredum avum suum tenuisse in capite*, die quo obiit, de praedicto avo regis nunc. Requisitus *Johannes de Bohun* quae castra, villas, maneria, terras, & tenementa dictus *Humfridus avus suus habuit & tenuit sigillatim*, die quo obiit, de comitatibus *Essex*, *Hereford*, feodis, honore & comitatu marescalli praedictis, dicit & cognoscit, quod dictus avus suus tenuit de dicto comitatu *Essex*, castrum & villam de *Plafey*, manerium de *Walden*, *Depeden*, *Waltham*, alta *Estre* & *Roysthamstede* in comitatu *Essex*, maneria de *Wyntanton* & *Weresle* in comitatu *Huntingdon*, manerium de *Agnodetham* in comitatu *Buckingham*, manerium de *Enfield* in comitatu *Middlesex*, & manerium de *Walton* in comitatu *Surrey*, quae castrum villa & maneria aliquando fuerunt de baronia *Willielmi de Mandevil*, quondam comitis *Essex*, & de dicto comitatu *Hereford*, manerium de *Woke*, in comitatu *Wiltis*, manerium de *Wylteberst* in comitatu *Glocestre*, castrum de *Calderote*, & villam de *Newton* in *Wallia*, & similiter maneria de *Fobbingis*, *Shenefeld*, *Queeneden* & *Farnham* in comitatu *Essex*. Quae quidem maneria de *Fobbingis*, *Shenefeld*, *Queeneden* & *Farnham*, dicit praedictum regem *Edwardum avum dedisse* praefato *Humfrido avo* in escambium, pro castro & terra de *Parford* in *Wallia*, quae castra & terra de *Parford* prius fuerant particula ejusdem comitatus *Hereford*, & de baronia comitatus *Hereford*, quae quondam fuit *Humfridi de Bohun*. Et de dictis feodis quae fuerunt *Ada de Portu*, castrum & terras de *Hain*, castrum & terras de *Huntingdon* & villam de *Winton* in *Wallia*; & de praedicto honore de *Beghnok*, castrum & terram de *Beghnok* in *Wallia*; ac etiam quod idem avus suus tenuit medietatem manerii de *Crondon*, in comitatu *Buckingham*, per servitium dictae tertiae partis quintae partis dicti comitatus marescalli. Et scrutatis rotulis &c. super operatione relevii antecessorum *Humfridi de Bohun*, patris praedicti *Johannis de Bohun* &c. compertum est in magno rotulo de anno xii regis *Edwardi avi regis nunc* in *Essex* *Hereford*, quod *Humfridus de Bohun*, quem dictus *Johannes de Bohun* dicit fuisse antecessorem suum, alias oneratus fuit consimili modo de relevio suo pro praedictis baronia de *Mandevil*, & baronia comitis *Hereford*, ac tertia parte quin-

ⁿ Cap. 2.^o Lib. 2. cap. 36.rem quem *Glanvillam* dicimus, lib. 9. cap. 4. cario & rot. fin. ejusdem anni membran. 8.^p Efc. 30 Ed. I. num. 30. Suffex.^q Efcetr. 47 Ed. III. num. 17.^r Comm. Pasch. 6 Ed. III. rot. 10.^q Vide infra §. XVIII.^r Vide auto-

Orig. 47 Hen. III. membr. 6. in scacc-

tae partis comitatus marescalli: Et quod idem Humfridus de Bohun oneratus fuit ibidem de l. marcis, de relevio suo pro tertia parte feodorum quae fuerunt Adaë de Portu, & de l. marcis pro tertia parte honoris de Bregbnok, & sic de majori summa quam praedictus Johannes de Bohun oneratur inde ad praesens, eo quod relevium praedictum oneratum fuit, tanquam pro tertia parte praedictarum baroniarum, ante confessionem magnae cartae de libertatibus Angliae, quo tempore relevium pro baronia assessum fuit ad c libras, & post confessionem ejusdem cartae ad c marcas tantum, juxta quarum c marcarum ratam, praedictus Johannes de Bohun oneratur superius de relevio dicti avi sui pro partibus dictarum baroniarum Adaë de Portu, & Bregbnok praedictis. Quae quidem duae baroniae post discessum dicti Willielmi de Breaus, descenderunt jure haereditario tribus filiabus & haeredibus ipsius Willielmi, videlicet, Matildae primogenitae filiae, quae nupsit Rogero de Mortuo mari, Evae secundae filiae, quae nupsit Willielmo de Cantilupo, & Alianorae tertiae filiae, quae nupsit Humfrido de Bohun antecessori praedicti Joannis de Bohun, quorum haeredum nomina plerum annotantur in magno rotulo de anno xxxviii regis Henrici tertii in Hereford, ubi idem haeredes onerantur de feodo dicti Willielmi de Breaus. But it appears afterward that he had the whole barony of Bregbnok, and so pays for it c marks, and for the rest, as he first offered. Divers parts of this record are for several uses observable. But that which is spoken of in it, touching another value of relief of a barony in xii of Edward the I, which seems there to be stiled a time, before the making of the grand charter, is to be understood (as I conceive) as if it meant, that the confirmation or exemplification of Henry the III his grand charter in the xxv or xxviii of Edward the I, (or is that by which we have Henry the III's at this day) were the very grand charter itself, and that the certainty of reliefs, which we find in it, had not been clearly till then received into practice. But however, it is most certain that what we have in the grand charter was, as we now have it, granted not only in the time of Henry the III, but also under king John, as we see in Matthew Paris, Roger of Wendover, and others. And I have used an original of it that had been sealed by king John.

Under Edward the III also, Thomas of Beauchamp, earl of Warwick, as son and heir to Guy earl of Warwick, son and heir to William of Beauchamp earl of Warwick, by Robert of Aton his attorney in the exchequer, cognovit dictum Willielmum (as the roll * says) tenuisse de rege in capite, die quo obiit, castrum, honorem, & maneria de Watwike & Batles, cum pertinentiis, per comitatum, & nomine comitis Watwike, & dat domino regi c libras pro relevio praedicti Guidonis, inde asserens comitatum illum quondam fuisse Willielmo Mault de Hampshap antecessoris sui, whereupon they searched the rolls of former times, and

found that of the xlvi of Henry the III before cited. But this relief was with others discharged by power of parliament under the same king, in whose time also (search being made in the exchequer, for the reliefs due from Henry earl of Lancaster, son and heir of Henry earl of Lancaster) it was found, that his father had been charged with the reliefs of fifty pounds, pro honore villa & castro de Leycestre, quae quondam fuerant Symonis de Monteforti, videlicet pro medietate haereditatis, quae quondam fuit Roberti de Melan quondam comitis Leycestriae, and of a hundred marks for the barony of Viscount in Northumberland, and of a hundred pounds pro comitatu Lancastriae, & de c libris pro comitatu Derby integro. And therefore he was now charged with the like, the same honours being descended to him from his father.

Other examples are of this nature of these kind of earldoms, consisting of castles, towns, or lands. But also the annual rent or creation-money, in case where it hath been given expressly sub nomine & honore comitis, hath been divers times adjudged upon great deliberation, an earldom within the grand charter, and so the relief of c pounds hath been paid for it. William of Ufford earl of Suffolk, being called under Edward the III to answer for his relief in the exchequer, shews first this charter of his father's creation made in the xi of the same king, who gave him in the same charter, according to his estate in the earldom, xx libras sub nomine & honore comitis Suffolk de firma sive exitibus comitatus Suffolk, and that he was ready to pay his relief as the court should award. He shews further, that about a fortnight after the creation, the king gave his father divers possessions of a m marks yearly revenue, under several tenures, ut idem comes statum & honorem comitis decentius continuare, & melius manutenere, ac onera tanto honori incumbencia, valeret facilius supportare. Hereupon (as the roll says) super praemissis inter cancellarium Angliae, thesaurarium, barones scaccarii & justiciarios de utroque banco, concordatum est & consideratum, quod praefatus nunc comes oneretur versus regem de c libris, pro relevio suo, pro praedictis xx libris quas praedictus Robertus nuper comes pater suus percepit, & idem nunc comes percipit annuatim, de firma sive exitibus dicti comitatus Suffolk, sub nomine & honore comitis Suffolk, tanquam pro comitatu integro. And for his other possessions, he paid only according to the tenures reserved out of them. The like was adjudged under Henry the IV, in the case of Edward* earl of Cambridge, son and heir of Edmund of Langley, who was created earl of Cambridge by Edward the III. And in his patent the annuity of xx pounds was given him, (according to his estate in the earldom) sub nomine & honore comitis Cantabrigiae &c. This being shewed by this earl Edward, he offers also to pay his relief as the court shall award. Thereupon, the like advice being taken as in that case of the earl of Suffolk, visisque (as the

* Comm. Mich. 14 Ed. III. rot. 8. ex parte rem. thes. x parte rem. thes. & Hill. 6 Ed. III. fines.

* Com. Hill. 7 Hen. IV. rot. 2.

* Com. Hill. 25 Ed. III. rot. 4. art. 36 6 Ed. III. num. 8.

roll of this says) *aliis recordis hujus scaccarii per eodẽm, super operatione consimilis relevii in eodem casu*, the like judgment is given, as is before cited out of that of the earl of *Suffolk*.

But in the later ages, the grant of the annuity or creation-money being without those words, *sub nomine & honore comitis*, and only, *ut honorificentius dignitatem sustineat*, or the like, the heirs of earls so created pay not reliefs for those annuities, as for earldoms or otherwise, but only pay according as the tenure of their other^b possessions require, without relation to their dignity of earl. Although, indeed, sometimes the heirs, and such as have not had their creation money granted with the addition of those words *sub nomine, &c.* have pleaded, by mistaking that it was so granted to their ancestor at the creation, and thence inconsiderately charged^c themselves with the payment of a hundred pounds for a relief, no otherwise than as if in truth those words had been in their charters.

With this matter of reliefs of earls, we observe also that old law of *William* the first, whereby we may see how different the nature of an earl's relief in his time was, from what the grand charter afterward appointed. *De relief al count* (saith that^d law) *que al rei asiert*, *viii chevelz selez e enfrenez*, *iv halbers*, *e quatre baumes*, *e iv escuez*, *e iv launces*, *e iv espes*, *les altres iv chaceurs*, *e palfreis a freins e a chevestres*. I transcribe it as I find it, but some of it is too obscure for me to interpret. But we see that reliefs of earls were payable in arms and horse for the most part. Perhaps this law continued, and reliefs were so legally payable (though compositions were sometimes for money, whence the uncertainties, and by reason of them, grievous exactions of reliefs were used) in arms, until the *xvii* of *Henry* the II. For then by the assize of^e arms, it was ordained what arms every man should keep; and that, for every knight's fee, a coat of mail, a helmet, a target and a lance were to be kept. And that if any tenant, having such arms, died, the arms should continue to his heir if he were of full age; if not, he that had him in ward should find a man that could use them in the king's service, until the heir were of full age, and then restore them to him. It is not unlikely that upon this law, reliefs came to be paid in money. For the arms were no more, after that assize, to be taken, but preserved for the heirs. And the law it seems extended to earls and barons, whose earldoms and baronies consisted but of knight's fees held in chief, though of no certain number, as anon is shewed more fully in §. *xviii*. where you may see more of the old reliefs of barons, by which also light is given hither; especially in this scruple, how it is to be understood, that the relief of a knight's fee being said to have been of certainty, yet the reliefs of earldoms consisting of knight's fees, were so uncertain.

XII. Besides the possessions, which made their earldoms, and the eminent power, which, by reason of those possessions, they most commonly had in their counties, it may perhaps be conceived that they had also some such power, in the more ancient times, through their counties, as if they had been legal governors of them under the king. The story of *Leulfun* and *Leodwin*, under *Walcher* bishop of *Durham*, and (as it is taken) earl of *Northumberland*, in the time^f of *William* the first, may give some argument of perswasion to this purpose. And when *Roger* of *Montgomery* was made earl of *Shrovesbury* by the same king, the county itself was subjected to his command. *Warino Calvo corpore parvo* (saith^g *Odericus Vitalis* of that earl) *sed animo magno*, *Aimeriam nepotem suam & praesidatum Scrobesburiae dedit, per quem Guallos aliosque sibi adversantes fortiter oppressit, & provinciam totam sibi commissam pacificavit*. *Guilielmum cognomento Pantulfum, Picoldum atque Corbatum, filiosque ejus Rogerum & Rodbertum, aliosque fideles fortissimosque viros comitatu suo praefecit, quorum sensu & viribus benigniter adjutus, inter maximos optimates maxime effloruit*. That passage also of the earl of *Cornwall*, that had *amplissimum sub rege principatum*, or *principatus dominatum* under king *Stephen*, and^h divers other like may belong to this consideration. But especially that of *William Fitz-Osborne*, earl of *Hereford*, under *William* the first. It may be thought that he exercised a power of making his laws in his county, which had force also and continuance after his death. For thus saith *William* of *Malmesbury*, speaking of his liberal hand, and of his indulgence to his soldiers, whom he maintained for the defence of the marches of *Wales*. *Factum est, ut militum multitudineⁱ quibus larga stipendia dabat, hostium aviditatem arceret, civium sedulitatem haberet. Quare pro effusis sumptibus, asperitatem regis offensam incurrit, quod gazas suas improvide dilapidaret. Manes in hunc diem in comitatu ejus apud Herefordam, legum quas statuit inconcussa firmitas, ut nullus miles pro quacunque commisso plus septem solidis solvat; cum in aliis provincias, ob parvam occasunculam in transgressione praeccepti berilis, viginti vel viginti quinque pendantur*. The law that was thus made touching the fining of soldiers in that county, continued till *Malmesbury's* time, at least, who lived under *Henry* the first. And *administratio comitatus^k* is remembered in *Hoveden*. But these and the like passages, I conceive, prove not that the earls of those times, as earls, had any power or jurisdiction thro' the counties that denominated them. In their possessions or earldoms they had such jurisdiction, and other privileges as they had received by the king's grant, and such power besides, as the largeness of their possessions and number of tenants only gave them. But otherwise, I think, none, since the time of the

^b Vide comm. Tr. 13 Jacob. cas. Fr. comitis Rutland.

^c Comm. Mich. 11 H.VII. rot. 4. cas. Georg. comitis Kantil. diploma vero quo creatus est pater ejus Edmundus, habetur cart. § Ed. IV. num. 18.

^d Leg. Guil. 1. cap. 22. in notis ad Eadmer. pag. 180. & vide Glanvil. lib. 9. cap. 4.

^e 27 Hen. II. apud Roger. de Hoveden, pag. 350. ed. Lond.

^f Rog. de Hoved. annal. part. 1. p. 558. ed. Fr.

^g Hist. eccles. lib. 1. pag. 521.

^h Gest. r. Steph. pag. 950.

ⁱ De gest. reg. lib. 3. pag. 105.

^k Sub

initio regis Johannis.

Normans. And for those testimonies before brought, that may seem to persuade the contrary; that *Walcher*, bishop of *Durham* (if he were earl of *Northumberland*) was, I think, sheriff also. He had *curam comitatus Northimbrensis*, as is already noted. And one *Gilbert*, his kinsman, was his under-sheriff. So I understand that of *Hoveden* in the same story. *Gilberto, quia suus propinquus erat, comitatum Northimbrensis sub se regendum commiserat.* And it appears, he executed such a kind of power as belongs to a sheriff in the county. And if in truth he were earl, yet I doubt not but that he had the sheriffwick also by special grant, as some other earls in those elder times had likewise. Whence the just interpretation of that of *Roger*, earl of *Shrewsbury*, is also to be had. For he had also the sheriffwick of *Shropshire*. And under him, it seems, as an under-sheriff, was that *Warinus*, to whose charge as well the military defence, as civil government of the county, or sheriffwick was committed. For in that place of *Ordericus*, I take *provincia* for the county, or sheriffwick; but *comitatus* for his earldom, or his honorary possessions. For those five to whom his *comitatus* (as *Ordericus* says) was committed (*William pantolf*, *Picot*, *Corbet*, and his two sons) were the greatest tenants of the lands of this earl's earldom, which were very great in that county. And by their rents and personal service (for I would read *quorum censu & viribus*, not *sensu*) they so assisted him in his government that belonged to him as sheriff, that they made his greatness equal to what *Ordericus* expresses of him. They are all named in the book of ¹*Domesday*, where their several possessions are numbered. *Rogerius Corbet tenet de comite, &c.* So *Willielmus Pantulf*, *Rogerius filius Corbet* and *Robertus filius Corbet* have their several places and possessions under the title of *terra comitis Rogerii*, as tenants to him. But for that *Picodus*, *Picot* is in *Domesday*; and those *alii fideles fortissimique viri* are there likewise named, as *Walchelinus*, *Tuold*, *Helgot*, *Hugo F. Turgis*, *Gerardus*, *Nigellus*, and such more. Now, that he was sheriff of the county at the same time, is in express words shewed by that infallible authority of *Domesday*. *Ipsē comes Rogerius* (saith the book) *tenet de rege civitatem Scitropesberie & totum comitatum* (where *comitatus* signifies the county or sheriffwick; for his earldom is otherwise denoted in his large possessions there also reckoned) *& totum dominium quod rex Edwardus ibi habebat, cum XII mansis quos ipse rex tenebat cum XLVII berwichis* (hamlets, villages, or the like) *ibi pertinentibus. Et alios XI mansos habet idem comes in eadem scyra. Inter totam, id est, civitatem & mansos, & hundreda, & placita comitatus* (these words shew the office of sheriff) *reddit CCC libras & CXV solidos de firma.* Nor is it against this, that one *Raynaldus*, over whose name, *vicecomes* is written in the same book as antiently as the rest of the volume, occurs there in *Shropshire* at the same time. It

may be that was but a note of a surname. For surnames are there frequent enough. But also it may denote some sheriff of another county, or perhaps one that was sometimes employed by him as under-sheriff. For also this *Raynald* was one of his tenants, and a great one. However, it is plain by that transcribed out of *Domesday*, that the earl himself was sheriff, and thence is that passage of his government of the shire in *Ordericus* to be rightly understood; as also that of the earldom of *Cornwal*, and such more, unless you will take *principatus* and *dominatus* to denote only the power which the earl had over the tenants of his land or earldom there. Neither is that of earl *Fitz-Osborne's* law in *Herefordshire*, otherwise I think to be interpreted, than from the conjunction of the dignity of earl and office of sheriff (as the use of the time was) accidentally in the same person. And the law which *Malmesbury* attributes to him, as if he had made it by his own authority, was, (I rather think) procured by him to be established in that county. And so it might, in a vulgar expression, be called his law, scarce otherwise than at this day, those known acts of the tenth of *Henry* the seventh in *Ireland*, are stiled *Poynings* acts; because *Sir Edward Poynings* was then deputy of *Ireland*, when it passed in the Parliament there. And there was reason enough for one that so much loved his soldiers that he had with him, as sheriff, for the defence of the marches, to procure this law, or at least some remission of that, which was the custom of *Hereford*, before he was earl of it. For upon every breach of the king's peace there, the fine before was no less than five pounds, whosoever was the offender; as it appears expressly in *Domesday*, where the old customs that were there at the coming of the *Normans* are inserted. And that of *administratio comitatus*, in *Hoveden*, and elsewhere, is to be englished the government or possession of the earldom, not of the county or shire, saving perhaps in cases of earls palatine, where the denominating counties or shires were scarce at all different from their earldoms. But thereof more in the next paragraph. And to conclude this point, it will be plain by the laws and rolls of those antient times, that the sheriffs of counties had the government and custody of them, and not the earls (unless they were palatine) otherwise than in cases, where they had the sheriffwicks joined with their dignities.

XIII. The chief ornaments of investiture, used at the creation of those earls, or the honorary ornaments mentioned in their patents, as belonging to them, and as if they had been used at the investiture (for the solemnities of creation, in the later times especially, are often omitted; and the patent only delivered or sent to them supplies the investiture) may be collected from what is before cited out of the forms of patents of several ages. The girding of a sword, the cap of honour, and the coronet (by the name of *circulus aureus*) have been mentioned as ornaments of investiture, in the

¹ In Scitropespyre. terra comitis 4.

patents ever since the time of *Edward* the VI, and are to this day put on (when it pleases the king to add the solemnities of creation) besides the robes, which are by others fully enough described. But from the time of king *John* till *Edward* the VI, the investiture is (for ought I have observed) mentioned in the charters to be, *per cincturam gladii* only. But in some few examples (as is already noted) the ornaments of investiture are not at all mentioned. And remember here that which is before cited out of ^m *Bracton*, touching the name of *comites*. But also in other testimonies that are of credit enough, both the girding with the sword is found (though not expressed in charters of creation) antienter than the time of king *John*, and the coronet also, as an honorary ornament of an earl, appears to have been in use long before the age of *Edward* the VI. And for the cap; I think, there is no doubt, but that it always accompanied the coronet. And therefore of the sword and coronet only, now more particularly. The first mention of the investiture of an earl by girding him with a sword, is in that of *Richard* the I. his creating *Hugh* de *Pusaz* bishop of *Durham*, earl of *Northumberland*. ⁿ *Roger* of *Wendover* and *Matthew Paris* remember it. *A rege gladio comitatus accinctus* (say they both) *nomen sibi comitis usurpavit. Quo gladio accincto, rex cum cacinno asiantibus dixit; juvenem feci comitem de episcopo veterano*. But although we find no antienter memory of the girding with the sword, yet it is, we see, there spoken of as a custom of that age formerly enough known, and not used as a new rite of investiture. But neither was it used only at the investitures of creation (as at this day) but at those also, which were only as liveries or confirmations of earldoms made to heirs. Thence is it that *Hoveden* hath the phrase of *accingere gladio comitatus patris sui*, speaking of *Richard* the I. his confirming of *Robert* of *Bretvil*, son and heir of *Robert* earl of *Leicester* in that earldom. The form also of that of king *John* before inserted, to *William* earl of *Derby*, shews it. And for the use of it, as a confirmation only after, or upon livery, we add this singular example of the same time, of the two earls, *William* earl of *Striguil* or *Pembroke*, and *Geoffry* earl of *Essex*. *Pembroke* indeed was then, I think, a county palatine. But I have not observed any difference between the investitures or ornaments of earls palatine and others with us, saving in the earls of *Chester*, since their investiture hath been confounded with that of the principality of *Wales*, which is joined usually with it in the creation, as is before shewed. But *die coronationis suae* (saith *Hoveden*) *Johannes rex accinxit Willielmum Marefcallum gladio comitatus de Striguil, & Galfredum filium Petri gladio comitatus de Essex; qui licet antea vocati essent comites, & administrationem suorum comitatum habuissent, tamen non erant accincti gladio comitatus. Et ipsi illa die servierunt ad mensam regis accin-*

eti gladiis. (²⁵⁹) This relation can mean only, that confirmations were made to them after, or upon their liveries, by this girding them with swords; not that they were newly created, as some mistake it. The author says they were both before called earls, and had administration of their earldoms, which I understand to be possession given them by livery, or *ouster le maine*. But the ceremony of investiture, used as well to heirs in those times, as to such as were first created, had not till now confirmed them. For it is plain, that this *William* earl of *Pembroke* became to be earl in right of his wife *Isabel* (as the law, in those times, was in fee simple earldoms) daughter and heir to *Richard Strongbow*, the next earl before him, whence this title and administration was in him before king *John*'s coronation, or, this girding him with the sword. And for that other of *Essex*; he was also earl in right of his wife *Beatrix*, heir to *William* of *Mandevil* that died earl of *Essex*, without issue, in the beginning of *Richard* the I; that is, daughter and heir to *William* de *Say*, son and heir of *Beatrix*, daughter to *William* father to *Geoffry* the first earl of *Essex*, father to that *William* whom this *Geoffry Fitz-Peter* succeeded. I know this *Beatrix* is usually taken to be the eldest ^p daughter of *William* de *Say*, as if she had a coheir. I dispute not that point here. But note here, that *William* of *Mandevil* dying in *November*, in the first of *Richard* the I, (as we see in *Hoveden* and others) who began his reign on the sixth of *July*, in *January* the second year of the same king, this *Geoffry Fitz-Peter* (who was a great lawyer, and afterward chief justice of *England*) together with this *Beatrix* his wife only, had livery, or *ouster le maine*, by the name of *justus & propinquior haeres*, of earl *William*, of all earl *William*'s land; which I take also to have been the very livery of the earldom, that consisted of such possessions in those times. For *concessisse & confirmasse*, which we find in it, were frequently used in liveries, or the like, in that age. The whole form of it, as it remains to this day exemplified, about seven years after, ^q by the same king, under his new seal, is worthy of observation.

*R*ichardus Dei gratia rex Angliae, dux Normanniae, Aquitaniae, comes Andegaviae. Archiepiscopis, episcopis, abbatibus, comitibus, baronibus, justiciariis, vicecomitibus, & omnibus ballivis & fidelibus suis ad quos praefens charta pervenerit, salutem. Sciatis nos concessisse, & praefenti charta nostra confirmasse, dilecto & fidei nostro *Gaufrido filio Petri & Beatricae* de *Say* uxori ejus, tanquam justo & propinquiore haeredi, totam terram comitis *Willielmi* de *Mandevile*, quae ei, jure haereditario, pertinebat, cum omnibus pertinentiis & liberatibus & liberis consuetudinibus suis. Quare volumus & firmiter praecipimus, quod praedicti *Gaufridus & Beatrix* uxor sua, & haeredes eorum habeant, & teneant de nobis & haeredibus nostris,

^m §. VII. ⁿ Ms. & Math. Paris sub initium Rich. I. titum scriptores de re genealogica, videlicet Camden. Brit. pag. 327.

^o 2 R. I. pag. 687. ed. Fr.

^p Praeter minorem gen.
^q Videlicet Rog. de Hoveden. pag. 446. ed. Lond.

totam, praedictam terram cum pertinentiis suis, sicut praedictus comes *Willielmus de Mandevile* eam melius, & liberius, & honorificentius, & integrius, & quietius, habuit unquam, & possedit, in bosco & plano, viis, semitis, pratis, pascuis, pasturis, aquis, vivariis, stagnis, piscariis, molenis, turbariis, in advocacionibus ecclesiarum, in custodiis valetorum, & donationibus puellarum, & in omnibus aliis locis & aliis rebus. Hiis testibus, *Waltero Rothomagensi* archiepiscopo, *J. Ebroicensi* episcopo, *Rogero de Patellis* dapifero nostro, *Richardo de Kanville*, *Bertrano de Verduno*, *Radulfo filio Godefredi* camerario nostro. Datum per manum magistri *R. mali catuli* clerici nostri, anno regni nostri secundo, xxiii die *Januarii* apud *Messanam*. Is erat tenor chartae nostrae in primo sigillo nostro. Quod quia fuit aliquando in *Alemannia* in aliena potestate constitutum, mutatum est. Innovationis autem hujus, testes sunt isti, *S. Batton*. & *G. Ebroicensis* episcopi, magister *Rogerus Richmond*, magister *Maugerus Ebroicensis*, *Simon Wellensis* archidiaconi, comes *Moretoniae* frater noster, *Willielmus Mariscallus*, *Hugo Bardulfe*, comes de *Arundel*, *Willielmus* filius *Radulphi* fenescallus *Normanniae*, *Johannes de Pratellis*, *Petrus de Pratellis*, *Robertus de Harewecurt*, *Robertus de Tresgoz*, *Baldewinus* capellanus. Datum per manum *E. Eliensis* episcopi cancellarii nostri, apud bellum castrum de rupe *Andel*, xv die *Junii*, anno regni nostri nono.

In that patent of the second year, perhaps *pertinentiae, libertates, et consuetudines* comprehended also the third penny of the county. For presently after it, this earl *Geoffry* had the third penny of the half year that followed. Otto filius *Willielmi vicecomes reddit computum, &c.* — *Galfrido filio Petri xx lib. & v solidos & v denarios in tertio denario comitatus de Essex, de dimidio anno*, saith the pipe roll of that year. And afterward during *Richard* the 1's time, the whole, that is xl pounds ten shillings and ten pence, was paid him yearly for his third penny, as also in the first of king *John*, as appears in the pipe; whence it is most plain that king *John*, girding him with the sword, did not newly create him an earl. And of the girding with a sword, used at the investiture of earls, thus much.

XIV. Their coronet, or *circulus aureus* (as it is at this day called in the charters of creation; and the cap of honour, I cannot doubt, but was always in use with the coronet) is also much more antient, as their honorary ornament, than the exprefs memory of it is in the clause of investiture of their charters. For that exceeds not the time of *Edward* the VI. But *John* of *Eltham*, brother to king *Edward* the III, earl of *Cornwal*, lies buried in saint *Edmund's* chapel at *Westminster*, with a coronet on his head, the form whereof indeed is fleury, or, as at this day, a duke's is with us. But he died almost two years before any duke

was made in *England*; whence we may perhaps collect also, that the coronets, at least of some earls, before the creation of dukes, were of like form to those of dukes. And in the later ages an earl's is pointed and pearled on the top of the points, as we see it at this day. But also long before the death of this earl of *Cornwal*, we have clear testimony of an earl's coronet. *Amyer de Valence*, that died earl of *Pembroke* in the xvi year of *Edward* the II, had one, as appears by this instrument of *William* of *Lavenham* treasurer to him, by which he acknowledges the receipt of it from Sir *Henry Stachedene* in mcccix, or the xii of *Edward* the II.

P Ateat universis quod ego *Willielmus de Lavenham*, thesaurarius nobilis viri domini *Adomari de Valentia* comitis *Pembroc*, recepi in custodia de domino *Henrico de Stachedene* unam coronam auream dicti comitis, in quodam coffino sigillato sigillis domini *Walteri Alexandri* & dicti domini *Henrici*, in praesentia magistris *Johannis de Wytecherche* & *Johannis Bunting*. In cujus rei testimonium huic scripto sigillum meum apposui. Datum *Londoniae* die dominica post festum decollationis sancti *Johannis*, anno domini mcccix.

And that of *Richard* earl of *Arundel*, under *Edward* the III, is most observable to this purpose. He had three coronets of several sorts and worth. And by his last will, dated at *Arundel* castle the fifth of *December*, in mcccxxv or the xlix of *Edward* the III, gave his best coronet to the lord *Richard* his son and heir (afterward earl of *Arundel*) to remain for ever to the heirs of his dignity, as for a remembrance of him; his second coronet he gave to the lady *Joan* his daughter, to remain to her and the heirs of her body; his third to his daughter the lady *Alice*, in like manner. The words are, *Item jeo done & devise a Richard mon fitz ma melieure coronne, luy chargeant sur ma benison, qu' il ne la ouste de ly durant sa vie, & apres son decesse, il la lessa a son heire per meisme la maineire, a demorer perpetuellement de heir en heir seigneurs de Arundel, a remembrance de moy & de ma alme. Item jeo done & devise a Johanne ma fille, ma second melieure coronne, la chargeant, sur ma benison, qu'ele ne la ouste de luy durant sa vie, & que apres son decesse, elle la lessa al heires nees de son corps, a demorer de heir en heir de ceux que viendront de ele a tous jours, en remembrance de moy & de ma alme.* And a little after, *Item jeo donne & devise, a Aleise ma fille ma tierce coronne en la forme suisdite.* But see also for this matter of earls coronets, *Holinshed* in *Henry* the VIII, pag. 933. and the charter of creation of *Henry* earl of *Warwick*, under *Henry* the VI, into the title of *primus comes regni Angliae*, in rot. cart. 22 Hen. VI, membrana 23. We add here the form of an earl, created with ceremony, in his robes and coronet, and so come to the title of earl that is personal.

[†] Videfis Camd. apolog. subnexam editioni penultimae Brit. in 4. pag. 13. in archivo archiepiscopatus pag. 93.

[†] Ex registro Simonis de Sudbury, arch. Cant.

XV. The title of earl that is personal, and not local, is now, and for divers ages together hath been only that, of earl marshal of *England*. A title of jurisdiction as well as of honour. But the jurisdiction we wholly omit here. The first that we find honoured by charter with this title (that is with the office of marshal, having the title of earl prefixed to it) was *Thomas of Mowbray* earl of *Nottingham*, whom *Richard* the II first made marshal of *England* for life, and then created him earl marshal, to him and his heirs males of his body begotten. The form of the patent was thus.

*R*ichardus, &c. Sciatis quod^r cum nos nuper de gratia nostra speciali concesserimus dilecto consanguineo nostro *Thomae comiti Nottingham*, officium marescalli Angliae, habendum ad totam vitam suam, nos jam de ulteriori gratia nostra concessimus praefato consanguineo nostro officium praedictum, una cum nomine & honore comitis marescalli, habendum sibi & haeredibus suis masculis de corpore suo exeuntibus, cum omnimodis feodis, proficiis, & pertinentiis quibuscunque, dicto officio qualitercunque, spectantibus, imperpetuum. His testibus venerabilibus patribus *W. archiepiscopo Cantuariensi totius Angliae primati, R. London. W. Winton. episcopis, Johanne rege Castellae & Legionis, duce Lancastriae, Edmundo Eborum, Thomae Glocestriae* ducibus avunculis nostris charissimis, *Richardo Arundel, Hugone Stafford, Michaele de la Pole, cancellario nostro, comitibus, Hugone de Segrave thesaurario nostro, Johanne de Monteacuto senescallo hospitii nostri & aliis.* Datum per manum nostram apud *Westmonasterium* XII die Januarii.

Per litteram ipsius regis de signeto.

And afterward the same king in parliament reciting this grant, gives and^u confirms to him, *officium ac nomen titulum & honorem comitis marescalli Angliae, habendum sibi & haeredibus masculis de corpore suo exeuntibus*, as fully and freely, as *Thomas of Brotherton*, then late earl of *Norfolk*, and marshal of *England*, father of the lady *Margaret* countess of *Norfolk*, his grandmother, or *Roger of Bigot* earl of *Norfolk*, and marshal of *England*, or any other since those earls, or as he himself had held *dictum officium marescalli*; and grants also, that the office of marshal in the common-pleas and exchequer, and the office of cryer in the court of the steward and marshal of the household, should after the death of them that then held these offices, remain to him with like limitation of estate; and that he and his heirs according to the limitation might grant them at their pleasure. *Et quod eadem officia, & omnia alia officia in quibuscunque curiis nostris & alibi, quae ad dictum officium marescalli Angliae retroactis temporibus pertinuerunt, & pertinere consueverunt, ad dictum officium marescalli Angliae integre rejunquantur, annexantur, & uniantur imperpetuum.* And he further by that patent granted,

ut ipse officium praedictum decentius & honorificentius de caetero facere valeat & exercere, that he and his heirs, according to the limitation, might bear a staff of gold enamelled black at both ends, with the king's arms on the upper end, and his own on the lower; *Quod ipse & dicti haeredes sui masculi* (as the words are) *marescalli Angliae, ratione officii sui praedicti habeant, gerant, & deferant tam in praesentia nostra & haeredum nostrorum, quam in absentia nostra & haeredum nostrorum, quandam baculum aureum, circa utrumque finem de nigro amelatam, & cum signo armorum nostrorum in superiori fine dicti baculi, & cum signo armorum ipsius comitis in inferiore fine ejusdem baculi ornatum, non obstante quod idem nunc comes tempore suo, seu praefati nuper comites, aut aliquis alius qui dictum officium marescalli Angliae ante haec tempora habuerunt, baculum ligneum portare seu deferre consueverunt.* By reason of the judgment given against this earl (when he was duke of *Norfolk* also) not long before the end of *Richard* the II. this honour and office were forfeited during his life. And the office was during the same time committed * to others. He died in the beginning of *Henry* the IV. His posterity afterward, by reason of that creation received from king *Richard*, had the^y honour and office, till the fifteenth of *Edward* the IV, when the issues males failed, and so the honour ended. But *Richard* the III. revived it in *John* lord *Howard*, whom he made also duke of *Norfolk*. This lord *Howard* was son to Sir *Robert Howard*, and the lady *Margaret* his wife, one of the coheirs to *Thomas Mowbray*, that was first created earl marshal. The patent of *Richard* the third^z is of the same kind with the latter, of the xx of *Richard* the second, which was made to that first created earl. And the limitation of estate is alike also. But by reason of an attainder by parliament, in the beginning of *Henry* the seventh, the honour and office was forfeited and granted^a in tail to *William* earl of *Nottingham*, afterward marquis *Berkley*. But he within few years died without issue. *Henry* the VIII. gave the same honour for life to *Thomas* earl of *Surrey*,^b afterward duke of *Norfolk*, and after the death of this duke, he gave it to his son *Thomas* duke of^c *Norfolk*, and the heirs males of his body begotten; which estate continued (the interruption during the time of *Edward* the sixth^d being excepted) until the fourteenth of queen *Elizabeth*. Since that, the estate of this honour and office hath been only for life. Saving that, at the coronation of king *James*, the earl of *Worcester* had it only for the present service, as also that for sometimes, the office hath been exercised by commission to divers lords at pleasure, while no earl marshal was created. By the patents, that in this age give this dignity, the king grants *officium comitis marescalli Angliae, ac ipsum* (saith^e the king in the first person) *comitem marescallum Angliae creamus, ordinamus, & constituimus per praesentes, & ei nomen, stilum,*

^r Cart. 9 Rich. II. num. 17.

^u Cart. 20 Rich. II. m. 1. n. 3.

^x Pat. 22 Rich. II. part. 1. m. 12. pat. 1 Hen. IV. part. 1. &c.

part. 5. m. 6.

^y Videtis rot. parl. 3 Hen. VI. membr. 18.

^z Pat. 1 Rich. III. part. 1. membr. 18.

^a Pat. 1 Hen. VII.

part. 3.

^b Pat. 2 Hen. VIII. part. 2.

^c Pat. 25 Hen. VIII. part. 2.

^d Videtis rot. parl. 1 Mariae num. 34.

^e Vi-

detis pat. 19 Jacobi part. 13. num. 5. comiti Arundel.

authoritatem, dignitatem & honorem, comitis marescalli Angliae, una cum omnibus & singulis suis officiis, commoditatibus, emolumentis, praebementiis, nominationibus, & aliis suis pertinentiis quibuscunque, tam in curiis nostris, quam alibi, eidem officio comitis marescalli Angliae qualitercunque spectantibus, sive de jure ab antiquo pertinentibus, per praefentes damus & concedimus; ac in eodem officio, & caeteris eidem officio, ut praemittitur, pertinentibus, ipsum N. investimus, stabilimus, & corroboramus in tam amplis modo, potestate, jurisdictione, & autoritate, as the antient earls marshals of England had it. And some of them are enumerated in the patents. Then the habendum and exercendum (after the limitation of the estate) is, per se, vel sufficientem deputatum sum, aut per sufficientes deputatos suos, absque compoto vel aliquo alio, &c. And the clause, for bearing the staff of gold, is also added in the same words, that are in that of the xx of Richard the second, to the earl of Nottingham. An annual rent of twenty pounds is also added to be taken out of the profits of the hannaper, or otherwise at the king's pleasure. No other clauses are in it. And this form hath, for the most part, continued ever since about the beginning of Henry VIII, when Thomas earl of Surrey was created earl marshal for life by it. For before that, the patents had usually those other particulars expressed, that are in that to the earl of Nottingham, in the xx of Richard the second.

But although the first creation of the expresse title of earl marshal, were under Richard the second, and, before that creation, the office and dignity were usually called in the patents that granted it, only *marescalcia*, or *officium marescalciae* ⁸ Angliae, or the like, and the marshal himself *marescallus*, without *comes*; yet, long before that creation, the title of earl marshal, or *comes marescallus*, occurs frequently. And that it was of known use also, appears by the title of countess marshal, attributed to the lady Margaret (daughter to Thomas of Brotherton marshal of England) in the parliament ^h roll of the first of the same king. But under Henry the third, *comes marescallus* is very obvious, as we see especially in Roger of Wendover and Matthew Paris, two writers that lived and died under Henry the third; as, Richardus ⁱ comes marescallus is reckoned in them among other earls; and, Richardus comes marescallus cum ceteris venire proponens, we read in them, and, Petrus Wintoniensis, qui vires comitis marescalli infirmare conabatur; and, post hunc consuetum comes marescallus cum Gilberto Basset; and, venit ad regem Gilbertus frater Richardi comitis marescalli; and very many such like passages are in both those writers, that were publick historiographers of the time. This Wen-

dover wrote all, or the most part that is in the published Matthew Paris, until the nineteenth of Henry the third. And he is the same that, by some, is miscalled Rogerus ^k Windore, and by others, Rogerus de ^l Windeshora. Comes marescallus occurs also in a judgment of the time of Henry the third before ^m cited, and otherwise ⁿ in the rolls of that king, and in ^o Bracton, as also in pleas of ^p parliament, both of Edward the first's, and Edward the second's time; whence their error is made plain, that say, the stile of marshal, or lord marshal only (not earl marshal) was in the ages that preceded king Richard the second. Comes marescallus we have also in the ^q beginning of Henry the third, in the rolls, and frequently afterward, during his time, and the next succeeding kings. And expressly le count marshal, in the beginning of Edward the third, in the printed year-books of ^r our law. And I doubt not, but the title of comes was added to marescallus, soon after that office came to the earls of Pembroke (about the beginning ^t of king John) in whom it continued, till it was thence, by a daughter, transferred to the Bigots, ^u earls of Norfolk, under Henry the third, from whom it came to the crown, about ^v the end of Edward the first. But to those testimonies may be added also, that of the treatise called, *modus tenendi parliamentum*. Comes senescallus, comes constabularius, & comes marescallus vel duo eorum (saith that treatise) eligent xxv personas, &c. Of the authority of that treatise more anon, where we speak of barons. But we see also here, the lord steward, and the lord constable titled earls. It is true, that both the stewardship of England, and constableship, were antiently hereditary in earls. The stewardship in those of Leicester, the constableship in those of Hereford. Whence it might be, that comes is, in that treatise, so prefixed to the steward and constable, as well as to the marshal.

But also observe, that in the more antient times, some of the most eminent officers being local earls, were yet sometimes stiled *comites*, or *consules palatini*, with relation to the court only, as if that personal title had sufficiently designed them, by joining the title of *comites* to a word, that generally expressed their personal office. For palatine was in this sense used also in England, and not only attributed to the local earls palatine, of whom enough is before said. The origination of this personal title of palatine (as it generally denoted officers of the court) is before shewed in the empire. But for examples of it in England; Odo, bishop of Baieux and earl of Kent under William the first, is called *consul palatinus*, in Ordericus Vitalis, an Englishman, that wrote under king Stephen. Quid loquar (saith ^x he) de Odone Baiocafino praefule, qui consul palatinus erat, & ubique cunctis Angliae habitatoribus formidabilis erat, ac ve-

^f Pat. 2 Hen. VIII. part. 2.

^g Videfis par. 1 Ed. II. part. 2. membr. 19, & 22. & cart. 9 Ed. II. num. 32.

^h Rot. parl.

ⁱ Rich. II. m. 4. n. 30.

^k Bal. cent. 12. script. 57.

^l Bal. cent. 12. script. 57.

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^{gi} Bal. cent. 12. script. 57.

^{gj} Bal. cent. 12. script

lut *secundus rex, passim jura dabat*? This title of *consul palatinus* was given him, not as he was earl of *Kent*, or a local earl (for his earldom was not palatine) but as he had a personal office in the court under the king, or a general power of lieutenancy created in the court, but extended through the kingdom. For he was *totius Angliae vicedominus sub rege*, as *William of Malmesbury* says of him, and *princeps palatii*, as *Ingulphus* styles him, or *curae palatinae regnique negotiis specialius praepositus*, as the author of *gesta regis Stephani* speaks of *Roger* bishop of *Salisbury*. And, in this sense it seems, *Joannes Sarisburiensis* in one place calls all great officers of the *English* court, *comites palatini*. At least such officers as, being earls, were also honoured with the greater court-dignities. *Sicut alii praefules in partem sollicitudinis*, (so says this *Sarisburiensis* in letters ^v to one *Nicholas*, sheriff of *Essex*) *a summo pontifice evocantur, ut spiritualem exercent gladium, sic a principe, in ensis materialis communionem*, *comites quidam, quasi mundani juris praefules, asciscuntur. Et quidem qui hoc officium gerunt in palatio juris autoritate, palatini sunt. Qui in provinciis, provinciales. Utrique vero gladium portant, non utique quo carnificinas expleant veterum tyrannorum, sed ut divinae pareant legi, & ad normam ejus utilitati publicae serviant, ad vindictam malefactorum, laudem vero bonorum. Tu ergo qui provincialium vices agis, prout loci & nominis index est titulus, utinam sic exequaris quod exegit princeps, ne offendatur is qui aufert spiritum principum.* But whereas he here tells this sheriff, that he did *provincialium vices agere*; it is but his playing with the word *vicescomes*. For there was no subordination between earls and sheriffs, save only in the *comites palatini*. And whilst this *Nicholas* (who as I think is called *Nicolaus clericus*, and *Nicolaus decanus*, in the pipe rolls of *Henry* the second) was sheriff of *Essex* and *Hertford* also (for so he was) both those counties had their earls, and he ² immediately accounted to the king for the profits of the counties, and amongst them, for the third penny payable to both those earls. But he had no such relation to them, as *vices agere*, in that epistle, seems to signify. That kind of personal count palatine, which is so frequent in the empire or popedom, hath never been at all in use here, for ought I could ever observe; although it be true, that in the taxes of cardinal *Wolsey's* dispensations, while he was archbishop of *York*, and legate *a latere* here from the pope, the fees of passing such a dignity be, among others, thus remembered.

Taxae dispensationum domini cardinalis Eboracensis:

Capellanus honoris, xx li.

Prothonotariatus, xx li.

Creare milites solo domino reservatur.

Doctoratus, xl s.

Baccalauriatus, xs s.

Comitis palatini creatio, iv li.

Notariatus, xs s.

And so the several fees for pluralities, triality, quadralities and the rest of dispensations to be given by one of his authority, with their fees, follow in my copy, that is of the same time with the cardinal. But, I conceive, this of count palatine, was, as some more there inserted, from the formal faculty, or commission of legatine power given ^{*} him by the pope, but not any such thing, as justifies any practice, or right of creating any such dignity in *England*, at least, not any such dignity of that name, as would have been here at all estimable. And of the title of earl after the *Normans* to this day, thus much.

XVI. The next title here (as the proposed method directs) is that of barons. And first of the name baron, and the various use of it: and then of the creation and nature of them, from the *Normans* to this day. The name succeeded, after the *Normans*, into the room of *cýniger þane þa him niht rýndon*, a *king's thane* that was next him, among the *Saxons*, however, in the beginning of the *Norman* state, that of thane, was often also retained. Nor is it likely that the use of language could have been so suddenly altered, that the title of baron only should have presently expressed it. Thence is it that in ^a *Domesday*, and the laws attributed to ^b *Henry* the I, *thanus* is so used. And the title of *ministri*, which expressed thanes in the *Saxon* times, was after the *Normans*, rather used only for such as were the king's servants, distinguished from barons; as it seems by a law of *William* the I, (concerning excommunication of them) compared with another of that kind of *Henry* the II, of both which laws, to this purpose, enough ^c elsewhere. But in the laws of *William* the I, instead of the earl, the king's thane, and the middle thane, of the *Saxon* times, the title of count or earl, of baron, and of vavasor, are used. Of a count, or earl, and of a vavasor, enough already. But of a baron, the words there are; *de^d relief a baron*, iv *chivalz enfeles e enfrenes*, e ii *balbers*, e ii *haumes*, & ii *escus*, e ii *launces*, e ii *espes*, e *les altres ii, un chaceur*, e *un palfrey a frenis e a chevefres*. The most of it needs no interpreter. But all of it, I must confess, I understand not.

And for tainlands, that were honorary possessions, the word *baroniae* was used; whence *comitatus* and *baronias* (saith *Ingulphus*, that lived in court with *William* the I) *Normannis suis distribuit*. Ever since the time of this king *William*, as also in his time, the title of baron was used very often, though it be but rare in ^e *Domesday*. But as most other names of titles, so this of baron hath had, and still hath various notions. Oftentimes it hath, from the

⁷ Epist. 263.

² Rot. magn. 11, & 15 Hen. II. in *Essex* & *Hertford*.

testate legati a latere lib. 7. §. 6.

^a Ms. *Hampshire* §. 69.

^b In libro rub. archiv. scacc. cap. de relevationibus.

^c In notis ad *Edmer*. pag. 168. & seq.

in notis ad *Edmer*. pag. 180.

^e Ms. in *Dorset*, & videtis not. ad *Edmer*. pag. 169.

^{*} Videtis *Andream Gambarum de officio & potestate legati a latere* §. 46. & vide ante §. IV.

^d Leg. Will. I. cap. 23.

first use of it, denoted all kind of lords of parliament, ^f as well earls as others, and the word, baronage, as a collective, hath in like sense comprehended them. As also sometimes, barony, as in that of *Gower* in his *confessio amantis*.

The privilege of regalie

Was safe, and all the baronie

Wolshipt was in his estate. ⁽²⁶⁰⁾

And *baroniae capitales*, or *baroniae* absolutely, so signified also honorary possessions, as well of earls as barons. Our stories and records have examples enough of this notion. Oftimes also it hath been given to such as were great tenants to the greater sort of subjects, as to those of the archbishop of *Canterbury*, and of some great earls of the antienter times, especially of those of *Chester*. Testimonies of that use of it are ^h common enough. *Baro* in that notion is used in *Thomas of Walsingham*, where he says; ⁱ *decollati sunt apud Salopiam comes Wigorniae baro de Kinderton, & dominus Richardus de Vernona*. And that name remains to this day, in his posterity. And I have seen an original charter of *Randal* earl of *Chester* under king *Stephen*, by which he gives to *Eustace Fitz John*, totum honorem qui fuit *Willielmi filii Nigelli constabularii Cestriae, in rebus & dignitatibus omnibus*, and makes him *haereditarie constabularium, & supremum consiliarium pro me* (as his words are in the first person) *super omnes optimates & barones totius terrae meae*. *Barones Walenses* also, for barons, under the princes of *Wales*, occur in the rolls ^k of *Edward* the I. And of them somewhat is before said, where we speak of the prince of *Wales*. ⁽²⁶¹⁾ The word *baro* hath been also so much communicated, that not only all lords of manors have been from antient time, and are at this day, called sometimes barons (as in the stile of their court barons, which is *curia baronis &c.* And I have read ^l *hors de son barony*, in a bar to an avowry, for *hors de son fee*) but also the judges of the exchequer have it from antient time fixed on them. And the burgeses of some other good towns, ^m as well as those of the cinque ports, have been antiently also stiled by it. But perhaps the barons of the exchequer were therefore in former ages called so, because they were antiently made of such as were barons of the kingdom, or parliamentary barons. If otherwise, why were they stiled *pares* or *peers* to parliamentary barons in *Bracton*? *Comites* (saith ⁿ he) *vel barones non sunt ameriandii, nisi per pares suos, & secundum modum delicti, & hoc per barones de scaccario, vel coram ipso rege*. For the honorary titles of *barones & pares baronum* are equally both parliamentary, and may signify the whole baronage. Sometimes also *baro* denotes only a temporal baron, as is anon ^o shewed. But the most known use of the word, is in the honorary title of parliamentary barons, or *ba-*

rones regni, as it is distinct from that of earls, and was the next parliamentary dignity beneath it, until the time wherein our viscounts were first made; of whom in due place. And since the making of viscounts, it hath been the next beneath them. And this distinct sense of it also hath been in use from the coming of the *Normans* to this day. We need add nothing here, for the literal sense of the word, to that which is already said of it in the empire, and elsewhere, saving that of *Bracton*, speaking of them after earls; *sunt & alii potentes* (^p saith he) *sub rege, qui dicuntur barones, hoc est robur belli*. Yet in this notion it hath been rarely used as any addition to the names of singular persons, that are barons, or as *comes* is, to the names of such as are earls. But, for the most part, we find it only either plurally in a general expression (as when we read *comites & barones* alone) or singularly designating the dignity, but not in form of addition, as in *Roger of Hoveden*, where he saith that king *Stephen* made *William* of *Mandevile* *consulem de barone* (when he created him earl of *Essex*) or in the patent that creates a baron, or in the act of *xxi* of *Henry* the VIII, of pluralities, the acts of apparel, and writs that certify a man is a baron, and the like. In one of these two forms only, it is for the most part, I say, used; although sometimes also it occurs as an addition, no otherwise than as *comes* doth. In the old writs of summons to parliament, the barons of *Greystock* and *Stafford* have the addition of baron often, as *Radulpho baroni de Greystock, Edwardo baroni de Stafford*. And in an original charter, of the first year of king *Stephen*, by which he gave *Sutton* to the church of *Winchester* in exchange for *Mordon*, after the subscriptions of divers bishops and earls, and some others that were great officers, many are thus noted with the addition of baron, which is a rare example.

Signum *Roberti de Ferrar*. ✠ bar.

Signum *Willielmi Peverel* de *Notingh*. ✠ bar.

Signum *Gilberti de Lacy*. ✠ bar.

Signum *Walteri Espec*. ✠ bar.

Signum *Pag. fil. Johannis*. ✠ bar.

Signum *Eustacii fil. Johannis*. ✠ bar.

Signum *Walteri de Saresb*. ✠ bar.

Signum *Roberti Arundelli*. ✠ bar.

Signum *Gaufredi de Magna Villa*. ✠ bar.

Signum *Ham. de Sancto Claro*. ✠ bar.

Signum *Rog. de Valoniis*. ✠ bar.

Signum *Henrici de Port*. ✠ bar.

Signum *Walteri filii Ric*. ✠ bar.

Signum *Walteri de Gant*. ✠ bar.

Signum *Walteri de Bolebec*. ✠ bar.

Signum *Walteri de Percy*. ✠ bar.

Signum *Walchelini Maminot*. ✠ bar.

And sometimes others ^f also are mentioned with like addition. But in the writs of summons to parliament, pleadings, and other legal

^f Math. Paris pag. 396. ed. Lond. & alibi saepius. Item *Bracton*. fol. 417. a.

in Brit. pag. 464. vide lib. rub. fecae. ms. pag. 82, &c.

ⁱ In Hen. IV. pag. 369. ed. Fr. & videlicet 1 Hen. IV. rot. parl. m. 15.

^k Rot. 9 Ed. I. de apitia & certific facti. in Wall. in arce

^l Mich. 5 Ed. II. ms. in biblioth. int. temp. fol. 66.

^m Cart. 16 Joh. r. m. 1. baronibus Lond. item pat. 50

ⁿ H. III. num. 49. & Math. Paris 1171, & 1322. ed. Lond. quod saepius etiam in archivis reperitur quin & dorf. clauf. 17 Joh. r. membr. 7.

^o baronibus Gernemuthae, Gipwici, Norwici, Orwell, Sorham, Portsmouth, Exoniae, Bofeham, &c.

^p Lib. 1. cap. 8. §. 4.

^q Hoveden pag. 488. ed. Fr.

^r Et videlicet rot. parl.

^s 1 Hen. IV. m. 15. n. 74.

^t Dorf. clauf. 27 Hen. VI. m. 24. baroni de Vefcy.

instruments, most regularly, the word baron is wholly omitted, and usually *chivaler* supplies it, as an addition, in the parliament-writs to the temporal barons, and *dominus*, and sometimes *dominus parliamenti*, in pleadings and the like. And the spiritual barons are expressed only by their ecclesiastical titles.

XVII. For the creation and nature of honorary or parliamentary barons, since the *Normans*, we divide the time that intercedes between the beginning of *William* the I. and this day, into three parts. That which falls between his coming, and the later time of king *John*. That which includes the later time of king *John*, and the rest that follows, until the middle of *Richard* the II. And that which from thence is extended to this day.

In the first part of these, we shall first open what it was that made barons in those times, as well spiritual as temporal. Next the special testimonies that shew the temporal barons and baronies, of the same times, and their nature. Then the like for the spiritual barons. And lastly, the chief passages that mention them together, as having place and right in parliaments or great councils of the kingdom, or being summoned to them.

For the first; all honorary barons of the time whereof we now speak, were (for ought appears) barons only by tenure, and created by the king's gift or charter of good possessions (without the title of earl) whereby he reserved to himself a tenure in chief, by common knight-service, or by grand serjeanty, or by both. For tenures by both were sometimes reserved. The testimonies that prove this we shew anon, where we speak of this dignity more particularly. And these were truly barons by tenure. Not those that had thirteen knights fees and a third part, as some learned men have misconceived upon the authority of the *modus tenendi parlamentum*; of which opinion, more anon, when we have dispatched the parts of our present division. These possessions given, were their baronies or *baroniae capitales*, as the baronies both of earls and barons were sometimes called. And the knights service reserved, was of no certain number of knights, or men to do knights service, but according to the pleasure of the king, or to the contract had with him. And by the number of the knights or military men expressed in the service reserved, the land given was esteemed more or fewer knights fees; unless it had been formerly given, with a reservation of the service of another number of knights or military men. For then sometimes, the number of knights fees were accounted in the gift, after the former number, which the antient reservation had fixed upon the possessions, notwithstanding that the number of knights newly reserved were different; in such sort, as when king *John* granted to *Walter Scroop*, *insulas de* ¹ *Asmundsley & de Clere*, *pro feodis quinque militum, per servicium unius militis & medietatis unius militis,*

pro omni servicio; adding, that if there were more than so many knights fees, he reserved the overplus in his own hands, and meant not to pass it. And such more examples are obvious. Neither did any certain number of acres make a knights fee, as some think. But the original and continuance of the quantity of a knights fee, were from these kind of gifts, and the services to be done upon them. But if grand serjeanty only were reserved, then the barony consisted not at all properly of knights fees; though in a special notion; as grand serjeanty is called knights service, so lands held by it may be called one or more knights fees. But otherwise (saying in this case where grand serjeanty was alone reserved) the baronies, as I conceive, consisted of such knights fees, as we have yet spoken of, but not of any certain number of them. And the chief seats of the barons in any parts of those fees, were called *capita* ² *baroniarum*. But there were two kinds of knights fees, as to this day also there are. Those that were held in chief of the king, and those that were held by a mesne tenure, called also antiently *vassalories*. Of the first kind only, these baronies (as also the baronies or honours of earls) were made; and they, by sub-infeudation for the most part, made the second. And by themselves and others provided at their own charge, or by their tenants (whom they made by such sub-infeudation) they performed the services reserved by the king. As if the king gave xx knights fees to be held in chief, or lands to be held by the service of xx knights, or men at arms, which was the same kind of gift, if the patentee infeoffed others of part to be held under him, for example, by the service of fifteen knights, then the king was served at the charge of his baron the patentee with five knights, and the other fifteen were supplied by those that held the rest by mesne tenures; yet so, that if they failed in ³ their service, the baron was to pay escuage (according to their number) to the king, and have his like remedy against them. Of these kind of knights fees held in chief, *William* the I. when he distributed his earldoms and baronies chiefly to his *Normans*, as *Ingulphus* saith he did, reserved in all, the services, if we may believe *Odericus Vitalis*, of lx thousand knights, or men of war. *Terras militibus ita distribuit* (saith ⁴ he) *& eorum ordines ita disposuit, ut Angliae regnum lx millia militum indesinenter haberet, ac ad imperium regis, prout ratio poposcerit, celeriter exhiberet*. And the number of all the knights fees in *England*, noted very often in leiger-books, and in some of the old statute-books, and elsewhere, together with the parishes and towns also, doth but a little differ from this. It exceeds this number only ccxv. The words that we commonly find in those books are these. *Nota quod in comitatibus praedictis* (after the catalogue of all the counties of *England*) or, *in Anglia, continentur* xlv m ecclesiae parochiales, & lxi m & lxxx villatae, & lx m & cc & xv feoda militum, de quibus religiosi habent xxviii

¹ Cart. 1 Joh. r. part. 1. m. 1. & vide infra §. XVIII. de baronia Drogonis juvenis.

² Hist. eccles. lib. 4. p. 523. b.

³ Videlicet Braet. lib. 2. ca. 34. §1.

⁴ Videlicet

M & xv. And the author of ^a *Eulogium* expressly refers the number of knights fees to the same king William's time. *Has provincias* (saith he, speaking of the shires of the Saxon times) *Willielmus conquestor fecit describi & per bidas sive carucatas fecit demetiri, & tunc inventi sunt in Anglia &c. feoda militum 600215, de quibus habent religiosi 28015, villae in Anglia 1080, ecclesiae parochiales in Anglia 40711.* But *Alexander*, archdeacon of ^a *Shrewsbury*, a most diligent officer of the exchequer under *Richard* the first, king *John*, and *Henry* the third, delivers that he never could see testimony enough of the just number of knights fees (the number of the parishes and towns beforementioned we examine not here) that were under *William* the first. But he says, that in his time it was a tradition commonly received, that the number of knights services or knights fees under that king, were xxxii thousand only, which report he credited not; and he gives his reason, because he could find no proof of it in any record. And he says also, that it may be doubted that *William* the first's near successors, were ignorant of any such number, because when *Henry* the second was to levy aid of his baronage for the marriage of his eldest daughter the lady *Maud*, to *Henry* duke of *Saxony*, he ^b commanded by proclamation, that every baron spiritual and temporal should certify the just number of the knights services that he owed the king, or the knights fees which he held of him; as if because this king commanded his barons thus to certify, therefore the tradition of the certain number that was given by *William* the first, were also uncertain. That I conceive his reason to be, but a very slight one or of no moment. For the number might, and most likely did vary often, according either as the king created new barons, by giving them knights fees to be held likewise in chief, or as any of the baronies ended upon escheat, or were joined by marriage, or otherwise returned to the crown. Besides also, it might have been before known how many were in all held, yet not how many every one held, which was required only by that proclamation. His words are in his preface to his ^c collection of the escuages under *Henry* the second, *Richard* the first, and king *John*, which he wrote in the time of *Henry* the third. *Illud commune verbum ore singulorum tunc temporis* (he means the time of *Richard* the first, when under *William* bishop of *Ely* chancellor of *England*, he collected, in another work, the certificates or returns made before the aids levied of the baronage for that marriage of *Henry* the second's daughter) *divulgatum, fatuum reputans & mirabile quod in regni conquestione dux Normanniae, rex Willielmus, servicia xxxii milium infeedavit, cum nec super hoc posteris suis regibus Anglorum rotulos reliquerit, nec annalia sua temporibus meis a quibusquam visa sunt, rotulo quidem Wintoniae sive Domesday, vel libro hydarum,*

*excepto, quo quidem hydas totius Angliae earundemque tenentes anno regni sui xvi per totius regni comitatus recensens, satis compendiose conclusit. Ignorasse quidem haec servitia militaria regis ejusdem postmodum successores subsequentium argumento non immerito potuit dubitari; quia cum rex Henricus filius imperatricis duci Saxoniae filiam suam Matildam nuptum traderet, a quolibet sui regni milite marcam unam in subsidium nuptiarum exegit, publice praecipiens edicto, quod quilibet praelatus & baro, quot milites de eo tenerent in capite, publicis suis instrumentis significarent, quae quidem instrumenta per singulos comitatus distincta sub praefato Willielmo Eliensi (he had before spoken of him) in unum recollegi volumen. But we see here that the common tradition of the age, wherein this author wrote, was almost but of half as many knights fees as *Ordericus* speaks of. Yet *Ordericus* ^d lived under king *Stephen*. The barons that were thus created in those elder times, after the *Normans*, being made tenants to the crown in chief, were either spiritual or temporal. The temporal barons are seen especially in the enumeration of the king's chief tenants in ^e *Domesday*, in the escuages of the times of *Henry* the second, *Richard* the first, and king *John*, and in the certificates made, by all of them, of the number of their knights fees, under *Henry* the second, before he levied the aid for the marriage of his daughter the lady *Maud* (both which are collected ^f in the red book of the exchequer by that *Alexander* archdeacon of *Shrewsbury*) and in divers pipe rolls of the same age, and in the extracts out of certain inquisitions taken in the time of king *John*. In that of *Alexander* of *Shrewsbury*'s collection of the escuages, he uses for the most part, over the escuage of the several years, these words, *escuagium tam super praelatis* (of that word alone, as it denotes spiritual barons often; somewhat more anon) *quam caeteris baronibus assisum, or impositum.* And in some places, he hath also heads; *de hiis qui non habent capitales honores.* And according to that collection of this *Alexander*, the pipe ^g rolls of the same time often have their heads of *scutagiis baronum Angliae, de exercitu Walliae, and de scutagiis baronum qui non abierunt cum rege in exercitu Galweiae, and de scutagiis baronum qui non abierunt nec milites, nec denarios miserunt ad exercitum Hiberniae, Galweiae, Walliae, and the like.* And under those heads the names of the barons of the counties where the heads are placed, occur together, with the number of the knights (or knights fees) for which they paid their escuages. And the same kind of tenants in chief or barons are oft-times also in the rolls of the same time indifferently called *milites* in heads of the same syllables, saving that *militum* supplies *baronum*, which agrees with the use of the later ages, wherein *miles* and *chivaler* have been so proper and usual in the expression of them. But the fullest*

^a Ms. in bib. Cotton. ^b Ms. in archiv. scacc. ^c Anno ut videtur 9 Hen. II. de qua re consulas Math. Paris an. 1163. & Roger. Hoved. anno 1164. ^d Ms. in lib. rub. in scaccario, fol. 47. ^e 1^o ipso teste, eccles. hist. lib. 13. pag. 924. ^f Ms. ^g Rot. mag. 20 Hen. II. in Buckingham, 33 Hen. II. in Oxinford. Norff. Suff. Ebor. &c. 2 Rich. I. in Hereford. &c.

testimony of the ages of the first part of our division now in hand, is in that of the certificates made by all the barons of the number of knights services, to which they were bound, under Henry the second, upon the matter of aid and marriage of his daughter. *Alexander of Shrewsbury* says expressly, that the king's proclamation was, that *quilibet praelatus & baro quot milites de eo tenerent in capite publicis suis instrumentis significarent*, and that those *publica instrumenta* of every of them, sent in according to the proclamation, he collected. For *praelatus* also in that passage; more anon, in the spiritual barons. But it is plain, that the rest were temporal barons, and only tenants in chief, and, in their certificates, their possessions are oft-times (according as the fancy of the clerk that drew them, would have it) called also baronies. But there is no doubt but all were indeed baronies, though but some only stiled so. For all were held in chief (touching which tenure to this purpose, more in the testimonies hereafter brought of the meeting of barons in councils, or parliaments of that time) and all those possessors were also *barones*, as this *Alexander* expressly calls them. Some examples of the certificates we add here. *Walterus de Meduana* thus certifies, that he holds the same knights fees, being xx, which that great foldier and baron of that age, *Geoffery Talbot* held under Henry the first. ^b *Henrico Dei gratia regi Angliae charissimo domino suo Walterus de Meduana salutem & fidele servicium; Notum sit vobis quod anno & die in quo rex Henricus avus vester vivus & mortuus fuit, tenuit Galfredus Tallebot* (See much of this great lord in the *Gesta regis Stephani*, published by *Du Chesne*) *in capite de illo xx milites quos gratia vestra de vobis modo teneo*; and then his tenants or vassals are reckoned, all whose services together make up his number. The most are of this kind. But many have the name of *baronia* in them; as that of *William de Curcy*. *Haec est baronia Willielmi de Curcy¹ dapiferi quam avus suus & pater suus tenuerunt, & quam ipse tenet*; and then, *ex baronia Willielmi Meschin ex parte matris suae*. So, *isti sunt milites de baronia Drogonis Juvenis de Monte acuto; de parvis militibus comitis Moreton, quorum xiii milites non faciunt nisi quantum ii debent facere de caeteris baronibus Angliae*. And divers like are in that collection. And in the extracts out of the inquisitions taken in the time ^k of king John, the phrases of *tenentes per baroniam & servicia militaria*, and *milites & barones tenentes in capite de rege*, are used for the same persons. *Baro* also, and *qui de rege tenet in capite* are so used in two laws, the one of *William* the first, the other of *Henry* the second touching excommunication, as is noted upon ^l *Edmerus*. And though in these, as in some other passages, earls were also comprehended (by reason of the more large notion of the title of baron, whereof already) yet it is plain,

that all the rest besides earls were barons, in the distinct notion of baron, which is the subject here. The most of the temporal barons that we find in this time, or their ancestors, were created by *William* the first, or some of his successors that fall in the time of this part of our division. For some, doubtless, not revolting against the crown, continued from the *Saxon* times, and kept their tainlands (which were their baronies) as they before had them, and were stiled barons as well as thanes, and at length barons only. But this continuance could happen only in temporal barons. For although the same dignity with a temporal baron, under another name, were in the *Saxon* times, and so it might continue where that other name was, in a *Saxon*, converted into it; yet no spiritual person had any such kind of dignity attributed to him, until after the *Normans*. Not that the prelates of that time, had not place and voice in their *Wycl synoder*, and *synagometer*, (for they had place and voice there as bishops, and as they were spiritual only, a relique whereof seems to remain in that use of sending writs of summons of parliament to the guardian of the spiritualties of a void bishoprick, which is obvious in the rolls) but that they had not their place or voice there, by the name of thanes, or by reason of their possession of tainlands, or of their temporalities, as after the *Normans* they had, all which we shew anon more largely in the spiritual barons of that age, after we have added something of the reliefs payable upon the death of temporal barons in those times. For upon the death of spiritual barons, none it seems was ever payable, as our year-books also teach us. The law of *William* the first, touching the relief of a baron, is ^m before noted. It consisted then in horses, arms, and things of that nature. But as the reliefs of earls, being of the same nature, were (if we conjecture ⁿ right) changed into money, upon the assise of ^o arms made in xxvii of Henry the second, being before legally payable in arms, though often, I doubt not, compositions were made for money (but after that assise every man's arms were preserved for his heir) so were also the reliefs of barons, which yet, together with those of earls, were not set at certain sums, until the grand charter afterward, under king John, appointed their just values. But an objection here offers itself against what we have delivered touching the creation and nature of baronies both of earls and barons in those elder times. For we suppose the baronies of both to have consisted of knights fees, or lands held by the service of so many knights. But the reliefs of knights fees appear settled at five pounds, or at least so restrained that they never exceeded five pounds, long before the grand charter was first made. *Dicitur rationabile relevium alicujus* (saith the author of the book called *Glarvile*) ^p *juxta consuetudinem regni de feodo unius militis centum solidi— de baroniis vero nihil certum statutum est, quia juxta voluntatem & misericor-*

^b Lib. rub. fecac. pag. 84. & vide auxilium ad maritandam filiam, &c. in rot. mag. 14 Hen. II. 20 Hen. II. & 27 Hen. II. &c.

¹ Ibid. pag. 88. Somerset.

^k Ibid. fol. 132.

^l Pag. 168. & seq.

^m §. XVI.

ⁿ §. XI.

^o 27 Hen. II. apud Hoved.

pag. 350. ed. Lond. de releviis porro vide 1 H. I. apud Matth. Paris, pag. 74. ed. Lond.

^p Lib. 9. cap. 4.

diam domini regis solent baroniae capitales de releviis suis satisfacere. And under Henry the second, Henry de Umfravil, a tenant of the honour of Gloucester, accompts for ^q XLV pounds *de relevio militum ix de feodo comitis*, and Roger de Masi for the like sum *de relevio ix militum de eodem feodo.* If then, the reliefs of knights fees were certain, and that baronies consisted of knights fees, whence was it that the reliefs of baronies were uncertain? This scruple, I think, may be cleared, by that distinction of knight's fees, which is before^r used. Some were held in chief, some by mesne tenures, and were called also vavafories. The reliefs of those which were held in chief, and made the baronies, were, always in those elder times, uncertain, and the passages that speak of the certainty of the reliefs of knights fees in those times, are not to be understood of such as were held in chief. But only of the vavafories or knights fees, held by mesne tenures, as of honours or baronies, as those of Umfravil's were. For they were held of the honour of Gloucester, as appears in the record whence they are mentioned. And this certainty grew to them, it seems, from that law of William the first, touching the reliefs of vavafors, which is before^r inserted. For there, five pounds is the highest sum that was payable in lieu of their reliefs, which also first consisted in horse and arms, as those of earls and barons did. But the liberty given by that law to supply the relief by five pounds, at length, it seems, came to such a certainty, that every vavafory or knights fee held by a mesne tenure, should pay five pounds for a relief, and never above, but sometimes under, according as he could compound for his father's horse and arms. For it is not without example, that in those times less than five pounds was paid for some knights fees that were vavafories. As under Henry the II, in Northamptonshire, Michael de Preston ^r *reddit compotum de xix libris & x solidis de relevio iv militum & dimidio de^u escaetis regis.* In the *thesauro* VIII libras; & debet XI libras & x solidos; and in Essex and Hertfordshire, Henricus filius Reginaldi debet XI solidos *de relevio de feodo iii partium i militis de feodo filii Willielmi filii Alani qui est in custodia regis.* In the first example of these, the relief of a knight's fee is but IV pounds, VI shillings, VIII pence, and in the second, but IV marks. But these and the like, I conceive, proceed from some composition, which were beneath the utmost rate of the statute of William the I, which made five pounds the highest, but left the law so, that the heir might justly compound for less, in case his father's horse and arms were of less worth. For horse and arms legally were, it seems, the measure of reliefs, until that assize of arms in XXVII of Henry the II, whereof^w before. How the law of those reliefs changed, we shew anon in that part of our division that intercedes the later

time of king John, and the middle of Edward the II. And we come now to spiritual barons of the time which we have hitherto handled concerning barons.

XIX. The bishops, abbots, and other ecclesiastical persons of the Saxon times, held their lands free from all secular service, besides that *trinoda^x necessitas*, as it was sometimes called, whereunto their lands were most commonly, by a special exemption, kept subject. *Expositio pontium, & arcium extractio* or *refectio* (or supply for the wars, and for the building or repairing of castles and bridges) were the three which were commonly excepted in the king's grants of church-lands, after the words that freed them *ab omni seculari servitio*, or *exacti-one*. Examples of it are in *Ingulpbus*, in the book of Worcester,^y and many such more. And in a complaint under Henry the III, against the grievous exactions which the pope exercised on churchmen and their possessions, mention^z being had of the large grants made to them in the Saxon times, these words to the same purpose are added. *Nec adeo libertati dederunt hujusmodi possessiones, quin tria sibi reservarent semper propter publicam regni utilitatem, videlicet expeditionem, pontis, & arcis reparationes vel refectiões, ut per ea resisterent hostium incursum.* But neither of these three excepted, were reserved as a tenure, but the exception of them declared only the king's intent to be, that they should be free from all services, and from all other charges whatsoever, saving those three, for which in their witenagemotes or parliaments, or otherwise, according to the laws of the time, their possessions as well as the lands of all lay-men were rated and charged, as in later time upon the granting of subsidies, or the like they are, or according to that of Knivet in^a 44 Ed. III. fol. 25. a. where with reference doubtless to this antient form of discharge, he says, that though the prior of St. Oswald in Yorkshire, held in frankalmoigne and free *ab omni servitio & exactiōe seculari*, yet he was not thereby discharged of reparation of bridges or cauleys. For the services that were due out of the tainlands of temporal thanes (or out of the baronies of such as were temporal lords of that time) were, I conceive, reserved, according to the forms of the time, so particularly, as that every suchthane knew his service by that reservation, no otherwise than tenants by knights service at this day know what they are bound unto by the quantity of their siefs. That is, their charge was perpetually fixed upon them by tenure. But the possessions or temporalities of the spiritual lords (who at that time were only bishops) were free from the charge of tenure, yet subject to the giving supply to those publick uses, or to the paying subsidies for them, when other lands of the kingdom were legally taxed; no otherwise than at this day those lands

^q 33 Hen. II. lib. rub. in fecac. ms. fol. 61. b.

Alani de Nevil. ^u Quales illae fuerint vide mag. chart. cap. 31.

A. D. 730. in archiv. eccles. Cant.

^y Ms.

item 3 Ed. III. in North. Fitzh. tit. affize 445.

^r §. XVII.

^s §. IV.

^w §. XI.

^z Rot. mag. 20. Hen. II. de placitis

^x Chart. Cedwallae r. eccl. Cant.

^a Vide

*

are, which are not chargeable with such supply by any tenure; or as in the old empire, *etiam ecclesia^b instructionis itinerum & pontium reparationis onus adgnoscat*. And *ad instructiones reparationesque itinerum pontiumque nullum genus hominum, nulliusque dignitatis ac venerationis meritis, cessare oportet*, we read in the constitutions^c of *Honorius* and *Theodosius*. According to which is that of king *Ethelbald*; *concedo^d ut omnia monasteria & ecclesiae regni mei, a publicis vectigalibus operibus & oneribus absolvantur, nisi instructionibus arcium vel pontium, quae nunquam ulli possunt relaxari*. (²⁶²) Why *expeditio*, or *expeditione* (as they called it) that is, supply for war or defence of the realm was omitted here, I know not. But as in this place, the words *nisi &c.* make no tenure, so I conceive the like to particular churches did not, when in the charters that *trinoda necessitas* of supply to publick uses was excepted. Only the like charge as all men were by accidental and legal taxes subject unto, was intimated by them. And so a great difference was in those ages between the tenures of the bishops or spiritual lords, and the thanes or temporal lords; as especially upon a just consideration of that place in *Matthew Paris*; and of what is hereafter said, touching this point, will appear more plainly. And this their freedom from that tenure which distinguished the honorary tainlands in the *Saxon* times, and the baronies, after the coming of the *Normans*, from other possessions, continued it seems till the fourth year of king *William* the I, when he made the bishopricks and abbeys subject to knight's service in chief, by creation of new tenures, and so first turned their possessions into baronies, and thereby made them barons of the kingdom by tenure. This is justified by *Matthew Paris*, and *Roger of Wendover*,^e out of whom *Matthew Paris* took this relation. Anno MLXX, (so are their words) *rex Willielmus pessimo usus consilio omnia Anglorum monasteria auro spolians, & argento, insatiabiliter appropriavit, & ad majora sanctae ecclesiae opprobria calicibus & feretris non pepercit*. Episcopatus quoque & abbatias omnes quae baronias tenebant [in pura & perpetua elemosyna] & eatenus ab omni servitute seculari libertatem habuerant, sub servitute statuit militari, irrotulans singulos episcopatus & abbatias pro voluntate sua, quot milites sibi & successoribus suis, hostilitatis tempore, voluit a singulis exhiberi. Et rotulos hujus ecclesiasticae servitutis ponens in thesauris, multos viros ecclesiasticos huic constitutioni pessimae reluctantes a regno fugavit. How it is likely he brought them to this kind of tenure, may be conjectured by other circumstances of the stories^f of the same time. And observe specially that he held a parliament the same year, so that perhaps this innovation of their tenures was done by an act of that parliament also. That parliament is anon more^g particularly mention-

ed. But for that passage in *Matthew Paris* and *Wendover*; both in the print and in the manuscripts that I have used of them, in *pura & perpetua elemosyna* are omitted, which yet I cannot doubt but should have place there, as I see they had in some good copy, whence the learned *Camden*^h transcribed part of the same passage. Neither indeed is there sense enough in it without those words. For if baronias tenebant, & eatenus ab omni servitute seculari libertatem habebant, should be interpreted, as it must, they held baronies, and in that regard were free from all secular service, it is a contradiction; if baronies be understood there for possessions, that in truth were baronies. For their very essence was for the most part in being subject to military service by tenure in chief, as is already shewed. If on the other side, baronies be understood there for great possessions of the church only, and that the word barony, be used by anticipation, as in truth it is (for before the tenure created, they were not baronies) then what dependence hath *eatenus* upon it? So that plainly *eatenus* ought to be interpreted by those words, left out of the print, which supply the sense most fully, and according to the truth of the *Saxon* times. But in the manuscript copy of *Matthew Paris*, which I use, in a very antient hand, these words are noted in the upper margin over the year MLXX. *Hoc anno servitium baroniae imponitur Ramesiae*. It seems the volume belonged to the abbey of *Ramsey*, and so some monk of the house noted that in the margin touching his own abbey, which equally concerned the rest of the abbeys that were meant in that relation. And in the parliament of 51 *Hen. III.* at *St. Edmundsbury*, this request of the king (which was the first of them that were then made in the house) is observable to this purpose, with the answer to it. Itemⁱ *petitum est, ut omnes clerici tenentes baronias, vel laicum feudum, personaliter armati procederent contra regis adversarios, vel tantum servitium in expeditione regis invenirent, quantum pertinet ad tantam terram vel tenementum*. Responso. *Ad hoc respondebatur, quod non debent pugnare cum gladio materiali sed spirituali. Scilicet cum lacrymis & orationibus humilibus & devotis*. Et quod propter beneficia sua manutenere tenerent pacem non bellum. Et quod baroniae eorum ab elemosynis puris stabiliuntur, unde servitium militare non debent nisi certum, nec novum incipient. Here those words, *Baroniae eorum ab elemosynis puris stabiliuntur*, denote, I think, that the baronies of the clergy were made of such lands as had been antiently held only in frankalmoine, according to that before cited touching them. And as then the bishops and abbots, so some others also of that kind of dignity, and by such tenures, afterward became barons likewise. But although these ecclesiastical persons were truly, by reason of their te-

^b Paratit. lib. 1. tit. 3.^d Ingulph. pag. 853. ed. Franc.^e De privileg. domus Augustae l. 4. abut & vide eclog. basilic. lib. 54. pag. 456.^f Ms.^g & 523. & Rog. de Hoveden, pag. 453. ed. Franc.^h Videtis Florent. Wig. sub anno 1070. Orderic. Vital. eccles. hist. lib. 4. pag. 518.ⁱ Britan. pag. 123. & videtis ultimam clausulam capituli 1. lib. 7. Glanvillae. Hinc recte capiendum est quod de hac re obiter insertum habetur in Clementis Reynerii appendicis apostolatus Benedictini parte 3. scriptura 69.^k Matth. Paris, pag. 1340.

nures, barons; yet they are oft-times expressed by the name of *praelati* only; as when *praelati & barones*, is used for spiritual and temporal barons, or of *episcopi & abbates &c.* or the like, when *barones*, for the temporal barons only, is added also. The examples of that kind are very frequent. That of the collection made by *Alexander of Shrewsbury*, of the certificates of every prelate and baron touching the aid to *Henry the II* before^k mentioned, shews it; where also the prelates or spiritual barons of that time, and the number of knights fees are reckoned. You may see also those of the time of *William the I*, in *Domesday*. And much more of them for the whole time of *Henry the II*, and *Richard the I*, and of the former part of king *John*, in their pipe rolls, where, under the titles *de scutagiis baronum qui milites non miserunt*, and the like, they are noted with the temporal barons^l that were in like case. So that *barones* comprehended as well those bishops and abbots as the temporal barons, though for distinction of their qualities, sometimes *praelatus & baro* be so used, that the first, being an ecclesiastical title, denotes the spiritual barons, and the last, being originally temporal, denotes only the temporal barons. For the use of the word baron hath been most various with us, as is before shewed.

XX. We come now to the chief passages that concern both the spiritual and temporal barons of that time, as they had place and voice in the parliaments or great councils of the kingdom; out of which also, light will be given both to those other particulars that are already delivered of the distinct dignity of barons, as also of earls, as earls are often comprehended under the larger notion of the same word. *William the first*, in the fourth year of his reign or *MLXX* (which was the year wherein he first brought the bishops and abbots, under the tenure by barony) *consilio baronum suorum* (saith *Hoveden*^m out of a collection of laws, written by *Glanvil*, as also the author of the book * of *Lichfield*) *fecit summoneri, per universos consulum Angliae, Anglos nobiles & sapientes, & sua lege eruditos, ut eorum & jura & consuetudines ab ipsis audiret*. And *xii* were returned out of every county, who shewed what the customs of the kingdom were, which being written by the hands of *Aldred* archbishop of *York*, and *Hugh* bishop of *London*, were with the assent of the same barons for the most part, confirmed in that assembly which was a parliament of that time. And so much is also shewed in that law of *Henry the first*. *Lagam regis Edwardi* (saithⁿ he) *vobis reddo, cum illis emendationibus quibus pater meus eam emendavit consilio baronum suorum*. This might be the same parliament wherein the controversy between *Thomas* archbishop of *York* (he was consecrated after the death of *Aldred* the same year, and to the same year this controversy is attri-

buted) and *Ulfstan* bishop of *Worcester* touching certain possessions, was determined. In *MLXX*, saith *Florentius*,^o *reverendi Ulfstani Wigorniensis episcopi mota est querela, jam consecrato Thoma qui pro Eboracensi ecclesia, in concilio, in loco qui vocatur Pedreda, celebrato, coram rege, ac Doroberius archiepiscopo Lanfranco & episcopis, abbatibus, comitibus, & primatibus totius Angliae, Dei gratia adminiculante terminata est*. Under *primates*, the temporal barons that being not earls, were here, I presume, comprehended, although sometimes the same word, as *proceres* or *magnates*, comprehend both them and the rest also. And *primates* plainly also denotes temporal barons in that subscription of *Godfrey* bishop of *Constantine* about two years after, to the decree touching the primacy of *Canterbury*. The words; *Ego*^p *Goffridus Constantiensis* (it should be *Constantinensis*) *episcopus & unus de primatibus Anglorum consensi*. For that decree was confirmed *totius regni assensu*, as *Edmerus* says, which expresses a full parliament; although but some lords only subscribe to it. And as in the same subscriptions, *Odo* bishop of *Bayeux*, having by that name no place in parliament, styles himself also earl of *Kent*, by which title he had place and voice there, so did this other *French* bishop, who by the title of his bishoprick was no part of the parliament, but only by reason of the temporal barony which he possessed in *England*. For his possessions were very large here, and by the king's bounty he held of him *cclxxx* manors. *Dono Gulielmi regis* (saith^q *Ordericus*) *ducentas & octoginta villas, quas a manendo maneria vulgo vocamus, obtinuit, quas omnes nepoti suo de Molbraio, propter nequitiam & temeritatem suam, non diu possessuro, moriens reliquit*. That *principum conventus* (as^r *Edmerus* calls it) or the assembly of earls and barons, at *Pinneden* in *Kent* (wherein *Lanfrank* archbishop of *Canterbury* *omnium astipulatione & judicio*, as the same author's words are, recovered against *Odo* earl of *Kent*) belongs to this place, and was held about the fifth year of *William the I*. And in our year-books also, in a case touching the exemption of the abbey of *Bury* from the bishops of *Norwich*, we have mention of a parliament^s held under the same king, wherein all the bishops of the land, earls, and barons made an ordinance touching that exemption.

About the seventh year also of *William the II*. or *MXCIV*, a parliament was held in *Rockingham* castle, in *Northamptonshire*, summoned chiefly by reason of the difference between the king and *Anselm* archbishop of *Canterbury*, touching his going to *Rome* for the pall, the acknowledging of the pope, and such like, and procured by the archbishop to the end that, *episcopis, abbatibus, cunctisque regni principibus una cœuntibus, communi consensu definiretur*, as *Edmerus*^t says. The whole form of proceeding in

^k §. XVII. & XVIII.

^l Vide supra §. XVIII.

^m In Hen. II. p. 243. ed. Lond.

^o Ms. & videtis not. ad Edmerum pag. 171.

ⁿ Matth. Paris pag. 75. ed. London.

^o Idem fere M. Paris, quod dum in anno 1095. refert ad 1070. retrospicit.

^p Malmesb.

^q Hist. Eccles. lib. 4. pag. 523. a.

^r Hist. nov. lib. 1. pag. 9. & videtis notas ad eundem pag. 197.

^s 21 Ed. III. fol. 60.

^t Hist. nov. li. 1. pag. 26. & videtis Malmesbur. de gest. pontific. lib. 1. in Anselmo.

it, and the debates of it are most observable, as the same author especially relates them.

A year or two after, the same king, saith the same *Edmerus*, ^u *de statu regni acturus episcopos, abbates, & quosque regni proceres in unum, praecepti sui sanctione egit.*

At the coronation of *Henry* the first, *clerus Angliae & populus universus* (saith *Matthew Paris*) were summoned to *Westminster*, where divers laws were both made and declared. And *commune consilium baronum* ^x *meorum* is mentioned in it. But whereas in the subscription of witnesses to the charter of those laws (as both he hath it twice, and also *Roger* of *Wendover* ^y from whom he took it) some few bishops, earls and barons with the addition of *& aliis multis* are remembered; the self-same charter both in ^z *John Brampton*, and in the red book of the ^a exchequer, is subscribed with his *his testibus, archiepiscopis, episcopis, comitibus, baronibus, vicecomitibus & optimatibus totius regni Angliae apud Westmonasterium quando coronatus fui.* Duplicates of the charter were sealed, and one was sent into every county to be preserved in the chiefest abbey of the county. And it seems that the *vicecomites* or sheriffs of every county, were all attending for that cause.

In the third year of the same king or *MCCII concilium celebratum est at Westminster*, which consisted of bishops and abbots, and *huic conventui affuerunt, Anselmo archiepiscopo petente a rege* (saith ^b *Edmerus*, and after him *William* of ^c *Malmesbury*) *primates regni, quatenus, quicquid ejusdem concilii auctoritate decerneretur, utriusque ordinis concordia cura & sollicitudine ratum servaretur.* Many laws were made in that meeting which are related in those monks. And *Roger* of ^d *Hoveden* hath some made about six years after by all the bishops of *England* (as he saith) *in praesentia gloriosi regis Henrici, assensu comitum & baronum suorum.* Some other assemblies ^e of the earls and barons, as well spiritual as temporal of all *England*, upon summons, are mentioned in the annals that comprehend the acts of this king *Henry*. After his death until the time of his grandchild *Henry* the second, I have not observed any thing that gives observable light here. But under the second *Henry* in his tenth year or *MCLXIII*, about the end of *January*, that great parliament at *Clarendon* was held *praesidente* (saith *Matthew Paris*) *Johanne de Oxonia* (the same was afterward bishop of *Norwich*) *de mandato ipsius regis, praesentibus etiam archiepiscopis, episcopis, abbatibus, prioribus, comitibus, & proceribus regni.* But *Roger* of *Hoveden* says expressly, that *clerus & populus regni* were then assembled; and so mentions it as a full parliament, or *generale concilium*, as ^f *Fitz-Stephens* and some others call it, which is also understood, it seems, in the relation of it transcribed at the end of *Quadrilogus*, and in *Goldastus*, where *nobiliores* ^g *& antiquiores regni* be added

to the bishops, earls, and barons of the kingdom. In this parliament, the ancient customs, or those *avitae consuetudines* (as they are called in divers epistles of the popes, of *Joannes Sarisburiensis*, and in others of that age) which made that great quarrel between the king and *Thomas* archbishop of *Canterbury*, were recognized, and among them this one is singularly pertinent to our subject here. *Archiepiscopi, episcopi, & universae personae qui de rege tenent in capite, habeant possessiones suas de rege sicut baroniam, & inde respondeant justiciariis & ministris regis, & sequantur & faciant omnes consuetudines regias, & sicut caeteri barones debent interesse judiciis curiae regis cum baronibus, quousque perveniat ad diminutionem membrorum vel ad mortem.* Thus we read in *Matthew Paris*, and in *Roger* of ^h *Wendover*, also, and the self-same is among the laws of that parliament, in *Gervasius* ⁱ *Doroborniensis* (an author that lived in that ^k age when it was held) saving that whereas in *Matthew Paris* we have it imperatively, and *consuetudines* only, *Gervasius* delivers it all indicatively. For *habeant, respondeant, sequantur* and *faciunt*, he hath *habent, respondent, sequuntur* and *faciunt*, and *rectitudines & consuetudines*. But it is so corruptly published in *Goldastus*, ^l as also at the end of the *Quadrilogus*, that the true sense of it is changed. *Archiepiscopi, episcopi, & universae personae regni quae de rege tenent in capite, & habent* (so it is in *Goldastus*) *possessiones suas de dominio regis, sicut baroniam, & inde respondent justiciis & ministris regis, & sequantur, & facient omnes rectitudines, consuetudines regias, & sicut barones caeteri, &c.* as *Matthew Paris*. And the *Quadrilogus* hath almost the same syllables, saving that for *sequantur & facient*, it hath *sequuntur & faciunt*. But the full and true sense is preserved in it, as *Paris*, *Wendover*, and *Gervasius*, relate it. And it is a singular testimony for what we have before delivered touching the creation of barons in those times. *Tenere de rege in capite, habere possessiones sicut baroniam*, and to be a baron, and to have right to sit with the rest of the barons in councils or courts of judgment according to the laws of that time, are synonymies in it. The meaning of it is, that all bishops, abbots, priors, and the like, that held in chief of the king, had their possessions as baronies, and were accordingly to do all services, and to sit in judgment with the rest of the barons in all cases, saving cases of blood. The exception of cases of blood proceeded from the canon-laws, which prohibited clergymen to assent to such judgments. And the clergy of the parliament of *England* hath sometimes, by reason of those canon-laws, absented themselves ^m from such judgments, and committed their whole interest for the time to a lay proxy. Those words *universae personae regni*, I interpret all abbots, conventual priors and the like; as if the words had been *universi in*

^u Hist. nov. lib. 2. pag. 38. & de judicio baronum sub hoc rege, videfis Flor. Wigorn. sub anno 1093.

^x Vide Matth. Paris pag. 75.

& 321. ed. Lond. ^y Ms.

^z Hist. Journal. ms.

^a Ms. pag. 163.

^b Hist. nov. lib. 3. pag. 67.

^c De gest. pontific. lib. 1.

^d In Hen. I. pag. 472. ed. Fr.

^e Videfis Polidor. lib. 2. in Hen. I. ubi de parliamentis.

^f Ms. vita Tho. arch. Cant.

^g Constit. imperial. tom. 3. pag. 347.

^h ubi vide baronum nostrorum complurium nomina, sed depravata nimis.

ⁱ Ms. pag. 68.

^j Bal. cent. 3. script. 48.

^k Constit. imperial. tom. 3. pag. 348.

^l Rot. parl. 11 Rich. II. & 21 Rich. II.

dignitatibus ecclesiasticis positi qui de rege tenent, &c. The phrase was taken from the use of it in the laws of the church. For as *personatus*, is sometimes, in the writers of the canon-laws, used for the dignity of the chiefest ecclesiastical corporations, so they that bear that dignity are stiled here *personae*, which yet time and use with us hath long since confined only to the signification of rectors of parish-churches. *Cognoscitur* (saith ⁿ *Archidiaconus*) *personatus*, quando aliquis habet *prærogativam* in choro vel in capitulo, in optionibus, in processionibus, in vocibus dandis & hujusmodi præ aliis canonicis ejusdem ordinis. And although he allow not the word proper for the greater dignities of the church, yet others ^o suppose *dignitatem* & *personatum* to bear the same sense, touching which I refer you to our ^p *Lindwood*. We add here that reason given by *Henry* the II, why he would not permit that any of these tenants in chief, or his *capitanei* (as *Radulphus de Diceto* ^q calls them) should be excommunicated without his leave, which was a law first made by *William* the I. Ne, saith *Matthew Paris*, ^r si hoc regem lateat, lapsus ignorantia communicet excommunicato, comitem vel baronem ad se venientem in osculo vel concilio admittens. To the parliament of Northampton also, or the *magnum concilium* (as *Roger of Hoveden* and others call it) held in October the XI year of *Henry* the II, or MCLXV, all that were tenants in chief were summoned. *Castro Northamtoniae* (saith an ancient ^t writer of the life of *Thomas Becket* archbishop of *Canterbury*, speaking of the king) *solenne statuens celebrare concilium, omnes qui de rege tenebant in capite mandari fecit*. And the whole proceeding there against that archbishop, as it is related in *Hoveden*, *Gervasius*, ^u *Doroberniensis*, *Quadrilogus*, and others, is especially observable. But that part of it which concerns *John* the marshal's complaint against him for matter of injustice, as we have it more exactly declared in *William Fitz-Stephen* ^v a monk of *Canterbury*, that attended *Becket* in those troubles, gives the most clear light in the present subject. The difference between the spiritual barons and the temporal, about giving judgment against him (in regard of the dignity of his person) the giving the judgment, and the parliamentary course of that time in such cases appears no where so fully. Therefore we transcribe it. *Secunda die* (saith he) *consultibus episcopis, comitibus, & baronibus Angliae omnibus*, ^x *Nor. pluribus, Roffensis episcopus & quidam alius nondum venerat. Archiepiscopus laesae majestatis coronae regiae arguitur, quia scilicet, ut supra narratum est a rege, citatus pro causa Johannis* (he means *John* the marshal, and the cause of the complaint appears at large in *Hoveden* neque venerat, neque idonee se excusasset. Archiepiscopi depulso nullum locum habuit. Allegata tamen Johannis supradicti injuria, & jurisdictione hu-

jus causa propria, & curiae suae integritate, rex exigit judicium. Archiepiscopi ratio nulla est approbata. Visum est omnibus, ex reverentia regiae majestatis & ex astrictione ligii homagii (he uses that word divers times for homage) *quod domino regi fecerat archiepiscopus, & ex fidelitate & observantia terreni ejus honoris quam ei juraverat, quod parum esset defensu vel excusatus, quia citatus a rege neque venerat, neque corporis infirmitatem, vel necessariam quae differrî non posset officii ecclesiastici administrationem per nuncios allegaverat. Condemnandumque eum dixerunt in poenam pecuniariam omnium bonorum suorum mobilium ad misericordiam regis. De proferendo judicio, distantia fuit inter episcopos & barones, utrisque alteris illud imponentibus; utrisque se excusantibus. Aiant barones; Vos episcopi pronuntiare debetis sententiam, ad nos non pertinet. Nos laici sumus; vos personae ecclesiasticae, sicut ille; confacerdotes ejus; coepiscopi ejus. Ad haec aliquis episcoporum; Imo vestri potius est hoc officii, non nostri. Non enim est hoc judicium ecclesiasticum, sed seculare. Non sedemus hic episcopi sed barones. Nos barones & vos barones, pares hic sumus. Ordinis autem nostri rationi frustra innitimini. Quia si in nobis ordinationem attenditis, & in ipso similiter attendere debetis. Eo autem ipso, quod episcopi sumus, non possumus archiepiscopum & dominum nostrum judicare. Sed quid? rex, hac audita de pronuntiando controversia, motus est. Et controversari super hoc desitum est. Dominus Wintoniensis (*Henry de Blois* was then bishop of *Winchester*) *impositus dicere tandem & invitatus pronuntiavit. Archiepiscopus autem, quia sententiae vel recordationi curiae regis Angliae non licet contradicere, sustinuit, consilio episcoporum, ad acta, ad mitigandum & honorandum regem, solenni & manuum ipsius missione, quasi concessionis judicii, ut moris est ibi, & omnibus episcopis datis vadibus praeter Gilbertum illum Londinensem qui rogatus pro eo spondere noluit; quae ejus singularitas notam fecit.**

In the xxiii year also of the same king, in lent, there was an assembly of all the spiritual and temporal barons, or the bishops, abbots, priors, earls and barons (as *Hoveden* says) at *Westminster*, for the determination of that great contention between *Alfonso* the king of *Castile*; and *Sancho* king of *Navarre*, touching divers castles and territories in *Spain*, which was by compromise submitted to the judgment of the king of *England*. And habito cum episcopis, comitibus, & baronibus nostris, cum deliberatione consilio, he determined it, as he saith himself, in the first person in the exemplification of the judgment, which with the whole proceeding is at large in *Hoveden*. Some memory of it is also in *Matthew* ^y *Paris*. Under *Richard* the I, we see in *Hoveden*, that while the king was in his captivity in the empire, the earls and barons were assembled together in that com-

ⁿ Ad C. statutum tit. de rescript. lib. 6.

^o Card. de elect. C. ut circa.

^p Ad tit. de praesumpt. C. unic. verb. personatum

& tit. de ad C. & honestate cleric. c. 1. ut Clericalis.

^q Citantur verba ejus in notis ad Eadmerum pag. 169.

^r Anno

^t 1163.

^u Anonym. ms.

^v Ms.

^w Stephanides ms. de vita & passione Tho. Cant.

^x Puto Norman-

^y Anno 1176.

munne concilium regni, as he calls it, or the parliament, wherein it was adjudged, upon the fight of the letters and instructions, that were taken by the mayor of London in the hands of Adam of St. Edmond's agent, to John earl of Moreton (who was imprisoned also) *quod comes Johannes disfaissetur de omnibus tenementis suis, & ut castella sua obsiderentur; & factum est ita.* It seems that parliament was held at Oxford. It is mentioned only in Hoveden, as sitting where that Adam was taken. And it seems by the course of the story (which, as many other things in that writer, is delivered with much confusion of time) that it sat in February that year wherein the king returned in May following. But in the roll of accompts of the sheriff of London and Middlesex, for that year (which was the first of king Richard) I think the writs of summons of it to Oxford are thus mentioned. *Laurentio² ostiario xx solidos ad deferendas summonitiones regis per Angliam pro concilio convocando apud Oxineford per breve regis.* In March and April, the year following, the same king held a parliament or great council with his barons, spiritual and temporal, *in quo ipse petiit sibi fieri iudicium de comite Johanne, fratre suo, qui contra fidelitatem, quam ei juraverat, castella sua occupaverat, & terras suas transmarinas & cismarinas destruxerat, & foedus cum inimico suo rege Franciae contra eum inierat,* as also against Hugh, bishop of Coventry, for treason. And it was thereupon adjudged, that both John earl of Moreton, and the bishop, should be peremptorily summoned, and if they appeared not within forty days, *nec juri steterint, indicaverunt* (saith^a Hoveden) *comitem Johannem demeruisse regnum, & episcopum Coventrensem subiacere iudicio episcoporum, in eo quod ipse episcopus erat, & iudicio laicorum, in eo quod ipse vicecomes regis extiterat.* Other proceedings before the barons in that parliament, are remembered in the same author.

In the second year of king John also, that great controversy touching the barony that William of Mowbray claimed against William of Stutvile, which had depended from the time of Henry the second, was ended *consilio regni & voluntate regis*, by way of fine or composition, as the same Hoveden tells us. In his fifth^b year also, *convenerunt ad colloquium apud Oxoniam rex & magnates Angliae*, saith Matthew Paris. And the rolls of that year have *commune consilium baronum nostrorum*^c at Winchester, in the same year. Certain laws were also made for the defence of the kingdom, in his sixth year, *communi assensu archiepiscoporum, episcoporum, comitum, baronum & omnium fidelium nostrorum Angliae*, as the words are of a roll^d of that year. We may observe here also that answer of William de Breose, when his children were, as the children of the rest of the barons, required by the ministers of the same king for hostages. *Si ipsum in aliquo offendi* (saith he, as Matthew Paris^e relates it) *paratus sum & ero domino meo & sine obsidibus satisfacere, secundum ju-*

dicium curiae suae & baronum, parium meorum, certo mihi assignato die & loco.

These chief passages concerning the barons having place and voice in parliaments, or great councils of that time, we shall conclude with an observation or two concerning the summons by which they were called. Somewhat is before noted of writs of summons out of the pipe rolls of Richard the first. Thereunto we add out of^f Fitz Stephens that which he speaks of Henry the second's summons of archbishop Becket, as a delinquent, to the parliament of Northampton. He says, he sent a command to the sheriff of Kent only to summon him, though he were wont of custom to have the first summons by the king's writ. *Nec tunc enim* (saith he) *nec diu ante ei scribere voluerat, quia eum salutare volebat. Nec aliam per literas sibi directas solennem ac primam, ut antiqui moris erat, habuerat archiepiscopus ad concilium citationem.* But the antientest writ of summons that I have seen is no elder than the sixth of king John. It is directed to the bishop of Salisbury, and thus commands him to come, and to summon all the abbots and conventual priors of his dioceses.

MAndamus vobis^g rogantes quatenus omni occasione & dilatione postposita, sicut nos & honorem nostrum diligitis, sitis ad nos apud London die dominica proxime ante ascensionem domini, nobiscum tractaturi de magnis & arduis negotiis nostris & communi regni utilitate. Quin super his quae a rege Franciae per nuncios nostros & suos nobis mandata sunt, unde per Dei gratiam bonum speramus provenire, vestrum expedit habere consilium & aliorum magnatum terrae nostrae quos ad diem illum & locum fecimus convocari. Vos etiam ex parte nostra & vestra abbates & priores conventuales totius diocesis citari faciatis, ut concilio praedicto interfint sicut diligunt nos & communem regni utilitatem T. &c.

The roll that hath this writ hath no such note of *consimilia* to the rest of the barons, as is usually in other close rolls, where summons to parliaments are entered. But it appears in the body of this, that the rest were summoned, and it is before noted, that there was a parliament in the same year. But of the title of barons in the time that intercedes the coming of the Normans, and the later end of king John, hitherto.

XXI. About the beginning of the next part of our division here (that which includes the later time of king John, and the rest which follows until the middle of Richard the second) an alteration of great moment fell among the barons and baronies of the kingdom. For whereas in the time of the first part, every tenant in chief, as is before shewed, was indifferently an honorary or parliamentary baron by reason of his tenure or lands held, which made his barony; about the end of king John, some only

^a Rot. mag. § Rich. I. in Lond. & Middlesex.

^b Pag. 737. edit. Franc.

^c Anno 1204.

^d Rot. pat. § Joh. reg. membr.

1. num. 3.

^e Dorf. pat. 6 Joh. r. membr. 2. & dorf. clauf. 3.

^f Fol. 303. ed. Lond.

^g Ms. de vita & passione Tho.

Cant.

^h Dorf. clauf. 6 Joh. r. membr. 3. & videlicet dorf. clauf. 15 r. Joh. part. 2. membr. 7.

that were most eminent of those tenants in chief (sometimes stiled *maiores regni barones*) were summoned by several writs directed to them. And the rest (whether stiled at any time barons in such a kind of sense or no, I know not; though they might as well have had the name of *minores barones*, as the other of *maiores*) that held in chief, were summoned also, not by several writs, but by one general summons given by the sheriffs in their several counties. What special kind of place and voice different from the other, they that were thus summoned by the sheriff had, I find not. But that thus the greater barons, and the rest of the tenants in chief, were then distinguished, expressly appears by a passage in the grand charter of king *John*, made in the last year of his reign. *Ad habendum commune consilium regni deⁿ auxilio assidendo aliter quam in tribus casibus praedictis* (those three cases of aid to make the eldest son a knight, of aid to marry the eldest daughter, and aid of ransom are understood here, as it is plain by the charter) *Et de scutagiis assidendis faciemus summoneri archiepiscopos, episcopos, abbates, comites Et majores barones regni sigillatim per literas nostras. Et praeterea faciemus submoneri in generali per vicecomites, Et ballivos nostros omnes alios* (some copies have *illos*) *qui in capite tenent de nobis ad certum diem, scilicet ad terminum quadraginta dierum ad minus Et ad certum locum; Et in omnibus literis submonitionis illius, causam submonitionis illius exponemus, Et sic, facta submonitione, negotium procedat ad diem assignatum secundum consilium eorum qui praesentes fuerint, quamvis non omnes submoniti venerint.* And in another place about the beginning of the same charter, we have, *si quis comitum vel baronum nostrorum sive aliorum tenentium de nobis in capite per servitium militare mortuus fuerit* &c. according as we find the same words also in that of *Henry* the third, which hath the most of the chapters that are in this of king *John*. And by these words we see that *alii tenentes in capite* are so remembered with barons, as if the name of barons had not then belonged to them. But it cannot be reasonable to think that by these laws of that grand charter (which was made, I conceive, by the king, and his *barones Et liberos homines totius regni*, as other particulars¹ were of the same time) that distinction of the *maiores barones* from the rest of the tenants in chief, first began. I cannot doubt but that before this charter was made, by the law of some other parliament, it appeared who these *maiores barones* were; and who, or of what nature, the other tenants in chief were, that were not of the *maiores*. Otherwise, how could the stile of *maiores barones*, have been here so familiar, or of any use? What certainty could have been in so general and indefinite an expression, unless it had been before determined who they were? Indeed, before this of the charter, I find not any clear phrases, of such distinction herein, as may fully perhaps satisfy;

nor meet I with any such law, as, I suppose; before determined it. But we know by what is already shewed, that divers former parliaments were in this king's time, though the laws made in them be lost; and in the year before this charter also, the author of *Eulogium*^k says, that *convocatum est parliamentum Londoniis, praesidente archiepiscopo, cum toto clero Et tota secta laicali*; wherein, *per domini papae praeceptum, illa obligatio quam rex domino papae fecerat cum fidelitate Et homagio relaxatur omnino VII die Julii.* And in his fifteenth year, or about two years before the date of his grand charter, he summoned a kind of parliament to *Oxford*, by this strange writ of summons that, for ought I have seen, is without example, and seems to point to that distinction of tenants by knights service, which I call here *barones minores* of that time, from the *maiores*, or such as were properly barons. The words of it are;

REX vicecomiti *Oxon.* salutem. Praecipimus tibi quod omnes milites ballivae tuae, qui summoniti fuerunt esse apud *Oxoniam* ad nos a die omnium sanctorum in xv dies, venire facias cum armis suis; corpora vero baronum, sine armis singulariter; & iv discretos milites de comitatu tuo illuc venire facias ad nos ad eundem terminum, ad loquendum nobiscum de negotiis regni nostri. Teste meipso, apud *Witten* xi die *Novembris*.

Eodem modo scribitur omnibus vicecomitibus.

Now in some of his parliaments, it seems, the law was made, whence this distinction first grew. And it is like enough to have proceeded thus. We may collect by the stories of the time, of and about the interdict (which had continued about six years, and ended within less than a year before the parliament wherein this charter was made) that upon the many differences and quarrels between the king and many of his barons, divers baronies did escheat to the crown; either by attainders, or otherwise, according to the laws of the time, which being in the king's hands, were partly granted to others, and partly retained as ready rewards for such as the king would make of his part, by giving them such escheats, or any parts of them, to hold of him in chief, as the ancient barons, from whom they escheated, had done. And of those escheated baronies, there is express mention in that grand charter of king *John*, whence also we have it yet in that of *m Henry* the third, which is used to this day. Divers barons also were perhaps so decayed in their estates, that they were not able honourably any longer to support their titles. Now the other barons which were of ancient foundation, or blood, or of great revenue, or the *maiores barones*, foreseeing, it seems, how their dignity and power might suffer much diminution, if the new tenants in chief, or patentees of those escheated baronies, and the rest that were decayed (being all barons by tenure, according to the laws of

¹ Matth. Paris, pag. 343.

claus. 15 Joh. reg. part. 2. mem. 7.

² Videlicet Rot. claus. 17 Joh. r. dorf. membr. 22. haec est conventio &c.

³ Mag. chart. cap. 31.

^k Ms.

^l Dorf.

that age) should have equality with them, and be indifferently barons of the kingdom every way as they were, procured (so we may justly think) a law in some of those parliaments that preceded that grand charter, by which themselves only should hereafter be properly stiled and be barons, and the rest tenants in chief only, or knights, or *milites*, which titles should be given them as distinct names from barons. This could not but much lessen the dignity and honour of the rest, although they remained still as barons, according to the former laws, as well as the greater did. And perhaps because the antient name could not suddenly in common speech be wholly taken from them, therefore the addition of *maiores* was given to the antient and more powerful barons, and of *minores*, at first, to those tenants in chief in common speech, although we find no old mention of them by that title. For legally, it seems, they had only the title of tenants in chief, as we see in the two passages before recited out of the grand charter. And their Possessions also were not then legally stiled baronies, but knight's fees only, though in common speech divers of them have retained the name of baronies to this day, there having not been any honorary barons of them since that age. But the greater and antient barons desiring still to increase their own power and honour, by lessening that which was either left in those tenants in chief, or might afterward be in any other that should be made such tenants; and those tenants perhaps, on the other side, claiming equal dignity and title, and such place in parliament as they whose estates they had, used to have; it was ordained, as we see in that grand charter, that there should be two eminent characters of distinction of dignity and honour (beside that of name or title) between greater barons and those other tenants. The one appears in that of the summons before noted. For it was in itself much more honourable to receive writs of summons directed from the king, than to be summoned by a general name only in the county by the sheriff. The other is touching their relief. For whereas formerly, while those tenants in chief and those whose estates they had, were in the ordinary state of barons, and their possessions legally baronies, their reliefs were payable uncertainly, sometimes in arms, sometimes in money by way of composition for those arms, as is before shewed; and the reliefs of the antient and greater barons were now, by the grand charter, assessed at a c marks; the reliefs of these tenants in chief were made payable, not for baronies, but now only as those of vassals antiently were, or of such as then held knight's fees of honours or mannors, and not in chief. That is, that they were to pay five pounds only for every knight's fee, as we see about the beginning of that grand charter of king *John*. And the words of it to this purpose are in that also of ⁿ *Henry* the third. The tenants in chief, being by these differences in the form of their summons, in their titles, possessions, and reliefs, made so much less in honour

than the greater barons, who had several writs at every summons, and all the antient circumstances of the title of baron still remaining in them; it was the less difficult, for those greater barons, to procure a law to exclude the rest wholly at length from having any interest in the parliaments of that time under the name of tenants in chief only. And to this purpose, doubtless, some law did afterward pass, whereby it was enacted, that none should come to the parliament, under that name or the name of barons, but such only as should have several writs of summons directed to them, in which number, not only all those of the antient and greater barons were comprehended (according to that charter of king *John*) but also all others to whom writs of summons should be afterward likewise directed; which was in substance, that no tenure, in that alone, should any longer make a baron of the kingdom; but that now the writ of summons only, might make one. In what year either that law, which we suppose made the first distinction between the greater barons and those tenants, passed, or when the other was made, which we conceive here afterward utterly excluded those tenants from their place, which by the grand charter they had upon the general summons in the county, appears not. But it seems, the first was in some parliament held not long before king *John's* grand charter was made; and the other, I think, not long after it. Yet I well know that, from the authority of an antient writer (whom I confess I could not yet see, although I have used my best diligence to meet with him) some very learned men suppose that this law of giving place and voice in parliament antiently to those only as barons, which by several writs should be summoned and to none other, was made toward the end of *Henry* the third, or as sometimes it is said, ^o about the beginning of *Edward* the first; and, from that authority also they write, as if in or near the age, whereof we now speak, some law had been made, by which none, as barons, were then to come to the parliament, but such only as should have their right continued or created by the king's special writ of summons. *Ad summum honorem pertinet* (saith the learned *Camden* ^p speaking of the dignity of a baron) *ex quo rex Henricus, III. ex tanta multitudine, quae seditiosa & turbulenta fuit, optimos quosque rescripto ad comitia parlamentaria evocaverit. Ille enim* (ex satis antiquo scriptore loquor, saith he; and the words following are out of that writer) *post magnas perturbationes & enormes vexationes inter ipsum regem, Simonem de Monteforti & alios barones motas & sopitas, statuit & ordinavit quod omnes illi comites & barones regni Angliae, quibus ipse rex dignatus est brevium summonitionis dirigere, venirent ad parlamentum suum, & non alii nisi forte dominus rex alia ^q illa brevium eis dirigere voluisset.* And this being begun about the end of *Henry* the third, was perfected and continued, saith ^r *Camden*, by *Edward* the first, and his successors. But that testimony of the old writer, ci-

^a Mag. chart. cap. 2.

^c *Camd. apologia*, pag. 11.

^p *Brit. pag. 122.*

^q *L. similia.*

^r Videbis eum item in *Brit. pag. 658.*
red

red here by him, perswades me not to think any such kind of law was made so late, as about the end of *Henry* the third, but long before, and much sooner after the grand charter of king *John*. For in all occurrences that I meet with, since that grand charter, I find no mention of any interest that those other tenants in chief, *eo nomine*, had in parliament, who doubtless were the persons that were excluded from it, whensoever any such law was made. And besides, we have some good testimony of barons being distinguished, by holding in chief from some others that held not in chief, long before the end of *Henry* the third (or the time to which that antient author refers the law of alteration) which seems to shew, that there were then barons by writ only (according to the purpose of the law we mean here) as well as antient barons by tenure. That testimony is in *Matthew Paris*; *Rex edicto publice proposito* (saith he speaking of the *xxix* year of *Henry* the III.) *Et submonitione generaliter facta, fecit notificari per totam Angliam, ut quilibet baro tenens ex rege in capite haberet prompta et parata regali praecepto omnia servicia militaria, quae ei debentur, tam episcopi et abbates, quam laici barones.* Barons holding in *capite* are mentioned here, as if some held not so, which must be such as were barons by writ only. And that difference, should most properly follow such a law as we now dispute of. That old author also used by the learned *Camden*, speaks of earls no otherwise than of barons, as if some like exclusion had been of any of them also, than which nothing can be more adverse to the known truth both of that age and all times. And even in that we have some character of the slightness of his authority, whosoever he were. These things, and what we have already noted, perswade me to give little credit to that relation, but rather to conclude, that not long after the grand charter of king *John*, (like enough in his own time) some law was made, that induced the utter exclusion of all tenants in chief from parliaments, besides the antient and greater barons, and such other as the king should in like sort summon. Whence from that time during the present part of our division, or until the middle of *Richard* the second, none else besides such, and the heirs or successors (as the case happened) of such, as were one of those two kinds, could justly enjoy this honorary title. Neither let it be imputed, that we seem too confident in the conjecture, that such laws, as we have supposed, were made in those times, because we have neither roll nor history that expressly mentions them. The common histories of those obscure times, have many that the rolls have not. The rolls that remain (as the patents and close rolls especially) have divers that the histories want. Neither have all. And it is a wonder rather they have so many. For the proper place of the laws as well of those times (as of our's) was in their rolls of parliament, all which are lost. And such laws as we find in those other rolls of

those times, came but accidentally into them. Whence it is also, that neither the grand charter of king *John*, nor of *Henry* the III. is in the rolls of either of those kings, though we have that of *Henry* the III. elsewhere, both in rolls of later time, and in good writers that are near as antient as the charter. And that of king *John* is extant only in some originals; and in some stories, as *Matthew Paris*,¹ *Roger of Wendover*, *Thomas* of ² *Rudborne*, and some such more, but not in any roll that remains now. Nor is it strange, that the memory of the time of making such laws of so great moment should be utterly lost. The ordinaries power in granting administrations of intestates goods (which is of no small moment) is well known to all men with us. Yet no antient book or roll (as far as I have observed) mentions the law that first began it, besides the constitutions of *Othobon*,³ where it is said, that it is *provisio quae olim a praelatis regni Angliae cum approbatione regis et baronum dicitur emanasse*. But neither those constitutions, nor any other author shew the words of that provision, or can tell us when it was made. I know that in king *John*'s grand charter, and in some copies of that of king *Henry* the III. at the end of the *xviii* chapter, *Si quis tenens laicum feudum, &c.* follow these words; *Et si quis liber homo intestatus decesserit, per manus parentum propinquorum et amicorum suorum, et per visum ecclesiae bona sua distribuuntur, salvo unicuique debitum quae defunctus debuit*, which I rather take for a supposition of a precedent right of the ordinaries granting administration of intestates goods, than for the first law that ordained it. But *John de Athon* in his commentaries upon *Othobon*'s constitutions, grossly refers the beginning of this law of administrations to the statute of *Westminster* the second; when it is plain that the constitutions were made in the *xxxii* of *Henry* the III, and that statute of *Westminster* long after, in the *xiii* of *Edward* the I. Heirs also in the times of *Henry* the I. and *Henry* the II. inherited chattels in like manner, as lands, as it appears, in the laws of *Henry* the I. and in the assize of ⁴ *Clarendon*, renewed at *Northampton*. But the law is now clearly contrary; and it hath been contrary from about king *John*'s time. And doubtless it was, about that time, changed by some act of parliament. But no such act is found remaining in our books or rolls. The like might be said of probats of wills, and of divers other particulars in this kingdom. And, in the old *Roman* monarchy, the famous *lex regia*, a law of the greatest consequence that ever any was in *Rome*, by which as ⁵ *Ulpian*, and ⁶ *Justinian* say, *populus principi et in eum omne suum imperium et potestatem contulit*, was, it seems, made about the beginning of the same monarchy, yet no man hath found, either the time of it, or the words of it, though some reference to it be in that fragment of confirmation of a like

¹ Pag. 871. ed. Lond.

² Ms.

³ Ms.

⁴ Tit. de bonis intestatorum c. cum mortis.

⁵ Apud

Math. Paris, pag. 75. lin. 14. a.

² 22 Hen. II. apud Rog. Hoveden, pag. 314. edit. London.

³ ff. de constit. princ. l. 1.

⁴ Instit. de jure nat. §. fed & quod (ubi videlicet Mynsingerum) & Pompon. ff. de orig. juris §. 11. novissime.

power^c to *Vespasian*, which to this day, by chance, is extant in the capitol, whither it was, some years since, transferred from the *Lateran*. The like might be said of the *lex regia*, in the *German*^d empire, and of some other antient laws, in every state, of whose being we are certain by the circumstances of matter, but for the just time of their making, and of the forms of them, we are left wholly to conjecture, for want of those antient testimonies of them which have perished.

XXII. By reason of the alteration which those laws, touching barons, here induced, there were in the time of our present division, or between the later part of king *John's* reign, and the middle of *Richard* the II, two kinds of barons; barons by writ and tenure, and barons by writ only. Barons by writ and tenure, were such as having the possession of their antient baronies, were called by several writs to the parliament, according to that of king *John's* charter, which concerns the *maiores barones* of the time of the making it. Barons by writ only, were such as were called by a like writ of summons, although they had no possessions that were honorary baronies. For also, the antient baronies were now become, in common language, to be twofold; either such as were legally baronies, and honorary, and supported the title of baron in the antient possessors, their heirs or successors, or such as were now but abusively called baronies, by reason of the antient application of that word to them (before the later part of king *John's* reign) and were, in truth, estimable but as knights fees only, which were not honorary baronies, as is before shewed. And of both these kinds divers remain and have the name of baronies to this day. The like is to be said of the baronies also that were of the honorary possessions of the antient barons, and have been aliened by them. For, though these often have retained the name of baronies in other hands, yet they were so stiled, but in regard of their being in truth honorary baronies formerly. And their barons became upon such alienation also, barons by writ only (retaining their antient place and dignity) because their possessions were gone, which at first made their ancestors barons by tenure. *Matthew Paris*, or he that continues him, says that *Henry* the III, being at *St. Albans*, and having occasion to speak of his brother *Richard* earl of *Cornwall*, that was chosen emperor, reckoned first the names of the electors, and then reckoned also the names of the kings of *England* that were canonized for saints, and at length also the names of the baronies of *England*, that he could remember, which he found to be ccl. *Nominavit idem quoque dominus rex* (so says^e the author) *& memoravit omnes Angliæ, quarum ei occurrit memoria, baronias, invenitque ducentas & quinquaginta*. The copy that Mr.

Camden^f used, had only *centum & quinquaginta*, it seems. But whatever the true number were, it was written from the king's mouth, and at his direction and command, as appears by what precedes it in him that wrote it. But whether that passage be to be understood only of the honorary baronies of that time, I know not. Nor appears it what the just number of them was, either at the time of the great alteration under king *John*, or afterward. But if he that would be more curious here for the number intended by *Henry* the III, in his enumeration of the baronies at *St. Albans*, would admit that *baroniae*, in *Matthew Paris*, may be taken only for the several honorary possessions of every peer or baron (in the larger notion of baron) and not for every several barony, divers of which one baron might then, as at this day, have; and also if he shall rather read there ccl (with learned *Camden*) than ccll, he may perhaps have further light out of the rolls^g of some few years afterward, where the temporal barons by tenure, being about cxxx, are called by several writs to be present, *cum equis & armis*, and the spiritual, being about l more, *ad habendum servitium suum*, as the form of the time was. But doubtless the greatest number of barons during all this time, whereof we now speak, were barons by tenure (of whole baronies; and those all held of the king in chief, ^h according as the antienter nature of baronies also required) as well as by writ; which not only appears by the multitude of the spiritual barons, who should of right, all it seems, have been, or were conceived to be, by tenure as well as by writ, (as we may collect out of this; that the great store of the regulars, with some other spiritual persons that held not in chief, which were sometimes summoned, were wholly at length omitted, as not having, of right, voice, and place with the rest, as is anon shewed more fully) but also is strengthened out of the antient law-books, where in some cases occurring touching the title of baron, ⁱ the judges suddenly make a question touching the tenure by barony, as if they had thought that, for the most part, every baron held either *per baroniam*, or *per partem baroniae*, which seems to be supposed also under *Edward* the I, in the ^k act concerning the marshals and chamberlains fees at the homages of earls and barons. But it is certain that some barons were now also made only by writs of summons, and had no baronies.

But concerning both kinds of barons in the time of this part of our present division, and as well concerning the spiritual as temporal, more in some particulars concerning them; which we make here five. The form of the writs that summoned them; the several kinds of persons summoned as barons; the discharges of some spiritual barons from the burthen of the title, either upon pleading, or by patent; the name of banneret sometimes as a synonymy attributed

^c Anton. August. de legibus, pag. 124.

^p 1282.

^f Britan. pag. 122.

^a 48 Ed. III. fol. 3. b. 48 assis. pl. ult.

^d Videfis Benedic. Carpouz. tract. de capitul. Caesarea cap. 1. §. 18.

^e Vide claus. 47 Hen. III. dorf. m. 7. & pat. 48 Hen. III. part. 1. dorf. 6. in schedula appensa, pat. & Ed. I. dorf. m. 12. & rot. feutagii ejusdem ann. m. 7.

^h 24 Ed. III. fol. 66. Grene.

^k Weist. 2. cap. 46.

^g 41 Hen. III.

ⁱ dorf. 6. in schedula appensa, pat. & Ed. I. dorf. m. 12. & rot. feutagii ejusdem ann. m. 7.

^j 22 Ed. III. fol. 18.

TO

to the temporal barons, and the just consideration of that common opinion of a barony's consisting of XIII knights fees and a third part. For the form of the writs that summoned them; there were many parliaments between the beginning of the time of this part of our division and the end of *Henry* the III, as appears in the rolls of his time, in *Matthew Paris*, and in the writer that continues him, and such more; some of which parliaments are testified, with the most of them that have followed to this day, in our published statutes. But the writs of summons to parliaments, of those of the antientest time of this part, were either rarely entered, or in some other rolls than the close rolls, where the writs of this kind, in the elder times after *Henry* the III, are usually found. It seems this was one, which the close roll of the XXVI of *Henry* the III¹ yet preserves.

Henricus &c. venerabili in Christo patri *Waltero Eboracensi* archiepiscopo salutem. Mandamus vobis quatenus sicut nos & honorem nostrum pariter & vestrum diligitis, & in fide qua nobis tenemini, omnibus aliis negotiis omittis, sitis ad nos apud *London*, a die sancti *Hilarii* in xv dies ad tractandum nobiscum, una cum caeteris magnatibus nostris quos similiter fecimus convocari, de arduis negotiis nostris statum nostrum & totius regni nostri specialiter tangentibus, & hoc nullatenus omittatis. *T. meipso* apud *Windleforam* xiv die *Decembris*.

It is subscribed with *eodem modo scribitur omnibus episcopis, abbatibus, comitibus, & baronibus*. But the first that we find accompanied with the other circumstances of a summons to parliament (as well for the commons as the lords) is in the XLIX year of the same king *Henry*, where this one form calls both the earls and all kind of barons to parliament.

Henricus Dei gratia rex *Angliae* dominus *Hiberniae* & dux *Aquitaniae* venerabili in Christo patri *R. episcopo Dunelmensi*, salutem. Cum post gravia turbationum discrimina dudum habita in regno nostro, charissimus filius *Edwardus* primogenitus noster, pro pace in regno nostro assicuranda & firmanda obfes traditus extitisset, & jam sedata (benedictus Deus) turbatione praedicta, super deliberatione ejusdem salubriter providenda, & plena securitate & tranquillitate pacis ad honorem Dei & utilitatem totius regni nostri firmanda, & totaliter complenda, ac super quibusdam aliis regni nostri negotiis quae sine consilio vestro & aliorum praelatorum & magnatum nostrorum nolumus expediri, cum eisdem tractatum habere nos oporteat, vobis mandamus rogantes in fide & dilectione quibus nobis tenemini quod, omni occasione postposita & negotiis aliis praetermissis, sitis ad nos *Londoniis* in octabis sancti *Hilarii* proximo futuris, nobiscum & cum praedictis praelatis & magnatibus nostris, quos ibidem vocari fecimus, super

praemissis tractaturi & consilium impensuri, & hoc sicut nos & honorem nostrum & vestrum, nec non & communem regni nostri tranquillitatem diligitis, nullatenus omittatis.

Only the *teste* of the writs to the bishops, is at *Worcester*, xiv *Decembris*; but of those, both to the temporal barons and most of the abbots and priors, it is the XXIV of the same month at *Woodstock*. But the barons being both spiritual and temporal, and the spiritual being also either secular, as bishops, or regular, as abbots and the like (which is anon more particularly shewed) the writs of the following times had, for the most part, their difference, according to the quality of the barons. The spiritual barons were commanded by the writs to be present most commonly in *fide & dilectione quibus nobis tenemini*, as in that of *Henry* the third, and the temporal in *fide & homagio*, till about the middle of *Edward* the third, where, in *fide & ligeancia* began to be used instead of it, yet so that *homagio* was afterward also in the same place sometimes inserted. The writs to the spiritual barons also that were secular (I mean the bishops) had sometimes under *Edward* the firstⁿ that clause of commanding them to warn their priors or deans (as the case was) and their chapters, or convents, and the archdeacons, and all the clergy of their dioceses, that the deans or priors, and the archdeacons, should be present themselves, and every chapter by one, and the clergy by two proxies; and after^o *Edward* the first, during this whole time, the like clause is, for the most part, in the writs to the bishops. But some^p under *Edward* the second, and *Edward* the third, as well as *Edward* the first, are without it. But observe, that in that of 49 *Henry* III. and in some of them here noted out of the near following years, where that clause is omitted, several writs were sent to some deans and priors of cathedral churches, whereof more anon, when we speak of the summons of regular barons. And that clause excepted, the rest of the writ was agreeable, usually to what was directed to the regular barons, which was the same that the temporal had, saving in some few syllables, which are anon here shewed. But this I speak, of that part of the writ that was the body of the summons. For the preambles sometimes so varied, that some eminent occasions of calling of the parliament was inserted in the writs to the spiritual barons, that was not in those to the temporal. And for the preambles also; oftentimes they have those occasions in them; oftentimes no more than a general and short narrative of the resolution of having a parliament. And much variation of that nature was in the writs. Many differences of slighter moment occur also. And sometimes against making proxies; sometimes leave for proxies^q in the writ; and sometimes in all a clause is against coming attended with arms. But the most and usual whole form,

¹ Dorf. clauf. 26 Hen. III. membr. 13. ^m Dorf. clauf. 49 Hen. III. m. 11. in schedula. ⁿ Dorf. clauf. 23 Ed. I. membr. 2, & 3. & 24 Ed. I. membr. 7. ^o Videfis dorf. clauf. 1 Ed. II. membr. 8, &c. ^p Dorf. clauf. 23 Ed. I. membr. 9. Dorf. 28 Ed. I. membr. 3, &c. 30 Ed. I. membr. 7. 1 Ed. II. membr. 8. 13 Ed. II. membr. 13. 14 Ed. II. membr. 14. 17 Ed. II. membr. 27. 6 Ed. III. membr. 19, &c. ^q Vide dorf. clauf. 23 Ed. I. membr. 2.

towards the end of *Edward* the third, to the spiritual barons that were secular, or bishops, was constantly ^r thus.

E*dw*ardus, &c. venerabili in Christo patri S. eadem gratia archiepiscopo *Cantuariensi*, totius *Angliae* primati, salutem. Quia de avia-mento consilii nostri pro quibusdam arduis & urgentibus negotiis nos & statum & defensionem regni nostri *Angliae* ac ecclesiae *Anglicanae* contingentibus, quoddam parlamentum nostrum apud *Westmonasterium* in quindecima sancti *Hillarii* proximo futura, teneri ordinavimus, & ibidem vobiscum ac cum caeteris praelatis magnatibus & proceribus dicti regni nostri *Angliae* colloquium habere & tractatum, vobis in fide & dilectione quibus nobis tenemini firmiter injungendo mandamus, quod consideratis dictorum negotiorum auctoritate & periculis imminentibus, cessante quacunque excusatione dictis die & loco personaliter ^r intersitis nobiscum ac cum caeteris praelatis magnatibus & proceribus praedictis super dictis negotiis tractaturi, vestrumque consilium impensuri, & hoc sicut nos & honorem nostrum ac salvationem regni praedicti ac ecclesiae sanctae expeditionemque dictorum negotiorum diligitis, nullatenus omitatis, ne (quod absit) per vestri absentiam, quam cessante impedimento legitimo nullo modo excusatam habere volumus, expeditio negotiorum nostrorum praedictorum retardetur seu aliquantulum differatur; praemunientes priorem & capitulum ecclesiae vestrae *Cantuariensis* ac archidiaconos, totumque clerum vestrae diocesis quod iidem prior & archidiaconi in propriis personis suis, ac dictum capitulum per unum, idemque clerus per duos procuratores idoneos, plenam & sufficientem potestatem ab ipsis capitulo & clero habentes, praedictis die & loco personaliter intersint, ad consentiendum hiis quae tunc ibidem de communi consilio ipsius regni nostri divina favente clementia contigerit ordinari. Teste meipso; apud *Westmonasterium* primo die *Decembris*.

Per ipsum regem & consilium.

The same form, *mutatis mutandis*, concluding with *aliquantulum differatur; teste, &c.* was to the regular barons, and to the temporal likewise, saying that *cum praelatis, &c.* was for *cum caeteris praelatis*, and *ligeantia* or *homagio* for *dilectione*, in those to the temporal. The writs that called those which had place in parliament, but not voice with the baronage (as the judges, the attorney general, king's serjeants, or such more) commanded them *quod intersitis nobiscum & cum caeteris de consilio nostro*, and sometimes *nobiscum* only, *super praemissis tractaturi vestrumque consilium impensuri*, whereas that to the barons was *quod intersitis cum praelatis, magnatibus & proceribus, &c.* as also the difference is to this day; which, by the way I note, left any scruple of this matter should here disturb a reader that is not acquaint-

ed with the process of parliaments. The styles given in that time to the spiritual barons are (as to this day) their ecclesiastical dignities added to their christian names; and *Anthony*, bishop of *Durham*, being also patriarch of *Jerusalem*, is stiled ^r so under *Edward* the second. The temporal barons (such as had only that distinct dignity, whereof we speak here) during all that time are regularly stiled in the writs by their christian names and surnames, or by their baronies supplying surnames, and sometimes by surnames and baronies. But also in some examples the title of *baro* is added, as is before ^u noted. And sometimes *chivaler* is an addition also. (²⁶³)

XXIII. The persons summoned by these forms of writs within this part of our division of time (which extends from about the end of king *John*, to the middle of *Richard* the second) summoned, I mean, as barons, were the lords temporal and the lords spiritual. And the lords spiritual were either seculars, as archbishops and bishops, or regulars, as abbots, priors, and some masters of orders. I say summoned as barons. For by the same kind of writs also, the guardians of the spiritualities of bishopricks in the times of vacancy, and the vicars general of bishopricks being beyond sea, were summoned also. But they being summoned only as substitutes, or in the right of the bishops, or of the vacant bishopricks, were not understood as barons, as neither are they at this day, or ever were. And though that division, before made, of the persons summoned as barons be regularly, and for the most part of time, true; yet also, some other secular persons are sometimes found in the summons of the time whereof we now speak, as some deans of cathedral churches, and such more. For in that of 49 *Hen. III.* the deans of *Tork*, *Exeter*, *Wells*, *Salisbury*, and *Lincoln*, are summoned with the like writ as the rest, and once under *Edward* the second, the official of the archbishop of *Canterbury*, and of the dean of the arches. But touching these anon, where we speak of the numerous store of regular barons in these elder times. The temporal persons summoned as barons, are obviously reckoned in the close rolls, and their names vary according, either as any new were made, or as the dignity ended, or the heir were within age, or as any thing else happened, that according to the law of the time precluded any of them, or caused them to be omitted. The bishops also are obvious in the same rolls, and constantly the same, saying where the vacancy, or absence out of the kingdom, or some such like makes a difference. For there was never any that had the title of a bishoprick in *England* since the *Normans* (saying the bishop of *Sodor* in the *Isle of Man*, which is part of *England*; and the bishop of the *Jews* here, that was sometimes called *presbyter Judaeorum*, sometimes

^r Dorf. cl. 50 Ed. III. part. 2. membr. 6, &c.

^u Vide Dorf. cl. 23 Ed. I. membr. 2. ubi episcopis Dunelmensi & Karleolensi dicitur per procuratorem idoneum intersitis; & Dorf. claus. 30 Ed. I. membr. 9. archiepisc. Eboracensi quod personaliter intersitis vel saltem procuratorem cum sufficienti potestate mittatis.

²⁶³ §. XVI.

²⁶⁴ Dorf. claus. 1 Ed. II. membr. 8. § 3 Ed. II. membr. 16, &c. vide 12 Ed. III. tit. Breif 480.

* *episcopus*, as also the high priests of the Jews in the Saxon gospel of St. John are divers times turned by *episcopar*, though in the other evangelists, *pacepof ealdrar*, for the most part) but was a baron of parliament. And they are summoned sometimes by the addition of *electi N.* when they are elect and not confirmed, and if confirmed and not consecrated, then are they in the summons stiled *electi confirmati N.* as they are also in other writs. But the regular barons (or the regular persons called by the like writ as the rest) vary very much on the rolls. And we shall the more carefully deliver them here, because I see some very learned men misconceive, as if those few that had places, and were in parliament under Henry the eighth, had been the only regular barons of former time with us. It is plain, that as the abbots and priors that held in chief in the first part of our present division were barons, by reason of their baronies or tenures; so in this part, all of them that were comprehended under that name of *maiores barones* (whereof before) or held the greater baronies, were now barons by writ and tenure; and divers others (besides the few before spoken of) that appear upon writs of summons directed to them, were barons by writ also, until they were legally declared not to be so, or discharged, as in some cases of discharge amongst them is anon shewed. But because all of them were not barons (as all bishops were) the name of abbots and priors indefinitely expressed (because indefinitely they were not barons) is rare in the occurrent mentions of the antient parliaments, though oftentimes *archiepiscopi, episcopi, comites, barones, & alii magnates*, or the like only, without the name of *abbates & priores*, express the whole number of the baronage. And in that particular enumeration also of the bishops, earls and barons, that were present with others at the making of certain laws concerning the trial of bastardy, and affizes of *darrein presentment* under Henry^v the third, there is no mention of any abbot or prior, though I doubt not but that they are comprehended under *& aliis*, that is added to the enumeration. I mean that of xviii Henry the third, which is preserved in the plea-rolls of that year, as if it had been transcribed out of the parliament-roll. For all parliament-rolls of the time of Henry the third are lost, excepted one of some passages in the parliament of Oxford, in the xliv of the same king, which I have heretofore used by the favour of an honourable person that communicated it. By that plea I speak of, that which is misprinted, and perhaps misplaced in *Bracton* touching the trial of bastardy, and taken out of some parliament-roll that then remained, may be justly amended.

For plainly he meant but the self-same that we remember here of the xviii of Henry the third. *Postea vero* (saith he)² *die Jovis proxime post festum sancti Dionysii anno eodem coram ipso domino rege & subscriptis, &c. provisum fuit, &c.* and in his next precedent pa-

ragraph he speaks only of the xx year of Henry the third, or the statute of Merton, which must persuade his reader (without some correction) that *eodem anno* here also is the xx year. But, doubtless, that of *eodem anno* in the parliament-roll whence he took it; had relation to the title of the roll which was the xviii year that was iterated upon several parts of it by *eodem anno*, which can have no reference to the time of the statute of Merton, or the xx year. The words of this plea-roll clearly justify it. *Die Jovis proxime post festum sancti Dionysii anno regni Henrici filii regis Johannis xviii coram domino rege & subscriptis, &c.* Almost the words of the act concerning bastardy, as they are in *Bracton*, are in the roll. But the names of the bishops, earls and barons that he hath before the act, in the roll follow it, by which also he must be corrected. For *Richardo comite Cornubiæ & Petro*, read *R. C. C. & Pictaviæ*; for *com. Warham*, read *Warreniæ*; for *R. filio Michaelis*, *Radulpho F. Nicholai*; for *H. filio Machute*, *Herberto filio Matthei*; for *Sylkarum*, *Siward*; for *W. de Bromich*, *Godefrido de Crawecumb*; for *B. Curial*, *Bertrando de Kuria*; for *E. de Singoy*, *Engelard de Cigongny*; for *R. de Mussengoy*, *Roberto de Muchegros*; for *B. de Pancy*, *Radulpho de Paunton*; for *G. de Lucy*, *Herberto de Lucy*. To this parliament also should that be referred, which in *Fitzherbert*³ is attributed to *Hillary* xix of Henry the third, touching affizes of *darrein presentment* of prebends. The words of it are in that plea-roll, although it be in him placed under the xix year of the same king. But this by the way.

In the close-roll that hath the summons of the xlix of Henry^b the third, beside the bishops and those deans before named, we have lxiv abbots, xxxvi priors, and the master of the temple, all called by the self-same kind of writ (the writ is before^c inserted) by which the rest of the barons were. The words are, *eodem modo mandatum est*;

Abbati S. Mariæ Eborum.
Priori Dunelm.
Priori S. Trinitatis Ebor.
Abbati de Seleby.
Abbati de Furnes.
Abbati de Fontibus.
Abbati de Rival.
Abbati de Melsa.
Abbati de Rupe.
Abbati de Bella Landa.
Priori de Bridlington.
Priori S. Oswaldi.
Abbati de Ruffod.
Priori de Blida.
Priori de Thurgarton.
Priori Karleol.
Abbati de Weethy.
Priori de Gisburne.
Priori de Parco.

* Videf. cart. 1 Joh. r. part. 1. membr. 27. n. 171. pat. 41 Hen. III. n. 6. & pat. 9 Ed. I. & not. ad marmor. Arundel. pag. 179.
² Placita apud Theokesburiam 18 Hen. III. dorf. rot. 15. in arce Londin.
³ Tit. Darrein presentment 23. & Nat. br. fol. 32. d.
^b Dors. clauf. 49 Hen. III. membr. 11. in schedula.
^c §. XXII.

And all these were summoned by writs of the same date, that summoned the bishops and those deans. Then follows,

In forma praedicta scribitur abbatibus & prioribus subscriptis sub hac data, teste rege apud Wodestock xxiv die Decembris.

Abbati sancti Edmundi.
Abbati de Wantham.
Abbati de S. Albano.
Electo de Evesham.
Abbati Westmonasterii.
Abbati Glasstoniae.
Abbati de Reding.
Abbati de Cirencester.
Abbati de Waverle.
Priori Eliensi.
Priori Norwicensi.
Priori de Merton.
Abbati de Osney.
Priori S. Frideswidæ Oxon.
Abbati de Messenden.
Priori de Lenton.
Abbati de Bello.
Priori ordinis de Sempringham.
Priori de Watton.
Priori hospitalis S. Johannis Jerusalem in Anglia.

Magistro militiae templi in Anglia.

Abbati de Ramsay.
Abbati de Burgo.
Abbati de Thorney.
Abbati de Crolland.
Abbati Cestriae.
Abbati Salop.
Abbati de Hulmo.
Abbati de Barden.
Abbati de Colcestr.
Priori de Dunstaple.
Abbati de Bello Loco.
Abbati de Parco Lude.
Abbati de Stanlegh.
Abbati de Lullestulle.
Abbati de Bitesden.
Priori de Bewver.
Priori de Leus.
Abbati de Clervaux.
Priori de Stodlay.
Abbati S. Augustini Cant.
Abbati de Certesey.
Priori S. Trin. Cant.
Abbati de Hida Winton.
Abbati de Midleton.
Abbati de Cerne.
Abbati de Abbotsbury.
Abbati de Tavistock.
Priori de Huntingdon.
Abbati de Sillebi.
Abbati de Wardon.
Abbati S. Jacobi Northampt.
Abbati de Leycestre.
Abbati de Kirkested.
Priori de Eton.
Abbati de Cruceroys.

Abbati de Kirkestall.
Abbati de Tame.
Priori de Bermundsey.
Priori de Bernwel.
Abbati de Merival.
Abbati S. Augustini Bristol.
Abbati de Malmesbury.
Abbati de Miltbenon.
Abbati de Abindon.
Abbati S. Petri Glouc.
Abbati de Persfour.
Abbati de Winchcombe.
Priori de Coventr.
Priori de S. Neoto.
Priori S. Swithini de Winton.
Abbati de Lefenes.
Priori de Leeds.
Priori de Landa.
Priori de Spalding.
Priori S. Bartholomaei London.
Priori de Kenilworth.
Priori de Osobveston.
Priori de Teusbury.
Priori de Swinshewed.
Abbati de Nuttel.
Abbati de Valle Dei.
Abbati de Croxton.

This number of regulars is great, but we find also by good testimony under Edward the third, that all ^a the abbots and priors of England were summoned to that parliament of the XLIX of Henry the third, and were *voluntarie summoniti*, as the words of the record are.

In the next summons ^c that is extant. (which is in 23 Ed. I.) not much more than half so many abbots are found, and those of the greatest. And with them we have the masters of the temple, and of the order of Sempringham, the prior of saint John's of Jerusalem, the priors of Merton, Bridlington, and Giseburn, and the prior of Canterbury, Ely, Winchester, Coventry, Bath, Norwich, Durham, and Worcester. But the summons to the bishops here had not the clause of *praemunientes* &c. which being yet in the next of the ^f same year, no prior of any cathedral church had the writ then sent to him (for ought appears in the roll) and the regulars summoned, besides the prior of S. John's, and the two masters of the temple, and of Sempringham, were four abbots under the title of *exempti*, of Bury, Waltham, saint Albans, and Evesham, and XLVI under the title of *Praemonstratenses*, and xv under the title of *Cistercienses*. But divers are amongst these which we have not in that of Henry the third's time. In the year following, ^e the same regulars are likewise again summoned. Then in 25 Ed. I. a few only of the chiefest ^h abbots, the prior of S. John's, the master of the temple, and the priors of Winchester, Canterbury, Ely, and Norwich. But, in the writ to the bishops here, the clause of *praemunientes* is omitted, as also in 27 Ed. I. where besides ⁱ xxxv of the greatest abbots, the priors of Can-

^d Pat. 26 Ed. III. part. 1. m. 22. quod habetur inferius §. 24.
claus. 23 Ed. III. membr. 4. dat. 30 Septem.

^e Dorf. claus. 24 Ed. I. m. 7.

^c Dorf. claus. 23 Ed. I. membr. 9. dat. 24. Junii.

^h Dorf. claus. 25 Ed. I. m. 5.

^f Dorf. claus.

ⁱ 27 Ed. I. m. 18.

terbury and Coventry, besides those of *Gisburn*, *Merton*, and of *Bridlington*, are summoned. But in the following year^k the writs to the bishops having the clause *praemunientes*, the number of the abbots summoned are LXXXI, and the rest of the regulars are only the master of *Sempringham*, the prior of Saint *John's*, and the master of the temple, but the direction that notes him, is, *fratribus & magistro militiae templi*. And in the same^l year the same abbots and divers more were likewise summoned, with the two masters, and the prior of Saint *John's*. In the following years of this king, the number of the abbots differ again, and in some of the summonses of those years, the two masters are mentioned with the prior of Saint *John's*, and in some not. In the first of *Edward* the second, the abbots^m summoned to the first parliament, were fifty four, and with them the master of the temple, and the prior of Saint *John's*. To the second,ⁿ the roll hath but twelve and those of the greatest, with the prior of *Canterbury*, of *Lewes*, and *Bridlington*. And the like almost is in the third summons^o of the same year. In his second^p year, about fifty abbots are summoned, with the priors of Saint *John's*, of *Spalding*, and of *Lewes*, as also in the^q fourth year, though in the summonses of *tertio* of the same king, no regular baron be mentioned. And in the summonses to one parliament of 5 *Ed. II.*^r the number is much fewer, but in another^s, more abbots are than in any of the former of his time, beside those three priors. About fifty also are in the next^t years summonses, with those three priors, and the master of *Sempringham*. In the succeeding summonses of his time, the number of the abbots is various. But till 13 *Ed. II.* no other priors but the three last beforementioned, are summoned; and they with the master of *Sempringham* also. But in his^u thirteenth and fourteenth years, the number of the abbots being few, the prior of *Coventry* is added to those other priors. But in another summons of the fourteenth,^v the most usual number of abbots (which was about fifty) is in the roll, and the three first priors, with the master of *Sempringham*; but not he of *Coventry*. The next summons (which is in his sixteenth year) hath^w about thirty abbots and the priors of Saint *John's*, of *Lewes*, of *Spalding*, and of *Bridlington*, as also hath the summonses of the^x seventeenth, and one of the eighteenth of this king. And in this of the eighteenth, the same writ that was sent to these regulars, was sent also *magistro Gilberto de Midleton, archidiacono Northampton, officiali curiae Cantuariensis*; and *magistro Roberto de sancto Albano decano de arcibus London*. In the XIX year,^y twenty four abbots are summoned with those four priors. But it is observable that after the words *priori de Bridlington*, here is written, *nihil tenet de rege*. A less number of abbots (without any

prior) is in the summonses of the time of *Edward* the third, till his fourth year,^b wherein there are twenty seven abbots, and the priors of Saint *John's*, of *Spalding*, and of *Lewes*; as also in his fifth^c year. And those abbots are of,

St. *Augustine* of *Canterbury*.
Ramsay.
Peterborough.
Crowland.
Evesham.
Saint *Benet* of *Holme*.
Thornton.
Colchester.
Leicester.
Waltham.
Thorney.
Saint *Edmonds*.
Beaulieu.
Abingdon.

Hide by *Winchester*.
Reading.
Glastonbury.
Osney.
Winchcomb.
Westminster.
Cirencester.
Saint *Albans*.
Saint *Mary* of *York*.
Sbrevsbury.
Seleby.
Saint *Peter* of *Glocester*.
Malmesbury.

To these in the several summonses of his sixth year, is added^d the abbot of *Bardeney* who, with the other twenty seven, and those three priors, are the regular barons, first noted in the roll, where the first writ that goes to the regulars, being to the abbot of Saint *Augustine's* of *Canterbury*, according to the usual form of entry, these words follow, *eodem modo mandatum est abbatibus & prioribus subscriptis videlicet*, and then follow the names of those twenty seven, and the abbot of *Bardeney*, and the three priors, and after them these words, *istis abbatibus & prioribus subscriptis non solebat scribi in aliis parliamentis videlicet*.

Abbati de *Tenkesbury*.
Abbati de *Bardeney*.
Abbati de *Barlings*.
Abbati de *Bello*.
Abbati de *Bershere*.
Abbati de *Hayles*.
Abbati de *Sancta Osiha*.
Abbati de *Langedon*.
Abbati de *Burton super Trentam*.
Abbati de *Forda*.
Abbati de *Wardon*.
Abbati de *Whalley*.
Abbati de *Furneys*.
Abbati de *Fontibus*.
Abbati de *Ryevall*.
Abbati sancti *Augustini Bristol*.
Abbati de *Tavistock*.
Abbati de *Stratford*.
Abbati de *Cestre*.
Abbati de *Boghland*.
Abbati de *Thame*.
Abbati de *Lefnes*.
Abbati de *Gerveux*.
Magistro ordinis de *Sempringham*.
Priori de *Sempringham*.

^k Dorf. 28 *Ed. I.* m. 16, & 17.

^l Ibid. m. 2, & 3.

^m Dorf. claus. 1 *Ed. II.* m. 19. 26 *Augusti*.

ⁿ Dorf. claus. 1 *Ed. II.*

m. 11.

^o Ibid. m. 8.

^p Claus. 2 *Ed. II.* m. 11. Dorf.

^q Claus. 4 *Ed. II.* m. 2. Dorf.

^r 5 *Ed. II.* ibid. m. 17.

^s Ibid. m. 3.

^t Claus. 6 *Ed. II.* m. 31. Dorf. & m. 17. & m. 2.

^u Claus. 13 *Ed. II.* m. 13. Dorf. & 14 *Ed. II.* m. 23.

^v Claus.

^w 14 *Ed. II.* m. 5. Dorf.

^x Dorf. claus. 16 *Ed. II.* m. 26.

^y Claus. 19

^z *Ed. II.* m. 27. Dorf.

^a Claus. 4 *Ed. III.* m. 41. Dorf. & m. 19.

^b Part. 1. 5 *Ed. III.* claus. Dorf. m. 25.

^c Dorf. claus. 6 *Ed. III.*

Priori de *Bridlington*.
 Priori *ecclesiae Christi de Twineham*.
 Priori de *Gisburn*.

But that other number of the fifth and sixth years occurs only (without any of these) afterward^e till his tenth year, where^t the prior of *Sempringham*, and the abbot of Saint *Augustine's* by *Bristol* are added. The prior of *Sempringham* is also afterward^s summoned with the rest to some parliaments of the same king. And in his thirteenth year, the abbot of *Thorneton* upon *Humber* is added to them. And it is here observable, that we read in a bill of parliament of his fifteenth year, *que toutes les religieuses que teignent per barony soyent tenus de venir au parlement*. But the summons differ not considerably, touching the regulars, till his two and twentieth year, where we have^b the abbots of *Midleton*, *Muchelney*, *Battaile* and *Chertsey*, with the prior of *Coventry* added to the prior of *St. John's* and of *Lewes*. And some other of these seven and twenty are omitted, as elsewhere they are, in the summons of the times we now speak of, by reason of the houses being vacant, it seems. In his four and twentiethⁱ year, five and twenty only of these seven and twenty above represented are summoned, with the priors of *St. John's* and of *Lewes*: So in his five and twentieth year, where^k the abbot of *Leicester's* name is cancelled and this written against it. *Abbas Leycestriae cancellatur quia habet cartam regis quod non compellatur venire ad parlamentum*. Touching which matter more anon, where we speak of the discharges of such regular barons. Yet in the summons of the seven and twentieth of the same^l king to a great council, this abbot of *Leicester* is among the rest, and the prior of *Lewes* only. The same abbots (saying that some few by reason of vacancy are omitted) are in the next year's^m parliament, with the prior only of *St. John's*, as also in the nine and twentieth year, where theⁿ abbot of *Leicester's* name is again with the same words written against it, that are in the roll of the five and twentieth year. Nor do the regular barons considerably differ from those of the nine and twentieth year, till his sixth and thirtieth^o year, where we find summoned also the priors of *Lewes* and of *Coventry*, besides those abbots; as also they are in the year^p following. But in the nine and thirtieth, *Lewes*^q is omitted, as also it is in the next summons, which is of^r the two and fortieth; and so likewise in the rest, till the end of the time of this part of our division, or to the middle of *Richard* the II. But most of those greater abbots before named, are during this time summoned with the priors of *St. John's* and of *Coventry*, or one of them, the other being sometimes omitted by reason, it seems, of vacancy or other such matter. About the end

of the present part of our^t division, and in the summons near it, these regulars are thus in the rolls.

Abbati de *S. Albano*.
 Abbati de *Westmonast*.
 Abbati de *Ramsay*.
 Abbati de *Burgo S. Petri*.
 Abbati de *Bello*.
 Abbati de *Croyland*.
 Abbati sancti *Benedicti de Hulmo*.
 Abbati de *Colchester*.
 Abbati de *Malmesbury*.
 Abbati de *Winchcombe*.
 Abbati *Gloucestr*.
 Abbati de *S. Edmundo de Bury*.
 Abbati de *Waltham Sanctae Crucis*.
 Abbati de *Thorney*.
 Abbati *beatae Mariae Ebor*.
 Abbati de *Abingdon*.
 Abbati de *Salop*.
 Abbati de *Reding*.
 Abbati de *Bardenev*.
 Abbati de *Hida juxta Winton*.
 Abbati *Glaston*.
 Abbati de *Seleby*.
 Abbati de *Evesham*.
 Priori de *Coventr*.

The prior of *St. John's*, the abbot of *St. Augustine's* of *Canterbury*, of *Cirencester*, and one or two more are sometimes added. And the omission, I presume, of them in such rolls of about that time as have them not, as also at other times the omission of some others before noted, proceeded from the vacancy of their houses or some such like occasion, or sometimes from the clerks fault that entered not all them that were summoned, whence it is no necessary argument to say that such a one was not summoned, because his name is not remembered in the summons.

Now we see the regular persons summoned in all these are either abbots, priors, or masters of orders. And with these, in that of 49 *Hen. III*. some deans also are called by the like writ, and in 18 *Ed. II*. the archbishop of *Canterbury's* official, and the dean of the arches. And of the priors, some are the priors of cathedral churches whose convents were the chapters to them and the bishops, as those of *Canterbury*, *Norwich*, *Winchester*, and such like; others, priors of monasteries that had no relation to any cathedral church, as those of *Lewes*, *St. John's*, *Bridlington*. But, I conceive, that all these were summoned as barons, and to the end that they should have places and voices as barons, and so the dignity of barons. Nor will there be, I think, here any difference between the deans and priors of cathedral churches (who otherwise had, at other times, a mediate summons by virtue of that clause *praemunientes*, &c. but not as barons) and the other priors.

^e Claus. 7 *Ed. III*. dorf. part. 2. m. 3. ⁸ *Ed. III*. m. 18. ⁹ *Ed. III*. m. 28.

claus. 11 *Ed. III*. part. 2. m. 11. 13 *Ed. III*. part. 2. m. 28. & m. 12

claus. 24 *Ed. III*. part. 2. m. 3.

^k Part. 1. claus. 25 *Ed. III*. m. 5. dorf.

claus. 28 *Ed. III*. m. 26.

ⁿ Dorf. claus. 29 *Ed. III*. m. 8. & vide 28 *Ed. III*. dorf. claus. m. 7.

dorf.

^p Dorf. claus. 37 *Ed. III*. m. 22.

^q Dorf. claus. 11 *Rich. II*. m. 13.

^t Claus. 10 *Ed. III*. m. 5. dorf. & m. 1.

^h Claus. 22 *Ed. III*. part. 2. m. 3. & m. 7.

ⁱ Dorf. claus. 27 *Ed. III*. m. 12.

^j Dorf. claus. 27 *Ed. III*. m. 12.

^o Claus. 36 *Ed. III*. m. 16.

^u Dorf. claus. 42 *Ed. III*. m. 22. &c.

For that it stood together to be a prior of a cathedral church, and a baron appears in that example of the prior of *Coventry*, who continued so even till the dissolution of monasteries. And for that official and the dean of the arches; the same may be said of them as of other deans, and such priors, and the rest that were not barons by tenure. But although all these were thus sometimes summoned as barons, yet for want of tenures in chief, which in these kind of barons was of singular moment (as we see anon in the cases of discharge of some of them from attendance at parliaments) and by reason of patents of discharge, and such like occasions, agreeable to the laws of the time, they continued not barons, but were afterward omitted, and the number restrained to such of this kind only as held by barony or part of a barony, or otherwise in chief. And it is observable that the most of those very abbots, with the prior of *Coventry*, to whom the number of parliamentary abbots was by this time under *Edward* the III. and *Richard* the II. reduced) were from ancient time tenants in chief, as appears by their being severally summoned *ad habendum servitium suum*, that is, to have their number of knights against *Wales*, with king *Henry* the III. and the rest of the barons of that age: The summons remain upon the rolls¹ both of 44, 45, 47, and 48 of that king. And in the first year, no prior is summoned but the prior of *Coventry*, though in the second, and 48, he of *Dunstable* be summoned also, touching whom I remember I have seen some controversy, in a book² of *Dunstable*, whether he held *per baroniam* or not. And touching those few regular barons also, there are alike testimonies under *Edward* the I. wherein those few only (or very near those few only) of abbots and the prior of *Coventry* (together with the four abbeesses, of *Shaftsbury*, *Berking*, *St. Mary* of *Winchester*, and of *Wilton*, who are also in those military summons of the time of *Henry* the III.) are by special writs summoned, ** ad habendum servitium suum*, which is a plain note of their being then barons. But the abbeesses, by the way, were not therefore baronesses, though their tenure were of the same nature. For no ecclesiastical person of that sex ever had the dignity. And it may be doubted, whether that, although so many abbots were sometimes called, they all had place and voice accordingly. Perhaps sometimes, such only of this kind of barons, were permitted to sit and have voice, as were both by tenure and writ. And the rest excluded that had right only by writ. But this is but a conjecture, the certainty whereof cannot be known, because the journals of those times are utterly lost, and such parliament-rolls as remain, instruct us herein neither way. And we may observe that about the end of *Edward* the II. was the beginning of the special care of omitting out of the summons such as of this kind were not in truth to have

place and voice in parliament, that is, such spiritual persons, as being regulars, or beneath that rank, held not in chief. And thereupon also even some of them that held in chief and *per baroniam*, from ancient time, were excluded either by discharge or like omission. For the honour of barony being in them in right only of their abbeyes and priories, and not inherent in them, as in men personally enobled, or as in such as by reason of their spiritual dignity had necessarily a right to place and voice in parliament, there was much liberty used, also in omission of them; as for example, the abbot of *Feversham*, that held anciently *per baroniam*, and was called to XII several parliaments in the times of *Edward* the I, and *Edward* the II, was never called after the eighteenth of *Edward* the II. Nor find I any discharge given to him. The like perhaps may be said of divers more. And if place be here for conjecture, we may well think that the strange summons, against all example, directed in 18 *Edward* the II. to the archbishop's official, and the dean of the arches, drew many of the rest into question, that being regulars and holding not in chief had no more right to be summoned (according to the law of that time) than the official and the dean. For presently after that, a great store of the abbots before found in the summons, are omitted, and so continue omitted, and in the very next year, the prior of *Bridlington* hath added to his name, *nihil tenet de rege*, for a note or reason why he ought not to be summoned, and (which is very observable) in 6 *Ed. III.* we see that a special note is in the roll of certain abbots and priors, *quibus non solebat scribi in aliis parliamentis*, which must be understood of the parliaments that had interceded between about the middle of *Edward* the II. and this sixth year of *Edward* the III. For scarce any is named there (if any) that had not been summoned to some parliament before the middle of *Edward* the II. And more touching the exclusion or omission of some regular barons about that very time, presently follows in the case of the abbot of *St. James* near *Northampton*.

XXIV. But although so many abbots and priors were often summoned; of which, many held not by barony, and so were for a time made barons by writ only, yet, it seems, the law in their cases was taken to be such, that upon their complaints that they and their houses were so much burdened by their attendance in parliament (for such complaints were sometimes made by them) and shewing that they held not by barony, or in chief of the king, and that their predecessors had not been summoned, or not constantly summoned, but now and then only, they and their successors were to be discharged for ever of the attendance and summons, and by consequent of the dignity also. To this purpose we have two most observable cases of the time of *Edward* the II. and *Edward* the III.

¹ Dors. clauf. 44 Hen. III. m. 8. & 45 Hen. III. m. 3, 47 Hen. III.

² Pat. 5 Ed. I. dors. m. 11. & rot. scutagii ejus. ann. m. 7.

dors. 7. & pat. 48 H. III. part. 1. m. 6. in dors.

³ Plac. 30 Ed. I. coram rege rot. 58.

⁴ Ms.

That under *Edward* the II. is the abbot of S. *James* by *Northampton*. He being summoned to the parliament at *Tork* in the twelfth year of the same king, made friar *Henry de Blithesworth*, a canon of his house his proxy, who upon shewing to the lord chancellor (*John de Otham*, bishop of *Ely*, was then lord chancellor) and the council of the chancery, that neither the abbot held of the king by barony, nor in chief, but in *frankalmoigne*, nor the abbot, or his predecessors had been before summoned, procured an order that his name should be rased out of the roll of them that were to be summoned. The case I find at large in a lieget of that abbey; ² and every part of the relation of it is so worthy of observation, that I insert it whole here.

Abbas de sancto *Jacobo* extra *Northampton* citatus fuit ad parlamentum domini regis *Edwardi* filii regis *Edwardi*, anno regni sui XII, post Pascha in unum mensem apud *Eborum*, qui quidem abbas constituit procuratorem suum fratrum *Henricum de Blithesworth*, canonicum suum qui comparuisse debuit in parlamento praedicto, cujus procuratorii tenor talis est,

Excellentissimo domino suo, reverendo domino, *Edwardo* Dei gratia illustri regi *Angliae*, domino *Hiberniae* & duci *Aquitaniae*, suis devotus presbyter *N.* abbas monasterii sancti *Jacobi* extra *Northampton*, salutem & foelicem in Christo rogandi gloriam cum orationum suffragiis devotum. Cum ad comparandum in parlamento vestro apud *Eborum* a die paschae in unum mensem, per breve vestrum mihi directum, personaliter sum vocatus, super diversis & arduis negotiis vestram excellentiam & statum regni vestri specialiter tangentibus tractaturus, una cum praelatis, magnatibus & proceribus regni vestri, mansuetudini vestrae si placet significo quod gravi corporis valetudine in tantum ad praesens sum oppressus, quod aliquo modo ibidem meam corporalem praesentiam exhibere non possum; desiderans tamen, modis omnibus quibus possum, vestris bene placitis complacere, dilectum mihi fratrem *Henricum de Blithesworth* canonicum meum, attornatum meum & nuncium specialem, necnon & absentiae meae personalem excusatorem, penes vestram regiam celsitudinem, ordino, facio, & constituo per praesentes. Ratum habens & gratum quicquid idem attornatus meus, nuncius & excusator praedictus nomine meo, una cum aliis ad dictum parlamentum convocatis, in praemissis duxerit faciendum. Valeat & prosperetur celsitudo vestra regia per tempora longiora. In cujus rei testimonium, sigillum meum praesentibus apposui. Datum in monasterio antedicto. Secundo die *Maii* anno Domini millesimo CCC nonodecimo.

Et quia nec idem abbas, nec praedecessores sui, unquam antea ad parlamentum fuerant citati, idem procurator quaesivit in cancellaria, utrum per simplex breve vel per registrum fuerat citatus. Et scrutatis rotulis cancellariae, ^a invenit nomen abbatis inter citandos ad parlamentum irrotulatum. Et per illud irrotulamentum semper ad quodlibet parlamentum esse inter alios ^b vocaturum. Qui quidem procurator rogavit cum effectu domini *Willielmi de Aermyne*, tunc custodem rotulorum, ut nomen praedicti abbatis deleteretur; defecit nunquam antea irrotulatum fuit, & defecit idem abbas nihil tenet de rege in capite nec per baroniam; sed tantum in puram & perpetuam elemosynam; nec accessus ejusdem abbatis ad parlamentum aliud domino regi seu ejus concilio praestaret consilium vel subsidium, quam ecclesiae sancti *Jacobi* oppressionem & canonicis ibidem pro rege & suis de famulantibus de pauperatione. Idemque custos respondit se aliquo modo non posse nec vellet rotulos cancellariae in aliquo cancellare, quod videbatur eidem procuratori durum & injustum. Nec voluit dictus procurator, quasi procurator aliquo modo comparere, quia semper abbas per se vel per procuratorem consequenter compareret, nec ipsum voluit excusare de infirmitate, quia tunc videretur quod, si posset, ibidem comparuisset; nec adhuc ipsum excusare potuit in parlamento, quod venire non debuit pro eo quod nunquam citatus fuerat, vel quia non tenet per baroniam, nec de rege in capite, &c. quia tunc pro contumace haberetur eo quod omnes de regno, de quocunque, vel qualitercunque teneant, veniant ad citationem domini regis. Sed inde ordinavit quandam billam domino *Thomae* tunc comiti *Lancastriae* tradendum, ac per eundem comitem in communi concilio, pro remedio adhibendo, exponendam; cujus billae tenor subsequitur.

A Soun tres honorable, seigneur, monsieur *Thomas* counte de *Lancastre*, seneschall *D'engleterre*, monstre soun chapeleyns & tenaunt tut lige *Labbe de sa Maisoun de saint Jake* dehors *Northampton*. que come meisme cestui abbe [que] riens ne tient en chief du roy, ne per baronie, mes en pure & perpetuele *almoigne*, est somonus per brief a ceo commun parlement, jusque il meisme ne ul de ses predecessours, unques avaunt ceux hures, au parlement ne furent somonus. E le nomme de vostre dite abbe est en roule en le chauncellerie, hore de novele, entre les prelati qui sont somonus a parlement per la resoun ^c qu'il tiegnent en chief du roy ou per baronie, en prejudice & graunt perde de lui & vostre maisoun; dont le dit abbe homblement prie a vostre haute seigneurie, qui estes seon souverain & drein refut, qui pite vous pregne de vostre pouere maisoun & eyder voilley devers

^a Cod. ms. abbatis S. Jacobi Northampt. fol. 222, & 223. In margine codicis adjicitur: Memorandum quod omnes procuratores fecerant fidem super omnibus excusationibus in billis vel procuratoriis suis contentis. Et de hujusmodi literis procuratoriis praelatorum, quae antiquitus in usu, vide si placet dorf. claus. 8 Ed. II. membr. 25. 5 Ed. II. membr. 15, 11 Ed. III. part. 2. membr. 1. 22 Ed. III. part. 2. membr. 3. 36 Ed. III. membr. 16, &c. & fascic. lit. procuratori, &c. 13 Hen. IV. & 5 Hen. V. ^b Among the summons that now remain, of those that preceded the time of this case, (or of 12 Ed. II.) the abbot of saint James by Northampton is found only in that of dorf. cl. 49 Hen. III. But the roll here spoken of was some register of the names of the lords of parliament, which is not now extant, unless you conceive it to have been the very close roll of 12 Ed. II. where indeed his name is. But that here mentioned it seems was some register of the names of such as ought to be summoned as lords, and a direction to the clerks of the petty bag, in making their writs in that year, whereas that of 12 Ed. II. is a record only (as the rest of the close rolls proportionably are) of such writs of summons as had issued in that year. And the abbot's name was by order to be cancelled out of the register here mentioned, But in the close rolls it remains uncanceled to this day. ^c Vocandum. ^d P. qu'il.

nostre seigneur le roy & soun conseil, qui vostre chapelayn & vostre maisoun auandite soient de fore allegiez de tiels somonus a parlement. E qui le noun del dit abbe soit retient hors de les rousles de la chancelarie pur lamour de Dieu.

Postea videbatur eidem procuratori, quod si hujusmodi billae in communi concilio executionem fecisset, crimen scandali domino cancellario & custodi rotulorum pro tali irrotulamento imposuisset, ac idem cancellarius & caeteri pro parte sua fovenda & pro facto suo advocando dicerent, quod idem abbas juste citatus fuerat & quod juste citandus esset; unde inquisitiones, dampna, & expensae, & caetera multa pericula emergere possent. Hac de causa, dictus procurator non deliberavit billam praedictam, sed aliam billam domino cancellario & ejus clericis ordinavit & tradidit, cujus billae tenor talis est.

Abbas sancti Jacobi extra Northampt. irrotulatur de novo in cancellaria domini regis inter citandos ad parliamentum, & non tenet per baroniam nec de rege in capite; sed tantum in puram & perpetuam eleemosynam, & nec ipse abbas, nec praedecessores sui unquam in cancellaria irrotulati^d fuerunt, nec ad parliamentum citati huc usque, unde idem abbas petit remedium.

Ad cujus billae executionem dominus cancellarius, cum suo concilio de cancellaria ordinavit, quod nomen praedicti abbatis a registro cancellariae deleteretur, & ita pluribus circumspcctis, idem abbas est absolutus. Sed quia idem abbas vel ejus successores ad stimulationem aliquorum^e malivorum possent alias, per casum, irrotulari & per consequens citari, praedictus procurator dictam executionis formam propter evidentiam in scripturam redegit.

Facta est ista executio per visum domini Johannis de Otham episcopi Eliensis, cancellarii domini regis, domini Willielmi Dayermynne tunc custodis rotulorum, domini Roberti de Bardelby, magistri Henrici de Clyff, domini Rogeri de Sutton, magistri Edmondi de London, domini Galfridi de Welleford, domini Roberti de Askby, domini Ade de Brom, domini Willielmi de Lecestre, & aliorum clericorum cancellariae & aliorum diversarum curiarum domini regis ac regni, &c.

But this abbot's name yet remains upon the close roll^f among the rest that were summoned in that year. As also it doth (however it came to pass) in a summons of two^g years after.

That other of the time of Edward the third, is the discharge of the abbot of Leicester by this patent, because he held not by barony, and that his predecessors had not been summoned continually, but *interpolatis vicibus* only, after the nine and fortieth of Henry the third, before which time none of them had been summoned.

REX omnibus^h ad quos, &c. Salutem. Supplicavit nobis dilectus nobis in Christo abbas de Lecestria, ut, cum abbacia sua praedicta per Robertum Fitz Robert de Melan, du-

dum comitem *Leycestriae*, fundata fuisset in puram & perpetuam eleemosynam, & advocatio sive patronatus ejusdem ad manus domini H. quondam regis *Angliae* proavi nostri, per forisfacturam *Simonis de Monte Forti* tunc comitis *Leycestriae*, & patroni ejusdem deveniret, idemque abbas aliqua terras seu tenementa de nobis per *baroniam* seu alio modo non teneat, per quod ad parlamenta seu concilia nostra venire teneatur, nec aliquis praedecessorum suorum ante quadragesimum nonum annum dicti proavi nostri, post forisfacturam praedicti *Simonis* (quo anno omnes abbates & priores regni nostri *Angliae*, ad parlamentum ejusdem proavi nostri tunc tentum, voluntarie summoniti fuerunt) summoneus extiterit, velimus ipsum abbatem de hujusmodi adventu ad parlamentum facto exonerari; Et, quia visis cartis & confirmationibus de terris & tenementis eidem abbaciae datis & concessis in rotulis cancellariae nostrae irrotulatis compertum est, quod dicta abbacia per praedictum Robert Fitz Robert de Melan, tunc comitem *Leycestriae*, fundata erat in puram & perpetuam eleemosynam, & non invenitur in rotulis praedictis, quod praedictus abbas aliqua terras seu tenementa de nobis tenet per baroniam seu aliquo alio servitio, nec quod praedecessores sui abbates loci praedicti ad aliqua parlamenta progenitorum nostrorum ante praedictum quadragesimum nonum annum dicti proavi nostri aut postmodum continue, sed vicibus interpolatis, summoniti fuerint; nolentes ipsum abbatem indebite sic vexari, concessimus pro nobis & haeredibus nostris quod idem abbas & successores sui de veniendo ad parlamenta & concilia nostra vel haeredum nostrorum de caetero quieti sint & exonerati imperpetuum, ita semper quod dictus abbas & successores sui in procuratores ad hujusmodi parlamenta & concilia per clerum mittendos consentiant, & ut moris est expensis contribuant eorundem. In cujus, &c. Teste rege apud *Westmonasterium* xv die Februar. Per petitionem de parlamento.

The parliament wherein this was obtained, was summoned by writs dated 15 *Novembris*, 25 *Ed. III.* to sit upon Saint *Hillary's* day following (which is the 13 of *January*) and the 15 of *February* following in the 26 year (his reign beginning the 25 of *January*) this grant is dated. And in the close roll of that summons of 25 *Ed. III.* the abbot's name is cancelled, and those words written at it, which are beforeⁱ noted, and that by reason of this charter. Yet in 27 *Ed. III.* the abbot of *Leicester* is summoned to that great^k council held in that year at *Westminster*. The abbot that procured this patent of discharge, was *William de Clown*. And *Henry* of *Knighton* a canon of the same abbey speaking of him, remembers it. *Cartam*, saith he, *de non veniendo ad parlamentum pro se & successoribus suis de rege adquisivit*. And to this of their having baronies, belongs that protestation in behalf of the abbots, priors, bi-

^d Yet the name of the abbot is in the summons of 49 Hen. III. as you see before in §. XXIV. ^e Malignorum. ^f Dorf. clauf. 12 Ed. II. membr. 11. ^g Dorf. clauf. 14 Ed. II. membr. 5. ^h Pat. 26 Ed. III. part. 1. membr. 22. ⁱ §. XXIII. ^k Dorf.

shops, and other prelates of the province of Canterbury made, under Richard the II. where the words are, *de jure & consuetudine regni Angliae archiepiscopum Cantuariensem, qui pro tempore fuerit necnon caeteros suffraganos, compadres, & compadres, abbates & priores aliosque praelatos quoscunque per baroniam de domino rege tenentes pertinet in parliamentis regis quibuscunque, ut pares regni praedicti, personaliter interesse, ibidemque de regni negotiis ac aliis tractari consuetis cum caeteris dicti regni paribus, & aliis ibidem jus interessendi habentibus, consulere, & tractare, ordinare, statuere, & definire, ac caetera facere quae parliamenti tempore ibidem inveniuntur faciendum.* And that ^m treatise de modo tenendi parliamentum; *Ad parliamentum summoniri & venire debent archiepiscopi, episcopi, abbates, priores, & alii majores cleri qui tenent per comitatum aut baroniam ratione hujusmodi tenurae, & nulli minores nisi eorum praesentia & adventus aliunde quam pro tenuris suis requiratur.*

XXV. The next particular concerning barons here, is that of the title of banneret given to some temporal barons, as if it were in them a synonymy, or an equivalent name to baron. That which concerns that name of banneret, as it signifies in knight banneret, is anon shewed where we speak of the orders of knighthood in England. But here the notion of the word is only as it expressed a parliamentary baron. In the proceeding against John de Gomeniz, and William de Weston in the first parliament of Richard the II. it is said, that the lords of the parliament, that is, the king of Castile and Leon, duke of Lancaster, Edmund earl of Cambridge, and divers other earls and barons there mentioned by name, ^o *plusours autres seigneurs barons & bannerets esleants au dit parliament assemblez*, had took advice touching the answers of the defendants. And whereas in the statutes of the same king, as we read them in English, every archbishop, bishop, abbot, prior, duke, earl, baron, baronet, knight of the shire, &c. are commanded under pain ^o of amerceement or other punishment according to ancient use, to appear in parliament; the French, both of the roll and of those books that are truly printed, hath banneret, and some by a little mistaking banneret, for the same word. And as when mention is in the old stories of knight banneret, the word baronet which runs easier from the tongue) is often for banneret; so fell it, not only in the English print of our statutes, but also in a report of a case that is of a later time than that to which our present division yet confines us, that baronet (for banneret) is likewise used for a baron. For in an attain under Henry the sixth, ^p one of the jury challenged himself because his ancestors had been *baronnets & seigniors des parlements*. I cannot doubt but that

the title of banneret in this sense was meant there, and also that the same conception of the word was in the challenge made under Edward the III, of one of the grand assize, because he was a banner, (as the book at large ^q says) or a banneret, as it is in Fitzherbert^r. There was no colour why the title of banneret, in that notion, as it signifies a knight banneret only, should be any cause of challenge. Therefore I see no reason why we should think that it was used there in that sense. But indeed it is disallowed (although the matter of the challenge were just) because it was not legally made. That is, it did not legally appear upon the challenge to the court, that he was a baron or banneret of parliament, which should have been certified to them by record, as it was resolved ^r also in that case under Henry the sixth. I know the answer given in the book is, that although he be a banneret and hold not by barony, he should be in the assize. But I understand that as if the court had said. The saying that he is a banneret is not cause enough of challenge, unless withall it be legally shewed that he be a baron of parliament. For *tenere per baroniam* was an obvious phrase of those times, deduced from more ancient use to denote the being a baron, though in truth there were no necessity that a baron must hold ^t by barony, because he might be by writ only. And to this use of the word, we have much light also from that writ whereby the lord Camoys under Richard the II. was discharged from being knight of the shire of Surrey (though he had been chosen) because he, as also many of his ancestors had been bannerets, and it had not been before in use to chuse such kind of bannerets, knights of the shire. This ^u was the writ.

REX vicecomiti Surriae, salutem: Quia ut accepimus tu Thomam Camoys chivaler, qui banneretus es, sicut quamplures antecessorum suorum extiterint, ad essendum unum militum venientium ad proximum parliamentum nostrum, pro communitate comitatus praedicti, de assensu ejusdem comitatus, elegisti; nos advertentes, quod hujusmodi banneretti, ante haec tempora, in milites comitatus, ratione alicujus parliamenti eligi minime consueverunt, ipsum de officio militis ad dictum parliamentum pro communitate comitatus praedicti, venturi, exonerari volumus; & ideo tibi praecipimus quod quendam alium militem idoneum & discretum, gladio, cinctum loco ipsius Thomae eligi, & eum ad diem & locum parliamenti praedicti venire facias, cum plena & sufficienti potestate ad consentiendum hiis quae in parlamento praedicto fient juxta tenorem primi brevis nostri tibi pro electione hujusmodi militum directi, & nomen ejus nobis scire facias. Teste rege apud Westmonasterium octavo die Octobris.

¹ Rot. parl. 11 Rich. II. part. 1. m. 2. art. 34. habetur item in regist. ms. Courtney archiepiscopi fol. 174. a. vide item Stamford in placit. coron. lib. 3. cap. 1. ^m Ms. & regist. ms. Arundel archiepisc. Cant. part. 1. fol. 561. ^a Rot. parl. 11 Rich. II. m. 6. ^o Stat. 2. 5 Rich. II. cap. 4. videtur item Thomam Walsingham pag. 359. ed. Franc. & rot. parl. 1 Hen. IV. membr. 16. n. 59. de banneretis quibus plane eo nomine sedes & vox inter proceres regni erat. ^p 35 Hen. VI. fol. 46. a. tit. challenge 44. ^q 12 Ed. III. fol. 18. a. ^r Tit. challenge 119. ^s Videtur Coke lib. 6. fol. 53. & regist. orig. fol. 179. & Fitzh. nat. br. fol. 165. c. and 48 assiz. plac. ult. ^t Videtur 48 Ed. III. fol. 50. b. 48 assiz. fol. ult. ^u Claus. dorf. 7 Rich. II. m. 32.

Neither may this writ be understood of any other banneret than a parliament baron, or banneret of that time. The expression of *bujusmodi banneretti*, shews that it is not meant of all bannerets, but such only as have the title either by inheritance, or in such a kind as that an inheritance might be of it; which is apparent also by the preceding words, in the writ, *bannerettus est sicut quamplures antecessorum suorum extiterint*. For it was never conceived that the title banneret, as it denotes a knight banneret, was hereditary. And, in truth, it is plain that one *Thomas Camoys* (who doubtless was the same man) was a baron and peer of that parliament. And many of his ancestors before him, had likewise been peers. For though the name of a *Camoys* occur not in the summons for the space of about fifty years before the time of this writ, yet from the eighth year of *Edward the II.* to the ninth of *Edward the III.* there is scarce a summons without one of the name. In that year of *Edward the III.* the name of *Ralf de Camoys* is in the summons, * as it is also frequently before. And some of the name also are in much antienter lists of the barons of those elder ages. But after the ninth of *Edward the III.* the name by reason of nonage or some other cause was omitted, till this seventh year of *Richard the II.* and (as it sometimes happens) the dignity, it seems, being obscured by abstinence from the name of lord or baron, the free-holders of *Surrey* chose him a knight of their shire, after which, according to his ancestral right, he being summoned to parliament, there was a necessity to discharge him; which was done under the name of banneret and not baron, it seems (according to the fancy of that time) because he had not a barony, or held not *per baroniam*. For about the end of *Edward the III.* if I be not much deceived, one of his ancestors, being also *Thomas de Camoys*, is found by office² to have died seized without holding any thing of the king. In *Surrey* and *Sussex* was the usual dwelling and possessions of these lords of *Camoys*. But some learned men also affirm³ that *Broadwater*, a town near the sea in *Sussex*, was from *Edward the first's* time the barony of these lords. But in that office I speak of, this *Broadwater* is held of the honour of *Brember*, and of a subject, which could not have been if then it had been a barony. But I think this here noted, is enough to persuade us that *Thomas Camoys*, the banneret in the writ before cited, was no other than the lord *Camoys* of that time, whose ancestors were barons likewise, as the rolls clearly inform us.

This use of the name of banneret, proceeded, it seems, from the *French* use of it, and the right also which was so proper to a baron to advance his arms in a square ensign or a banner; whereof before in the dignities of *France*.

XXVI. It rests that we come to the confide-

ration of that common opinion, touching a barony consisting in antient time of thirteen knight's fees and a third part. This I see hath much possessed some very learned men. But without any other ground than the mistaking fancy of him that wrote the treatise *De modo tenendi parliamentum*. The passage in that treatise to this purpose hath these words; *item summoniri & venire debent ad parliamentum, omnes & singuli comites & barones, & eorum pares, scilicet illi qui habent terras & redditus comitatus integri, videlicet xx feoda unius militis, quolibet feodo computato ad xx libras quae faciunt quadringentas libras in toto, vel ad valentiam unius baroniae integrae, scilicet xiii feoda & tertiam partem unius feodi militis, quolibet feodo computato ad viginti libras quae faciunt in toto quadringentas marcas, & nulli minores laici summoniri & venire debent ad parliamentum ratione tenurae suae, nisi eorum praesentia aliis de causis fuerit utilis vel necessaria ad parliamentum*. Here we see a whole barony is clearly supposed to have been thirteen knights fees and a third part, and an earldom twenty knights fees, both which were first invented (for ought I have observed) by the author of this treatise, together with that of the estimation of a knights fee by twenty pound rent, as also of *pares baronum* for a distinct dignity from barons, which we shall presently shew to be mere mistakings, as soon as we have spoken something of the time to which the treatise is to be referred. The title that commonly is prefixed to it, refers it to the time of the end of the *Saxons*, or to the coming of the *Normans*. *Hic describitur modus* (so are the words) *quo parliamentum regis Angliae & Anglorum suorum tenebatur tempore regis Edwardi filii Ethelredi regis, qui modus recitatus fuit per discretiores coram Willielmo duce Normannorum conquestore & rege Angliae, ipso conquestore hoc praecipiente, & per ipsum approbatus & suis temporibus & etiam successorum suorum regum Anglorum usitatus*. And before an extract of the beginning of it, which concerns the summoning of the prelates and clergy (as I find it transcribed by a hand of about *Henry the fifth*, into one of the registers of *Arundel* archbishop of *Canterbury*) there is this title with express reference to the rolls of those times, as if the work had been taken out of them. *De modo convocandi clerum Angliae ad parliamentum regis Edwardi filii Ethelredi regis, qui modus fuerat intimatus Willielmo conquestori, & per eundem observatus, prout patet in rotulis dictorum regum super inde confectis*. If we could have believed these prefixed titles, we must have used the treatise for a testimony of the earls and barons, or thanes of the *Saxon* times, and of the beginning of the *Normans*. But the vanity of it seemed such as that we thought fittest to leave it for this place, so to speak of it by itself, as an imposture of some bold fancy. For it will

^w Dors. cl. 7 Rich. II. m. 10, & 37.
par. 4 Ed. I. dors. 12. & in rot. scutagii ejusdem anni, &c.
den in Brit. pag. 223.

^x Dors. claus. 9 Ed. III. m. 28.

^y Dors. claus. 49 Hen. III. m. 11. in schedula

^z Efcact. 46 Ed. III. num. 15.

apud Stening in Suffex.

^a Cam-

^c Regist. ms. Arundel, archiepiscopi. Cant. fol. 561. part. 1.

appear no better, if we examine the time when the author of it lived, and the matter of it. First for the time when the author of it lived; the mention in it of the *justicie de banco*, of the *capitalis justiciarius qui tenet placita coram rege*, and the barons of the exchequer so severally, besides the language throughout it, and that occurrence of *comes senescallus*, *comes constabularius*, *comes marescallus*, and divers more characters that remain in it, shew plainly enough that it was first written some ages (at least) after the coming of the Normans, of which, I think, no man doubts that hath read it. And for my part, I cannot yet believe that it is antienter than about the time of *Edward the III.* Divers copies I have seen of it, but never any which exceeded that age. And the language and context persuade me also to that belief. Then for the matter of it so referred in the title to the *Saxon* times, and the coming of the Normans; what taste or colour is there, either in the many stories, laws, or other memories of those times, that the bishops, abbots, and priors, held knights fees under *Edward the confessor*, or the son of king *Ethelred*, as he is called in the title? Nor indeed any of them were then as barons by tenure, in parliaments or pitegnementes, but as prelates only, which is before shewed. Nor doth this determination of the quantity of an earldom or barony agree with any thing that occurs in the *Saxon* times. And in the times that followed the Normans (for so the title leads us on, as if the same state of barons had been and continued from *Edward the confessor*, and *William* the first, into the reigns of their successors) what colourable testimony is there in any record, story, or law, that so much as seems to justify this number of knights fees in the making of earldoms or baronies? In truth the contrary appears plainly. *Geoffry lord Talbot* held twenty knights fees in chief of *Henry* ^d I. the same that afterward *Walter de Meduana* held likewise of *Henry* the II. Yet neither of these were ever accounted to have had earldoms. The same may be said of *John de Port* ^e in the same time, that held fifty seven knights fees, and of *Walter de Wabull* that held thirty ^f and divers such more, as appears in the records of the exchequer, where some also have fewer knights fees than thirteen, and yet are equally barons with the rest. And of the earls, most had more than twenty knights fees, none of which yet had from any number of those fees in his honour, more than one entire earldom. And *Geoffry Fitz Peter*, earl of *Essex* (from whom *Humfrey de Bohun* derived his title to that earldom) under king *John*, held his earldom ^g as sixty knights fees, and *Aubry* earl of *Oxford*, as 30 ^h. Yet never any man thought that therefore either of these had by reason of those numbers above one whole earldom. Whereas the sixty fees must by the account in the *modus te-*

nendi parliamentum have made three earldoms, and the thirty and an eighth part, above one and a half, which never any man dreamed of before the author of this treatise, nor any since, but such as are deceived by him. And for that earldom of *Essex* being but one entire earldom; you may see the example before brought ^h of it touching the relief payable upon it. The abbot also ⁱ of *Abingdon* antiently held by the service of thirty knights fees for castle-gard at *Windfor*, of which four were to go upon summons with the king in his army; the abbot of *Evesham* by the service of four and a half only; the prior of *Coventry* of ten; the bishop of *Chichester* of one and a half, yet they (as other like) were barons by tenure without reference to any certain number. And upon the summons of all the barons, under *Edward* the first, ^k to *Worcester*, for an expedition against *Wales*, divers of them came before the constable and marshal of *England*, presenting (as they ought) their services, by which we may easily know how, at that time, they held, and how many knights fees, or by how many knights services (which is all one.) Some few examples we thence add here;

Rogerus ^l de *Clifford*, junior, qui duxit in uxorem primogenitam filiam & haeredem Roberti de veteri ponte recognoscit servitium ii feodorum militum & dimidii, pro medietate baroniae de Westmerland; & faciet servitium per seipsum & Thomam Boter milites, & Alanum Boter servientes.

Rogerus de *Leyburn*, qui duxit in uxorem alteram filiam & haeredem Roberti de veteri ponte, recognoscit servitium suum ii feodorum militum & dimidii pro altera medietate baroniae praedictae; & faciet servitium per seipsum, Johannem de *Leyburn*, Willielmum de *Iseild*, Robertum de *Kirkeby*, & Petrum de *Camera* servientes.

Petrus Corbet ^m recognoscit servitium v feodorum militum pro baronia de *Kaus*; faciet per seipsum & Robertum Corbet, militem & per Thomam de *Radesbergh*, Richardum de *Hop*, Rogerum de *Eiton*, Robertum de *Frankton*, Adam Haghe, Willielmum de *Baneres* servientes. *Mauricius* de *Berkeley* recognoscit servitium iii feodorum militum pro baronia de *Berkley*; faciet per seipsum, Thomam de *Berkley*, & Willielmum Manfel milites.

So *Bigod*, then earl of *Norfolk*, recognoscit servitium v feodorum militum pro haereditate sua comitatus *Norfolk*, and divers more such other there, as also the services or tenures of the ecclesiastical barons, distinguished by their number of knights, without any colour of reference to thirteen knights fees, and ⁿ. And it is constant through that roll, (which by the way is very observable) that they either serve by knights (according to the several numbers) or else by two servientes instead of every knight. Touching servientes, more anon, where we speak of

^d Certificat. factae de feodis militum sub Henrico II. in lib. rub. fecac. ms. fol. 84. Kent.

fol. 103. Bedfordshire.

^e Inquisit. 12, & 13 Joh. i. dict.

^f Inquisit. 12, & 13 Joh. i. dict.

^g Inquisit. 12, & 13 Joh. i. dict.

^h Inquisit. 12, & 13 Joh. i. dict.

ⁱ Inquisit. 12, & 13 Joh. i. dict.

^k Inquisit. 12, & 13 Joh. i. dict.

^l Inquisit. 12, & 13 Joh. i. dict.

^m Inquisit. 12, & 13 Joh. i. dict.

ⁿ Inquisit. 12, & 13 Joh. i. dict.

^e Ibid. pag. 84. Hantsshire.

^f Ibid. pag. 84. Hantsshire.

^g Ibid. pag. 84. Hantsshire.

^h Ibid. pag. 84. Hantsshire.

ⁱ Ibid. pag. 84. Hantsshire.

^k Ibid. pag. 84. Hantsshire.

^l Ibid. pag. 84. Hantsshire.

^m Ibid. pag. 84. Hantsshire.

ⁿ Ibid. pag. 84. Hantsshire.

cf. squire.

esquires. The testimonies of this kind are infinite, but we conclude here with that of *Nigelus*, or *Neah*, bishop of *Ely*, lord treasurer to *Henry* the first, to the abbot of *Ramsay*, by which he acknowledged that the abbot (who was plainly a baron) held but by the service of four knights. *N. Eliensis episcopus venerabili fratri & amico W. Ramesiae abbati, salutem. Sciatis quod ubi Richardus clericus reddidit computum de scutagio militum vestrorum ad seaccarium, ego testificatus sum vos non debere plusquam quatuor milites & pro tantum quieti essis & in rotulo scripti. Vale.* This occurs in the book ⁿ of *Ramsay* in the exchequer. But for that passage in the *modus tenendi parliamentum*; what other ancient occurrence is any where that preserves this distinction of *comites & barones*, from such as were *pares comitibus & baronibus*,^o by reason of holding entire earldoms or baronies, and yet had not the title of earls or barons? Nay, where appears it antiently that a knight's fee was twenty pounds revenue? It is true, that men who had twenty pounds revenue, were often distrained or summoned ^p to take the order of knighthood. But also sometimes men of less revenue, sometimes by reason of more, were likewise called to the same dignity, as is anon shewed * where we speak of knights. And land of the yearly revenue of twenty pounds held in socage, is made equivalent by the statute of aid under ^q *Edward* the first, to a knight's fee. But what doth either of these concern the legal value of knight's fees, which were never in truth estimable, either by any certain number of acres or quantity of revenue (though some have erroneously determined them by both) but only by the services, or number of knights reserved. And doubtless, this error touching the just value of a knight's fee, was the principal ground-work to that vain superstruction of the certain values and quantities of earldoms and baronies. For that being first supposed to be the just value of a knight's fee, the author (that used his own fancy also enough in other things comprehended in his treatise) observing also truly that earldoms and baronies consisted for the most part of knight's fees, fell to, if I be not deceived, a mistaking in his rules of proportion, thus. As the relief of a knight's fee to a knight's fee, so the relief of an earl, and of a baron to an earldom and barony. But the relief of a knight's fee is the fourth part of a knight's fee (which is true, if a knight's fee were measured by twenty pounds revenue) therefore are the reliefs of earls and barons, the fourth part of their earldoms and baronies. Now the relief that was ever since the grand ^r charter settled, hath been for an earl having a whole earldom, a hundred pounds, and for a baron having a whole barony, a hundred marks; whence it easily followed, that therefore a whole earldom was four hundred pound revenue, and a whole barony four hundred marks. But this kind of account was grossly erroneous. For until the grand charter settled (and the most of the time that can be meant

by the title of that treatise, falls before the settling of that charter) the relief of earldoms and baronies were wholly uncertain, as is already shewed; so that then there could not have been any such argument drawn from their proportion. But the author here being over-willing to seem to know what an earldom and a barony were, thus deceived himself and many more, that with so easy belief have so easily and commonly received for truth the mistaking of his fancy. It may be divers things in that *modus* (and among them some that differ much from the present and later ages) were agreeable to the antient parliaments. But doubtless some particulars are directly contrary to the known and received parliamentary use from antient time, as for example, the placing of the archbishops and bishops of the two provinces, one on the right hand, the other on the left of the king, and the supposition of the barons of the cinque ports to be equal in matter of amercement to a baron of the kingdom. And some such more occur in it. And the same that is said of the credit and authority of this *modus*, may be likewise said of that which was found in a parchment roll with *Sir Christopher Preston*, at *Clare* in *Ireland*, under king *Henry* the fourth; not much differing from this usual *modus tenendi parliamentum* in *England*. Only that is made proper for *Ireland*, and supposed to have been sent thither by king *Henry* the second, when he conquered the island, for a direction how to hold their parliaments. But the sense of it is, for the most part, just like that whereof we have so many copies for *England*. It was, as I have heard, exemplified by *inspeximus* under the great seal of *Ireland*, by the lord *Talbot*, lieutenant of *Ireland*, under *Henry* the fourth. And I had from my worthy friend *Mr. Hackwell*, of *Lincoln's Inn*, the use of a copy of the exemplification, that was transcribed out of it, when heretofore the exemplification itself under seal was in his hands. The stile of it goes thus;

Henricus Dei gratia rex Angliae, & Franciae, & dominus Hiberniae, omnibus ad quos praesentes literae pervenerint, salutem. Inspeximus tenorem diversorum articulorum in quodam rotulo pergameneo scriptorum cum Christophoro de Praeston milite, tempore arrestationis suae apud villam de Clare, per deputatum dilecti & fidelis nostri Johannis Talbot de Halomshire chivaler locum nostrum tenentis terrae nostrae Hiberniae, nuper factae inventorum, ac coram nobis & concilio nostro in eadem terra nostra apud villam de Trim, nono die Januarii ultimo praeterito ostensorum in haec verba, modus tenendi parliamenta.

Henricus rex Angliae, conquestor & dominus Hiberniae mittit hanc formam archiepiscopis, episcopis, abbatibus, prioribus, comitibus, baronibus, justiciariis, vicecomitibus, majoribus, praepositis, & omnibus fidelibus suis terrae Hiberniae tenendi parliamentum.

Inprimis summonitio parliamenti praecedere debet per quadraginta dies &c.

ⁿ Ms. fol. 58, & 59.

* §. XXXVI.

^o Mod. tenend. parl. loco citato & cap. de poena summonitionis.

^q West. 1. cap. 36.

^r Mag. chart. cap. 2.

^e Videlicet stat. 1 Ed. II. de militibus

And then follows the most of the particulars that occur in the ordinary *modus* for *England*, fitted to *Ireland*; and among them that especially of the estimation of earldoms and baronies by the number of knights fees. And some few other things also being added of grand councils, of the difference between an ordinance and a law, and of the oath at the coronation; it is concluded with, *Nos autem tenores articulorum praedictorum, de assensu praefati locum tenentis & concilii praedicti, tenore praesentium duximus exemplificandum* [§] *has literas nostras fieri fecimus patentes. Teste praefato locum nostrum tenente apud Trim XII die Januarii anno regni nostri sexto.*

Per ipsum locum tenentem & concilium.

But whoever was the author of this *Irish modus*, I think doubtless, took it out of this other whereof we have so many copies in *England*, and so fitted it to that kingdom, not only in the supposed parliamentary forms, but also in the title, that it might have every way like relation to *Ireland* as the other to *England*. For as that of *England* is supposed to have been declared before king *William*, and allowed by him at his conquest, so this also by *Henry* the second at his of *Ireland*. But I cannot believe that either of them were so antient as *Henry* the second. His stile in it agrees not with any that I have seen of him. Nor before king *John*'s time were sheriffs, and other officers and dignities (according to the *English* pattern) so settled there, that those dignities and offices to whom (even as at this day the use is) the *in-speximus* is directed, could have had such place in it under *Henry* the second. But this by the way. And hitherto of barons in the time between the later end of king *John*, and the middle of *Richard* the second.

XXVII. From the middle of *Richard* the second to this day we have had a third kind of barons, then first added to those two before shewed, or to the barons both by writ and tenure, and those by writ only. That is, barons made by letters patents. The two first kinds, and the use of making new by writ, still continue. Neither need we in this part of time say more of them, than only shew the form of the writ that makes those that are by writ only, and calls the rest, adding something of the spiritual barons that were regular (for what concerns the rest is well enough known) which done, we conclude with the creation of barons by patent.

Touching the form of the writ, we observe the body of that form, and the stile given to the persons called by it. That form already shewed to the spiritual barons that were secular, continued till about the end of *Richard* the second, when that clause *ne, quod absit, per vestri absentiam, &c.* to differatur, began to be omitted. And the same form to nullatenus o-

mittatis. Teste, &c. was to the regular barons, as also to the temporal. Only *ligeancia* is used to the temporal for *dilectione*, as it is to this day. Nor is there almost any difference between the syllables of the writs of the former times of this last part of our division (after the omission of that clause) from those that are used at this day. The spiritual barons at this day (being all secular, or bishops) are called by this form.

REX, &c. Reverendissimo in Christo patri praedilecto & fideli consiliario nostro N. eadem gratia archiepiscopo *Cantuariensi* totius *Angliae* primati & metropolitano salutem. Quia de avifamento & assensu concilii nostri pro quibusdam arduis & urgentibus negotiis nos statum & defensionem regni nostri *Angliae* & ecclesiae *Anglicanae* concernentibus, quoddam parlamentum nostrum apud civitatem nostram *Westmonasterii* (such a day and year) teneri ordinavimus, & ibidem vobiscum ac cum caeteris praelatis magnatibus & proceribus dicti regni colloquium habere & tractatum, vobis sub fide & dilectione quibus nobis tenemini firmiter injungendo, mandamus quod consideratis dictorum negotiorum arduitate, & periculis imminuentibus, cessante excusatione quacunque dictis, die & loco personaliter interfutis nobiscum ac cum praelatis, magnatibus, & proceribus praedictis super dictis negotiis tractaturi, vestrumque consilium impensuri, & hoc sicut nos & honorem nostrum ac salvacionem & defensionem regni & ecclesiae *Anglicanae*, expeditionemque negotiorum praedictorum diligitis, nullatenus omitatis. Praeponentes decanum & capitulum ecclesiae vestrae *Cantuariensis* ac archidiaconos totumque clerum vestrae dioeceseos quod iidem decanus & archidiaconi in propriis personis suis ac dictum capitulum per unum, idemque clerum per duos procuratores idoneos plenam & sufficientem potestatem ab ipsis capitulo & clero conjunctam & divisim habentes, praedictis die & loco interfut ad consentiendum hiis quae tunc ibidem de communi concilio dicti regni nostri divina favente clementia contigerint ordinari. Teste meipso, apud, &c.

The temporal barons have the same form (excepting *ligeancia* for *dilectione*) to nullatenus omitatis, T. &c. But all this is spoken of the ordinary writs of summons. For it hath been sometimes in example, to add a limitation of the estate in the dignity of barons to the rest of the writ by which a baron hath been created. So was it done in the writ that created Sir *Henry de Bromflet* baron of *Vesey*, under *Henry* the sixth. After nullatenus omitatis, follows this clause, *Volumus enim vos & haeredes vestros masculos de corpore vestro legitime exeuntes barones de Vesey existere. Teste, &c.*

For the files given to the barons in these writs; the spiritual barons have the title of their ecclesiastical dignities, and the addition of privy counsellor, or the like, as the case falls out. So have the temporal also, of whom some as is

[§] Dors. claus. 27 H. VI. m. 24.

before[†] noted, have had the name of baron given to them. But that was rarely used; and at this day it is not given to any in the writ. Divers were antiently stiled by their christian names and surnames, or baronies, or both, and very frequently the addition of *chivaler* or *militi* was given them; and divers also after the addition of *chivaler* were stiled lords, with an addition of that whereof they are called barons, by *dominus de N.* As *Jacobo Beauchamp militi domino de Beauchamp*, and the like, as also without *militi*, as *Thomae domino de Ros*, and such more. But about *Henry* the eighth, it came into use to stile them all *chivalers*, whether they were knighted or not, which is also continued, and in practice to this day. And after their surnames, their titles of that whereof they are stiled barons, usually precedes *chivaler*; both in writs of summons upon former right, and in writs of creation. For regularly they differ not in any thing but that the writ of creation (which first, so calls any man to the parliament) makes a baron, and the self-same iterated, calls him to other parliaments afterward. But amongst them there is a singular form of stile to the lord *de la Ware*. In the later part of *Richard* the second, in *Henry* the fourth, *Henry* the fifth, and part of *Henry* the sixth, the stile is *magistro Thomae de la Ware*. The reason, they say, is, because he was a clergy-man; and that before the title descended on him. And I remember in the proxy-bundle of the fifth of *Henry* the fifth, he makes *John Franke*, and *Richard Hulme*, clerks, his proxies also, as the use of that time was for lords that were spiritual persons.

The regular barons of this time (to go on with them where we before left) were usually to the dissolution of monasteries under *Henry* the eighth, the same great abbots (with the priors of *St. John's*, and of *Coventry*) that are before noted. But in the fifth of *Henry* the fourth, the prior of *Christ Church* in *Canterbury*, is again summoned also among them. But he occurs no more in the following summons. But the number soon grew fixed to twenty five abbots, and those two priors. The abbots were of

1 Saint Albans.	13 Abingdon.
2 Glastenbury.	14 Waltham.
3 St. Augustine's of Canterbury.	15 Shrewsbury.
4 Westminster.	16 Gloucester.
5 St Edmund's Bury.	17 Bardeney.
6 Peterborough.	18 St. Benet of Holme.
7 Colchester.	19 Thorney.
8 Evesham.	20 Ramsey.
9 Winchelcomb.	21 Hide.
10 Crowland.	22 Malmesbury.
11 Battaille.	23 Cirencester.
12 Reding.	24 St. Mary of York.
	25 Selby.

And these with those two priors were the regular barons till the fifth of *Henry* the eighth,

when the^{*} abbot of *Tavistock* in *Devonshire* was added to them by creation by patent, the form whereof is anon inserted. After the dissolution of monasteries in 31 *Hen. VIII.* during his reign, and the reign of king *Edward* the sixth, no regular baron was acknowledged here. But under queen[†] *Mary*, and for some time in the first parliament of queen *Elizabeth*, the prior of *St. John's*, and the abbot of *Westminster* were summoned as barons again. But there was soon an end of them also in that parliament of queen *Elizabeth*. And we come next to the creation of barons by letters patent.

XXVIII. The creation of barons into that title expressly by patent, began in the eleventh year of *Richard* the second. And the following examples of it have been very numerous. And I remember one example of a spiritual baron thus also created. The first temporal baron thus created, was *John de Beauchamp*, steward of the household to *Richard* the second, who was made by this patent one of the peers and barons of the kingdom, and to be stiled lord of *Beauchamp*, and baron of *Kiderminster*, to him and the heirs[‡] males of his body.

Richardus &c. Sciatis quod, pro bonis & gratuitis servitiis quae dilectus & fidelis miles noster *Johannes de Beauchamp de Holt* feneſcallus hospitii nostri nobis impendit, ac loco per ipsum tempore coronationis nostrae hucusque impenso, & quem pro nobis tenere poterit in futurum in nostris consiliis & parliamentis, necnon pro nobili & fideli genere unde descendit, ac pro suis magnificis sensu & circumspectione, ipsum *Johannem* in unum parium ac baronum regni nostri *Angliae* praefecimus, volentes quod idem *Johannes* & haeredes masculi de corpore suo exeuntes statum baronis obtineant ac domini de *Beauchamp*, & barones de *Kidermyſter* nuncupentur. In cujus rei &c. T. (264)

This first form was thus simple or brief. Afterward it grew variously longer, both out of several clauses, that were but explanatory of the dignity, as also out of the clause sometimes of creation-money or annuity given for support of the dignity. For that use was also in the age that followed not long after the beginning of such creations, that barons had their honorary annuities in some examples, no otherwise than earls. So Sir *Ralf Botiller*, baron of *Sudley* in *Gloucestershire*, created by *Henry* the sixth, ut idem *Radulphus* & haeredes sui praedicti (that is, his heirs males of his body; nor have I seen a creation of a baron by patent to him and his heirs generally) melius, decentius, & honorificentius valeant statum praedictum ac onera ipsis incumbencia manutenerere & sustentare, as the words of the[‡] patent are, had two hundred marks annuity given out of the profits of *Lincolnshire*, payable by the sheriffs of that county. So *Edward* the fourth created Sir *Walter Blount*, baron of *Mountjoy*, and gave

[†] §. XVI. [‡] Claus. 5 Hen. IV. part. 2. m. 4. dorſ. * Ita recte capiendi Camden. in Brit. pag. 123. & Clem. Reyner. in appendice ad apostolat. Benedic. pag. 150. [†] Diarium parl. 4. & 5 P. & Mar. 7. & 8 Martii, summonitio ejusdem anni, & diarium parl. 1 Elizabeth. [‡] Pat. 11 Ric. II. part. 1. m. 12. part. 1. pat. 25. Hen. VI. m. 29.

him likewise an annuity, as creation-money, of twenty marks yearly; twelve marks thereof payable out of the moiety of the town of *Thurbaston*^b in *Derbyshire*, and the other moiety out of the profits of *Derby* and *Nottingham-shires*. But afterward this use of giving creation-money with the dignity, ended. And the forms of the patents of creation were very various; and briefer than those at this day, and less explanatory of the dignity, and more different also one from another than at this day we find them. For in our age, especially since the beginning of king *James*, this^d form (after the king's stile, and the preamble, which is varied by occasion) is for the most part, if not always constant.

SCiatis igitur quod nos, de gratia nostra speciali, ac ex certa scientia, & mero motu nostris, praefatum *A. B.* ad statum, gradum, dignitatem, & honorem *baronis B. de C.* in comitatu *N.* ereximus, praefecimus, & creavimus, ipsumque *A. B. baronem B. de C.* praedicto, tenore praesentium, praefecimus, constituimus, & creamus eidemque *A. B.* statum, gradum, dignitatem, stilum, titulum, nomen & honorem *baronis B. de C.* imposuimus, dedimus, & praebuimus ac per praesentes damus, imponimus, & praebemus, Habendum & tenendum eadem statum, gradum, dignitatem, stilum, titulum, nomen & honorem eidem *A. B.* & haeredibus masculis de corpore suo exeuntibus imperpetuum, volentes & per praesentes insuper concedentes, pro nobis, haeredibus & successoribus nostris, quod praedictus *A. B.* & haeredes sui masculi praedicti nomen, statum, gradum, stilum, dignitatem, titulum & honorem praedictum successive gerant & habeant, & eorum quilibet habeat & gerat & per nomen *baronis B. de C.* vocentur & nuncupentur & quilibet eorum vocetur & nuncupetur, quodque idem *A. B.* & haeredes sui masculi praedicti successive *barones B. de C.* in omnibus teneantur & ut barones tractentur, teneantur, & reputentur, & eorum quilibet tractetur, teneatur, & reputetur, habeantque, teneant, & possideant dictus *A. B.* & haeredes sui masculi praedicti, & eorum quilibet habeat, teneat, & possideat sedem, locum, & vocem in parliamentis, publicis comitiis & conciliis nostris haeredum & successorum nostrorum infra regnum nostrum *Angliae* inter alios barones, ut barones parliamentorum, publicorum comitiarum & conciliarum; necnon dictus *A. B.* & haeredes sui masculi praedicti gaudeant & utantur & eorum quilibet gaudeat & utatur per nomen *baronis B. de C.* omnibus & singulis juribus, privilegiis, praecminentis, & immunitatibus ad statum *baronis* hujus regni nostri *Angliae* in omnibus rite & de jure pertinentibus, quibus ceteri barones dicti regni nostri *Angliae* ante haec tempora melius, honorificentius & quietius usi sunt & gavisii seu in praesenti gaudent & utuntur. Eo quod expressa mentio, &c. non obstat. His testibus &c. Datum apud *Westmonasterium*, &c.

And it is most frequent in these later times to have the surname added in the creation as *A. B.* here is created baron *B.* of *C.* where *C.* is the place that denominates the baron. But the surname only is then often used as the title of honour, in common expression. And we conclude the temporal barons with this form of a baron invested at this day.

The example of creating a spiritual baron by patent, is in that to *Richard Banham* abbot of *Tavistock*, and his successors under *Henry*^e the eighth.

HENRICUS &c. Sciatis quod certis considerationibus nos specialiter moventibus & ob specialem devotionem, quam ad beatam virginem *Mariam* matrem Christi sanctumque *Romonum*, in quorum honore abbatia de *Tavistocke*, quae de fundatione nobilium progenitorum nostrorum quondam regum *Angliae* & nostro patronatu dedicata existit, gerimus & habemus, hinc est quod, de gratia nostra speciali ac ex certa scientia & mero motu nostris, volumus eandem abbatiam five monasterium nostrum gaudere honore, privilegio, ac libertatibus spiritualium dominorum parliamenti nostri haeredum & successorum nostrorum, ideo concessimus & per praesentes concedimus, pro nobis haeredibus & successoribus nostris quantum in nobis est, dilecto nobis in Christo, *Richardo Banham* abbati de *Tavistocke*, praedicto & successoribus suis, ut eorum quilibet qui pro tempore ibidem fuerit abbas, sit & erit unus de spiritualibus & religiosi dominis parliamenti nostri haeredum & successorum nostrorum, gaudendo honore, privilegio, ac libertatibus ejusdem; & insuper, de uberiori gratia nostra, affectando utilitatem dicti nostri monasterii, considerando ejus distantiam, ita quod si contingat aliquem abbatem qui pro tempore fuerit, fore vel esse absentem propter praedicti monasterii utilitatem in non veniendo ad parlamentum praedictum haeredum vel successorum nostrorum, quam quidem absentiam eidem abbati perdonamus per praesentes; ita tamen quod tunc solvet pro hujusmodi absentia cujuslibet parliamenti integri in nostro scaccario, suum per attornatum quinque marcas nobis haeredibus five successoribus nostris, totiens quotiens hoc in futurum contigerit. In cujus &c. Teste &c. vicesimo tertio die *Januarii* &c.

And thus much of these more antient dignities of earls and barons, whence we come to the title of duke, and so to those of marquess and viscount.

XXIX. The first creation of the title of duke, as distinct from that of earl (for in the elder times they were oft synonymies with us, as elsewhere, which is before shewed) was in the eleventh year of *Edward* the third, when in parliament he created his eldest son, being then earl of *Chester*, into the title of duke of *Cornwall*, and erected the dutchy of it. The

^b Pat. 5 Ed. IV. part. 1. m. 6.
baroni Buckhurstii.

^c Videbis pat. 1 Ed. VI. part. 6. baroni Sheffield & aliis, item pat. 9 Elizab. part. 10. memb. 25.
^d Saepius in rot. pat. Jacobi & Caroli. rr.

^e Pat. 5 Hen. VIII. part. 2. m. 22.

charter of creation (for so much as concerns the present subject here) was thus ;

Edwardus Dei gratia, &c. Inter caetera regni insignia, illud arbitramur fore potissimum, ut ipsum ordinem dignitatum, & officiorum distributione congrua vallatum, sanis fulciatur consiliis & robustorum potentiis teneatur. Plurimis itaque gradibus haereditariis in regno nostro, cum per descensum haereditatum secundum legem regni ejusdem, ad cohaeredes & participes tum deficiente exitu, & aliis eventibus variis, ad manus regias devolutis, passum est a diu in nominibus, honoribus, & graduum dignitate defectum multiplicem dictum regnum. Nos igitur ea, per quae regnum nostrum decorari, idemque regnum ac sancta ejusdem ecclesia, aliae etiam terrae nostro subiectae dominio, contra hostium & adversariorum conarus securius & decentius defendari, paxque nostra inter nostros ubique subditos conservari illacra poterint, meditatione sollicita intuentes, ac loca ejusdem regni insignia pristinis insigniri honoribus cupientes, nostrae considerationis intuitus ad personam dilecti & fidelis nostri *Edwardi comitis Cestriae*, filii nostri primogeniti, intimius convertentes, volentesque personam ejusdem honorare, eidem filio nostro nomen & honorem *ducis Cornubiae*, de communi assensu & consilio praelatorum, comitum, baronum & aliorum de consilio nostro in praesenti parlamento nostro apud *Westmonasterium*, die lunae proxime post festum S. *Matthiae* apostoli proxime praeteriti convocato existentium, dedimus, ipsumque in *ducem Cornubiae* praefecimus & *gladio cinximus*, sicut decet. Et ne in dubium verti poterit aliquid in futurum, quid aut quantum idem dux seu alii duces dicti loci qui pro tempore fuerint nomine *ducatus* praedicti habere debeant, omnia in specie quae ad ipsum ducatum pertinere volumus, hac carta nostra duximus inferenda. Dedimus itaque & concessimus pro nobis & haeredibus nostris, & hac praesenti carta nostra confirmavimus, eidem filio nostro, *sub nomine & honore ducis* dicti loci, castra, maneria, terras, & tementa & alia subscripta, ut ipse statum & honorem dicti ducis juxta generis sui nobilitatem, valeat continere, & onera, in hac parte incumbentia, facilius supportare, videlicet ; vicecomitatum *Cornubiae* cum pertinentiis, ita quod praefatus dux & alii duces ejusdem loci pro tempore existentes, vicecomites praedicti comitatus *Cornubiae* faciant & constituent, & facere & constituere possint, ad exercendum & faciendum officium vicecomitis ibidem sicut hactenus fieri consuevit sine occasione vel impedimento nostri vel haeredum nostrorum imperpetuum, necnon castrum, burgum, manerium & honorem de *Launceston* cum parco ibidem &c.

Diversi manors and franchises both in *Cornwal* and other counties then follow, which are made parts of the dutchy ;

Habendum & tenendum eidem duci & ipsius & haeredum suorum regum *Angliae* filiis primogenitis, & dicti loci ducibus in regno *Angliae*

haereditarie successuris, una cum feodis militum, advocacionibus ecclesiarum, abbatiarum &c. de nobis & haeredibus nostris imperpetuum. Quae quidem omnia castra, burgos, villas, maneria, honores, stannarias, & cunagium, firmam *Exoniae & Wallingford*, terras & tementa, prout superius specificantur, simul cum feodis, advocacionibus, & omnibus aliis supradictis, praedicto ducati praesenti carta nostra pro nobis & haeredibus nostris annectimus & unimus eidem imperpetuum remansura, ita quod ab eodem ducatu aliquo tempore nullatenus separantur, nec alicui seu aliquibus aliis quam dicti loci ducibus per nos vel haeredes nostros donentur seu quomodolibet concedantur, ita etiam quod praefato duce seu aliis ejusdem loci ducibus decedentibus, & filio seu filiis ad quos dictus ducatus praetextu concessionum nostrarum praedictarum spectare dinoscitur tunc non apparentibus, idem ducatus, cum castris, burgis, villis & omnibus aliis supradictis ad nos vel haeredes nostros reges *Angliae* revertatur, in manibus nostris & ipsorum haeredum nostrorum regum *Angliae* retinendus quousque de hujusmodi filio seu filiis in dicto regno *Angliae* haereditario successuris appareat, ut dictum est, quibus tunc successive ducatum illum cum pertinentiis pro nobis & haeredibus nostris concedimus & volumus liberari, tenendum prout superius est expressum &c. — His testibus *J. Cantuariensi* archiepiscopo totius *Angliae* primate cancellario nostro, *Henrico Lincolnensi* episcopo thesaurario nostro, *Richardo Durnelmensi* episcopo, *Johanne comite Warrenae & Surriae*, *Thoma de bello campo comite Warwicki*, *Thoma Wake de Lydell*, *Johanne de Mowbray*, *Johanne Darcy* le neveu seneschallo hospitii nostri, & aliis. Datum per manum nostram apud *Westmonasterium* xvii die *Martii* anno regni nostri xi.

Per ipsum regem & totum consilium in parlamento.

By this creation, not only the first born son of the kings of *England*, but the eldest^e living also are always dukes of *Cornwal*. Neither needed there any new creation of the title, although sometimes we find it joined with the creation of the title of prince of *Wales*, as is before shewed. The investiture of this first duke was, we see, for ought appears in the charter, only by girding him with the sword, although some learned men confounding, it seems, the ceremonies of his being afterward made prince of *Wales*, with this creation of him into the title of duke, say he was invested by a ring, a rod, and a coronet, all which indeed together are mentioned in some patents of the following times, that seem to create the eldest sons dukes of *Cornwal*, as well as princes of *Wales*, and earls of *Chester*. The same investiture also, by the sword only, is mentioned in the creation of *Henry*, the first duke of *Lancaster*,^f about fourteen years after this first creation of the duke of *Cornwal*. He was created, for life, in parliament, and the clause of investiture, in the char-

^e Coke lib. 8. cap. principis & le case du duche de Cornovaille publie 1613.

^f Pat. 25 Ed. III. part. 1. m. 18. 6 Martii.

ter, is only *nomen ducis* Lancastriae imponimus, & ipsum, de nomine ducis dicti loci, per cincturam gladii praesentialiter investimus, and the county of Lancaster as a county palatine, with reference to that of Chester, for example of jurisdiction, is given to him, as the body of his Dutchy. Afterward in 36 Ed. III. on the last day of the parliament, Lionel duke of Clarence, and John duke of Lancaster, both sons to the king were honoured with those titles, Lionel being then in Ireland; but the other being present had investiture by the king's girding him with a sword, and his putting on him a cap of furr, *desus un cercle d'or & de peres*, as the roll ⁵ says, that is, under a coronet of gold and stones. And in the parliament of the ninth of Richard the second, Edmund earl of Cambridge, and Thomas earl of Buckingham and Essex were invested dukes, this of Gloucester, and the other of York, the king sitting crowned in his throne, and Skirlaw, the lord elect confirmed of Coventry and Lichfield, that was keeper of the privy-seal, delivering the causes of their creation, the charters of which were dated at Heselwelowgh in Triviale the sixth of August, before the parliament that began on St. Luke's day, or the xviii of October following at Westminster. And the ^b charters having nothing expressly that design the creation alone, more than *ducem ereximus eidem ducatus N. titulum assignantes & nomen*, the ⁱ parliament-roll says, of both of them, that the king *ipsum ducem de praedictis titulo, nomine & honore*, per gladii cincturam & pilei ac circuli aurei suo capiti impositionem, *maturius investivit ac cartam praedictam in plenum testimonium perpetuamque memoriam & fidem praemissorum, manibus suis propriis eidem duci tradidit & realiter liberavit, & capto immediate ejus homagio pro ducatu praedicto eum vultu hilariter inter pares parlamenti in gradu celsiori sedere mandavit, quod idem dux gratantius incontinenti fecit.* And they had each of them a thousand pound revenue given them for support of the dignity. But in the parliament of xxi of Richard the second, Henry duke of Hereford, Thomas duke of Surrey, John duke of Exeter, Edward duke of Aumerle, and Thomas duke of Norfolk were created, ^k the self-same preamble of merit being in every of their patents, which then go on thus, *de assensu praefatorum, ducum, magnatum, & aliorum procerum & communitatis regni nostri Angliae in instanti parlamento nostro apud Westmonasterium existentium, ipsum comitem* (for they were all earls before) *in ducem N. cum titulo, stilo ac nomine & honore eidem debitis praefecimus, ac inde praesentialiter per appositionem capae suo capiti ac traditionem virgae aureae investimus,* ⁶⁵ after which the limitation of the estate by the *habendum*, and the creation-money of forty marks yearly out of the exchequer, follow, without any other clauses whatsoever.

And in the parliament-roll (where the king sitting in his throne invests them) it is said the charters were there read, and that the king made them by girding them with swords, and putting on every of their heads *un cap d'honneur & dignité du duc*, and that every one *fist son homage en la manere accoustumée devant ces heures*. Here we have no express mention in the act of creation of the rod, nor (in either the charter or parliament-roll) of a coronet, but only of a ducal cap for the head; as in that of the thirty-sixth of Edward the third, the coronet and cap are, but not the rod of gold. And to the coronets of our dukes, that of *Martial de Paris* ¹ hath reference, speaking of Thomas duke of Clarence, brother to our Henry the fifth.

*La en grand pompe & seigneurie
Si saillit le duc de Clarence,
A un chapeau de pierrerie
Plein de diamans d'excellence.*

The later times, have had for the most part, all these, the sword, coronet (which supposes the cap) and rod of gold, together in the clause of investiture. In our age, the form ^m is such, that first the person honoured, is in the same patent created into the title of an earl, though he were an earl or marquis before, but without any creation-money or annuity of creation added to that title of earl; and then follows;

AC insuper, pro consideratione praedicta, de uberiori gratia nostra speciali ac ex certa scientia & mero motu nostris, praefatum *A. in ducem C. necnon ad statum, gradum, stylum, titulum, dignitatem, nomen & honorem ducis C. ereximus, praefecimus, insignivimus, constituimus, & creavimus, ipsumque A. in ducem C. necnon ad statum, gradum, stylum, titulum, dignitatem nomen & honorem ducis C. tenore praesentium erigimus, praeficimus, insignimus, constituimus & creamus per praesentes, eidemque A. nomen, stylum, titulum, statum, gradum, dignitatem & honorem ducis C. imposuimus, dedimus, & praebuimus, ac per praesentes imponimus, damus, & praebemus, ac ipsum A. hujusmodi nomine, stilo, titulo, statu, gradu, dignitate & honore ducis C. per gladii cincturam, capae, & circuli aurei impositionem in capite & traditionem virgae aureae insignimus, investimus, & realiter nobilitamus per praesentes, Habendum & tenendum nomen, stylum, titulum, statum, gradum, dignitatem & honorem ducis C. praedicti, cum omnibus & singulis praecedentibus, honoribus caeterisque hujusmodi nomini, stilo, titulo, statui, gradui, dignitati & honori ducis pertinentibus sive spectantibus praefato A. & haeredibus masculis de corpore suo exeuntibus imperpetuum, volentes & per praesentes concedentes, pro nobis, haeredibus & successoribus nostris, quod praedictus A. & haeredes sui masculi praedicti nomen, stylum, titulum, statum, gradum, dignitatem & honorem praedictum successive gerant*

⁵ Rot. parliam. 36 Ed. III. num. 36.

⁶ & vide etiam supra part. 1. cap. 4. §. 2. de duce Hiberniae, eodem anno. Vide item cart. 15 Ed. IV. membr. 12. duci Eboraci, in ducem Northolciae creato, ubi nulli investiturae mentio.

part. 4. num. 35.

part. 1.

^b Cart. 9 Rich. II. memb. 15. num. 27.

ⁱ Rot. parl. 9 R. II. num. 14, & 15. membr.

^k Cart. 21 Rich. II. memb. 14. num. 23, & rot. parliam. ejusdem anni

¹ Chez Louis d'Orleans en les ouvertures des parlements chap. 11, pag. 169. in 4.

^m Rot. pat. 21 Jacobi

& habeant, & eorum quilibet gerat & habeat, & per nomen ducis C. successive vocentur & nuncupentur, & eorum quilibet vocitetur, & nuncupetur, & quod idem A. & haeredes masculi sui praedicti successive ut duces C. teneantur, tractentur, & reputentur, & eorum quilibet teneantur, tractetur, & reputetur, habeantque, teneant, & possideant dictus A. & haeredes sui masculi praedicti & eorum quilibet habeat, teneat & possideat sedem, locum & vocem in parliamentis, comitiis, & consiliis nostris haeredum & successorum nostrorum infra regnum nostrum Angliae, inter alios proceres & magnates hujus regni nostri Angliae, ut dux C. necnon dictus A. & haeredes sui masculi praedicti gaudeant & utantur, & eorum quilibet gaudeat, & utatur, per nomen ducis C. omnibus & singulis juriis, privilegiis, praeceminentiis, & immunitatibus statui ducis in omnibus rite & de jure pertinentibus, quibus duces hujus regni Angliae ante haec tempora melius, honorificentius, & quietius usi sunt & gavisi.

Then should follow (if at the time of the creation we have other dukes here) *aut in praesenti gaudent & utuntur*, as in the patents of other titles of like nature. After this the clause of support or creation-money follows, wherein sometimes land, and forty pound yearly annuity, sometimes only the annuity is given. Then the usual clauses of *volumus*, &c. and *eo quod expressa mentio*, &c. *In cujus rei*, &c. *His testibus*, &c. conclude the whole form of it, as of other patents of creation. We add here the form of a duke invested.

XXX. As *dux* or duke was used with us in expressions of the antient earls, many ages before it was a distinct dignity of itself, so also was that of *marchio* or marquels, sometimes both for earls and barons, but especially for those that were lords marchers, or lords of frontiers, whence the true origination of the word is, as is already shewed. And afterward (as *dux* also) it became a special dignity, placed next beneath that of duke, and immediate above that of earl, as it remains to this day.

For the antient use of the word with us; *Brianus filius comitis marchio de Walingford* is remembered in *William* of ^a *Malmesbury*. Neither did he, as I conceive, use the word otherwise than as taking *Walingford*-castle, which was then well fortified, to be a frontier or march between those of the part of king *Stephen*, and of *Maud* the empress. This *Brianus* or *Brientius* (as he is sometimes called) was lord of the castle. And *Johannes Sarisburiensis*, of the lords marchers of *Wales*; *Otinam*, sic faciant uxores & matres nostrorum Marchionum; quacunque occasione patriam servant incolummem & labem pudoris amoveant. And at the coronation of queen *Eliana*, wife to *Henry* the third, *John Fitz-Alan*, *Ralf Mortimer*,

John of *Monmouth*, and *Walter* of *Clifford* as *marchiones* & *de marchia Walliae* (being lords marchers) claimed as *jus marchiae* ⁽²⁵⁶⁾ to carry the canopy which belongs to the barons of the cinque ports. Other *marchiones Walliae* are remembered in *Florilegus*. And *Edmundus* (saith he) *haeres famosi comitis jam defuncti*, *Rogeri de Mortuo mari*, cum quibusdam marchionibus, irruit in exercitum *Leolini*, speaking of the same kind of marquesses. Others call them *Marchisii*; *Wallenses contra regem* & *ejus* marchisios bellum moverunt cruentissimum, saith *Matthew Paris*, in whom *marchisii* is used also for inhabitants in the marches; as *missimus ultra aquam per batellos, trecentos Wallenses marchisios nostros de Cestriscyra & Salopesbyriscyra*. But *marchio* or *marchisius*, of itself, denoted not any title of honour in those times, nor long after with us, no more than *de marchia* doth in *comites & barones de marchia* in the statute of the king's prerogative, or than *commarchiones regni nostri*, in the old Latin translation of king *Ina's* laws for such as lived bynne ^{Sam} *gemaeum*, *upper pices*, or in the frontiers of the kingdom, or than *marchio* doth in a patent ^u that declares that *John* lord *Nevil* of *Raby* was *marchio* and *unus custodum marchiarum Scotiae*, in the beginning of *Richard* the second. But under the same king this title of marquess (as it is a distinct title of honor) began. He created *Robert de Vere* earl of *Oxford*, marquess of *Dublin* in *Ireland* for life. But it was, in him, an *English* dignity, and, by reason of it, he was placed between the dukes and earls in the parliament, wherein he was invested. His patent was almost the very same (such parts being changed as necessity requires) with that before ^x inserted, by which he was created afterward duke of *Ireland*. The creation was in the ninth year of this king *Richard*. *Creata est* (saith *Walsingham*) in hoc parlamento nova dignitas, Anglicis insueta; nempe comes *Oxoniae* dominus *Robertus de Vere*, appellatus & factus est *marchio Dubliniae in Hibernia*, caeteris comitibus hoc indigne ferentibus, quod viderent eum gradum celsiorem ipsis regis munere perceperisse, & praecipue, quia nec prudentia caeteris, nec armis valentior videbatur. In the patent itself ^y there is no other clause of investiture than praefato *Roberto* nomen *marchionis Dubliniae* imponimus & ipsum de nomine *marchionis dicti loci* praesentialiter investimus. But the parliament-roll (for the investiture was in parliament and in presence of both houses.) saith, that *Michael de la Pool* earl of *Suffolk* and chancellor of *England*, declared the merit and reason of the creation, and then the king ipsum ^z *marchionem de praedictis titulo*, nomine, & honore, per gladii cincturam & circuli aurei suo capiti impositionem, maturius investivit, ac cartam praedictam in plenum testimonium perpetuamque memoriam & fidem praemissorum, manibus suis propriis, eidem

^a Hist. novel lib. 2.

^b Videfis *Camden* in *Attrebatiis*, pag. 204.

^c De nugis curialium, lib. 6. cap. 16.

^d Lib. rub.

saec. ms & *Camden* in *Cornaviis*, pag. 446. & videfis *Floril.* ann. 1264. & 1284.

^e Pag. 860, & 924. ed. Lond. & 935, & 936.

& 958, & 984.

^f Cap. 1.

^g Cap. 10. apud Jo. Brompton in hist. Jornal. ms.

^h Pat. 1. Rich. II. part. 2. membr. 13.

ⁱ Part. 1. cap. 4. §. 2.

^j Cart. 9 Rich. II. membr. 13.

^k Rot. parlam. 9 Rich. II. membr. 3. num. 17.

marchioni tradidit & realiter liberavit, & (capto immediate ejus homagio, pro statu, terra, & dominio praedictis) eum vultu hilaris, inter pares parlamenti, in gradu celsiori, videlicet inter duces & comites sedere mandavit, quod idem marchio gratantius incontinentiter fecit.

Here the investiture is by the sword and coronet. But in the charter-rolls of *xxi* of the same king, there is a patent, though cancelled, by which *John* earl of *Somerſet* is created marquis of *a Dorſet*, and the words (for the investiture) are, *ac inde praesentialiter per appositionem circuli aurei suo capiti investimus.* And after the *habendum*, follows a grant of thirty five marks yearly for creation-money, or the annuity of honour given out of the county, which concludes the patent. It is dated *xxix Septembris*. And in the margin it is noted with *vacat quia nihil inde actum est.* Another *b* patent follows there, of the same date, by which he is made marquis of *Somerſet*, with the like revenue out of the county, and the investiture is expressed in it only *per cincturam gladii.* But the parliament-roll, that relates what was done upon the first, however the charter-roll says nothing was done by it, tells us expressly that, besides the sword, he had also a coronet put on him. The words *c* are; *item mesme le jour en parlement sire Johan Beaufort, conte de Somerſet feust fait & creez en marquis de Dorſet, & ceintus de son espee, & un cercle mis sur son chief, per le roy, en manere & forme accustumez.* And it is certain, that he was created and continued marquis of *Dorſet*, as appears both by the parliament-roll of that year, and the printed *d* statutes. But it is observable, that, this dignity being taken from him, in the beginning of *Henry* the fourth, and the commons afterward in the parliament of the fourth year of the *e* same king, recommending his merit to the king and lords, and so making it their suit that he might be restored to the title of marquis; he gave them hearty thanks for their favour toward him, but humbly declared himself to the king, that he was unwilling to have any such title, because it was then so strange and new in this kingdom. The words of the roll are; *Item lundy le vi jour de Novembre les commens viendrent devant le roy & les seigneurs, en parlement, & entre autres choses & matires illeques monstres & parlez, mesmes les commens, honorablement recomandantz les bone & honorable port & governance del conte de Somerſete, prirent au roy que mesme le cont purroit estre resteres a ses noun & honour de marquis queux il avoit pardevant; de quel prier, le roy & les seigneurs remercièrent les dits commens. Et le roy leur disoit, q' il voudroit estre avisez & ent faire ceo que luy sembleroit pur le mieulx, touchant cell matire. Et sur ceo, le dit cont, engenuilant, molt humblement pria au roy, que come le noun de marquis fuyſt estrange noun en cest roialme, q' il ne luy vorroit aucunement doner cel noun de mar-*

quis. Car jammais par congie du roy il ne vorroit porter n' accepter sur luy nul tiel noun en ascun maniere; mais nientmeins mesme le cont molt cordialment remercia les seigneurs & les commens, de leur bones coers & volentes, celle partie.

In the patents of creation of the following times, the clauses of investitures have been not always alike. As, in that to *Thomas Gray* created marquis of *Dorſet* by *Edward* the fourth, it *f* is only, *per cincturam gladii & capae honoris, & dignitatis inpositionem*, the coronet being omitted, though it be like enough it was used in the act of investiture. The form of the patent of the creation of marquis, having been somewhat varied through those ages that have past since the beginning of it here, till this of ours or our fathers (for the clauses of having their place in parliaments, and enjoying the other rights and privileges of marquesses in those few that occur in the elder time of it, are not always in the same words) is become to be but the same with that *g* of an earl, the word *marchio* being but put in the place of *comes*, and the annuity or creation-money being forty Marks, which was antiently sometimes more, sometimes less. But the form of a marquis's coronet, and the rest of the habit used at the investiture, makes them different enough; as you may see in this shape.

XXXI. The title of viscount (of whose original, before, in *France* especially) which is between that of earl and baron, and is but the self-same word which signifies our sheriff, turned into a dignity began with us, under *b Henry* the sixth. He, in his eighteenth year in parliament, thus created *John* lord *Beaumont* viscount *Beaumont*.

*H*enicus &c. archiepiscopis, episcopis, abbatibus, prioribus, ducibus, comitibus, baronibus, justiciariis, vicecomitibus, praepositis, ballivis, ministris & aliis fidelibus suis, ad quos &c. salutem. Sciatis, quod cum majestatem nostram decere conspiciamus, ut illos qui se nobis exhibent obsequiosi famulatu continuo, in hiis maxime quae de nostra mera praerogativa & libertatis gratia procedunt, praecipuis honoribus attollamus, praesertim quos parentum praerogativarum nobilitavit memoria & propriarum virtutum merita clara evidenter condecorant, ut praemiata virtus roboretur intrinsecus ac multos alliciat ad actus virtuosos; hinc est quod nos considerantes generis nobilitatem carissimi consanguinei nostri *Johannis* domini de *Beaumont*, & servicia quae progenitoribus nostris tui parentes fideliter impenderunt, ac ea quae gratissima nobis ipse obsequia laudabiliter a nostrae aetatis auspiciis nuncusque indies impendit, uti ea continuare desiderat in futurum, & eo nobis accommodiora efficere quo celsiore fulgeat praerogativa honoris, de gratia nostra speciali, in praesenti parlamento nostro, praefato *Johanni* domino

a Cart. 21 Rich. II. memb. 14. n. 23.

b Ibid. m. 12. n. 18.

c Rot. parl. 21 Rich. II. memb. 9.

d 21 Rich. II.

cap. 16. *e* Rot. parl. 4 Hen. IV. m. 18. art. 18.

f Cart. 15 Ed. IV. m. 13.

g See before pag. 695, 696.

h Pat. 18 Hen. VI. part. 2. m. 21.

de Beaumont consanguineo nostro, ac haeredibus masculis de corpore suo exeuntibus nomen *vicecomitis de Beaumont* imponimus, ac ipsum *insignis vicecomitis de Beaumont* realiter investimus, locumque in parliamentis, consiliis, & aliis congregationibus nostris, super omnes barones regni nostri assignavimus eidem; cui ut magis conveniat & decoretur in ipso status vicecomitis praedicti motu & mera liberalitate nostris dedimus & concessimus pro nobis & haeredibus nostris, quantum in nobis est, praefato *Johanni* ac haeredibus suis una cum nomine insignis & loco praedictis, viginti marcas percipiendas annuatim sibi & haeredibus suis masculis de corpore suo exeuntibus, de firmis, exitibus, proficuis & commoditatibus comitatus *Lincolniae*, per manus vicecomitis ejusdem comitatus pro tempore existentis ad terminos Paschae & Sancti *Michaelis* per aequales portiones; habendum & tenendum sibi & haeredibus suis praedictis, nomen, insignia, locum & viginti marcas praedicta imperpetuum, eo quod expressa mentio de aliis donis & concessionibus eidem *Johanni* per nos ante haec tempora factis nec de valore eorundem juxta formam statuti inde editi & provisi in praesentibus minime facta existit, non obstante. In cujus &c. Teste rege apud *Reding* xii die *Februarii*.

Per breve de privato sigillo.

What was understood by the *insignia vicecomitis de Beaumont* mentioned here in the clause of investiture, may be doubtful. Of the old ensigns or *insignia* of a viscount in *France*, see before pag. 575. But, it seems, because they are iterated in the *habendum* that they were the arms of the viscounty of *Beaumont in France*. Of the gift of the feudal viscounty it self in *France*, to him, soon after, see before pag. 576. And it is to be observed, that about five years after this creation, he had other letters patents (before any other viscount made in *England*) of a more express designation of the place or precedence belonging to his dignity. After a short recital of the first grant, *de uberiori gratia* (says the king) *concessimus eidem vicecomiti & haeredibus suis masculis*, vicecomitibus *Beaumont*, *sedem & locum ante & supra omnes vicecomites fiendos, & creandos, & ante & supra haeredes & filios omnium comitum, ac sedem honorem immediate & proxime comitibus dicti regni Angliae in singulis parliamentis consiliis & aliis locis tam in praesentia nostra quam haeredum nostrorum & alibi, eo quod expressa mentio &c.* The date is in *Westminster* xii Martii, in the xxiii year of the king; and the warrant is expressed by, *per breve de privato sigillo & de data praedicta auctoritate parliamenti*, which last words divers patents (of that age, and of some that follow) have in the expression of their warrants, by reason of the statute of 18 *Hen. VI. cap. 1.* by which it was enacted that letters patents shall be dated the same day wherein the warrant for them is received, as to this day from that time and act,

the law hath continued. Divers viscounts have been since created, and the usual form at this day, after the preamble, is in this manner.

*S*ciatis igitur quod &c. praedictum *A.* in vicecomitem *N.* creximus, praefecimus, constituimus & creavimus, ipsumque *A.* in vicecomitem *N.* erigimus, praeficimus & creamus per praesentes, eidemque *A.* nomen, statum, gradum, stilum, dignitatem, titulum & honorem vicecomitis *N.* imposuimus, dedimus, & praebuimus, ac per praesentes imponimus, damus & praebemus, habendum, tenendum & gaudendum eadem nomen, statum, gradum, stilum, dignitatem, titulum, & honorem vicecomitis *N.* praedictum cum omnibus & singulis praeheminentis, honoribus, caeterisque privilegiis nominis, statui, gradui, stilo, honori, titulo, & dignitati vicecomitis pertinentibus seu spectantibus, praefato *A.* & haeredibus masculis de corpore suo exeuntibus imperpetuum, volentes & per praesentes concedentes pro nobis, haeredibus & successoribus nostris, quod praedictus *A.* & haeredes sui masculi praedicti nomen, stilum, gradum, dignitatem, statum, titulum & honorem vicecomitis *N.* praedicti successive gerant & habeant, & eorum quilibet gerat & habeat. Et per nomen vicecomitis *N.* successive vocitentur & nuncupentur, & eorum quilibet vocitetur & nuncupetur. Et quod idem *A.* & haeredes sui masculi praedicti successive ut vicecomites *N.* teneantur, tractentur & reputentur, & eorum quilibet tractetur, teneatur & reputetur, habeantque teneant & possideant, dictus *A.* & haeredes sui masculi praedicti & eorum quilibet habeat, teneat & possideat successive, sedem, locum, & vocem in parliamentis & publicis comitiis atque consiliis nostris haeredum & successorum nostrorum infra regnum nostrum *Angliae* inter alios vicecomites & ante omnes barones, ut vicecomites *N.* Necnon dictus *A.* & haeredes sui masculi praedicti gaudeant & utantur & eorum quilibet gaudeat & utatur, per nomen vicecomitis *N.* omnibus & singulis juribus, privilegiis, praeheminentis & immunitatibus statui vicecomitis in omnibus rite & de jure pertinentibus, quibus caeteri vicecomites dicti regni nostri *Angliae* ante haec tempora melius, honorificentius, quietius, & liberius usi sunt & gavis, seu in praesenti gaudent & utuntur, & quoniam aucta status & dignitatis celsitudine necessario crescunt sumptus & accedunt onera grandiora, ut praedictus *A.* & haeredes masculi sui praedicti melius, decentius & honorificentius statum, honorem, & dignitatem praedictam vicecomitis *N.* ac onera ipsi *A.* & haeredibus suis masculis praedictis incumbantia manutenere & supportare valeant, & quilibet eorum ea manutenere & supportare valeat, ideo de uberiori gratia nostra, dedimus & concessimus, ac per praesentes pro nobis, haeredibus & successoribus nostris damus & concedimus eidem *A.* & haeredibus masculis de corpore suo exeuntibus feodum sive annualem redditum tresdecem librarum sex solidorum & octo denariorum legalis monetae *Angliae*, ha-

bendum & percipiendum annuatim dictum feodum five annualem redditum tresdecem librarum sex solidorum & octo denariorum eidem A. & haeredibus suis masculis de corpore suo exeuntibus, de exitibus, proficuis, & revencionibus magnae & parvae custumae, & subsidiiis nostris nobis concessis five debitis, seu imposterum nobis haeredibus seu successoribus nostris concedendis five debendis provenientibus, crescentibus, five emergendis infra portum civitatis nostrae L. per manus customariorum, five collectorum nostrorum haeredum & successorum nostrorum, custumarum & subsidiorum nostrorum haeredum & successorum nostrorum ibidem pro tempore existentium ad festa Paschae & Sancti Michaelis archangeli per aequales portiones. Volumus etiam &c. abique fine in hanaprio &c. Eo quod expressa mentio &c. In cujus &c. Teste &c.

The figure and habit of a viscount created is thus.

The forms of creations hitherto shewed are either for life, or to the heirs or heirs males of the body begotten of the persons created only. Others are sometimes with remainders over after the estate tail ended, to other persons likewise in tail, whereof you have examples in *Rot. pat. 2 Caroli R. part. 5. num. 12. & num. 14.*

XXXII. Having thus severally gone through such titles of honour as are parliamentary with us, we shall conclude them with a short corollary touching two particulars that concern all of them together.

The names of honour that are common to all of them, and the habits proper to their dignities. They are all comprehended under the name of *magnates*, or *les grandes, proceres, domini, lords*, (antiently *blapousses* and *louerds*) *seigneurs, pares regni*, or *peers of the realm*. Neither need more to be said of any of those comprehensive names, but only of peers. The occurrence of that title, with reference to the lords of parliament, is frequent, both in our stories^k, and laws^l, and the *jus paritatis* is thence mentioned in the parliament^m rolls. And much might be added concerning the nature and extent of the title of peers, and the trial of them, which we purposely decline here, and only note a strange mistaking of a *French* writer of this time, that says the peers of *England* had their beginning from an imitation of that state (which may be true enough) but that the number of them was but five only. *Est a noter* (so are hisⁿ words) *que les roys mesme d'Angleterre avoient leurs pairs a l'imitation de ceux de France, mais a nombre de cinque seulement que n'estoit compaignie suffisant pour juger en dernier ressort, & de la vie des grands*. And to justify this, he cites a passage out of *Froissart*, who speaking^o of the coronation of king *Henry* the fourth, says that the king came into the hall (at *Westminster*) to dinner, & fut la premier table du roy, la seconde des cinque

pers d'Angleterre, la tierce des villains de Londres. But the collection from this of *Froissart* was too rash. Neither is so much as any sign of either the number of five or of any other established number of peers with us in *England*. Nor can I believe that *Froissart* being so conversant both with the *English* court and customs (especially such as had relation to the lords in whose frequent acquaintance he lived here) could be any way guilty of the fancy of such an error. And for the *cinque pers* spoken of in his history; though I cannot judge of it by any written copy of him, (for I have none by me) yet I am forward to think it is mispublished in him for *cinquant pers*, which denoted not an established, but an accidental number only of the time. That his copies are very corrupt in names and number, appears almost in every leaf of him, and an abbreviation, or a small slip of the pen, might cause such a mistaking. Now for *cinquante pers*, or fifty peers, which he might mean, fate at the second table; thus. He says expressly, that the two archbishops and seventeen bishops (which is one bishop more than we find summoned to that parliament; for it was in parliament time) fate at the king's table, so that none of them altered any number of any other table. Neither doth he speak of any other table at which the temporal earls and barons fate (for of the abbots and priors here, nothing appears) unless they were placed at the second, where they might well sit under the name of the fifty peers in common language, because in truth the number of them that were summoned was in the end of *Richard* the second (as we see in his last^p parliament) just fifty. And they were in the first parliament of *Henry* the fourth (when his coronation was) so near the same number (for they^q were forty seven) and almost all the same persons, that it were no absurdity to think that the name of the fifty peers fixed on the temporal barons in the last of *Richard* the second (which without doubt was talked of enough to settle special names and numbers upon the particulars of it) was become a note rather than a just number of the temporal baronage, and was so used by *Froissart*, that wrote in the court-language of his time. It is not more strange that fifty, being the famous number of them, should be attributed in a familiar expression to the body of them, when they were fewer than fifty, than that the number of five out of a vulgar account should to this day legally express seven as it doth in the parliament writ, directed to the lord warden of the *cinque ports*, to cause two barons to be *de quolibet praedictorum portuum*; there being in truth seven of them. And seven also return barons upon the precepts that issue upon that writ. Other examples might be offered for the like acceptance sometimes of a received number, for that which in truth and strictly is more or less. I confess, we may be

^k Videtis M. Paris an. 1208. ubi de Willielmo de Breosa & pag. 357. ed. London. in literis Innoc. PP. III. & pag. 450. & 13. 14. &c. ^l Mag. chart. cap. 14. 15 Ed. III. c. 2. & passim in recentioribus legibus quae judicia capitalia inducunt.

^m 11 Rich. II. part. 1. m. 2. art. 34. & de nomine Paris baronibus spiritualibus tributo, videtis 3 Ed. III. fol. 186. & Pasch. 3 Ed. III. coram rege rot. 9. rex 22 Ed. III. fol. 9. Pl. 28. 13 Ed. III. tit. inquest. 43. & challenge 115. &c. Godwin. in vit. Rich. Scoop. archiepisc. Ebor. & regis. ms. Courtenay archiepisc. Cant. fol. 174.

ⁿ Antiquitez & recherches de la France liv. 2. traite 5. par A. D. C. ^o Hist. volum. 4. cap. 114. ^p Dorf. clauf. 23 Rich. II. m. 3. ^q Dorf. clauf. 1 Hen. IV.

deceived in correcting *Froissart*. But however; it is plain that there can be no question, but that the number of peers of the realm with us was never confined to any more certainty, than the lords of the parliament are.

We add here, that the eldest sons of dukes in *England*, in their father's life-time, are stiled by the titles of their fathers earldoms, and those of marquesses and earls, by their fathers baronies or viscounties, and are so called lords. As also the other sons of dukes and marquesses are called lords, *my lord* being prefixed to their christian or surnames. But they have these titles by the courtesy only, or *curialitas*, of the kingdom. And by reason of their fathers being in so eminent dignity, they enjoy these stiles. But they are not indeed barons of the kingdom, nor peers or *proceres regni*, because they have not, by that right only, place and voice in parliament. See also *Rot. pat.* 4 *Jacobi part.* 1, 1 *Junii*, the title of *dominus* or *lord* only given by patent, which example I think is singular.

For the habits of their dignities; as they are used in the later times, they are before expressed in the several figures of them. I add only out of *Froissart* for the former times, the habits of the dukes, earls, and barons, at the coronation of *Henry* the fourth. *Les ducs, comtes, & barons*, (saith^r he) *avoient longues houpelandes d'escarlate & longs manteaux fourrez de menuver & grans chaperons aussi fourrez en celle maniere. Et tous les ducs, & les comtes avoient trois honnables de menuver assises sur l'espaule senestre d'un quartier de long, ou environ; & les barons n'en avoient que deux; & tous autres chevaliers, & escuyers avoient houpelandes fourrez de livree & estoient d'escarlate.*

XXXIII. The name of knight (which is most commonly with us restrained to an honorary title, and is the next that follows in our division of the honours of *England*) together with *miles* and *chivaler*, being but the same with *eques*, have been and are, as all or most of other words that make the titles of honour, of divers significations. *Knight*, or *cnicht* or *cnicht* (as it was written in the *Saxon*) signified as *puer*, *servus*, or an attendant. Whence it is that in the *Saxon* evangelists *leopnung cnichtar*, or *learning knights*, expresses the disciples. (¹⁶⁷) Sometimes it denoted the sex, or as much as *masculus*,^c as also *deinstknecht* is a man servant to this day with the *Dutch*, and *knecht* or *knaecht* alone also, which is variously joined to other words as *stat-knecht*, *voet-knecht*, and the like. And *knecht-schap* was antiently^u *servitudo* with them, as *knechtweise serviliter*. Sometimes a soldier is denoted by it, as in the *Saxon* interpretation of that in *Saint Paul*, *non sine causa portat miles gladium suum*,^x *ne bȳpȳe ne ȳe cnȳht butan in cȳngin his ȳrpe*, *the knight beareth not his sword in vain*. And in that sense also it is to this day in the *Dutch*. So in the preface to

the seven penitential psalms in *Henry* the eighth's primer, *Uriah* is called *king David's knight* and *servant*. Tenants by knight's service were likewise called *knights*, *milites*, or *chivalers*, because their service was military, which most especially occurs in the antient rolls of escuages and aids, and in the pipe-rolls where escuages and aids are accounted for, and in our writs^v of attain. We have *rodknights* also in *Bracton*,^z for tenants that held by the service of riding from one manor to another with their lord, which was also adjudged by some under *Henry* the third, to be such^a a knight service that it drew ward and marriage to it also. The chief gentlemen likewise or freeholders of every country (in regard they usually held by knights service) are stiled *chivalers* in the statute of *Westminster*^b the first, touching the choice of coroners. And it is before noted, how the addition of *chivaler* is given in the later age to every temporal baron of parliament (whose dignity is not above a baron) in his writ of summons, whether he be a dubbed knight, or solemnly created into the order of knighthood, or *miles gladio cinctus* (as the phrase is) or not. But the title of itself is then honorary only when it is had by such creation; and it endures for life only.

That honorary title of knight is with us of four kinds. The first is knights bachelors,^c or of the spur, which are indifferently stiled knights, *milites*, and *chivalers*, and sometimes *milites simplices*, for distinction from bannerets in the elder times. The second is, knights bannerets. The third, knights of the garter. And the fourth, knights of the bath. For so we rank them here for method's sake, however their places in precedence be far otherwise. And because the name of knight, in the rest of them, came doubtless from the use of it in expressing those of the spur, or bachelors, who are much antienter than any memory of the rest, and are fittest first to be known, therefore only they had the first place here. For the original and name of our knights bachelors; that which is before in the knights of the empire, and of bachelers in *France*, is applicable enough to these of our nation, wherein the mention of them occurs often during the time of the *Saxons*, that (as we must remember here) came out of *Germany*, and those northern or northwestern countries adjacent to it. And what is in this dignity in the fabulous stories of king *Arthur*, we omit here as justly as we do what we have of the like nature in the old *romants* that often mention knights of this island. But in the *Saxon* times (if we may believe, as I think we may, that *miles* denoted this dignity) we have frequent mention of it. In a charter of *Kenulph* king of *Mercia*, of the year *mccevi*. to the abbey of *Crowland*, he confirms to the abbey *eleemosynam quam Algarus miles*,^d *etiam dudum meus dedit illis in Bafon & in Repingale*. The same knight is mentioned in a confirmation of king

^a Vol. 4. chap. 114. ^b Videſis Camden, in reliquiis, pag. 237. ^c Not. ad Edmer. pag. 170. ^d Corn. Kilianus in etymolog. Teutonic. linguae.

^e Africus de Novo Test. pag. 47. ^f See Brook, tit. droit de recto 18. ^g De acquiren. Dom. lib. 2. cap. 35.

^h Eod. lib. cap. 16. §. 6. ⁱ West. 1. cap. 10. ^j Sic dicti 3 Ed. IV. cap. 5. ^k Ingulph. pag. 854. & 857. ed. Fr.

Witlaf to the same monastery; item *donum* (saith he) *Algari militis, scilicet Northland in Anglon.* Item *donum ejusdem Algari militis in Repingale*, and there is added in this of *Witlaf*, item *donum Oswini militis in Draitona*. And they are again, with some others, remembered with that title still in confirmations of some of the succeeding Saxon kings inserted by *Ingulpbus*, who mentions also *Fernotus miles & dominus de Bosworth*, and *Edmerus miles & dominus de Holbroke*, under king *Hardecnut*. And it occurs in the additions of divers that subscribe also to charters in those ages, as in a charter of *Canutus* to the monastery of *Badrices* (that is Saint Edmundsbury in Suffolk) after the subscriptions of the Queen, and some by the name of *duces*, follow. ✠ *Ego* ⁱ *Oslaus miles*, ✠ *Ego Thored miles*. ✠ *Ego Thurkel miles*. ✠ *Ego Thrim miles*. ✠ *Ego Brother miles*. ✠ *Ego Alfwinnus miles*. And then divers abbots. And other such more are found in the memories of those time, although some learned men have doubted that in the old transcripts and exemplifications (for the most we have in this kind are such; at least, if not forged) *miles* might be often ignorantly made from *m.* that stood frequently for *minister*, touching which addition enough already, where we speak of thanes. But some have *minister* for an addition, where others follow with *miles*, as in a ^e charter of privileges to the abbey of *Westminster*, by *Edward* the Confessor; after the king, queen, bishop, abbots, some other of the clergy, and earls follow. ✠ *Ego Eszarus minister*. ✠ *Ego Boudius minister*. ✠ *Ego Radulphus minister*. ✠ *Ego Robertus minister*. ✠ *Ego Agelnodus minister*. ✠ *Ego Wigodus minister*. ✠ *Ego Adnothus minister*. ✠ *Ego Wulfrius miles*. ✠ *Ego Siwardus miles*. ✠ *Ego Colo miles*, ✠ *Ego Wulfwardus miles*. The mention of these knights is so obvious in the following times, that we need not further observe it. Only for the name of *bachelors*, we add here somewhat out of *Matthew Paris*: *Ipsa quoque tempore* (saith he, speaking of the thirty third year of *Henry* the third) *basiludium commissum est apud Brakele, ubi multi de militibus universitatis regni qui se volunt bachelarios appellari, sunt contriti*. And *Willielmus de Valentia male tractavit Willielmum de Odingseles militem strenuum qui bachelariis annumerabatur*.

But that which is chiefly considerable here, touching this dignity of knights bachelors, we divide into three heads. The particulars that concern the creation of them, respects of honour, both in the antient and the later time, given them, and the degradation of them. The first we subdivide into the persons that have given and received it, the ceremonies and other circumstances used at the giving it, and our feu-

dal laws by which compellable supplies, or pecuniary aids are to be given, when another is to be created into it. And of these severally.

The persons that gave this dignity antiently were sometimes subjects (and these gave it without any superior authority granted to them) as well as sovereigns. Though long since it hath grown to be clear, that none gives it with us but the sovereign, or some other by his command or ^h commission. But in the antienter times both ecclesiastical and lay subjects created knights. *Brand* abbot of Saint Edmundsbury created one *Heward*, and other gentlemen of Saxon blood, under the ⁱ conqueror. *Lanfrank* also archbishop of *Canterbury*, made king *William* the second a knight in his father's life-time. *Accessit & favori ejus* (saith *William* of ^k *Malmesbury* speaking of his coming to the crown) *maximum rerum momentum archiepiscopus Lanfrancus, eo quod eum nutrierat & militem fecerat*. To this making of knights by ecclesiastical persons, belongs that of the parliament of the third of *Henry* the first, *ne* ^l *abbates faciant milites*, whereby the creation of them was denied to abbots, as also that in a *lieger* ^m of the abbey of *Battel*; *Terras censuales non donet (abbas) ad feudum. Nec milites nisi in sacra veste faciat*. Where it seems it was supposed abbots might make them, as it is likewise in that of king *Henry* the first to the abbey of *Reading*, which was confirmed also by other kings afterward, without any notice taken of that act of the third of *Henry* the first. *Terras* ⁿ *censuales non donet abbas ad feudum. Nec faciat milites nisi in sacra veste Christi, in quo parvulos suscipere modeste caveat. Maturos autem seu discretos tam clericos quam laicos provide suscipiat*. For lay-subjects; the earl of ^o *Glocester* knighted his brother, and ^p *Simon* of *Montfort* earl of *Leicester* made *Gilbert* of *Clare* a knight. *John* duke of *Bedford* also ^q gave the same dignity to king *Henry* the sixth. And ^r *Edward* earl of *Somerset* to king *Edward* the sixth. But supreme princes might even take it as well from their own subjects as from ^s other princes. Other examples occur anon in the relation of the ceremonies used in knighting. And hereof see some pleas in ⁸ *Ed. III.* in the exchequer, *ex parte rememoratoris regis*. And it is observable, that in some old writs of summons, or *distingas*, for taking the order of knighthood, a distinction is made; that some should come *ad recipiendum a nobis* (from the king) *arma militaria*; and others, being not tenants to the king, should ^t be summoned or distrained *ad se milites faciendos, or ad arma suscipienda*. And in ^u one I observe, that those of the second kind are to be distrained, *quod tunc sint ibi parati ad recipiendum arma de quibuscunque voluerint*. In which form the writs went to all the sheriffs of *England*.

^e Idem ibid. pag. 906.

^f Inspec. 4 Ed. III. cart. membr. 58.

^g Anglia tract. 1. sect. 1. §. 16.

^h Idem de gest. pontiff. lib. 1. sub Anselmo.

ⁱ Videtis Br. tit. addition 17.

^j Et Edmerus novorum, lib. 3. p. 68.

^k Ingulphus pag. 901. ed. Fr.

^l De gest. reg. lib. 4.

^m Ms. in tabulario augmenta-

ⁿ tionum coronat.

^o Pat. 1 H. IV. part. 2. m. 26. n. 10. & Trin. 2 Ed. III. rot. 106. coram rege Berk. & alibi notavimus ad Ed-

^p mer. pag. 207.

^q Camd. Brit. pag. 126.

^r Matth. Paris pag. 1320. edit. London. five 1350.

^s Sow annal. pag. 604.

^t Idem pag. 1000.

^u Vide rot. clauf. 44 H. III.

^v Idem de gest. pontiff. lib. 1. sub Anselmo.

^w Pat. 1 H. IV. part. 2. m. 26. n. 10. & Trin. 2 Ed. III. rot. 106. coram rege Berk. & alibi notavimus ad Ed-

^x mer. pag. 207.

^y Camd. Brit. pag. 126.

^z Matth. Paris pag. 1320. edit. London. five 1350.

^{aa} Sow annal. pag. 604.

^{ab} Idem pag. 1000.

^{ac} Vide rot. clauf. 44 H. III.

^{ad} Idem pag. 1000.

^{ae} Vide rot. clauf. 44 H. III.

^{af} Idem pag. 1000.

^{ag} Vide rot. clauf. 44 H. III.

^{ah} Idem pag. 1000.

^{ai} Vide rot. clauf. 44 H. III.

^{aj} Idem pag. 1000.

^{ak} Vide rot. clauf. 44 H. III.

^{al} Apud Clem. Reyner in apostolat. Benedictinorum in

^{am} Ingulphus pag. 901. ed. Fr.

^{an} De gest. reg. lib. 4.

^{ao} Ms. in tabulario augmenta-

^{ap} tionum coronat.

^{aq} Pat. 1 H. IV. part. 2. m. 26. n. 10. & Trin. 2 Ed. III. rot. 106. coram rege Berk. & alibi notavimus ad Ed-

^{ar} mer. pag. 207.

^{as} Camd. Brit. pag. 126.

^{at} Matth. Paris pag. 1320. edit. London. five 1350.

^{au} Sow annal. pag. 604.

^{av} Idem pag. 1000.

^{aw} Vide rot. clauf. 44 H. III.

^{ax} Idem pag. 1000.

^{ay} Vide rot. clauf. 44 H. III.

^{az} Idem pag. 1000.

The persons that received it were also, not only of the laity, but also sometimes of the clergy. Among those of the laity, kings themselves as well as inferior lords (as is before touched) took it for an accession of honour to them. And clergymen of eminency that were willing to leave their spiritual cures, and betake themselves to secular employment, upon resignation of their benefices, were sometimes honoured with it, and, it seems, that resignation was to be exacted of them before they might receive it. So I conceive from that of *Matthew Paris*, speaking of king *Henry* the third's knighting of *Sir John de Gatesden*, a clergyman. *Die natali* (saith * he) *Johannem de Gatedene clericum, & multis ditatum beneficiis, sed omnibus ante expectatum resignatis, quia sic oportuit, baltheo cinxit militari*. But touching the persons also that have given and taken it, more will occur in the ceremonies of it.

XXXIV. The ceremonies and circumstances at the giving this dignity, in the elder times, were of two kinds especially, which we may call courtly and sacred. The courtly were the feasts held at the creation, giving of robes, arms, spurs, and the like, whence as in the stories of other nations, so in those of ours *armis militariibus donare*, or *cingulo militari*, and such more phrases are the same with *militem facere*, or to make a knight. The sacred, are the holy devotions, and what else was used in the church at or before the receiving of the dignity, whence also *consecrare militem*, was to make a knight. Those of the first kind are various in the memories that preserve them, and yet they were rarely or never without the girding with a sword, until in the later ages, wherein only the stroke on the neck or shoulder, according to the use at this day, hath most commonly supplied it. The antientest mention of any courtly ceremonies used at the creation of a knight with us, is in that of king *Alfred* his knighting his grandchild *Æthelstan*, that was afterward king. *Nam & avus ejus Alfredus* (saith *William* of *Malmesbury*) *prosperum ei regnum olim imprecatus fuerat, videns & gratiose complexus speciei spectatae puerum & gestum elegantiam; quem etiam praemature militem fecerat, donatum chlamyde coccinea, gemmato baltheo, ense Saxónico cum vagina aurea*. Here was a purple robe and a sword given. In the stories of the following times, often mention is of making knights. But other ceremonies of the court, besides feasts and the giving of arms, or the girding on the sword (and those generally expressed) are but seldom remembered. Therefore we collect here for the most part, according to the course of time, such testimonies as shew them somewhat more in particular with the preparations for them, and other circumstances belonging to them. *Henry* the first purposing before the marriage of his daughter *Maud* the empress to *Geoffry* of *Anjou*, to knight him at *Roan* in *MCXXVII*, on *Whitsunday* following, desires the earl, his fa-

ther, *ut filium suum nudum militem* (or being but yet a young gentleman, or *damosseau*, or *domicellus*, as they called such) *ad ipsam imminuentem Pentecostem, Rotomagum honorifice mitteret, ut ibidem cum coaequaevis suis arma suscepturus regalibus gaudiis interesset*. This young gentleman, with five more of like quality, attended by *xxv* esquires, were bathed according to the antient custom (saith *du Favin*, of *France*; but I cannot doubt but that *Henry* the first used the customs that were agreeable to those of his own country also, though he gave the order in his dutchy of *Normandy*) and then coming in robes proper for the ceremony, received the dignity by having horse and arms given them. *Illucescente die altera, balneorum usus, uti tyrocinii suscipiendi consuetudo expostulat* (saith *John* the monk of *Maire-monstier*, as *du Favin* cites him) *paratus est. Comperit rex a cubiculariis quod Andegavensis, & qui cum eo venerant, ascendissent de lavacro, jussit eos ad se vocari*. Post corporis ablutioem ascendens de balneorum lavacro comitis Andegavorum generosa proles *Goffredus*, bysso retorta ad carnem induitur, cyclade auro texta supervestitur, chlamide conchylii & muricis sanguine tincta tegitur, caligis holosericeis calceatur, pedes ejus sotularibus in superficie leunculos aureos habentibus muniuntur. Ejus vero consodales qui cum eo militiae suscipiendae munus expectabant, universi bysso & purpura innovantur. Talibus itaque, ut praetaxatum est, ornamentis decoratus regius gener quasi flos lilii candens roseo superfus rubore, cum illo suo nobili collocataneo comitatu de secreto thalami processit in publicum. Adducti sunt equi, allata sunt arma, distribuntur singulis prout opuserat. And there were put on *Geoffry d'Anjou*, harness of double mail, and gilt spurs. A shield of the lions of *Anjou* was hung on his neck. A rich helmet put on his head. And an armed spear put in his hand. And last of all, a sword was brought him out of the king's store, *ab antiquo* (saith the monk) *ibidem signatus, in quo fabricando fabrorum superlativus Galannus multa opera & studio desudavit*. Thus armed, he mounted a *Spanish* horse that was also at first given him by the king, and the feast that belonged to this receiving the dignity (or the *festum tyrocinii* as the like is often called in the monks) continued seven days, being honoured with *tornies* and *masques*.

And when *Thomas Sturmy* was to receive this dignity from king *John*, the sheriff of *Hampshire* was commanded to deliver him robes, bed, sheets, and other such furniture, against the time of his creation, as they are reckoned up in this writ^a sent to that purpose.

Johannes &c. vicēcomiti *Southampton* salutem. Praecipimus tibi quod facias habere *Thomae Sturmy* valletto nostro unam robam de scarletto cum quadam penula de byssis, & aliam robam de viridi vel burnetta & unum sellam, & unum par loianorum & capam ad plumam & unam culciram & unum par lintheorum

^a 29 Hen. III. Mat. Paris pag. 882. ed. Lond.

^y De gest. reg. lib. 2. cap. 6.

^z 27 Hen. I. apud Johannem Monach.

Majoris mon. ff. ut exscriptit Faynus in theat. honor. lib. 3. pag. 577.

^a Claus. 6 reg. Joh. dor. rot. 20.

quando ipse fiet miles. Et quod in hiis posueris, computabitur tibi ad scaccarium. Teste meipso apud *Bristol* XVIII die *Julii* anno regni nostri sexto.

*Per Bartholomeum clericum
de camera.*

King Henry the third knighted *Alexander* the third, king of *Scotland*, on Christmas-day at *Tork*, in MCCLII; and twenty more with him *baltheo* donavit militari (saith *Matthew Paris*) qui omnes vestibus preciosis & excogitatis, sicut in tam celebri tyrocinio deuit, ornabantur. This was the day before the marriage of the lady *Margaret*, daughter of *Henry* the third, to him, when the earl marshal demanded as his fee the king of *Scotland*'s horse and furniture. Jus suum & avitam sibi consuetudinem instanter fieri flagitavit (says the same author) scilicet palefridum regis *Scotiae*, quem pro jure vendicavit sibi stratum exhiberi non pro precio vel concupiscentia, sed pro antiqua consuetudine in casibus consimilibus, ne in suo tempore pro sua desidia deperiret. But the king of *Scotland* answered that he conceived no such fee could be due to the earl marshal from him, because at his own pleasure he might have received his knighthood, either from any other catholick prince, or from any of his own subjects being gentlemen; if at least nobiles may be taken in the relation of it for gentlemen, and not for noblemen, as according to the *English* phrase it often is. The words are. Quia si placeret ei, potuit ipsa arma suscipere a quovis principe catholico, vel ab aliquo nobilium suorum. Sed ob reverentiam & honorem tanti principis domini & vicini sui, maluit ab ipso rege *Angliae* cingulo donari militari quam aliquo alio. Thereupon by the king's command the matter was at peace. A year or two after this of the king of *Scotland*, *Henry* the third^d being in *France*, sent his mandate in a writ close to *Bonacius Lombard* master of his wardrobe, quod *Gauchero de Gomartin* consanguineo *Petri de Subundia*, qui arma militaria suscipiet in instante festo omnium sanctorum se tertio, honorifice inveniat necessaria ad militiam suam & sociorum suorum, & eidem *Gauchero* habere faciat unum pannum sericum ad aurum ad opus suum proprium. This was dated the eighteenth of *October* in castris ante *Benages*, for a preparation of the knighting of that *Gauchero de Gomartin*, and the two other on *All-Hallows* day following. It is not expressed here what the particulars of the provision were. Only a piece of cloth of gold is especially appointed for *Gomartin*. But it seems the rest were of the like nature of those in that before cited of king *John*, in the behalf of *Sturmy*. For whatsoever was to be provided out of the wardrobe in that age, was known generally by the name of ea quae ad militiam pertinent, without further expression, as appears both here by the words of the writ, as also by others that were a few

days before sent to the same *Bonacius* in the behalf of *Reginald de la Cokere*, and *Bertrand de Cressy*. Mandatum est *Bonacio Lombardo* (so is the entry) quod *Reginaldo de la Cokere*, qui in festo sancti *Edwardi* suscepturus est arma militaria habere faciat ea quae ad militiam suam pertinent, sicut aliis novis militibus consuevit inveniri. The like entry is for the other. And both shew also a certain use in those times of preparation, for such as were to be knighted out of the wardrobe, by those words, sicut aliis novis militibus consuevit inveniri. And under *Edward* the first, all things praeter equitaturam, or their horse and arms, were given them out of the wardrobe, as we see in the relation taken out of *Matthew of Westminster*, where also some particulars of their honorary habits are expressed with their vigils, of which something is in that of *Henry* the first's knighting of *Geoffry of Anjou*, and more presently is shewed out of *Upton*, and in the sacred ceremonies belonging antiently to their creation. Ad augmentandum professionem suam (so are the words of *Matthew*^f of *Westminster*) in *Scotiam*, fecit rex per *Angliam* publice proclamari, ut quotquot tenerentur fieri milites successione paterna, & qui haberent unde militarent, adessent apud *Westmonasterium* in festo *Pentecostes*,^e admissuri singuli omnem ornatum militarem, praeter equitaturam, de regia garderoba. Confluentibus itaque trecentis juvenibus, filiis comitum, baronum, & militum, distribuebantur purpura, byssus, syndones, cyclades auro textae, effluentissime, prout cuique competebat. Et quia palatium regale, etsi amplum, tamen ad tot occurrentium turbam angustum fuit, apud novum Templum *Londini* succissis lignis pomiferis, prostratis muris, erexerunt papilionem & tentoria, quo tyrones deauratis vestibus se singuli decorarent. Ipsa quoque nocte in templo praedicti tyrones, quotquot poterat capere locus ille, suas vigilias faciebant. Sed princeps *Walliae*, praecepto regis patris sui, cum praecessis tyronibus fecit vigilias suas in ecclesia *Westmonasteriensis*. Ibi autem tantum clangor tubarum & tibicinum; & exaltatio vocum prae gaudio extiterat clamantium, quod conventus de choro ad chorum, non audiretur jubilatio. Die autem crastina cinxit rex filium suum *baltheo* militari in palatio suo, & dedit ei ducatum *Aquitaniae*. Princeps ergo factus miles perrexit in ecclesiam *Westmonasteriensem* ut consocios suos militari gloria pariter venustaret. Porro tanta erat ibi pressura gentium ante magnum altare, quod duo milites morentur, quam plures syncopizarent, etiam cum quilibet ad minus tres milites ad se ducendum & tuendum haberet. Princeps autem propter turbam comprimentem, non secus, sed super magnum altare divisa turba, per dextrarios bellicosos, socios suos cinxit. The same is thus briefly remembered in the old annals of *Ireland*; but about a hundred knights more are added. *Edwardus rex Angliae fecit Edwardum filium suum militem*

^b 35 Hen. III. M. Paris pag. 1103. ed. Lond. quem videbis item pag. 1000. & Camd. Brit. pag. 126.

cap. 46.

^d Claus. Vasc. 37 H. III. m. 17.

^e Claus. Vasc. 37 H. III. m. 18. vide Camd. in Reliquiis pag. 232. & ibi claus.

^f Anno 1306. seu 34 Ed. I.

^g Accepturi.

^h Vide stat. West. 1.

in festo Pentecostes London. In quo festo neopolizati (as the print is, but the Ms. that I have used, hath *neophytizati*) *fuerunt milites circa cccc* & *Edwardus de Caernarvan novus miles fecit sexaginta milites de praedictis* & *tenuit festum London apud novum Templum.* The putting on of spurs is also remembered in that of knighting Sir Richard Rodney under king Edward the second. Anno MCCXXVI dominus Richardus de Rodney factus fuit miles (saith an old^h author) *apud Keynsham die translationis sancti Thomae Martyris in praesentia domini Almarici comitis de Pembroch, qui cinxit eum gladio, & dominus Mauricius de Berkley super pedem dextrum posuit unum calcar, & dominus Bartholomaeus de Badilefinere posuit aliud super pedem sinistrum in aula, & hoc facto recessit cum honore.*

It is commonly supposed that their spurs were gilt, as also it appears by the words anon cited here out of Nicholas Upton, that lived and wrote under Henry the sixth. And it was therefore supposed that William Murle, the rich brewer of *Dunstable*, would have been knighted in the field by Sir John Oldcastle (saith *Walsingham*) because he brought with him two hories trapped with gold, and a pair of gilt spurs hid in his bosom; whence, as in other nations which is before noted, they have the names of equites aurati. But I understand not how that agrees with an act of parliament under Henry the fifth; that whosoeverⁱ gilds any sheaths or metal but silver, and the ornaments of the church, or layeth any silver upon any metal but only upon knights spurs, and the apparel which belongeth to a baron, should forfeit to the king ten times the worth of the thing gilt, and be one year imprisoned.

That of judge *Thirning* also which he spake on the bench under Henry the fourth, is observable here: *I have heard* (saith^k he) *that a lord had issue a son, and carried him to the font, and presently, as soon as he was baptized, took his sword, and made him a knight.* Here we see the use of the sword only (which it seems was by a gentle stroke with it) in the creation. The stroke was in that sort to be given with a sword delivered to the king, or his lieutenant, that had power of creation, by him that was to be created, and that with both hands, and the name of knight also to be imposed at the giving it. And an ancient knight to be assigned that should put on the spurs on the new knight, and perform a vigil with him the next night. At least this form was to be used when the dignity was given before a siege or in the field, as *Upton* tells us. *Creantur milites* (saith he, where he shews us also some office of the heralds at the creation) *per aliquem principem, seu capitaneum in villarum obsidionibus, castrorum, & fortalitorum & hoc diversis modis.* Si forte *assaltus fiat, seu faciendus fuerit, tunc creandus in militem portabit gladium in manibus, de principali capitaneo ipsius obsidionis ut creet militem petens; qui quidem princeps seu prin-*

*cipalis capitaneus capiet gladium praedictum de manibus ordinandi, & ipsum percutiet am-babus manibus dictum gladium tenendo, cum eodem nominando eum militem sic percussus; qui quidem princeps tenetur alium veteranum militem eidem assignare, qui sibi calcaria deaurata praeparabit, & secum transibit ad assaltum faciendum. Item idem modus observatur in creatione militum ad mineram. Sed veteranus miles, cui novus tiro committitur, vigilet nocte sequente cum suo tyrone in minera supradicta. Item creantur milites in bellis campestribus & talibus conflictibus ubi idem modus creationis observatur, qui in assaltibus exercetur. In honestate tamen est, quod rex baraldorum, si ibidem fuerit, & in ejus absentia alius baraldus major in exercitu prius congregat creandos in milites, & eos coram principe illius exercitus^m requiretque eundem ut productos in milites creet, qui quidem princeps ut praedictum est accipiet gladium de manibus alicujus creandorum, & faciet ut superius dictum est. Fiant etiam milites in alio modo, videlicet cum aliquis notabilis princeps conquerere nititur terras sui inimici cum justo titulo; rex baraldorum si praesens fuerit, & in ejus absentia alius ut praedixi colliget creandos si quos noverit, & eos ducet ad capitaneum principem in primo ingressu in terram, supra praedictam, eundem requirens ut est dictum, qui quidem princeps per omnia faciet sicut primo ut prius dixi. Idem modus creationis observatur in aliquo passagio periculoso alicujus ripariae, seu pontis ubi transitur de una terra in aliam, sive de una marchia in aliam. Isti praedicti modi habentur in usu, & si plures modos inveneris honestos, eos audacter observa. But in the later ages, only a gentle stroke with the sword on him which is to be knighted kneeling, with the words *soiez chivaler au nom de Dieu*, and *avancez chivaler*, or the like spoken or manifested by the king, or those that have authority from him, are the usual ceremonies.*

The known title of SIR prefixed, with us, to the christian name in compellations, and expressions of knights so created, is very antient; and in *Edward* the first's time was so much taken to be parcel of their names, as that the *English Jews* in their *Hebrew* instruments or starrs (as they are called obviously in the records, from שטר she-tar, which they pronounced then starrs) retained it, and wrote it שיר Sir, without interpreting it by any word of their own, as they do, who in *Latin* express it by *dominus*. An example of it in the names of Sir Adam of Stratton, and of Sir Stephen Cheinduit, is in this starr or release of *Chajim*, a Jew of *Lincoln*; which, out of the records of the exchequer, I represent here.

אני החתום מטה מורה הודאה גמורה שפטרתי ומחלתי לשם אדאם משטרמונת וליורשו ולבאים מחמו כל מן ותביעה וענין שיש לי ושכול לדון לעל המלון משטרמורה הקטנה בפלך מודלשצע שהאדם הנקי מחוק ואת לדעת בקרקע ובאחו ובמרה

^h Apud Glover *Somerjet de nobilitate civili*. Anno 1414. IV. fol. 7. & vide Br. tit. addition 17.

ⁱ 8 Hen. V. cap. 3 & rot. parl. 8 Hen. V. petit. com. 7. De re militari Ms. lib. 1. cap. 3.

^m Deest forte ducet.

^k 7 Hen.

וכאנא עם כל האפרטניצין שמקדס הוה לש' אשטייבנא מקנינט בכן שלא אני ולא יורשי ולא שום אחר בעכו' ויכולן לחבוע או לערער על שיר אדאם הנק' או על יורשו או על הבאים מכחו על המלון הנק' עם כל האפרטניצין הנק' בעלילת שום חוב שהוה אשטייבנא הנק' הייב לו או לשום יורדי אחר קברא'ת עולם עד סופו ואם שום יורדי כעולם יבא לתבוע או לערער על ש' אדאם הנק' או על היורשי או על הבאים מחמרו על המלון משטנברא הנק' עם האפור טניצין הנק' בעלילת שום חוב שהוה אשטייבנא מענינט הנק' הייב לו או לשום יורדי אחר בעולם מראת עולם עד סופו עלי ועל יורשי בתראי להנינם ולהצילם ולפטרם נגד כל הסעור ים וזוית חתמתי חים דניקול

In English.

I, whose name is under signed, do fully and clearly acknowledge that I have released and acquitted to Sir Adam of Stratton, and to his heirs, and to the issue of his body, all kind of demands and suits which I have or may have against the lordship of Stanmere the less, in the county of Middlesex, which the said Adam is known to possess in land, in meadow, in pasture, and in ponds, with all the appurtenances, which heretofore was Sir Stephen of Cheynduit's, so that neither I my self, nor my heirs, nor any other in my behalf, may make any demand, or sue against the said Sir Adam, or his heirs, or any issue of his body, for the said lordship, with all the appurtenances aforesaid, by reason of any debt due to me from the said Sir Stephen, or to any Jew, from the beginning of the world to the end thereof. And if any Jew whatsoever shall go about to make any demand, or commence any suit against the aforesaid Sir Adam, or against his heirs, or against the issue of his body, for the lordship of Stanmere aforesaid, with the appurtenances aforesaid, by reason of any debt due to me from the said Sir Stephen of Cheynduit, or to any other Jew whatsoever, from the beginning of the world to the end thereof, it shall lie on me and my heirs after me, to defend them, save them harmless, and discharge them against all suits. And this I have signed; Chajim of Nicol.

In the original (which is kept in the office of receipt of the exchequer) there is thus much noted only for the contents of it.

Istud starrum fecit Hagm. fil. magistri de London, domino Adae de Stratona, de acquietantia de Stanmere, de omnibus debitis in quibus S. de Cheynduit ei tenebatur, ita quod idem Judaeus, nec haeredes sui nihil exigere possint de praedicto Ada nec de haeredibus suis ratione terrae de Stanmere de praedictis debitis.

Chajim is the same name that is Hagm. here. The guttural letter *cheth* bred the variety of sound and writing. Nicol is the same with Lincoln, as it occurs often in our year books also, which stands well enough with his being called in the Latin *filius magistri de London*. For as Lincoln shewed his place of usual abode, so the other expression his parentage. And ma-

gister de London, I conceive, denotes some great rabbi that was so singularly eminent in the London synagogues of that time, that he was sufficiently known to the christians by the name of the rabbi of London. It might well be the famous rabbi Abraham Abenezra, who lived in London till near the end of the Jewish state here, which was about the middle of king Edward the first. He wrote in London his epistle concerning the sabbath, and there were in London at that time with him קרוב לשני אלפים בחים כלם אנשים כמלי חכמה about MM masters of families of them, all men of note, for wisdom and wealth, as the words are of rabbi Salomon ben Wurga. The word ש', written with omission of the last letter, as their course is when it is so known a word that they cannot doubt but every reader will supply the defect, is for ש' that is, Sir, as נק' for נק', that is, the said. The signing is in the hand of the releasor, that is, those words and this I have signed &c. Our law word *appertinentiis* is also retained in it, in Hebrew characters. The rest is of the stile of their lawyers; and for the most part in the same orthography. But the words *aiatur* and *aiayrim*, and *lairair*, which signify suits, and to sue in their rabbinical language, should every of them rather have had inserted here another radical *resh*, thus, *airair*, *airairim*, and *lairair*. For so is the use among their lawyers, though perhaps it was in that age, in speech, and such instruments omitted, by reason that indeed it makes the word rougher in pronunciation. And I have by me a deed of exchange, somewhat antienter than this starr, made of certain lands in Empingham, by Thomas capellanus de Empingham, (as appears by the seal; being only stiled Thomas capellanus in the deed) to one Ralf of Normanville, in lieu of other lands there, to the seal of which is fixed with a label a little starr, with the word עירוריים for suits, written as it should be. For the rarity of that kind with us, I add it here also.

ידוע לכל שצאל מנורמאביל פטור הוא ויורשו ממני ומירשי מכל חובות ומכל עירערים שפזלם מבראית העולם עד קדישם שנחט' למלך ממנני הסלך הנרי שו' ומר' שרודיוני שרודיוני נכתו וחתמתי ממו בן דוד

Know all men, that the chaplain of Normanvil stands discharged, both he and his heirs, from me and my heirs, of all debts, and of all suits which have had their ground or occasion from the beginning of the world to the coronation day of the fifteenth year of the king that is ordained over us, king Henry, whom God preserve; and what I have determined, I have written and signed; Mamio ben David.

This Thomas the chaplain had been, I conceive, before known by the name of the chaplain of Normanville, and that then he had this

release from *Ben David*, which was annexed to the deed as part of the assurance of the other party. I confess, I have not observed the word *וְכֹל* any where to denote any such thing as a chaplain. But because it might be deduced well enough from *זֶלָא* or *זֶלָרָה* which is *to pray*, and so made a word fit to denote a chaplain, and for that also the circumstance of persons seem to persuade that it is meant for one, I have adventured to turn it so. But these things by the way.

This dignity of knighthood occurs also sometimes, as if given by patent. In a roll, at the chappel of the rolls, titled *diversi tractatus amicitiarum tempore Jacobi regis*, it appears that Sir *Jacob Van Einden*, a Low-country man, and governor of the town and castle of *Wourdane*, was knighted by king *James*, and an addition, in testimony of it, given to his arms. And this is there expressed by letters patents made to him, dated 27 *Decembris* 1610, as if the very patent had created him. For, after a little preamble of his merit, follow these words; *Propterea tenore praesentium equestris ordinis sive equitis aurati gradu, titulo, & dignitate illum donamus; quod ut omnibus clarum innotescat*, the addition is made to his coat. *Donamus* might seem to imply that the great seal thus made a knight. But in the same roll others have patents, as testimonies of their knight-hoods with the word *donavimus*, as supposing the giving of the knighthood past before the patent. So there, *Cornelius Hoffman*, a Low-country man. And so likewise in one kind of form, four of the same nation, that in 1610, were sent ambassadors from the states of the *United Provinces*, had several letters patents of testimony of it, that is, *Albert Joakim* one of the deputies for the states of *Zeland*, *Hely Van Olden Barnevelt*, doctor of law, syndick and counsellor of *Rotterdam*, *John Berke*, doctor of law, and syndick and counsellor of *Dort*, and *Albert de Veer*, doctor of law, and syndick of *Amsterdam*. The words were after a little preamble of the merit of him that was knighted;

Propterea equestris ordinis sive equitis aurati gradu, titulo, & dignitate illum donavimus. Quod ut omnibus clarius innotescat, utque ipse equitis aurati numero & loco (ita ut aequum est) ubique locorum habeatur & censeatur, hinc jam literis palam testamur & profiteamur, adeoque etiam id ipsum hoc diplomate nostro ratum & confirmatum esse volumus praenominatum N. equestris ordinis dignitatem, honorem & titulum, ultro a nobis donatum atque insignitum esse. Ideoque illud ab omnibus, tum regiae nostrae dignitati atque autoritati, tum ipsius meritis debere, ut eo numero & loco apud populares suos & usquam alibi perinde habeatur, ac nos quovis alios praestantes viros simili honore ab aliis regibus ornatos & condecoratos sumus habituri. Teste, &c.

XXXV. The sacred ceremonies antiently used, in giving this dignity with us, are first mentioned by *Ingulphus* that lived at the conquest. He speaks of them as being in use with the

English Saxons before his time. And shews us, that a solemn confession, a vigil in the church, receiving the sacrament after an offering of the sword on the altar and redemption of it, and the bishops, abbots, monks, or other priests, putting it on him that was to be created, concurred at the making of a knight. And how likely it is that the most, or some of these were also then used when the creations were by kings or other lay persons, I leave to better judgment. Touching which also observe what is anon cited out of *Johannes Sarisburiensis*, *Petrus Blesensis*, and others, for the succeeding ages, besides that before cited out of *Florilegus*, and *John* the monk of *Maire-Monsier*. The relation in *Ingulphus* is upon the occasion of *Brand*, abbot of *St. Edmondsbury*, his knight-ing of *Heward* an *English* gentleman of *Lincolnshire*, and lord of *Brunne* in that county, together with some other such as upon his return out of *Flanders* (where he had lived in exile by judgment against him under *Edward* the Confessor) he had gotten to be of his part for the recovery of his inheritance, which the conqueror had, after the death of his father, given away to one of his *Normans*, and also for the rescue of his mother from the sufferings in the common calamity, which by that foreign nation was then brought upon most of the *English*. *Audiens in Flandria terram Angliae* (saith he speaking of this *Heward*) *alienigenis subjugari, suamque paternam haereditatem, mortuo patre suo Leofrico, munere regio, cui-dam Normanno donari, matremque viduam* (her name was *Ediva*; and she was descended lineally from *Oslac* a great ealdorman in the time of king *Edgar*) *multis injuriis & maximis molestiis affligi, tactus dignissimo dolore, cum Thurfida sua uxore* (she was a gentlewoman of *Flanders*, whom he had married there) *Angliam advolat: collectaque cognatorum non contemnenda manu super matris injuriatores gladio fulminat, & de sua haereditate procul fugat & eliminat. Considerans etiam tunc fortissimis viris se praefectum, nonnullisque militibus praepositum, ac nec dum militari more balteo legitime se accinctum: assumptis secum de sua cohorte paucissimis simul legitime militiae cum eo tyronibus consecrandis, patrum suum tunc abbatem Burgi nomine Brandum, virum valde religiosum, & (ut audivi ex praedeceessore meo domino Wulketulo abbate, aliisque multis) pauperum elemosynis valde deditum, & omnibus virtutibus adornatum, adiit, & se fieri legitimum militem, praemissa primitus omnium peccatorum confessione, & eorum percepta absolutione, instantissime supplicavit. Quoniam Anglorum erat consuetudo, quod, qui militiae legitime consecrandus esset, vespere praecedente diem suae consecrationis, ad episcopum, vel abbatem, vel monachum, vel sacerdotem aliquem contritus, & compunctus de omnibus suis peccatis confessionem faceret, & absolutus, orationibus, & devotionibus, & afflictionibus deditus in ecclesia pernoctaret: in crastino quoque missam auditurus, gladium super altare offerret, & post evangelium sacer-*

M m m m m

dos

dos benedictum gladium collo militis cum benedictione imponeret: & communicatus ad eandem missam sacris Christi mysteriis denuo miles legitimus permaneret.

But this form of receiving of knighthood was much disliked by the Normans, saith the same author. *Hanc consecrandi militis consuetudinem Normanni abominantes* (so are his words) *non militem legitimum talem tenebant, sed socordem equitem & quiritem degenerem reputabant.* And he says also that they changed it. *Non tantum hunc morem, sed alias etiam consuetudines* (saith he) *inmutabant.* But whatsoever he meant by their changing of it; the offering of the sword at the altar, and other of these sacred ceremonies, continued in the following ages. For that of offering the sword at the altar; *Johannes Sarisburiensis* having shewed the nature of the ancient military oath in the empire, and that they who took it were bound to the defence of the church, goes on with, *Licet autem sint qui sibi non teneri videntur ecclesiae ex sacramento solenni, quia jam ex consuetudine plerumque non praestatur, nullus tamen est qui sacramento tacito vel expresso ecclesiae non teneatur obnoxius. Et forte ideo cessat solennitas juramenti, quia ad hoc omnes invitatur & coarctatur necessitas officii & sinceritas fidei.* Unde jam inolevit consuetudo solennis, ut ea ipsa die qua quisque militari cingulo decoratur, ecclesiam solenniter adeat, gladioque super altare posito & oblato, quasi celebri professione facta, seipsum obsequio altaris devoteat & gladii, id est, officii sui jugem Deo spondeat famulatum, neque necesse est ut hoc profiteatur verbo, cum legitima professio militiae facto ejus videatur inserta. ⁽²⁶⁸⁾ Quis enim in homine illiterato, & qui magis arma debeat nosse quam literas, professionem exigit literarum (some copies have *literatam*.) Nam & ipsi episcopi & abbates professione scripta vel dicta ad fidem & obedientiam videntur artari. Et revera artantur. Quia Deo mentiri non licet. Sane aut plus est aut non minus, quod milites faciunt, qui non scudulam sed gladium offerunt, & quasi primitias officii redimunt ab altari unde ecclesiae in perpetuum famulantur. Nam sicut eis pro ecclesia plurimum, ita contra ecclesiam licet nihil. And in another place, sunt autem plurimi qui malorum clamore operum quando militiae consecrandi cingulum altari obtulerunt, videntur protestari se eo tunc animo accessisse ut altari, & ministris ejus, sed & Deo qui ibi colitur, bellum denuntiarent. Facilius crediderim hos malitiae execratos quam ad legitimam militiam consecratos. So *Petrus Blesensis*, that lived in the same age with *Sarisburiensis* under Henry the second; *Hodie tyrones enses suos recipiunt de altari: ut profiteantur se filios ecclesiae atque ad honorem sacerdotii, ad tuitionem pauperum, ad vindictam malefactorum & patriae liberationem gladium accepisse.* Porro res in contrarium versa est. Nam ex quo hodie militari cingulo decorantur, statim insurgunt in Christos Domini, & deserviunt in patrimonium

crucifixi. This offering of the sword, with some of the rest of the sacred circumstances belonging to it, was, it seems, used also in the vigil held at *Westminster* and the *Temple*, under *Edward* the first, before the dignity received, in the example before shewed out of *Florilegus*, and in that of *Geoffrey d'Anjou*; the vigils being (as I think) but a general name to express the sacred ceremonies which preceded the knighting done by the king, and his son prince *Edward*. To these we add that of the *benedictio ensis novi militis*, which is commonly found in the manual (or common prayer book of the elder ages) among other rites of the *English* church before the reformation.

Benedictio ensis novi militis fiat hoc modo, genuflectente ipso milite coram altari.

Primo dicat sacerdos sine nota, Dominus vobiscum, & oremus.

DEUS cunctorum in te sperantium protector, adesto supplicationibus nostris, & concede huic famulo tuo qui sincero corde gladio se primo praecingere nititur militari: ut in omnibus galea tuae virtutis sit protectus: & sicut *David* & *Judith*, contra gentis suae hostes fortitudinis potentiam & victoriam tribuisti, ita tuo auxilio munitus contra hostium suorum facinoriam victor ubique existat, & ad sanctae ecclesiae tutelam proficiat. Per Christum Dominum nostrum. Amen.

Alia oratio, cum oremus.

DEUS qui trinos gradus hostium post lapsum *Adae* toto orbe terrarum constituisti, quo plebs tua fidelis immunis ab omni imperu nequitiae secura & quieta permaneret: adesto supplicationibus nostris, & hunc enfem quem invocatione tui sanctissimi nominis benedictione bene dicere dignare: ut famulus tuus cui eum, te largiente, concedimus ac acingimus, sic eo utatur (*hic succingat sacerdos militem cum ense*) quatenus & hostes ecclesiae insidiantes reprimat, & seipsum ab omni inimico tua protectione potenter defendat, per Christum.

Deinde aspergat sacerdos militem ense cinctum aqua benedicta, & recedat miles in nomine Domini. ⁽²⁶⁹⁾

XXXVI. For our feudal laws, by which supplies or pecuniary aid is to be given, when another is to be created into it; there is frequent mention in our law books of *reasonable aide a faire fite chivaler*; that is, certain sums of money levied on the tenant to make the son and heir apparent of the lord a knight: For the ceremonies, preparations, and other circumstances, were such antiently at the receiving of the dignity (as is before shewed) that such an aid might have place enough in the charge of it. Before the time of *Edward* the first, the king and

^o De nugis curial. lib. 6. cap. 10.
ecclesiae Argentinenfis fol. 279. a.

^p Ibid. cap. 15.

^q Epist. 94.

^r Manual Antwerp. ed. fol. 49. videbis agenda

every other lord, at least that was a knight himself (for the author of the book called *Breton*, that wrote about the time of *Edward* the first, says, that it is a good bar to the avowry for this kind of aid, to plead that the father himself is not a knight) might have levied this aid by distress according to such an arbitrary moderation as stood with the quantity of the charge so to be expended, and with the estate of the tenant, *ne nimis inde gravari videretur vel sum contementum amittere*, as the words are in the book attributed to *Glanville*. And such respect to the lord and tenant was to be had in the moderation, *ut auxilium accipienti cederet ad commodum, & danti ad honorem*, saith *Bracton*. Thence it was then called *rationabile auxilium*, or *such an aid as was to be levied with reason*. As in the grand charter of king *John*, where it is remembered together with the aids for ransom, and for marriage of the eldest daughter. *Nos non concedemus de caetero alicui quod capiat auxilium de liberis hominibus suis, nisi ad corpus suum redimendum, & ad faciendum primogenitum filium suum militem, & ad primogenitam filiam suam semel maritandam*. And there is mention enough in our published law books, of these two aids, for knighting the son, and marrying the daughter, but none as far as I remember, for ransom of the lord, though (by the way) in the ms. years* of *Edward* the first, a release made by one *Robert* of *Bentham* to the abbot of *Ford*, of all services, *forpris fuit real & reasonable aide, pur luy raindre hors de prison ou ces heires quel heure qu'ils fussent enprisonnes*, is pleaded in bar to an avowry. But in the third year of *Edward* the first, it was enacted by^y parliament, that the value of the aid to be levied should be no longer arbitrary, but that every tenant of a whole knight's fee should pay to his lord twenty shillings, and but the same sum should be levied of a tenant that held lands in socage of the yearly value of twenty pound, and so *pro rata*; but that none of it should be levied until the son were of the age of fifteen years, which was reputed a fit time enough to receive the dignity, or *l'aage pur ordre de chevalier prendre*, as the author of *Breton*^z calls it. That statute which thus altered the ancient law that allowed this aid to be arbitrary, according to the dignity of the lord and estate of the tenant, extended only to such lords as were common persons, and the king was, notwithstanding it, at the former liberty, and levied aids of this nature afterward^a by a higher rate. Therefore was the statute of the five and twentieth of *Edward* the third^b made, by which also the king's case, for this kind of aid, was made in the like condition with the case of a common person. But our books say^c that lands held as ancient demesne, and by grand or petit serjeanty, are not subject to the payment of this aid, though

in truth grand serjeanty, be also knight service, and petit serjeanty, socage. And of the particulars which concern the creation of knights hitherto.

XXXVII. Beside the dignity that necessarily accompanies their solemn profession of arms, and that which was due to them naturally, as they had relation to the field, they have had also with us peculiar respects and notes of honour, which occur in the legal proceedings of the kingdom. The grand assize in a writ of right, which is as a jury, and the highest tryal by oath that is in the law, is to be chosen by knights, and out of knights, if they can be found. And none^d else of less quality should either chuse or be chosen, unless there be not knights enough to fill the assize. Upon an essoin also *de malo lecti*, the ancient law was, that four knights were^e to be sent to take view of the defendant. And it was not sufficient if the sheriff sent esquires, or any that were of less dignity. *Milites enim esse debent* (saith *Bracton*) *propter verba brevis*. For the writ to sheriff is expressly to send *quatuor milites*, which are there taken, it seems, for honorary knights. Upon trials also in actions where a baron of parliament is plaintiff or defendant, the baron may justly challenge the pannel, & unless one knight at least be returned of the jury; which, though it be a privilege to the baron, yet is as an honour to the order of knighthood, seeing no such trial can be legally had (the baron making his challenge) if one knight at least be not among the judges of the fact. That also in *Breton* is here observable touching the punishment of a ruffian that had, without cause, struck a knight, by the loss of his hand wherewith he struck him, though I remember not an example of it in practice. *Ascuns trespasses* (saith the author^f of that book, speaking in the person of king *Edward* the first) *sont nequedent plus punissables, sicome trespass fait en temps de pees a chevaliers ou a autres gentz honorables par ribaus, & par autres viles personnes, en quel cas nous volons que si ribaud soit atteint a la suite de chescun chevalier que il eit feru per felonie sans desert de chevalier, que le ribaud perd son poin dont il trespassa*. But in the pipe rolls of *Henry* the second, one is fined at a hundred pounds for striking a knight (neither doth the roll mention him by his own name but only by the title of *miles*) and another at forty marks, because he was present when the knight was compelled to swear that he would not complain of the injury done to him. *Hakelinus filius Joscii Quatrebusches* (saith the^h roll) *debet c libras ut sit quietus de hoc quod militem percussit*. *Moyfes de Cantabrigia reddit computum de xl marcis, quod confessus est se interfuisse ubi miles ille coactus fuit affidare quod non ostenderet injuri-*

^f Chap. des prises des avers.

^e Lib. 9. cap. 8.

^d Lib. 2. de acquiren. Dom. cap. 16. §. 8.

^x 21 Ed. I. fol. 66. in

codice meo. Et videtur si placet Chopin de Domino, lib. 3. tit. 4. §. 10.

^y West. 1. c. 36.

^z Chap. des prises des avers.

^a Rot. parl. 20 Ed. III. art. 45. alibi item.

^b 25 Ed. III. cap. 11. rot. parl. 25 Ed. III. art. 29.

^c 11 Hen. IV. fol. 31.

^d 10 Hen. VI. tit. avowry 267. & tit. ancient demesne 11.

^e 39 Ed. III. fol. 2. 7 Hen. IV. fol. 3. & 20. Br. tit. droit de resto 18.

^f 15 Ed. IV. fol. 1.

^g Bracton. lib. de essoinis &c. 3. Hen. III. tit. essoin. 186. 5 H. III. eod. tit. 187. 14 H. III. eod. tit. 190. Reg. orig. fol. 8. & 9.

^h 13 Ed. III. tit. challenge 115. & enquest 43.

ⁱ 8 Eliz. Dier. fol. 246. 14 Eliz. fol. 318. & Plow. Comm.

^j Rot. mag. 29 H. II. London. placita Ra-

nulphi de Glanvilla.

riam sibi illatam. In thesauro xx marcae, & debet xx marcas.

By the ancient law also, it seems, the *equitatura* or horse and armour of a knight that lived in a noble reputation, and was ever ready to do the king and country service, was privileged from executions of *fieri facias*, or *levari facias*, although they were to levy the king's debts; and if the knight were in the king's pay and dishonourably absented himself when his aid was required, all that he had was then subject to the execution, saving one horse which was to be left him *propter dignitatem militiae*. And though he so lived that he were neither ready for any publick employment of arms, nor had dishonourably declined any such employment, yet such of his horses as were for his ordinary use were spared, and what else he had was subject to the execution. For thus it is delivered in that dialogue of the exchequer¹ attributed to *Gervasius Tilburienfis*, written about the time of king *John*. *Nota quod si debitor ille qui solvendo non est* (saith the author, speaking of levying the king's debts by process out of the exchequer) *militiae cingulum semel obtinuerit, venditis caeteris, equus tamen ei non quilibet, sed usus usualium reservabitur, ne, qui dignitate factus est eques, pedes cogatur incedere. Quod si miles ejusmodi fuerit quem juvat armorum decor, & juvat usus eorum, & qui meritis exigentibus debeat inter strenuos computari, tota sui corporis armatura cum equis ad id necessariis a venditoribus erit liberima, ut cum oportuerit ad regis & regni negotia armis & equis instructus possit assumi. Sed si hic idem cui lex in parte pepercit, audita necessitate regis vel regni delitescens se absentaverit, vel ad hoc vocatus non venerit, si tamen non propriis sed regis stipendiis militet & evidenter absentiam suam non excusaverit, nec ab his venditores temperabunt, sed solo contentus equo (propter dignitatem militiae)² sibi relicto, juri communi vivat obnoxius.* (270) And thus the equitature of a knight, was as his *contenementum*, or *countenance*³, as it was antiently called.

Some learned men have conceived also that the right of using a seal⁴ was peculiar to them that had received this knighthood. They take their conjecture from the relation of the sealing of a charter of confirmation, made by *Richard* earl of *Chester* under *Henry* the first, and the countess dowager, the lady *Ermentrudis*, his mother, to the abbey of *Abingdon*. It occurs in an old leiger⁵ of the abbey, where it is said that the earl sealed it with his mother's seal, and the reason is given; *Nondum enim militari balteo cinctus est*. And it is added too, that *literae quaelibet ab eo directae materno sigillo includebantur*. (271) But whatever the meaning of this may be, we are sure by the express words of *Ingulphus*, that the use of seals were promiscuous⁶ in *England*, to persons of all qualities that would

use them, and that immediately after the coming of the *Normans*; although it be true, that divers charters were for a little time made only with the subscriptions of names and crosses according to the *Saxon* manner. And so much also was a known law under *Henry* the second (which was not long after the time of *Henry* the first) if at least we may believe that book attributed to *Randal de Glanville*. *Si debitor* (we read⁷ there) *cartam suam non advocat, duobus modis eidem contraire vel contradicere creditor potest, scilicet ipsum sigillum in curia recognoscendum suum esse, &c.* Other testimonies⁸ are to that purpose. And it is plain by⁹ *Bracton*, that they were frequent, and one of the essential parts of every deed according to the known law, not only of this, but of his time, which was under *Henry* the third. Although yet some learned men being mispersuaded by a report of *Sir Richard Lucy*, chief justice of *England* under *Henry* the second, his finding fault with a man of mean condition for using a seal, and some other as slight testimonies, have thought¹⁰ that the use of them was not lawful for all men, until about king *Edward* the third. It may be that fault might be justly found with one for using another's seal, (which was held as a forgery) or for using a seal of arms proper only with us to gentlemen at least, who had sometimes their great seals and less seals, the one being, it seems, their seals of arms, the other some device without a scutcheon. But, that any person might not have used a seal in the nature of the less seal of gentlemen, I think, can never be proved. (272) For that of the great seal and the less seal, observe by the way this testimony of *John de Burgo* under *Henry* the third. *Johannes de Burgo* (saith an entry on a roll of¹¹ that time) *cognovit quod apposuit parvum sigillum suum cuidam scripto quod fecit decano & capitulo de Lichefeud, de confirmatione & quieto clameo de advocacione de Herdel, & apponet sigillum suum magnum praedito scripto circa tertiam septimanam post Pascham*. And that of the earl of *Chester*, is only a note of a monk after the entry of the charter of confirmation, and no part of the body of the charter. And in regard that I see no other testimony of antient time to second it with the like; I should think that the monk was either grossly deceived in his reason of *nondum enim militari balteo cinctus est*, or else that he meant only that the earl was a child within age; and that by reason of his minority, wardship, and the tuition of his mother (who joineth with him in the charter) her seal was only used to it, as also to his letters. For it was done (as appears in the leiger) in *May*, the sixth year of *Henry* the first, or *MCVI*, that is, about three years after the death of earl *Hugh*, father to this earl *Richard*, when by all likelihood he was yet under age. And he was *adhuc juvenis* (as *Ordericus*¹² twice calls him) when he was drowned, passing over from

¹ Ms. in recepta scaccarii. Videtis Westm. 2. cap. 43. & regist. orig. fol. 100. & forte hinc discendum quid equitatura illic denotet.

² Vide mag. chart. cap. 14.

³ Ms.

⁴ Stat. 2. 1 Ed. III. cap. 4. ubi male continence, in nonnullis editionibus legitur.

⁵ Ingulph. pag. 901. ed. Fr.

⁶ Glanvil. lib. 10. cap. 12.

⁷ Videtis 33 Hen. II. apud

Coke in praefat. ad lib. 3.

⁸ De acquirend. dom. cap. 16. §. 12.

⁹ Videtis Lambard. in itin. Cantii. p. 405.

¹⁰ Hill. 44

Hen. III. placit. apud Westm. Rot. 28 Staff. in arce Lond.

¹¹ Eccles. hist. lib. 4. pag. 522. b. & lib. 12. pag. 870. a.

Normandy,

Normandy, together with prince *William*, son and heir apparent to king *Henry* the first, and divers other, in *MCXCIX*, at which time he had been about thirty-five years old at least, if he had been one and twenty, or of full age when he sealed this confirmation at *Abingdon*. Now the law being, that whosoever was knighted, though before the age of one and twenty, was of full age in regard of any wardship, or any other tuition, as presently is further shewed; and the use being, that such great lords were knighted often before they were of that age, and so had their full age supplied, and that perhaps also, while they were in ward; they used only their guardian's seals, lest the authority of a seal of their own, before they had discretion to use it, might have done them prejudice in point of honour at least, if not in matter of profit; It is likely enough that the monk here took the phrase of *being not knighted*, to serve for *being not of full age*. So that the having of a seal was not peculiar to this order of knighthood, but to such only, of what condition soever, as were of full age. But I leave it to better judgments. That having a supply of full age by receiving the dignity, is also special honour given to knighthood. For though it be regularly supposed in law, that no heir of a tenant by knight's service is able to do the service himself, until he be of the age of one and twenty years, which is the reason and ground of all our wardships of male heirs, yet if any such be knighted, either in the tenant's life-time, or after his death, of what age soever he be, he is adjudged for that purpose only as of full age, and the wardship of his body in the one case is prevented by it, and, in the other, ends with it. For in regard that, by the laws of honour, he is adjudged to be a knight: therefore, by the common-law he is likewise adjudged so able to do the service, as that his body needs no further tuition of a guardian over it. And so is the law at this day ^a in practice, and also it was so anciently, as we see by the grand charters, both of king *John*, and *Henry* the third, where we read, *Si hæres infra ætatem fiat miles, nihilominus terra remaneat in custodia dominorum suorum usque ad ætatem XXI annorum*, that is, though the wardship of the body be ended, in the case of knighting after the death of the tenant by receiving the order of knighthood, yet the land continues to the lords, until the full age of the heir, as if he had not received the order. From this reason was it that, under *Henry* the second, some are fined for procuring others than the king (for so I understand it, according to the law of that time) to knight any of the king's wards, whereby he lost his wardship of the body. *Avellina de Ria* (saith ^y a pipe-roll of *Henry* the second) *reddidit compositum de c, & XLVI lib. & XIII solid. & IV denar. quod fecit filium suum militem, qui erat in custodia regis. In thesauro xx marcae & debet CLIII lib. & VI sol. & VIII denar.* Others like are.

XXXVIII. The degradation of a knight is also a respect of honour to knighthood in general, although by reason of the ceremonies used in it; and because it is the contrary of creation, we have made it a several member of our division concerning knights. For as, by the canon-law, when, for any grievous offence, a clergy-man is to be delivered over to secular punishment, lest the rest of his dignity should suffer also in the infamy which he suffers in his punishment, he is first to be degraded from the dignity he hath in the greater or less orders; as also he is to be, when his fault, punishable by the church, is so great, that it were too scandalous to the rest of his dignity, if he, being condemned, should suffer the punishment, and yet remain in his degree of orders; So for the honour due to knighthood in general, some examples are, that when judgment of treason hath been to be given against one that had formerly received the order, he hath been first degraded from his knight-hood, lest so much ignominy, as accompanied the judgment for such an offence, should lie on any that were a knight when he suffered it. And some other kinds of degradation from knighthood have been exercised here in this present age, which are so known, ^z that I purposely decline further mention of them. But also, as by the canon laws, the ceremony of degradation from any degree of order is by a solemn taking away those things from the clerk wherewith he was so invested, at his taking the order from which he is to be degraded; so the ceremonies of degradation of a knight were, in ancient times, such as that the sword with which he was girt at his knighting, and the spurs that were put on him were to be publicly taken off from him, and some other solemnities were sometimes in it. When judgment was to be given against Sir *Andrew Hartley* earl of *Carlisle* under king *Edward* the second, for treason, before the court (which was held by special commission) would give that judgment, it first awarded that he should be *deceint del espee* (as the ^a record of his attainder says) *& que vous esperouns d'orres soient coupez de talours*, and then they gave the judgment of that time for treason against him, all which was the same in substance which *Thomas of Walsingham* says ^b of him, saying that he adds (as some others ^c also) that his shoes and gloves were took off in the degradation. *Quadrifario judicio* (saith he) *condemnatus est. Nempe primo degradatus est amputatis securi ad talos suos calcaribus, & sic vicissim discinctus est baltheo militari, abeatis calceis & chirothecis. Deinde tractus, suspensus & in quartas divisus est.* But in our stories, this of the degradation is variously delivered. Some say that he was led to the bar in manner of an earle (as the words are in an old history called *the fruit of times*) nobely arrayed with a sword igrude, and ihosid, and isporid. And that Sir *Anthony Lucy* (whom the author of this relation supposes to have been a

^x Jacobi. Coke part. 6. fol. 73. Plowd. comm. fol. 267. Coke, part. 8. fol. 173.

cit. archid. Pistaviensis.

^z Videfist process. & Judic. rot. parl. 18 Jacobi regis.

34. & 35.

^b 16 Ed. II. Walsingham, pag. 97. ed. Lond.

^c Avesbury apud Camd. in Br. pag. 780.

^y Rot. mag. 15 Hen. II. Norff. & Suff. plac.

^a Plac. coram rege Hill. 18 Ed. II. rot.

judge at his arraignment; but that is directly contrary to the record, where the judges are *Edmund earl of Kent, John lord Hastings*, and others, and *Sir Anthony Lucy* only as sheriff of *Cumberland*, attended them where they fate at *Carlisle*) used these words to him; *Sir Andrew*, the king dede unto you much honor, and made you erle of *Cardoil*, and thou, as a traytor to the lord the king, laddest his people of this countre, that shoud have holpe him at the battaile of *Beighland*, away by the countre of *Copeland*, and through the erledome of *Lancaster*, wherfore our lord the king was scomfited there of the *Scottis*, thorough thy tresoun and fallenes, and if thou haddest come betimes, he had bed the mairtie. And all that trefaoun thou dedest for the somme of gold and silver, that thou understeng of *James Duglasse* a *Scotte* the king's enemye. And our lord the king is will is that the orde of knighthood, by the which thou understeng all in honor and in wurshippe oppon thi body, ben all brought unto nought, and thi stat undon, that other knights of lower degree, now after thee beware, the which lord hath thee advanced heigely in divers countreies of *England*: And all now take ensample by thee, there lord afterward for to serve. Tho commanded hee a knave anon to hew of his spores of his heles, And after hee he let breke the swerd over his heed, the which the king him gaf to keepe and defende his land therwith, when he made erle of *Cardoil*. And after he lete him unclithe of his taberd, and his hood, and of his furred cotes, and of his gyrdell; and when this was done, *Sir Antony* said to him: *Andrew*, quoth he, now ert thou no knight, but thou art a knave. And then, says the same author, the judgment for treason was also given. Here it was conceived, it seems, that he was first degraded as well from his earldom, as from his knighthood, which by others is likewise expressly affirmed, that tell us the judgment was, that ^a he should be degraded from his earldom, by the taking away from him the sword he had been girded with at his creation, and likewise of his knighthood, by cutting off his spurs from his heels. Others of this otherwise. But the record is the best measure of truth here. To to this we may add that preamble of the judgment for treason given against *Sir Ralf Grey*, by the earl of *Worcester*, high constable of *England* under *Edward* the fourth; wherein the ceremonies of degradation are mentioned, though judgment of degradation were not given against him. But perhaps it may be rather conceived, that this of *Sir Ralf Grey* is meant of a knight of the bath, in regard of the ceremonies of the master cook cutting off the spurs remembered ^e in it. However, we deliver it here as we find it. *Sir Ralf Grey*, for thy treason, (says the constable of *England* before the judgment ^f given) the king had ordained that thou shouldst have had thy spurs striken off by the hard heels, by the hand of the master cook, who is here ready to do as was promised thee, at the same time that he took off thy spurs, and said to thee as

is accustomed, and thou be not true to thy sovereign lord, he shall smite off thy spurs with his knife hard by the heels: And so shewed him the master cook ready to do his office with his knife. Moreover, *Sir Ralf Grey* the king had ordained, here thou mayst see, the kings of arms, and heralds and thine own proper coat of arms, which they should tear off thy body, and so shouldst thou as well be degraded of thy worship, nobleness and arms, as of thy order of knighthood. Also here is another coat of thine arms reversed, which thou shouldst have worn on thy body, going to thy deathwards: for that belongeth to thee after the law. Notwithstanding, the disgrading of knighthood, and of thine arms and nobleness, the king pardoneh that, for thy noble grandfather, who suffered trouble for the king's most noble predecessors. And then he gave judgment on him for his treason. And for the matter of degradation of a knight, see more in *Sir William Segar's honour military and civil*, lib. 2. cap. 4.

We may justly enough add here a kind of temporary degradation or suspension of the honour (pretended at least) by a sentence of penance given by the archbishop of *Canterbury*, *John Peckham*, together with the bishop of *Salisbury* as delegates, in *MCCLXXXV*, or *13 Ed. I.* against *Sir Osbert Giffard* knight for stealing two nuns out of the abbey of *Wilton*. It was, that he should never ^g come into any nunnery more, that he should never be so much as in the presence of any nun without license of his diocesan, that he should go thrice nudus in camisia & femoralibus, in *Wilton* church (but not in the presence of the nuns) and every time fustigetur. So likewise in *Salisbury* market, and in *Sbafstbury* church. *Praeterea* (saith the sentence) insigniis militaribus interim sit privatus, nec calcaria deaurata, nec gladium, nec sellam militarem aut deauratas faleras habiturus, nec vestes coloratas, sed tantummodo in russeto cum agnibus pellibus vel ovinis, nec calciamenta nisi vaccina; nec utatur camisia postquam praedicto modo fuerit fustigatus. Et haec omnia sibi injungimus in virtute praestiti juramenti, ut taliter extra militiam agat vitam, donec per triennium steterit personaliter & integre in terra sancta, nisi infra triennium dominus rex illustris ipsum revocandum duxerit ex gratia speciali.

XXXIX. For knights bannerets; they are with us of the same nature, as those of the ancient time in *France*, saying that we have no example either of a creation of them by patent, or making the title hereditary in *England*; both which we see have, in *France*, been in practice. And though we have patents wherein the creation of them is mentioned, yet the mention is scarce of any other kind than those of giving the order of the bachelor knighthood in the honorary patents to strangers (as is before shewed) in the praeterperfect tense, or as a recital only that they have received the dignity. And the pa-

^d Apud Holinghed. hist. Angl. pag. 334.

^e Vide infra §. XLV.

^f J. Stow, in annal. pag. 693, & 694. edit. vet. in 4.

^g Re-

gift. ms. Joh. Peckham arch. Cant. fol. 119. g. Kl. Martii.

tents are made only ^h of some bounty given by the king for support of the honour it self. *Milites vexilliferi* expresse them sometimes ⁱ in our stories of the times that are elder than any passage that hath the word *banneret* in it for this dignity.

It is said with us, that ^k no knight banneret can be created but in the field, and that, when either the king is present, or at least his royal standard is displayed. But the creation is almost the self-same with that in the old *French* ceremonies, by the solemn delivery of a banner charged with the arms of him that is to be created, and the cutting of the end of the pennon or streamer to make it a square, or into the shape of a banner in case that he which is to be created, had in the field his arms on a streamer before the creation. And this as well after the battle, as before, as I remember especially at the battle by *Newark*, ^l where Sir *Gilbert Talbot*, Sir *John Chyngny*, and Sir *William Stoner* were made before the battle, and ten more after the battle by *Henry* the seventh. There is in *Froissart* a special example of Sir *John Chaundos* his being made knight banneret by *Edward* the black prince, assisted by *Don Pedro* king of *Castile*, before the battle of *Navaret*. Sir *John Chaundos* brought a banner (*la quelle*, saith he, *encores navoit nullement bonte hors de son estuy*) charged with his arms and folded up, to the prince, using these words; *Monseigneur veez cy ma banniere; je la vous baille per telle maniere qu'il vous plaise la d'envelopper & que aujourduy je la puisse lever. Car (Dieu mercy) i ay bien de quoy en terre & heretage pour tenir estate ainsi come appartient a ce*. Then the prince together with *Don Pedro* took the banner of him, and delivered it again to him displayed, with these words, *Messire Jehan, veez de cy vostre banniere, Dieu vous en laisse vostre preu faire*. Whereupon, Sir *John Chaundos* returns to his company, and with much gladness among them, his banner was advanced and born by an *English* esquire, whom *Froissart* calls *William Alery*. The antientest mention that I remember of the very name of this dignity, is in the time of *Edward* the first, in the accounpts of his wardrobe. And in other such testimonies bannerets are often mentioned. And if I be not much deceived, we have mention of some creations of them under him in our histories. When king *Edward* the first lay before *Berwick*, *exercitu praeparato in planitie* (saith *Walter* of ^m *Gisburn*) *fecit ibidem rex novos milites, Henricum scilicet de Percy cum aliis multis, quod cum vidissent marinarii nostri qui cum XXIV navibus bellicis expectabant in mari coram portu, credebant regem vel le confestim insultum facere urbi, eo quod videbant armatum exercitum & multa vexilla explicata, moxque cum fluctibus maris redundantibus & ipsum portum ingressi sunt*; and the story goes on, as in others. But that which

this author says, is, that the king made many new knights, the ceremony whereof, when they at sea perceived, they apprehended that he would presently make some charge, because they saw both the troops armed, and many banners displayed. Now it seems clear by *credebant* here, and *aestimantes*, to the same purpose, in *Thomas* ⁿ of *Walsingham*, who hath the body of the story, although not so particularly, and by the circumstances of the whole relation, that they at sea misinterpreted what they saw, by reason they apprehended the many banners displayed at the creation; for a sign of the king's present purpose of some onset.

Under these bannerets divers knights bachelors and esquires usually served; and according to the number of them, the bannerets received wages; As *domino Johanni de Segrave banneretto pro vadiis suis, domini Johannis de Sancto Johanne banneretti xi militum, & xli scutiferorum suorum a primo die Octobris, quo die equi sui fuerunt appreciati, usque tertium diem ejusdem mensis, utroque computato per tres dies, cuilibet banneretto iv solidos, cuilibet militi ii solidos, & cuilibet scutiferorum suorum per diem xii denarios &c.* which occurs in some accompts of the wardrobe of 4 *Ed. II.* And very many such occurrences are in the old accompt books of the wardrobe remaining in the exchequer; saying that it is rare that a banneret served under a banneret, as here Sir *John Seint-John* did under Sir *John Segrave*.

Of the name of banneret as it sometimes expressed a baron of parliament, enough is before ^o said. And as in that notion of it, baronet was often miswritten for it, so also in this. Neither only have the old stories *baronetti* very frequent for *banneretti*, but even in a patent passed to Sir *Ralph Fane* a knight banneret under *Edward* the sixth, he is called ^p *baronettus* for *bannerettus*.

XL. Touching knights of the order of the garter; there is so much of the ceremonies, habits, and some such more particulars belonging to the installation of them, the observance to which they are bound by their statutes, their officers, and the like, published in *Camden*, *Leland*, *Polydore*, *Segar*, *Glover*, *Favin*, *Erhardus Cellius* his installation of the duke of *Wittemberg* under king *James*, *Johannes Olers* his ^q installation of the prince *Palatine*, and the prince of *Orange* under the same king, and such more, that it may seem wholly needless to speak further of it. And if any desire to see the particulars of it allegorically expounded, he may read that old little treatise stiled *la gerreteire*, or *speculum Anglorum*, written by *Mondorius Belvaleti* a monk of *Clugny*, that was embassador here, and published lately by *Philip Bosquier*, under the title of *catechismus ordinis equitum periscelidis Anglicanae*. Yet there are two things concerning it, of both which, I

^b See rot. Vasc. 13 Ed. III. m. 13. pro Will. de la Poole, m. 1. pro Richardo de Cobham, & pat. 15 Ed. III. part. 2. m. 22. pro Johanne de Coupland &c.
^c Matth. Paris pag. 1354. aut 1333 & 1355 edit. Lond.
^d Sir William Segar lib. 2. cap. 10. & vide Camd. Brit. pag. 124.
^e Ms. ubi de coronat. Hen. VII. baptismo Arth. principis &c. pag. 27. in biblioth. Cotton.
^f Chronic. de gest. reg. Angliae cap. 269. ms.
^g Sub anno 1297. pag. 30. ed. Lond.
^h §. XXV.
ⁱ Rot. pat. 4. Ed. VI.
^j Prope finem genealog. comit. Nassov. edit. Lugd. Batav. an. 1616.

think it not untimely to add something here. Of the time, and the occasion of the institution of it, and of saint George, the saint or patron of it.

Although the original of it be attributed, and justly, to king Edward the third, yet a purpose of making it is supposed much antienter in an author that wrote, under Henry the eighth, the book¹ intitled *institutio clarissimi ordinis militaris a prænobili subligaculo nuncupati*. He says that Richard the first purposed it in the holy wars, where in a tedious siege *tandem illabente per divi Georgii, ut opinatum est, interventum spiritum, venit in mentem ut quorundam electorum militum cruribus coriaceum subfubulum, quale ad manus tunc solum habebat, indueret, quo futuræ gloriæ memores & condito, si vincerent ad rem fortiter ac strenue gerendam expergerent, ad Romanorum instar, apud quos illa coronarum varietas, quibus variis de causis donati sunt & insigniti milites, ut his velut irritamentis excussa vecordia virtus animi fortitudoque pectoris fervidior exurgeret atque exiliret*. What antient testimony he had to justify this, I have not yet learned. But for Edward the third, although it be clear enough that he were the first author of it, and that he to the honour of almighty God, and of the blessed and immaculate virgin Mary, and the blessed martyr saint George, patron of the right noble realm of England, and of saint Edward king and confessor, to the exaltation of the holy faith catholick, ordained, established, created, and founded it, (as the words are in the statutes² of the order of the time of king Henry the eighth) yet the time and occasion of the institution is not so clear. Some say the time was after his wars successfully had against the French, and that about mccccl, or the twenty fourth of his reign; and that the garter was taken for an ensign of it, because a garter was the word³ of the field in the battle. And it seems, they the rather cast it about that time, because they find that at the battle of Calais in an. mcccxlx. the king himself with his sword drawn in the field, publicly in the army made his invocations of saint Edward and saint George together, as Walsingham tells us. Others refer it to the lady Joan countess of Kent and Salisbury, her garter, that falling from her leg in a dance, was taken up by the king, who much affected her, and (as they say too) wore it on his own leg, and whether upon the queens jealousy, or some of the lords merrily observing it, told them all openly, *Hony soit qui mal y pense* (according to that of Philip upon sight of the regiment of lovers slain at the battle of Chaeronea, *ἔταλοντο ἡρώδης ἐν τῷ δὲ π μίαν ἢ πέντε αἰσχροῦ ἑμπονοῦντες*, ill betide them⁴ that think any ill of these men) and that shortly the garter should be most highly honoured. Some also have the like story of the queens garter. *Haec vulgus perhibet* (saith Camden, while he briefly touches the opinions concerning it) *nec vilis sane haec videatur origo, cum, ut ait ille, nobilitas sub*

amore jacet. And to the same purpose; before him, Polydore Virgil. In this uncertainty of the occasion, our common stories give us but little light. Nor know I whence wholly to clear it. But for the time; it seems plain rather, that it was in the year mcccxliv, or the eighteenth of Edward the third. For in that year, says Froissart⁵ expressly, began the *confrairie de Saint George, or de les chevaliers de la bleu jartier*, as he calls it, at Windsor. And though he mis in the number of them (for he makes that forty, as his copies are) yet it being far easier for him to know the time, which fell in his own age, and could not but be of a most publick fame, than the number (which either by mis relation might come false to him, or, by mistranscription, false to us from him) we have yet reason enough to credit him for the year of the institution. And so much the rather also, because we know by others of our own country⁶ that, in the self same year, a solemn and great meeting of knights was appointed by the king at Windsor castle, for the setting up of his round table there, which made the French king do the like, to prevent as far as he might the concourse of knights from foreign parts thither, and to draw them into France. And it seems, that, out of the plot and purpose of this round table at Windsor, erected in the same year wherein the order of the new garter was instituted and appointed to be celebrated on Saint George's day of the same year, as we may collect out of Froissart also, the order itself had chief part at least of its original. And the other traditions touching the garter of the queen, or of the countess of Kent and Salisbury, may well stand with this thus far, that the word and the use of the garter began as the traditions suppose, but that the order was raised chiefly out of this of the round table of that time, as out of a seminary. For the round table was in special use in those ages for the drawing together of the braver knights and ladies. And in the excellencies of his knight, Chaucer thus mentions it.

Full oftentime he had the bourd begon
Abode all nations —

And according to Froissart also, we read in a French chronicle written by a French man, in the time of Henry the eighth (one that had been in England with some ambassadors from the French king) titled *grandes chroniques de Bretagne*; Van mcccxliv *Le roy Eduuart d'Angleterre fist a Vindefore une feste moult solennelle en la quelle il crea & establist l'ordre de la bleu jarretiere sur la quelle sont en langage Francois escriptes ces mots, hony soit qui mal y pense. Et fut pur un jeune mignonne a qui la jarretiere bleue tomba en dansant devant le roy & la leva ung chevalier que dict les desuisdites paroles. En cest jarretiere furent premierement receus quarante chevaliers dont le roy & ses enfans & les plus grands princes & seigneurs de sa terre estoient. Et ordonna que*

¹ Ms. in Pelopida.

² Ms.

³ Videfis Leland, ad cygn. cant. verb. Windelesora & Camden in Atebatiis pag. 207.

⁴ Thom. de Walsingham sub anno 1344, p. 154.

⁵ Plutarch.

d'an

d'an en an le jour Saint² Gregore sen feroit la feste dedans le chasteau de Vindefore le quelle chasteau le roy Artur avoit fait faire autrefois edifier, & in iceluy tener la noble table ronde &c.

XLII. (273) The Saint of this order, was, and is St. George, the great martyr, and so reputed the patron-saint of England, as St. Denis is of France, St. Andrew of Scotland, St. James of Spain, and the like. And the order it self is stiled oftimes the order of St. George,^a as well as of the garter. Whence Chaucer also thus writes to the knights of the order.

— for Gods pleasure
And his mother, and significaunce
That ye been of St. George's livery,
Doeth him service and knightly obeisance
For Chyffes cause is his well knowne ye.

At the institution of the order, the chapel at Windfor was consecrated to his name, and his day then appointed for the annual solemnity of the knights. He suffered martyrdom, as it is said, in the ninth persecution under Dioclesian. Some say the time was^b the cccc year after our Saviour, or the seventh of Dioclesian. And that the place where he suffered was Ramah or Ramel^c in Palestine. His name soon grew very famous in both the eastern and western churches, and many dedications of churches and fraternities, and frequent invocations, especially in the time of wars, have been made to him. But we divide the particulars that are fit here to be further spoken of him into four parts. The first is a view of the testimonies that most concern his name, and so give light to his quality, martyrdom in general, and to his honour (for I meddle not with the miracles belonging to him) in the eastern church; the second a designation of such testimonies in the western, saving that so much as concerns him, with exprefs relation to England, is referred to the third, which is a consideration how he came to be called patron of the English, and hath been since honoured here in his feast day. The fourth is the figure by which he is commonly represented.

For the testimonies in the eastern church; those attributed to Pasificrates, a servant (they say) to saint George, and his acts written by Simeon Metaphrastes are obvious^d enough. Nor shall we need more than name such as are so obvious. But in some old rituals, or books of ordinary service of that church (where they have also^e saints of the same christian name, but all distinguished plainly enough from this) he is supposed, as in other testimonies, to have been of Cappadocia. It is also delivered in those rituals that he was of a good family, and a very famous commander in the wars under Dioclesian, but that when he suffered martyrdom, he was a count. So much, is but the interpretation of these words. Ο' ἡνδοξος^f &

θαυμαστός & μέγας μάρτυρ Γεώργιος, ἡγετὶ τὰς χεῖρας ἦν Διοκλητιανῶ τῷ βασιλεῶς, ἐν χώρᾳ τῇ Καππαδοκίᾳ, καὶ γὰρ ἐπὶ τῇ τριβένῳ ἐστράτειᾳ διαπρέψας, ἐν ᾧ δὲ ἀθλῆν ἐμελλε, κόμης ἦν τῇ ἀξίᾳ. It is said there also he was beheaded, and to that purpose they have these iambicks and this hexameter, before his commemoration, according as they have the like before the commemorations of other saints in their rituals.

Εὐχρὲς δ' ἔμνον Γεώργιος ἐν μέγας
Ἐκὼν παρ' ἐχθρῶν τέμνεται δι' ἐξέφθ,

Ἡ ρε Γεώργιος ἐκὰδ τετάρτῃ ἀρχενα χαλκός.

that is, Saint George who slew his enemies in the field, was willingly slain by the sword of his enemies. And on the three and twentieth day (of April) he was beheaded. Very many forms of invocations of him they have there also, wherein, besides the usual attributes, that have relation to war, given to martyrs (for they are all together called *candidatus*^g *exercitus*, as in the *te Deum*; τὸ ἄρην τοῦ μάρτυρων στρατεύμας, in the Greek rituals; and the noble army of martyrs, in our liturgy) he hath many that sometimes expressly, sometimes with allusion peculiarly denote his military quality and command, and his being the great patron of soldiers. As, τὸ μέγας βασιλεῶς στρατῶτα Γεώργιε, or O saint George, the soldier of the great king, and χαίρεις τοῖς ἀθλῆταις ὁ μέγας παύλαρχος, and ὑπερυμνὸς παρεμβολῆς ὁ παύλαρχος, & τοῖς πικρῶν ἀπάντων ποροφύγιον & τάχος, καλῶν Γεώργιε, Hail thou great commander in chief, of them that fight, and of the army of martyrs; a succour and defence of all that believe, most victorious St. George. And he is called there *μονόμοχος* and *μονομάχος*, Χείρως ἀθλητής, or the most singular and victorious champion of Christ, and ἀριστος ποροφύγιος, or the most excellent patron or leader, and such like. And in their invocations he is sometimes desired to make intercession as well for the peace of the world, as for the salvation of their souls: πρὸς θεὸν δεόμεθα (so they pray to him in that sense) ὑπὲρ ἐξήνης τῷ κόσμῳ & σωτηρίας τοῦ ψυχῶν ἡμῶν. I omit the many other of this kind, and add only this one whole prayer that they have to him, especially because of that title of *τροπαιοφόρος* *tropaeophorus* in it. Ὡς^h τοῖς αἰχμαλώτων ἐλευθερωτῆς, & τοῖς πτωχῶν ὑποερασπιστής, ἀσθενέντων ἰατρός, βασιλεῖον ὑπερμαχός, τροπαιοφόρος, μεγαλομάρτυς Γεώργιε, πρὸς θεὸν Χριστῶ τῷ Θεῷ ζῶντι τὰς ψυχὰς ἡμῶν. Thou that art the redeemer of captives, the protector of the poor, the physician of the weak, the champion of kings, victorious and great martyr St. George, make intercession with our Lord Christ for the salvation of our souls. This attribute *τροπαιοφόρος*, which I interpret by *victorious*, long since became with them as his peculiar name. Some others have the substance of it given them sometimes in the commemoration of them; as Ar-

^a Pro S. George, proculdubio.

^b Stat. ord. gart. sub Hen. VII. &c.

^c Vet. autor. apud Baron. in Martyrol. April. 23.

^d Anna Comnena Alexiados. lib. 8. Robert. monach. hist. Hierosolym. lib. 8. Guill. Malmesb. de gest. reg. lib. 4. alii.

^e Anna Comnena Alexiados. lib. 8. Robert. monach. hist. Hierosolym. lib. 8. Guill. Malmesb. de gest. reg. lib. 4. alii.

^f Vide de albatis militibus, quibus antefignatus Georgius apud Robert. monach. hist. Hierosolym. lib. 8.

^g Miliario April. 23 & Antholog. eod. die.

^h Habetur tam in Antio-

logio, & Meniaeo, quam in Horologio seu Menologio, ad diem 23 Aprilis.

temius is called ἰδὲ καὶ ἐχθρῶν νίκης ἀεζήμενος τρῶπαια or *he that carried away the victory, or had the trophies of his enemies*; and the like, others. But none besides him hath it as a peculiar name. Nor do they of that church, where they place the title of his day in their rituals, name him without it. In their *anthologion*, the rubrick for the liturgy of his day, which is the same as with us, the three and twentieth of April, is, τὰ αἴγλις ἐνδοξὴς μεγαλομάρτυρος Γεωργίου τῆ τροπαιοφόρου, that is, *of the holy famous great martyr St. George the victorious, or tropaeophorus*. The same name is there given him in the rubrick of his commemoration, as also it is in their great *meniaeon*. So it is in the *apostoloevangela* at the end of their *euchologium*, which is of such nature as our book of common-prayer, in their *menologium* inserted in their *horologium*, or the office for their monastery, and in *Damascenus Studites*, *Maximus Margunius*, and the rest of them that write his life. And it is but the same which is meant by that corrupted name of *tropelophorus* in that *menologium* of the Greeks, published in *Latin* by *Canisius*. And whereas they have very many faints days in the same month of April (divers of them being eminent in that church) and commemorations belonging to them, as of St. *Mary of Aegypt*, *Gerontius*, *Basilides*, *Titus*, *Amphionus* and *Aedesius*, *Theodora*, *Polycarpus*, *Nicetas*, *Joseph*, *Elpidiphorus*, *Dius*, *Bythoni*, *Gallucius*, *Illyrius*, *Georgius Malaesus*, *Theodulus*, *Agathopus*, *Pherbuthe* and her maid, *Publius*, *Plato*, *Theonas*, *Symeon*, *Phorbinus*, *Zosimus*, *Claudius*, *Diodorus*, *Victor*, *Victorinus*, *Pappius Nicephorus*, *Serapion*, *Theodora*, *Dydymus*, *Thermus*, the mistress and her maid, *Pompeius*, *Zeno*, *Maximus*, *Terentius*, the five young martyrs of *Lesbos*, *Eutychius* patriarch of *Constantinople*, *Platonis*, the two martyrs in *Afcalon*, *Calliopas*, *George* bishop of *Mytelene*, *Ruffinus*, *Aquilina*, the two hundred martyrs in *Synope*, *Herodian*, *Agabus*, *Rufus*, *Asyncritus*, *Phlegon*, *Hermes*, which six last are of the seventy apostles, pope *Coelestine*, *Euphychius*, *Badinus*, the martyrs that died in captivity in *Persia*, *Abdiasus*, *Macarius*, *Africanus*, and the rest of six and thirty martyrs with them, *Olda* the prophetess, *Jacob*, *Azas*, *Antipas* bishop of *Pergamus*, *Tryphaena*, *Pharmuthus*, *John* the disciple of St. *Gregory* of *Decapolis*, *Basil* bishop of *Paros*; *Anthusa* daughter to the emperor *Constantine Copronymus*, *Demes*, *Proton*, *Artemon*, *Menas*, *David* and *John*, pope *Martin*, *Maximus*, *Quintilian*, *Dadas*, *Eleutherius* of *Persia*, *Theodosius*, *Zoilus*, *Aristarchus*, *Pudes*, *Trophimus*, *Ardalion*, *Thomas*, *Crescens*, *Anastasia*, *Basilissa*, *Leonides* bishop of *Athens*, *Theodoros*, *Pausolypius*, *Irene*, *Agape*, *Chionia*, *Felix*, *Fortunatus*, *Januarius*, *Septemimus*, *Chariessa*, *Nice*, *Galene*, *Calis*, *Nownebia*, *Theodora*, *Simeon* of *Persia*, and *Abdellas*, *Chusdazat*, *Phusec*, and the rest of MCL martyrs with them, *Adrianus*, pope *Agapetus*, *Sabbas*, with the rest that suffered with him, *Cosmas* archbishop

of *Chalcedon*, *Athanasia*, *Paphnutius*, *Philippa*, *Socrates*, *Dionysius*, *George* bishop of *Pisidia*, *Tryphon* archbishop of *Constantinople*, *Theodoros Trichinas*, *Zoticus*, *Caesarius*, *Severianus*, *Theonas*, *Antonius*, *John* surnamed *Palaeolaurites*, *Anastasius* of *Antioch*, *Zachaeus* the apostle, *Probulus*, *Sossus*, *Fauftus*, *Desiderius*, *Alexandra*, *Apollo*, *Isaacius*, *Quadratus*, *Maximus* patriarch of *Constantinople*, *Anastasius* of mount *Sinai*, *Theodoros Syceotes*, bishop of *Anastasiopolis*, *Simon Zelotes*, *Apelles*, *Lucas*, *Clemens*, *Valerius*, *Anatolius*, *Protoleone*, *Athanasius*, *Glycerius*, *Donatus Therinus*, *Elizabeth*, *Pascirates*, *Valention*, *Eusebius*, *Neo*, *Leontius*, *Longinus*, *Mark* the holy evangelist, *Macedonius* patriarch of *Constantinople*, *Basil* bishop of *Amasia*, *Glaphyra*, *Iusta*, *Nestor*, *Simeon* cozen to our Saviour, and bishop of *Jerusalem*, *John* the confessor, *Publio*, *Eulogius*, *Lolio*, the nine martyrs in *Cyzicum*, *Memnon*, *Tbaumaturgus*, *Patricius* bishop of *Prusa*, *Jason*, *Sosipater*, and the seven martyrs that *John* brought to believe, *Cercyra* daughter to king *Cercullinus*, *Vitalius*, *James* the brother of *John* the divine, *Clemens* the poet, and some more which doubtless in this long enumeration I have omitted, besides our St. *George*, of all which they have special memory in the April of their larger rituals; yet, in their more contracted rituals, where they reckon but some, and the most eminent of them only; this St. *George* hath ever a principal place, and sometimes the sole place, which is a clear testimony of their high and singular estimation of him. In that *Μηνολόγιον*, which is a part of their *Ἐσχαριον*, there are short memories of divers of those before reckoned, and St. *Mary of Aegypt*, *Theodoros Syceotes*, *Simeon* cozen to our Saviour, and *James* the brother of *John*, have each of them a prayer inserted. But none of the rest have, saving this St. *George*, and St. *Mark*, which are in their several days remembered with the solemnities of more distinct rubricks than any of the rest, as the two chief of the month. And they have both added to their days those notes of a special feast, *αγρία, ὅως ἐν ἐλαίῳ καὶ πάλαις*, that is, *abstinence from work, and the use of wine and oil*. As that *menologion* is for prayers, so they have two other *menologia*, the one for gospels, and the other for epistles and acts of the apostles. That for gospels of faints days is a part of their ritual, which they call *Εὐαγγέλιον*. And in the April of that, the gospels are only set down for the days of St. *Mary of Aegypt*, *Theodoros Syceotes*, this St. *George*, St. *Mark*, and St. *James*. That for epistles, is in their ritual, which they title *Ἀποστόλων*, where St. *Mary of Aegypt*, St. *George*, St. *Mark*, and St. *James* only are remembered. But in the *Ἀποστολοδυναμεια* at the end of their *euchologium*, made for all the months of the year; all April hath nothing else but what belongs to this St. *George* only. So in the epitome of their *menology* made by *Christophorus Patricius* proconsul of *Mytelene*, this day hath no other name but ὁ μάρτυς

Georgius, or the martyr *St. George*. Yet there are also with them seven more saints of this month that have the self-same day with him; of whom *Glycerius* was converted by ^k him. The rest are the four above named next before *Glycerius*, and the two that follow him. Neither do they honour him only on his own feast-day, but also expressly on the feast-days of others that have relation to him: as of *Alexandra* especially, and *Theodorus Syceotes*. *St. Alexandra*, they say, in her commemoration, was empress and wife to *Dioclesian*; and that she being an eye-witness of the tortures which *St. George* suffered in preparation to the accomplishment of his martyrdom, turned christian, and was thereupon committed to prison; where, when she heard of the emperor's edict for the beheading both of *St. George* and of herself, she peaceably, they say, gave up her life in fervent prayer, and prevented the execution. Those three also that follow her in the catalogue before shewed, *Apollo*, *Isaacius* and *Quadratus*, being her servants, were converted by the example of her constancy, and have the same feast with her on the ^{xxi} of *April*. And for *Theodorus Syceotes* (of whom you have enough in the writers of ^l faints lives) that lived some ages after *St. George*, and died under *Heraclius*; it is said, in his commemoration, which is on the day before *St. George's*, that *St. George* usually appeared to him, and taught him, and directed him during his life. Thus have they from ancient time honoured his memory in their sacred solemnities, as one of their most principal saints and martyrs, whose name, though it occur not expressly in *Eusebius*, that is the best and most ancient writer of *Dioclesian's* persecution, yet, may perhaps be understood in that of him, where he speaks ^m of the beginning of that persecution. *Ἐκ τῆς ἐν στρατίαι ἀδελφῶν καταρχομένης τῆς διωγμῆς*, the persecution (saith he) beginning among the brethren that were in the wars, or in garrison. And *Rufinus* of the same time, in his ⁿ translation; *Divina providentia adgreditur primo sensim refrenare lapsantes, & integro adnuc ecclesiae statu, congregationibusque manentibus, indulget interim eos qui erant in militia tantum, Gentilium persecutione pulsari*. Under these in militia, this martyr might be comprehended, being first a captain, and afterward raised, as they say, to the dignity of a count, by which he might more eminently have place in the *Militia*. And it is easily seen, that an exceeding number of great martyrs are designed ^o in *Eusebius's* histories of the persecutions, whom he names not. And yet they have been preserved in memory both for their quality, and the nature of their martyrdom in several acts and traditions of them, and in martyrologies that have been as supplements to his general designation. Nay, it is probable enough, that even in *Eusebius* his martyrology, which he made ^p at the command of *Constan-*

tine the great, this very *St.* was named among the many more who, being omitted in his history, were received from him into the martyrologies of the succeeding ages, and, had it not been for those who so received them, and, together with *St. George*, transmitted them to posterity, had been utterly unknown to us. Some say that martyrology of *Eusebius* is extant in the *Escorial*. And in that very year that *St. George* his martyrdom is placed, no less ^q than seven hundred martyrs had their crowns within thirty days, many of whose names we are sure, if not all, are utterly omitted in the ecclesiastical stories that are left us.

Besides these rituals, divers observable, yet not very obvious testimonies of them are in the writers of the eastern parts. Erections of churches were frequent to him there; and at *Ramel* especially, famous for his shrine and martyrdom, a bishoprick was about five hundred years past instituted and consecrated to him. And *Justinian*, that was emperor but about *ccxi* years after *St. George's* passion, built a temple to him in *Armenia*, where it is likely, he received much of his fame as in a neighbouring country to *Cappadocia*. So expressly says *Procopius* that lived under *Justinian*. *Καὶ ἱερὸν* (saith ^r he) *Γεωργίου τοῦ μάρτυρος, ὃν Βυζαντίος ἐδείματο*, *Et templum extruxit Georgio martyri in Byzanis*. I know some very learned men have taken that passage of *Procopius*, for a temple built by him in *Constantinople*. Were it so, the testimony were enough for the ancient memory of the martyr. But plainly *Justinian's* buildings at *Constantinople* are reckoned by *Procopius* purposely in his first book, and the third, wherein he says thus, he professes to belong to what he built in *Armenia*. The mistaking hath proceeded both from neglecting the author's drift, which he declares enough to an observing reader, as also from the sudden apprehension of *ὃν Βυζαντίος* in *Byzanis*, to have signified the same with *ὃν Βυζαντίος* in *Byzantiis*, or *ὃν Βυζαντίον* in *Byzantio*, which is, in *Constantinople*. *Byzana* plurally is the same with *Bazanis*, in *Armenia major*. It was formerly called *Leontopolis*, and was the mother city of six more there, which is especially noted by *Eusebius* upon *Dionysius Afer*. But, to *St. George* again. *Cedrenus* speaking of the persecution under *Dioclesian*, says, that ^s πολλοὶ τῶν ἀθλήσεως ἀνεδόσαντο ἑβραν. *Ἐξ ὧν εἶς Πάτρος Ἀλέξανδρος καὶ Ἀνθίμος Νικομηδείας Περόππος καὶ Γεώργιος οἱ αἰοῖσι μὲν μάρτυρες*, many were crowned with martyrdom, and among them *Peter of Alexandria* and *Anthimus of Nicomedia*, and *Procopius* and *George the famous martyrs*. The same author tells us also, ^t that the emperor *Joannes Tzimiscēs* (he began in *ccccclxx*) after his victory against the *Russians*, which was had on *St. George's* day, presently made a publick sacred acknowledgment of it to this martyr. *Ὁ δὲ βασιλεὺς* (so are his words to the same pur-

^k Vita D. Georgii in Anthologio, & in Menaeo.

^l Georgius ejus discip. Metaphrastes apud Lipomannum, & Surius die 22 Aprilis.

^m Euseb. eccles. hist. lib. 8. cap. 1. & videlicet cap. 29. ubi de Valerii tyrannide, & Niceph. Callist. lib. 6. cap. 3.

ⁿ Lib. 8. cap. 1. ^o Vide eum lib. 8. cap. 12. in codice Graeco, &c.

^p Videlicet Flavianum Dextrum sub ann. 308. & ibid. Francisc. Bivarium, pag. 359.

^q Flor. Wigorn. ad an. dom. 2909.

^r Lib. 3. de Aedificiis Justiniani.

^s Lib. 3. de Aedificiis Justiniani.

^t Lib. 3. de Aedificiis Justiniani.

^u Lib. 3. de Aedificiis Justiniani.

^v Lib. 3. de Aedificiis Justiniani.

^w Lib. 3. de Aedificiis Justiniani.

^x Lib. 3. de Aedificiis Justiniani.

^y Lib. 3. de Aedificiis Justiniani.

^z Lib. 3. de Aedificiis Justiniani.

ρὰς) τὸ ἐπιτίμια θύσας τῇ καλλιῳ μάρτυρι Γε-
αργίου (ἐν γὰρ τῇ αὐτῇ μνήμῃ συγγραφεὶς τοῖς πολεμίο-
ις) ἢ ἐπιστῇ καὶ αὐτὸς τῇ πρὸς τὸ Δορίκολον ἵστατο:
Joannes Euchaitensis alſo (or biſhop of *Euchai-
ta* under the emperor *Conſtantine Monomachus*,
who built a monastery in the place they called
Mangana to the honour of St. George, into
which he and the ſucceeding emperors uſed to
make a ſolemn proceſſion yearly on St. George's
day, or the three and twentieth of *April*) in a
ſacred poem encouraging the emperor gloriously
to entertain our Saviour in his churches, adviſes
him alſo to join in the entertainment thoſe that
love him, and the bleſſed virgin his mother to-
gether with the ſaint that fights for him, and is
as his general, and hath his name from trophies,
τερπεία or *victory*; by which words he means
doubleleſs *tropaeophorus*, the proper attribute
among their Saints to St. George. This was
done by this biſhop about the year *MXL* in iam-
bick verſe. And ſo much of it as gives the
full ſenſe of what concerns St. George, I tranſ-
cribe here.

Αἰλ' Ὁ κραταιὲ δέσποτα φερνφόρε
Δέχεσθαι τὸ ἐξάγοντα φῶς ἀπὸ σκότους ἔσθ.
Δέχεσθαι πνεῦμα καὶ σέβει πρὸς ἀξίαν,
Βλέπων, ἀκούων, ποροσκυνῶν, κρατῶν, φέρων,
Αὐτὸν Θεὸν καὶ Θεὸν ῥεκαίτες λόγους,
Τὸ τῷ βροτῶν φῶς, τὸ τρυφῇ τῷ ἀγγέλων,
Τὸν καὶ βασιλεύοντα, καὶ γέγοντα σε,
Τὸν συμβασιλεύοντα καὶ σκῆπτροντα σε,
ὅτι συγγένει καὶ φίλος καὶ μητέρα,
Αὐτὸν περὶ τὸν ΣΥΜΜΑΧΟΝ καὶ ΠΡΟΣΤΑΤΗΝ
ὅτι τὴν ΤΡΟΠΑΙΑ κλῆσιν ἀξίαν ἔθες.
Γάντες γὰρ εἰς ἐν συνδραμόντες ἄγερσι
Σύνεισι χεῖρας καὶ δύνανται σε χάριν.
Πάντες σε λαμπρύνονσι, πάντας ἐν δόξῃ.
Οὗτοι γὰρ σοι, μάρτυρες, λαμπροὶ λίθοι,
Κοσμήοντες ὡς καλλιὰ τὴν ἀληθινὰ.
Οὗτοι καὶ ἐχθρῶν ὅπλα σοι νικηφόρα,
Μετ' ὧν κραταίς τε, καὶ κρατῆσιν ἐς τέλος,
Ἐν οἷς φυλάξεις εὐδυχῆς σε τὸ κράτος,
Καλὴν παρ' αὐτῶν καὶ παρὰ τὸν ἐλπίσι
Τῆς εὐσεβείας τὴν ἀμοιβὴν λαμβάνων.

That is, *But O mighty Lord and emperor re-
ceive him that brought light out of darkness,*
ἔσθ. receive him with faith, and worship him
*according to his dignity, seeing, hearing, a-
doring, apprehending and observing both God*
himself, and the sacred word of God; the light
of men, and delight of angels; him that made
you emperor, and crowned you; reigns with you
*and defends you. And with him together en-
tertain those that love him, and his mother,*
and your own champion and general, that is
justly denominated from trophies. For they
all together are with Christ and intercede for
*you. They all make you glorious, therefore en-
tertain them. They are a crown to you, pearls*
and rich stones, that add a most excellent
*splendor to your robes of state. They are a-
gainst your enemies victorious arms, with*

which you conquer and shall conquer to the end.
In them you shall preserve the happy state of
your empire, and for your religious hopes you
shall receive a fair reward of them. He is
*thus remembered also by the lady Anna Por-
phyrogenneta; Εἶτα ἐκείθεν (saith she² speaking*
of Godfrey of Bulloign, king of Jerusalem,
his going against the Turks) τὸ Ράμελ κατέλαβον
ἐν ᾧ ὁ μεγαλομάρτυς Γεώργιος μαρτυρήθηκε. They
then went thence to Ramel, where the great
martyr St. George suffered martyrdom. And
Callicles, that lived (as I think) in her time,
hath some tetrasticks upon his statue cut in white
marble, one of which I add here;

Εἰς τὸ ἄγιον Γεώργιον ἐν λευκῷ
λίθῳ τυπωθέντα.

Ραῖς Ἀβραάμ δ' μάρτυς ἔστος ἐν λευκῷ.
Γλῆν εἰ² τὴν σαρκὸς εἶχεν ἡνυθρωμένον,
Ἐχρῶν δὲ τὸ τοῦ λευκοῦ ἐνυθρῶτον
Μαρτυρικῶς² δ' ὁρώσιν ἐκτεταγμένον.

That is, *Upon St. George cut in white marble.*
This martyr is a child of Abraham made of
stone. But whatsoever of red flesh he had, it
is made as white as snow, being washed with
the agonish sweat of martyrdom.

To these, take that of *Nicephorus Xantho-
pulus* in his *Συνοπτικῇ σύνοψις ἁγίων χρόνων*, or his
short representation of the Saints of the year.
There in his *April* he puts this St. George and
St. *Sabbas*, thus, in one verse.

Γεώργιον, Σάββαν τε, τὸς στρατηλάτας.

George and Sabbas commanders in the war.

And *Jobannes Cantacuzenus* (he that was em-
peror) using some arguments taken from the
martyrs of the christian church, both in behalf
of the christians and against the mahumedans,
mentions martyrs in general, but takes St. George
for his singular example. Ο παρ' ἡμῶν τὸ χρεσ-
τανόν (saith^c he) πιαμάρτυς μάρτυς τὸ χρεσ-
τάριον, ἐς καὶ παρ' ὧν τῶν Μουσουλμάνων, πηξί, ὄνο-
μαξί² ὃ παρ' αὐτῶν Χετὶρ Ηλιαξ, βασιανζόμην²
καὶ περαζόμην² παρὰ τὸ ἀσεβῶν καὶ ἐδωλοκατῶν ἵνα
τὸ μὴ Χετὶρ ἀνήσῃ, σεβασθῇ καὶ τὸ ποροσκυνῇ τοῖς
ἐκείνων ἰστοῖς, ὃ δὲ ποροκαλετο μυρίες θανάτους καὶ μυ-
ρία βασάνους παρὰ τὸ ἐνδομῆ² τὸ χρεσ-² τὸ ὅπως ἀδε-
τιῶσι τὸ εἰς τὸ χρεσ-² τὸν πῶς αὐτοῦ. The martyr of
Christ that is honoured by us christians, St.
George, (who is also honoured by the musulmans
themselves, and called by them Cheter Eliaz)
being tortured and tempted by the wicked, and
by idolaters, that he might be brought to deny
Christ, and worship and adore their gods, chose
rather to have undergone a thousand deaths,
and a thousand tortures for the name of Christ,
than at all to renounce the faith that he had
in him. And Cantacuzenus goes on there with
some more particulars of the history of his mar-
tyrdom, as if it were the most eminent exam-
ple of martyrdom in their church, and such a

^a Cedrenus pag. 650.
Cuiusmodi fol. 131. a.
male in codice vulgato.

^x Codinus περὶ ὁφικ. cap. 15. & Gretferus ad eum, commentar. lib. 3. cap. 10. pag. 262. adde Histor.
^y Lego potius ρεκαίτες ἁγίων.
^z Apologia καὶ τὸ Μωαματ. γ.

^a Alexiados lib. 8. ^b Male ἦς in vulgato codice.

^c ὁρώσιν

one as was enough in that kind of argument to make up his apology for the christians against the *Musulmans*. In *Venice* also the chief church for the *Grecians* is dedicated to St. George's name. *Emanuel Malaxus* remembers it with the title of *great St. George*, where he speaks of the trouble wherein the *Grecians* there were, when *Arsenius* brought pope *Alexander* the sixth's letters against them to the duke of *Venice* somewhat more than a hundred years past. 'Εγένετο πολλή σύγχυσις καὶ ταραχὴ εἰς τὴν ἐκκλησίαν τὴν Ῥωμίων εἰς τὴν μέγαν Γεωργίαν, are his words ; ^d There fell out a great confusion and discontent in the church of the *Grecians* (for so Ῥωμαιοὶ signifies here ^e as *Ῥώμη* long since signified *Constantinople*) which is great St. George's. And upon some instauration of this church in MDLXIV, an inscription of dedication was made for it, to our Saviour, and to St. George, in the name of all the *Grecians* that lived there, and of those that used to come thither. And that by *Michael Sophianus* of *Constantinople*, as *Crusius* ^f relates it, out of the end of a book written by *Zacharias Scordylus Marapharas* a *Cretan*, and published, as it seems, by *Crusius*, MDLXIX. Whether it were fixed on the church or no, I know not. But it is thus delivered, together with the purpose expressed by the author of it.

Εἰς τὴν ἀρίστην τῶν Ἐντίσι ναῶν
Τῶν μεγαλομάρτυρος Γεωργίου ᾠδῶν
Γεωργίων ὀπίγεσθαι ἐν ᾧ τίτλος ποι-
ῶν ὡς τὸ τὸ σφωτάτε καὶ λογιώτα-
τε κυρίου Μιχαὴλ Σοφιανῶ τῶ Βουλαντί.

ΧΡΙΣΤΩ ΣΩΤΗΡΙ
ΚΑΙ ΤΩ, ΑΓΙΩ, ΜΑΡΤΥΡΙ, ΓΕΩΡΓΙΩ
ΟΙ ΜΕΤΟΙΚΟΙ ΚΑΙ ΟΙ ΑΕΙ ΚΑΤΑΪΟΝ-
ΤΕΣ ΕΝΕΤΙΑΣΕ ΤΩΝ ΕΛΛΗΝΩΝ
ΕΚ ΤΩΝ ΕΝΟΝΤΩΝ ΦΙΛΟΤΙΜΗ-
ΣΑΜΕΝΟΙ ΤΟ ΊΕΡΟΝ ΑΝΕΘΗΚΑΝ
Α Φ Ε Δ

That is,

For the dedication of the church of the great martyr St. George, the inscription of the Grecians in form of a title: made by the most discreet and learned Michael Sophianus of Constantinople.

TO OUR SAVIOUR CHRIST
AND TO THE HOLY MARTYR
S. GEORGE, THE GRECIANS
THAT ARE AT VENICE, AND
THOSE THAT USUALLY COME
THITHER HAVE MOST DEVOUTLY
CONSECRATED THIS CHURCH
M D L X I V.

The book out of which *Crusius* had this, it seems, was that of this *Zacharias Scordylus*, touching the degrees of consanguinity, or *ἑξ ἑκτὴ συγγενείας βαθμύων*, at the end of which in my

copy printed at *Venice*, MDLXXXVIII, I find this that *Crusius* cites, saying that the year of our Lord is omitted. But also there are joined iam-bicks written by the same *Zacharias* upon that dedication. And in mount *Athos*, where twenty two monasteries are yet remaining, two of them ^g are sacred from antient time to his name.

To these we add the memory of him in *Damascenus Studites*, not without his title of *tropaeophorus*, and in *Maximus Margunius*, not many years since bishop of *Cythera*, or *Cerigo*, as they call it now. 'Ο ἑδοξῆτο καὶ μέγας Γεωργίου ἦτον (so are the words of *Maximus* mixed with the dialect of the later ^h *Greeks*) τὰς κυρίας τῶ βασιλέως Διοκλητιανῶ, ἀπὸ τῆ Καππαδοκίαν, ἀπὸ γένου λαμωροῦ, τὸ πάξιως τ' εὐταίως τ' τρεβέων· ὅτε δὲ ἐμελλε νὰ γένῃ ἀδελφὸς ἦτον κύριος τὸ ἀξίωμα, which is but the same in substance that is before cited out of their rituals ; *The glorious, wonderful, and great martyr St. George, was in the time of Dioclesian the emperor, of Cappadocia, and of a good family, and a tribune in the wars; but when he suffered martyrdom, he was by dignity a count.* But also there is among them of the *Greek church* a testimony of an order of religious knighthood under the title of this martyr, which continues to this day, from no other original than the very time of *Constantine the great*, if we may believe the pretences that the sovereigns of the order themselves make to it. I mean that order whereof those of the imperial family of the *Comneni* claim at this day to be sovereigns, and accordingly do make their *Constantiniani cavalieri*, as they call them, under the rule of St. *Basil*, and the title of St. *George* with the red cross, and those words, *in hoc signo vince*; or ἐν τῷ τῷ νίκῃ ⁱ written with gold upon it. This, they say, was begun by *Constantine the great*, and afterward encreased by *Heraclius* upon his victory had against *Cosroes*. And the making of such knights, and the sovereignty over them is derived to the *Comneni*, chiefly through a patent thereof made by the emperor *Michael Paleologus*, to *Michael Angelo Comneno* and *Andrea* his son, and to the heirs of their bodies begotten ; Whence signor don *Giovanni Andrea Angelo Flavio* (lately and perhaps yet living in *Venice*, and pretending also himself heir to the crown of the *Constantinopolitan empire*) as descended from *Michael Angelo* heir to *Isaacio Angelo* that was emperor, had both the contents of that patent summarily testified, with the authority of the patent itself, under the hand and seal of a notary at *Rome* in *March* MDCX. by the title of *principe di Macedonia & Moldavia, duca & conte de Drivasto & di Durazzo, & gran soprano e maestro della militia seu religione aureata Angelica Constantiniana, instituita par apparitione divina dal magno Constantino imperatore sotto la regola di S. Bafilio & invocatione S. Giorgio martyre, capitano di Constantio* (thus he is supposed here, a captain under *Constantinus*, who was a caesar in *Dioclesian's*

^d Hist. patriarchal. pag. 151. ^e Videsis Platin. in vita Bonifacii III. ^f Turcograec. ad hist. eccles. pag. 200 ^g Graeculi apud Janum Rutergerium var. lection. lib. 2. cap. 11. ^h Bist. ἁγίων. pag. 263. b. ⁱ Videsis Euseb. de vita Constantini lib. 1. cap. 32.

time) padre di detto Constantino, eretta & poi da Eraclio Constantiniano imperator Graeco, nel tempo c'ebbe la vittoria contro Cosedroe re de Persi ampliata & dilatata, &c. And divers particular allowances of the privileges of making those knights, especially in the states of Spain and Italy, by this pretence and the authority received from the patent are added, and were printed also at Rome in the same year. And among them, one is that Giovanni Georgio di Cefalonia, who falsely pretended himself an heir to this right, against Pietro Angelo father of this Giovanni Andrea Angelo, in MDXCI, was by sentence given by Prospero Farinacio that great lawyer, whose many and excellent decisions are since publick, being lieutenant criminal of signor Camillo Burgese, auditor of the pope's chamber, and afterward confirmed by signor Pompeo Mollela, lieutenant to signor Francisco Aldobrandino, a commissioner especially appointed by pope Clement the eighth, in MDXCV, first condemned to perpetual banishment from the whole popedom, and afterward to the galleys during his life, whence he was in MDXCVII. released by reason of his age, remaining still under the sentence of banishment, and that if he did any more usurp the making of any of those knights he should die for it. Other testimonies are in the writers of the western parts touching these knights, and the reference of their original to Constantine, as you may see specially in Gaspar Escolavo his history^k *Valentia*, where, upon his faith, you have an old coin of those primitive ages (he makes it a coin of Majoranus) with GLORIA CAESARUM AUGUSTORUM GEORGIANORUM on the one side of it, which he interprets by the glory of the caesares augustos maestros de la cavalleria Georgiana. That very cross also that appeared to Constantine he makes Saint George's, and divers other things he hath touching it which I willingly omit here. To these may be added, other testimonies learned from the eastern parts, though delivered by writers of the west. That of Justinian's erecting a temple to St. George at Lydda, or Diospolis, some three miles distant from Rama or Ramel in Palestine, in the portion of the tribe of Ephraim, by reason of which nearness, and for that the bishoprick there instituted was called sometimes of Lydda, and sometimes of Ramel, as well the one place as the other, hath been mentioned by writers for his martyrdom. The particulars of his stature and miracles, largely related from Arculfus who learned them in the east, by Adamannus a Scot^m that wrote about DCCC years since, and published at Ingolstadt by Gretherus in 1619. have their weight here also; as likewise that of Johannes Cotovicusⁿ speaking of Lydda. Mox (saith he) urbem antiquissimam Diospolim olim nuncupatum, distantem a Rama tria millia passuum, eminens conspeximus. Haec divi Georgii martyrio ac tumulo, & imprimis Petri apostoli praedicatione & miraculo celebris est. Nunc

solo aequata & in cinerem fere versa tota neglecta jacet. Praeter pauca enim Maurorumtuguriola, solum superest templum in martyris memoriam a Richardo Angliae rege, ut aliqui putant, restauratum supra fundamenta antiquioris delubri a caesare Justiniano, ut volunt, erecti, quod paulo ante adventum Bullionii ducis cum suo exercitu Saraceni solo tenus dejecerunt, ne christiani in urbis Hierosolymae opugnatione trabibus ecclesiae, quae multae proceritatis erat, uterentur, easque in machinas & tormenta converterent. That church is now, he says, used partly for a meschite by the Turks, and partly by some Greek monks. And it is held in singular reverence as well by the mabumedans^p as christians. For all of them that come back from their pilgrimage to Mecca through Palestine, devotionis ergo (saith he) adire illud haud negligunt; precibusque inibi Deo redditis, largas etiam elemosynas erogant & martyris sepulcrum venerantur. And he tells us, that the mabumedans take him also to be suae sectae protector eximius; and so honour him, that when they sometimes destroy other images of saints in the christian churches, they religiously abstain from St. George's; touching which he hath an example in a monastery of minorite friers in Arnica, a town of Cyprus, where all the other images being destroyed by them, only St. George's he saw sitting on horseback with a tulipant on his head, and left untouched. Many other testimonies of the eastern parts that are of less note concerning him, I omit here, and come to a short view of such as are of him in the western.

XLII. For the western church you may remember what is at large of him in Jacobus de Voragine, Lipomanus, Surius, and the like, which write ex professo the lives of the Saints. They are obvious, and therefore we omit them here. The antientest martyrologies have him also on the three and twentieth of April, with natalis Sancti Georgii martyris cujus illustre martyrium inter coronas martyrum ecclesia Dei veneratur. Pope Gregory the great, that lived about three hundred years after the supposed time of his martyrdom, repaired an antient church dedicated to his memory. And before that, St. German, bishop of Paris, after his pilgrimage to Jerusalem, returning through Constantinople, received there from the emperor Justinian, among other precious relicks, Saint George's arm, which he laid up at St. Vincent's in Paris. So says Amoinus, a most antient writer of France, who hath king Childbert his charter of foundation of St. Vincent's at large, in the year DLIX; wherein, among many other saints barely named, he is peculiarly stiled beatissimus sanctus Georgius. And Gregorius Turonensis, another near that age, specially remembers^t both his relicks and miracles. Est in sacramentario (saith Baronius^u also) S. Gregorii, in natali S. Georgii specialis de eodem sancto

^k Lib. 9. cap. 7. & 8.

Hierosolymit. lib. 2. pag. 137. gor. lib. 4. indic. 4. epist. 68. martyrol. Rom. 23. Aprilis.

^l Will. Tyrus de bello sacro, lib. 7. cap. 22.

^m Guill. Tyrus loco citato.

ⁿ De gest. Francorum, lib. 2. cap. 20.

^p De situ terrae sanctae, lib. 3. cap. 4.

^q Vide item Cotovicum dict. itinerar. fol. 343.

^r De gloria martyrum, lib. 1. cap. 101.

^s Itinerar.

^t Greg.

^u Ad

praefatio. And *Sidonius* bishop of *Mentz*, in the time of *Justinian's* reign, erected a church to this saint, where the relics and memory thereof remain ^u to this day. On which also *Venantius Fortunatus*, a christian poet * of little less antiquity, hath this epigram.

*Martyris egregii pollens micat aula Georgi,
Cujus in hunc mundum spargitur altus honor.
Carcere, caede, siti, vinclis, fame, frigore,
flammis
Confessus Christum, duxit ad astra caput.
Qui virtute potens orientis in arce sepultus
Ecce sub occiduo cardine praebet opem.
Ergo memento preces & reddere dona viator;
Obtinet hic meritis quod petit alma fides.
Condidit antistes Sidonius ista decemter,
Proficiant animae quae nova templa suae.*

And in another church he notes among other relics ^v some of this *St. George*.

*Hic quoque reliquiis micat ille Georgius almus,
Qui probus igne cedit, nec pice mersus obit.*

Fuit & Romae (so also *Baronius*) quae adhuc perseverat illustris memoria *S. Georgii* ad velum aureum, ubi & caput ejus asservatur, quod *Zacharias papa* in theca repertum cum inscriptione Graecis literis exarata ibidem recondidit, ut testatur liber de Romanis pontificibus in *Zacharia*. This pope *Zachary* was a Grecian, and lived pope in *ccccxl*, and afterward basilicam (saith *Platina*) beati *Georgii* in velabro condidit, eoque loci caput ipsius sancti collocavit. Other antient, and as yet not published, testimonies of his life, are mentioned by *Baronius*. And in the office of the church of *Rome* for that day usually, which they keep as the *Greek church* on the three and twentieth of *April*, besides the epistle, gospel, and what else might be common to other saints, they have ^z these also with his name in them. *Deus qui nos beati Georgii martyris tui meritis & intercessione laetificas, concede propitius ut qui tua per eum beneficia poscimus, dono tuae gratiae consequamur per Dominum nostrum.* And after the offering; *Munera Domine oblata sanctifica & intercedente beato martyre tuo, nos per haec a peccatorum nostrorum maculis emunda per Dominum nostrum*: And for the post communion; *Supplices te rogamus omnipotens Deus, ut quos tuis reficis sacramentis, intercedente beato Georgio martyre tuo, tibi etiam placitis moribus dignanter tribuas deservire per Dominum nostrum.* And whereas in *Rome* every month hath certain special feast days which are no court days in the capitol, as *Corpus Christi* day, *All-Saints*, *Midsummer* day, and *Candlemas* day with us at *Westminster*, in *April*, no saints days but of *St. Mark* and *St. George* are appointed to be honoured so, as we see in the laws ^a of that city. Neither is it to be omitted here, that

in the antient *Ordo Romanus*, which is a ceremonial or ritual for the consecration of bishops, abbots, nuns, &c. there is an *ordo*, ad armandum ecclesiae defensorem vel alium militem; and after divers prayers, proper to the giving of that dignity of knighthood, one follows in these words presently after the shield given, *Domine Deus, qui conteris bella, & adjutor, & protector es omnium in te sperantium, respice propitius invocationem nostram & per merita sanctorum martyrum tuorum & militum, Mauricii, Sebastiani, Georgii, praesta huic viro victoriam de hostibus suis, & salva eum tuo gratuito munere, qui dignatus es hominem redimere preciosissimo filii tui sanguine, qui tecum vivit.* But as it happens frequently in the reports of what is at all wonderful, such are those of the sufferings of the martyrs, so hath it in that of *St. George*; that so many incredible circumstances are added, and so mixed with his martyrdom, that the relation of him hath suffered too much blemish by such mixtures. Whence it was that when pope *Gelasius* the first, in *ccccxciv*, in his synod at *Rome*, made a large declaration of what writings were to be admitted, beside the holy scriptures, he reckoned up many, as also the gesta sanctorum martyrum; Sed ideo, saith he, ^b secundum antiquam consuetudinem singulari cautela, in *S. R. E.* non leguntur, quia & eorum qui conscripsere nomina penitus ignoratur, & ab infidelibus aut idiotis superflua aut minus apta quam rei ordo fuerit scripta esse putantur; sicut cujusdam *Quirici & Julittae*, sicut *Georgii* (some editions of *Gratian* have falsely, *Gregorii*) aliorumque hujusmodi passionum quae ab hereticis perhibentur conscriptae. Propter quod ut dictum est, ne vel levis subsannandi oriatur occasio, in sancta Romana ecclesia non leguntur. For examples of such saints lives as were so miswritten, he brings those of *St. Quiricus*, and *St. Julitta*, and of *St. George*; but so, that whereas they are named with cujusdam prefixed to them, *St. George*, as a more eminent and known saint in those times, is severed from them by sicut *Georgii*. And we see in the sixth general council at *Constantinople*, a special canon ^c is made against the admission of such lives of the holy martyrs as were written by ῥ αληθείας ἐχθροί, or hereticks, as they are called, ὡς ἀν τὸς τῷ Χριστῷ μαρτυρῶν ἀπὸ αἰρετικῶν καὶ πρὸς αὐτῶν ἐναντίον τὸς ἀρετῶν, to the end that they might dishonour the martyrs of *Christ*, and make the relations of them incredible to the hearers. But out of the several acts of martyrs and their lives written, such choice was afterward ^d made, that some were, and are to this day read in the church of *Rome*. And *Baronius* thinks also, that he found in an antient ms. in the *Vatican*, those very corrupted acts of *St. George* which were noted in that synod of *Rome* by *Gelasius*, for which he professes he made a most painful search. His own words best deserve place here. Quenam essent acta,

^u Brower, ad Venant. Fortunat. lib. 2. pag. 39. Romanum Parisiis 1605, pag. 225, &c.
Diff. 15. Can. 3. sancta Romana. Jvo part. 4. cap. 64. Burchard. lib. 3. cap. 220.

* Poemat. lib. 2. epig. 13.

^a Stauria Romae, lib. 1. cap. 58.

^v Poemat. lib. 10. ep. 10.

^b Tom. concil. 2. part. 1. edit. 1618. pag. 501.

^c Sext. Synod. Can. 63.

^z Missale

^d Baron. ann.

says he, ^e Georgii, a Gelasio improbata atque rejecta, exquirendi studio fatigatus, ea me tandem invenisse arbitror. In nostra bibliotheca tertio tomo vitae sanctorum antiquissimo, ac pene vetustate consumpto codice, ibi pag. 159. inveni acta quaedam S. Georgii multis haud dubium referta mendaciis, ibi portentosa quaedam ab omni miraculorum ratione aliena feruntur; quae quidem (ut praedictae synodi utar verbis) non ad pietatem legentes, sed ad infidelitatem adducunt. Insunt praeterea illic quaedam ab haereticis accepta atque gentilibus: ut conflictus ille Georgii cum Athanasio mago: alludit nimirum auctor impius ad Georgium Arrianum episcopum invasorem sedis Alexandrinae; & magni Athanasii ejus sedis episcopi pugnacissimum persecutorem. Athanasium enim ab Arrianis esse magum appellatum, acta Tyri conciliabuli satis docent: apud Gentiles etiam eandem de eo sparsam esse calumniam constat ex Ammiano Marcellino lib. 15. At Georgium Arrianum episcopum, defuncto Constantio imperatore occisum esse ob ejus scelera Alexandriae, relatumque a suis in martyres, liquet: testante id etiam Marcellino libro 22. Ex quibus sane apparet totam illam de actis Georgii fabulam fuisse commentum Arrianorum. Leguntur in iisdem alia nonnulla indigna martyre: ut phanatica quaedam & portentosa, suspectum contubernium viduae, ars dolosa ejusdem ad perdendos Gentilium magos, atque enecandos Gentiles quosque, innumera praeterea tormentorum genera, quibus agitatus Georgius, nec mori potuit, ut, praeter eculeos, ungulas, crates ferreas ignitas, rotamque mucronibus undique praefixam, calceosque armatos clavis, quae & in aliis leguntur actis; etiam arca ferrea clavorum cuspidibus intus ad feriendum aptata, praecipitium, contusiones malleis ferreis iteratae, columna ingentis ponderis super eum posita, ingentisque molis saxum super caput revolutum, ferreum ignitum stratum, liquens plumbum super effusum, quadraginta igniti clavi quibus est confossus, aeneus bos candens, versio in puteum ingentis ponderis saxo ad collum ligato, quibus nec quidem occidi martyrem potuisse tradunt. Ad haec insuper, fingitur ibi Datianus quidam imperator qui Persis dominetur, & septuaginta quinque regibus imperet, sub quo Georgius passus sit, & alia multa quae potius delirantium somnia, quam sinceram historiam martyris prae se ferant, quae Gelasii censura proscripta esse, absque aliqua difficultate quisque sibi suadere potest.

Other acts of him written by *Metaphrastes*, and the compilers of the saints lives in the later times, and the author of the common legend, and such like have vanities enough mixed with his martyrdom. But among all those that they have in the *Vatican*, *Baronius* thinks that one to be nearest truth which was wont to be read in some churches, and hath in it the year of the martyrdom, and only beating, the wheel, the frying pan, and the beheading, for his suffer-

ings. *Legi & in veteri manuscripto* (saith he) to that purpose) quae in quibusdam ecclesiis recitari consueverunt acta Georgii, ubi & annus passionis describitur ccxc, ibique haec solimmodo tormenta Georgius passus narratur, verbera, rotam, ignitamque sartagine, ac demum gladio truncatus legitur. Quae licet ob longiores paraphrases & carmina quae in eis habentur intexta, minime referant pristinum illum candorem ac sine fuco dicendi stilum, tamen caeteris probabiliora videntur. Habemus ea in nostra bibliotheca tom. 9. *Vit. Sanctorum* pag. 74. So *Baronius*. The many dedications of churches and societies to him in the later ages, and the mention of his relicks, of his frequent apparitions, and the like, we omit, being such as cannot add any valuable honour here to his name, beyond that which those ancient testimonies have given him.

XLIII. In the consideration how he came to be as the patron saint of the *English*; we may easier guess at the reason why his name was chosen by them, than of the time when it was chosen. It is nothing strange, that so military a nation should chuse the name of such a soldier-faint, and of one so known by the peculiar name of *tropaeophorus*, or *victorious*, as is already shewed, being also of far greater eminency in both churches, than either *St. Sabbas*, *St. Sebastian*, *St. Maurice*, or any of the rest that were soldiers also. And in the articles prepared by *Richard Scroope*, archbishop of *Tork*, against *Henry the fourth*, he is called *St. George, martyr and knight, special protector and defendour of the realme of England, and aboket*. So toward the end of *Edward the third* also, that is, in his forty fourth year, in the constitutions of a guild erected to him by some of the *Weststreet* in *Chichester*, he is stiled, *Anglorum protector & patronus*. In *Dei nomine amen, die Sabbati in festo Sancti Bartholomaei apostoli contingente* (so are the words of the preamble to those constitutions, ² which I have) in anno Domini mcccclxviii, indictione viii, pontificatus sanctissimi in Christo patris & domini nostri Urbani divina providentia papae V, anno xvii, mensis Augusti die xxiv, ad honorem S. Trinitatis suique gloriosi martyris Georgii Anglorum protectoris & patroni, quidam de *Westrata Cicestr.* devoti ad ipsum sanctum summa devotione excitati imaginem ipsius in ecclesia *Cicestr.* honorifice erexerunt fraternitatem quandam inter eosdem, statuentes &c. But for the first and exact time or age; although I have not observed any warrantable story, either of invocation of his name, or other peculiar honour done to him by the *English*, as drawing him to their part, before *Edward the third*, yet it is very likely that he was long before taken by our nation as their patron saint, and that perhaps, in the time of the holy wars, when our ancestors had so frequent access, by the assistance of their swords to those eastern parts

^e Ad martyrolog. April. 23. & de Julitta & Quirico qui in synodo illa Georgio adjecti sunt, consule, si placet, eundem ad 16 Junii & in annal. tom. 2. sub anno Christi 305, pag. 871. ed. Antwerp. videbis eum item lib. de Romano martyrologio cap. 2. ^f Ms. ^g Ms.

^h Vide quod ex *Walsinghamio* citavimus supra §. XLI.

where he was ever since his martyrdom, and to this day is so magnified. And our king *Richard* the first's repairing his temple at *Lydda*, is before remembered by *Cotovicus*. But I should have the sooner guessed that his name had been first taken to us, under *Edward* the third, if I had not seen that, even in a most antient martyrology, peculiarly belonging to this kingdom, he is the only saint mentioned for the three and twentieth of *April*, though both in the *Greek* and *Latin* martyrologies there be divers more besides him on that day. Unless there had been some singular honour given him from this nation, why should his name alone be so honoured with it? I determine nothing here. I see not light enough. But the martyrology which I mean, is to this purpose observable, and so is that memory it hath also of *St. George*, that it may be so compared with other passages of his life that are published. For this is yet only manuscript, and in *Saxon*, or the antient *English* of the time before the *Normans*, and upon the three and twentieth of *April*, or of *Eorþmonað* (as it is there called) hath these words. On ^k þone þre : 7 tƿentig oþan dæg, þar biþ Sancte Georƿus tƿs (so it is written; clearly for *Georgius* tƿs and the *Saxons* did ever keep the *Latin* terminations of names, as the *Dutch* do somewhat frequently at this day) þær aedelan Mærtý- þer þone Ðatianus ƿe Cæsepe georpan geape mýð una- ƿcege. slium ƿitum hýne þreotode þ he Crist ƿfroce 7 he næppe hýne oþer ƿriþan ne mihte : 7 æfter þam georpan gearum het he hýne beheapðian : that is, *On the three and twentieth day, is Saint George's feast, that noble martyr, whom Datanus the emperor, seven years together with unspeakable tortures, urged to renounce Christ, which when he could not bring to pass, he cut off his head.* And a little after, And Sancte Georƿus hým to Ðƿýhtne gebæð 7 ðus cræð; Ðæ- lenð Crist on þoh minum gæte. 7 ic ðe byððe þ ƿraþ- þlic man ƿƿi mýne gemýnð on eorðan so þonn æfýrþu ƿƿam ðær mannes hure ælce untrunýrre ne hým ƿe- onð ne ƿceððe ne hungor ne mancƿealm; 7 gýf man mýnna nama nemneð on ænigre ƿƿeceðnýrre oððe on ƿæ oððe on oðrum ƿýð ƿæte ðonne fýlge ƿe þýnne mýlsheortýnere. Ða cæn ƿcefen of heo- ƿenum 7 cræð, cum ðu gebletotða, 7 ƿraþþlic man ƿƿa on ænigre ƿtope 7 ƿƿeceðnýrre mýnne naman þurh ðe cýgð, ic hýne ge hýne : that is, *And St. George, (at his death) prayed to the Lord and said, Jesus Christ receive my soul; and I be- seech thee that whosoever shall keep my com- memoration on earth, all falsehood, hurt, hun- ger, and sickness be far from his house; and that whosoever shall in any danger, either by sea, or elsewhere, use my name, thou wilt be merciful to him. Then came a voice from hea- ven, saying, Come thou blessed, and whosoever shall in any danger or place call on my name through thee, him will I hear.* After which, *Arculfus* his book is remembered (for that of *Adomannus*, taken from him, which is ¹ before cited) as a testimony of his miracles. The lan-

guage and hand of this martyrology is of about the age of *St. Dunstan*, or above ƿc years since. And this of his prayer at his death, and the voice in answer of it, is thus expressed in old *English*, by ^m one that long since wrote the lives of the chief saints in verse, and hath in his, the particulars of his tortures.

His honden he helth op on hei; a down he fate a kne,
Lord, he seðe, Ihesu Christ that alle thing might Ie
Grant me gif it is thi wille, that who so in faire
manere

þalt wel mi dai in Auril for my love on erde here,
That there ne falle in ðilke hous no qualm in all
the yere,

Ne gret seknesse, ne hunger strong that thereof
ne be no fere,

And ho so in perill of se to me biððe his bone

Ðiher in oþer stedes perillous, hele him thereof
sone.

Tho herde hi a fois of heben that to him seðe tƿis
Com sozt to me my blesst childe, thi bou herd is.

Tho his hed was of infinite &c.

Only, thus much I add for the name of the emperor under whom he suffered. He is called often *Datanus*, which is the same that is given to the king of *Persia*, under whose tyranny he is supposed to have suffered, in those fabulous legends of him cited by *Baronius*. How *Dati- anus* came to be made a name of a *Persian* king, I know not. But he is noted in the *Saxon* martyrology with the addition of *Cæsepe*, or *Cæsar*, which is most proper to the emperors of *Rome*, and their successors. And therefore might not *Dati- anus* be mistranscribed into this martyrology and elsewhere, also for *Diocletianus*? We know that in old writing, *Iustinus* ⁿ was used for *Iustinianus*, as to this day it is in the *Greek* ^o rituals. Might not *Datanus* so be corrupted from some abbreviation of *Diocletianus*? Among the *Saxon* homiles also of *Alfricus* upon ^p some few saints days, or rather in their lives distributed to their days, this saint, by the name of *Georius*, and his martyrdom, without the vanities that others join with him, are de- scribed under *Datanus*, which name may be interpreted as before, and he is called an ealþo- man, that is count, of *Cappadocia* there; and in the speech that the emperor hath with him, he says, *Georƿus ic eom gehæten; and ic hæbbe eal- dōpdom on minume eapre ðeif gehæten Cappadocia; I am called Georgius, I have an earldom in my own country called Cappadocia.* We see in the testimonies of the *Greek* church he is called *comes*, which agrees with this of ealþoþman and ealþoþom. *Alfricus* was archbishop of *Can- terbury* about *M* years after the death of our Sa- viour.

But however, these are no slight testimonies that he was in great estimation among the *Eu- glish*, even in the *Saxon* times. After that the order was instituted, an addition of honour was also to his feast-day, which is the three and twen- tieth of *April*. For whereas antiently it had

¹ §. XLII.

² Ms. cap. 32.

mensium ad April. 22. in Theodor. Syceota.

^k Martyrolog. Saxon. in bibliotheca Benedictina, apud Cantabrigienfes volumen est ibi 36.

^a Videfis Nic. Aleman. ad Procopii *anabosin* de frequenti illorum nominum inde confusione.

^p Ms. 9 kall. Maii.

⁴ §. XLII.

^o Bibl.

been only *minus duplex*, it was first in a convocation of the first of Henry the fourth, held under archbishop *Arundel*, desired, *quod festum Sancti Georgii martyris qui totius militiae Anglicanae spiritualis est patronus, & penes quem in actibus armorum prae caeteris sanctis habetur devotius & confidentius memoria, instituat per totam Angliam festive ac solenniter feriandum & colendum, sicut caeterae nationes suorum patronorum festa colunt.* But this was desired among divers other things, expressed in a petition delivered by one *John Maidenbeth* in name of all the clergy of the province of *Canterbury* to the archbishop, and the rest of the bishops, none of which at that time had any further proceeding. But afterward, upon the instance of king *Henry* the fifth, preparing for *France*, his day was made *festum duplex ad modum majoris duplicis*, by a canon of the convocation of the province of *Canterbury*, held in *November* mccccxv. For to that time must those words of *Walsingham* be referred. *Eo tempore decretum fuit (saith he) per cleri concilium Londonis apud sanctum Paulum celebratum, ad instantiam maxime regis nunc (speaking of Henry the fifth) ut festivitas S. Georgii martyris, ut duplex festum de caetero celebretur.* This in *Walsingham* is thus placed in mccccxiii, or the first of *Henry* the fifth. But *Linwood* of it, expressly; *Haec constitutio fuit Henrici Chichele, archiepiscopi Cantuariensis moderni, qui hanc constitutionem specialiter edidit ad excitationem regis Henrici Angliae quinti in partes Normanniae transaturi.* And *Chicheley* was not archbishop in the first year of *Henry* the fifth. And in the registers of the convocation of that time, the letters sent by this archbishop to the bishop of *London*, (as the use is in other things of like nature) for the observation of the day according to the canon, are dated in *January* mccccxv, or the third of *Henry* the fifth. And it is, in those letters, recited in these words; *Ineffabilis & imperscrutabilis potentiae Dominus, cujus altitudo prudentiae nullis inclusa limitibus, nullis terminis comprehensa, recti censura iudicii coelestia pariter & terrena gubernat, etsi cunctos ejus ministros magnificet, altis decoret honoribus, & coelestis efficiat beatitudinis possessores, nonnullos tamen apud diversarum Christianismi regionum incolas, laudis & praemiorum uberiori retributione prosequitur, quos ipsarum regionum habitatoribus patronos & intercessores speciales disposuit, ut sic ipsos merito collaudet ingentior devotio populi sub tanto patrono & intercessoris praesidio per Dei clementiam assidue stabilita. Hujus itaque dispositionis ex clementissima & benignissima Dei salvatoris nostri misericordia procedentis consideratione, nationis Anglicanae plebs fidelis, etsi Deum in sanctis suis omnibus laudare ex debito teneatur, ipsum tamen, ut orbis affatus, ipsaque gratiae de-*

super concessae experientia, rerum cunctarum interpret optima, attestantur, in suo martyre gloriosissimo beato Georgio, tanquam patrono & protectore dictae nationis speciali humanis tenetur attollere vocibus, laudibus personare praecipuis, & specialibus honoribus venerari. Hujus namque, ut indubitanter credimus, interventu, nedum gentis Angligenae armata militia contra incursum hostiles bellorum tempora tuta reperitur, sed & cleri pugna militaris in sacrae pacis otio sub tanti patroni suffragio celebriter roboratur. Hinc est quod nos qui Dei laudem in sanctis suis, in quibus gloriosus existit, in nostra provincia cupimus ampliari, regis & regni incolarum ad hoc hortatibus excitati, confratrumque nostrorum & cleri provinciae nostrae ducti consiliis, quinimo & nostri provincialis concilii robore ac decreto suffulti, antiquorum patrum erga sanctos Dei devotionis affectum prosequentes, festum beati Georgii martyris sub officio duplici ad modum majoris duplicis festi tam per clerum quam per populum dictae provinciae per universas ecclesias ejusdem, de expresso consensu nostrorum fratrum cleri antedicti, volumus, statuimus, & praecipimus annis singulis, perpetuis futuris temporibus solenniter celebrari, & in ipso festo ab omni servili opere per omnes civitates & loca ipsius provinciae, sicut & prout in festo natalis Domini, praecipimus feriari, quo magis in ipso festo plebs fidelis ad ecclesiam conveniant, Deum laudent, & ipsius sancti & omnium beatorum patrocinia devotius implorent, & pro rege ac regni salute insistent frequentius & exorent. Before this, by a canon¹¹ under archbishop *Islip*, in the thirty seventh year of *Edward* the third, the holy days were confined to a narrow number, and to but a few more than we now observe, excepting the days of dedication of churches, and the patron saints of them, to which liberty *Linwood*, by reason of that canon of *Chicheley's* time, gives this exception, * *excipe festum sancti Georgii, which in that of Islip was not mentioned.* And liberty was given to work on any other saint's day. After this, as before also in the calendaries of the *English* church, *St. George's* day was noted with *duplex*, yet so that it stood, it seems, only for *minus duplex*, or *inferius duplex* still, notwithstanding this canon of the convocation. For in the ordinal *pica* or *pie* of the church of *Salisbury*, which is called also *directorium sacerdotum*, carefully rectified and published in 1508, or the beginning of *Henry* the eighth, by one *Mr. Clerk*, chanor of *King's College* in *Cambridge*, by the direction of that university (a book by which priests were taught how and when to celebrate all feasts of the year) this of *St. George* occurs frequently with *minus duplex* added to it. But yet it was not observed, it seems, otherwise than those that were the *inferiora duplicia*, however the convocation had made a canon to the contrary, as appears by a table *de festorum divi-*

⁹ Regist. ms. Arundel. arch. Cant. part. 1. fo. 53. b. art. 27.

arch. Cant. part. 2. fo. 2. & fo. 114. b. & *Linwood* tit. de feriis c. ineffabilis. Adde his v. cl. *Arthurum Duck* in vita *Chichelei* arch. Cant. pag. 43.

¹⁰ De festo duplici & quotuplex illud, vide *Durand*, rational. lib. 7. cap. 7. §. XXXI. Ordinale, &c. item *Linwood* ad tit. de feriis C. Ineffabilis verb. officio duplici & verb. majoris duplicis, &c.

¹¹ Sub initio *Henrici* V.

¹² Regist. ms. *Henrici* *Chichelei*

arch. Cant. part. 2. fo. 2. & fo. 114. b. & *Linwood* tit. de feriis c. ineffabilis. Adde his v. cl. *Arthurum Duck* in vita *Chichelei* arch. Cant. pag. 43.

¹³ De festo duplici & quotuplex illud, vide *Durand*, rational. lib. 7. cap. 7. §. XXXI. Ordinale, &c. item *Linwood* ad tit. de feriis C. Ineffabilis verb. officio duplici & verb. majoris duplicis, &c.

¹⁴ Regist. arch. Cant. Sim. *Islip* fo. 186. b.

sione, printed at the end of the psalter, according to Salisbury use, where the *majora duplicia* are reckoned to be *Candlemas, Corpus Christi day, All Saints*, and some few more, *Christmas, Easter*, and some such more being *principalia duplicia*; and the *minora duplicia*, *St. Stephen's day, St. John's, Innocents*, the *Annunciation*, the holy days of *Easter* and *Whitsun week*, and some such more; and then the *inferiora duplicia*, the days of *St. Andrew, St. Thomas* the apostle, *St. Matthew, St. Gregory, St. Ambrose, St. Mark, St. Augustine* the apostle of England, *St. Michael*, and some more, among whom *St. George* is numbered, but with this note; *Festum sancti Georgii secundum constitutionem provincialem est majus duplex. Et consulo ut ita observetur, licet hoc non habeat consuetudo*. Whence we know clearly, that it was not kept according to the canon. In that *ordinale* also, it appears, how by reason of the concurrence of the three and twentieth of *April* with *Easter*, or *Easter-Eve*, the celebration of the feast every where was put off to the ninth day, or some other day of *May*, as the case required, in their ecclesiastical discipline. But in the end of an old ms. *ordinale* of the province of *York*, I find it noted, that if *St. George's day*, or *St. Wilfrid's*, which is the four and twentieth of *April*, fell on *Easter-Even*, (as it happens in some years that have eight or nineteen for the cycle of the moon) the celebration was to be anticipated, and cast into the eighth or ninth day day preceding, or into the sixteenth or seventeenth day of *April*. *Notandum* (so are the words) *quando festum sancti Georgii, vel sancti Wilfridi, in vigilia Paschae evenierint, anticipetur & fiet viii & ix die praeecedente. Et fiet de sancto Georgio, cum novem lectionibus. Et sint sex primae lectiones de communi unius martyris*.

When the number of our holy days were necessarily reformed under *Henry* the eighth, for the practice of every man's labour in his vocation, which was before forbidden ^v in them, the feasts of the apostles, of our blessed lady, as the words are before *Henry* the eighth's primer, and of *St. George*, and the four evangelists, and *Mary Magdalen*, are, besides some other more eminent feast days, excepted in the reformation. Thus it remained a general holy day, until by act of parliament under *Edward* the sixth, those days which we now keep holy in our church, were singled out only for holy days to be kept, and commanded to be kept. *Provided* ² *always* (as the words of the act are) *that it shall be lawful for the knights of the garter, and to every of them, to keep and to celebrate solemnly the feast of their order commonly called St. George's feast, yearly, from henceforth the xxii, xxiii, and xxiv days of April, and at such other time and times as yearly shall be thought convenient by the king's highness, his heirs and successors, and the said knights of the said honourable order, or any of*

them now being, or hereafter to be; any thing in this act heretofore mentioned to the contrary notwithstanding. This act was repealed in queen *Mary's* time, but it is since revived.

Notwithstanding these testimonies both of the eastern and western churches, and the so antient and continued honour done to this martyr, and that by our nation particularly; there have been some, and that most ^a learned men, who in our age, for we find not any of them antienter, while they have fervently opposed the invocation of his name with others, have denied him also any being at all, unless you will, with them, make him the same with the *Arrian* heretick *George* bishop of *Alexandria*, cruelly murdered there, of whom *Ammianus* ^b *Marcellinus*, *St. Athanasius* ^c and *Gregory Nazianzen* ^d have obvious mention. This *Arrian*, they say, began to be worshipped as a saint, was also of *Cappadocia*, and that the *St. George* we speak of as the patron saint of the *English*, is mentioned in no good story of the church, but grew in legends, to be that he is now made, out of that hereticks name of *Alexandria*. And they would so have the whole picture of our *St. George*, whereof more presently, to be symbolical and not historical. For divers circumstances of his martyrdom, I confess, there is no reason we should believe them as they are related, being so incredible, so various, and so contrary sometimes one to the other. But that is common to him with many other martyrs, of whose having been martyrs, we doubt not, tho' their miracles and many of the circumstances of their sufferings be too incredible. The question is only whether there were one or no of this name that suffered death in the persecutions as a martyr, and that at *Lydda* or *Diospolis*, being a *Cappadocian*. For good stories of him; We know that of the time wherein he is supposed to have suffered, we have no historian of the church but *Eusebius*, who mentions not the name of one martyr in divers hundreds that he tells us of in general. But the many and antient dedications of churches to him, old relations of his miracles and apparitions, the peculiar liturgies and festivals in both churches belonging to him, and divers other particulars beforementioned, or designed of him, his being a martyr having been never, before this age, questioned, may supply the full weight of the best ecclesiastical story that could have been left of him. And for the arguments brought against him out of the name of that *Arrian* of *Alexandria*, as if posterity had turned that heretick into this martyr, and so created him with a fiction of mistaking; there is no other warrant for any such supposition but mere fancy. For it is plain by *Ammianus Marcellinus*, that the *Arrian George* was a *Cilician*, not a *Cappadocian*; though he came indeed, being sent for, out of *Cappadocia*, as we know out of *Athanasius*. Neither is there any thing in the relations of them, common to them both, but the name only of *Cappadocia*, which to the one was a place of former abode,

^v Videfis Linwood ad tit. de feriis C. ineffabilis, verb. omni fervili opere. de idololatria, lib. 1. cap. 5, &c. ^b Lib. 22.

^c Apol. 2. & de fuga sua & epist. ad solit. vit. degentes.

^a Vide Rainold.

^d Orat. in

to the other both of abode and birth, as it is usually taken. Neither appears it that the *Arrian* was ever worshipped, or begun to be worshipped as a saint, nor doth the place brought to prove so much out of *Epiphanius*,^e warrant with any colour any such matter. So that whether *St. George* were at all or not, depends only upon the authority of the so antient consent and use of the churches of the east and west. And nothing at all that is deduced out of the story of *George the Arrian of Alexandria*, and applied to this of ours, doth in the least degree, if rightly considered, impeach the truth of his martyrdom. And, which is principally to be thought of here, the martyrdom of our *St. George* is placed under *Dioclesian*; about cccx of *Christ*. That rage of the people in murdering him of *Alexandria* after cccxx; so that there interceded lxx years between them. Why should we now begin so to confound into one these two, who for above mccc years time, have in both churches with all publick attestation been kept so severall, that as the one was highly worshipped for a saint and martyr, so the other hath been remembered only as a most wicked heretick, and most different in his life, dignity, death, and age, from the other.

XLIV. The figure of *St. George* armed on horseback, and the dragon under him, just like the arms of the emperor of *Russia*, is that which is fixed to the collar of the order. For his being armed, and on horseback; no apter figure could be made of him, being supposed a foldier and a commander, as is before shewed. And the *Greeks* antiently shaped him so, as appear in *Nicephorus*^f *Gregoras*. But some have thought that the dragon was rather symbolically added, than upon any historical and just ground. It was as antient a fashion as *Constantine* the great to express the devil in that shape, because he is so called in holy scriptures. And therefore also did *Constantine* command his own picture, as of one that triumphed over the devil, to be made with the cross over it, and a dragon by him thrust through with a sword, and tumbled headlong into the sea; which, saith *Eusebius*,^g was but a figure of that in the prophet *Esay*, In^h that day the Lord with his sore and great and mighty sword shall visit the dragon (so the septuagint turn ליוֹתָן *Leviathan*) that piercing serpent, even the dragon that crooked serpent, and he shall slay the dragon that is in the sea. In other figures he hath sometimes before him a maid kneeling, which learned men have conceived also to be only symbolical, and to denote some country or city, only imploring his aid, the old fashion being, as at this day, to expose countries and cities in feminine shapes. And both for the dragon and the maid, I add here the words of *Baronius*. *Pictura illa* (saith he)ⁱ *S. Georgii qua effingitur eques armatus, qui bastae cuspidē draconem interficit, juxta quem etiam virgo po-*

sita manus supplices tendens imploret auxilium; Symboli potius quam historiae alicujus opinor esse expressam imaginem. In nullis enim, quae recensuimus, S. Georgii actis antiquis, quicquam ejusmodi legitur. Sed a Jacobo de Voragine, absque aliqua majorum auctoritate, ea ad historiam referuntur, quae adversus diaboli vires tanti martyris impleret auxilium. But, saith he, *Non imus inficias S. Georgium* (so it should be; but in the edition at *Rome*, it is misprinted *S. Gregorium*) *ut equestris militiae militem, equestri imagine referri consuevisse.* Some passages there are of this figure in the the duke of *Somerset's* letters to *Stephen Gardiner* bishop of *Winchester*, and other such reported in *Fox's* acts of the church of *England*, which I omit here, as also what *Erhardus Cellius*, and such more have of it. And I conclude with those verses in that neat poem of the marriage of *Tame* and *Isis*, where the *Thames* is personated thus speaking to *Windfor* of this order, with a very small variation;

— *Cappadocis tu clara Georgi Militia; procerumque cohors, chlamydata nitenti*

Cincta periscelidi furas, te lumine tanto Illustrat, tantis radiis perstringit & orbem Ut jam Phryxaeum spernet Burgundia vellus, Contemnat cochleis variatos Gallia torques, Et cruce conspicuas pallas, Rhodus, Alcala & Elba,

Solaque militiae sit splendida gloria vestra.

XLV. It rests that we come to the order of the bath. No man, I think, believes the fabulous assertions of *Julius Caesar*, his making knights of the bath, which some durst give out to the world among the like vanities, which we no further touch here. The first express mention of them, as of a distinct order, is commonly attributed to the beginning of king *Henry* the fourth. He, preparing for his coronation, made XLVI knights at the *Tower* that were bathed. *Celle nuit* (saith *Froissart*, speaking of the *Saturday* before his coronation) *y veillerent tous les escuyers, qui devoient estre faitz chevaliers le lendemain, que fuerent le nombre de XLVI & eurent tous ses escuyers, chacun sa chambre, & chacun sa baign, ou ils se baignerent celle nuit; & lendemain le duc de Lancastre les fit chevaliers a sa messe, & leur donna longues cottes verdes a estreits manches, fourrees de menuver en guise de prelates, & avoient les dits chevaliers sur la fenestre espaule, un double cordeau de soye blanche a blanches bouppells pendans.* But observe what is before said touching bathing in making knights bachelors, by the king both of *France* and *England*,¹ long before *Henry* the fourth. The ceremonies at their creations are at large delivered by^m *Camden*,ⁿ *Segar*, and others. * And some memoirs of^o coronations, creations of the prince of *Wales*, and of the duke of *York*, have likewise the ceremonies of

^e Haeref. 76. contra Anomaeos.

^f Ad April. 23. in martyrolog. Roman.

^g Brit. pag. 124.

^h Hist. 8.

ⁱ Camden. in Atrebatius pag. 209.

ⁿ Honour military and civil, lib. 2. cap. 11.

^o De vita Constantin. lib. 3.

¹ Ms.

^h Isiaie cap. 27. comm. 1.

¹ Supra §. XXXIV. & cap. 8. §. XXIV.

taking this order at large, which we omit here. But their being bathed, is the ceremony whence they are denominated. The ensigns in the creation of a knight of the bath are, besides robes and such like, the sword and gilt spurs wherewith he is invested after the vigils, bathing, and such other precedent solemnities; all or most part of which were antiently used in making of knights bachelors, or *militēs simplices*, as is before shewed. After the creation, they all dine together, and, as they come from dinner, the king's master cook shews to them his knife, and admonishes them that they prove good and faithful knights, which if they do not he threatens them to cut off their spurs. Touching that, you may observe what before occurs in the preamble of the judgment against Sir *Ralph Grey*,^p under *Edward* the fourth. These kind of knights have been usually created out of the choicest of such as have not before received the order of knighthood, and this at coronation or knighting of the prince, and such like of the greatest solemnities at court. The antientest writer that purposely handling the nature of knighthood mentions this order, is *Nicholas Upton*^q that lived under *Henry* the sixth. Immediately after his chapter, which is before^r transcribed in the knights of the empire, touching who may create knights, he goes on with the form of creation under this title; *Quibus modis creantur milites*; saith he, *Creantur milites multis modis. Primo modo ut praedixi apud S. Sepulchrum, ut praedictum est. Creantur in alio modo milites, viz. per balneum, qui modus multum observatur in Anglia, & in aliis regnis* (to which purpose observe what is before in the knights of^s *France*) *ubi regnat pax. De isto modo, dic ut ibi*; that is, he refers you to the precedent chapter for the knowledge of such persons as might create them. And then he goes on with that which is transcribed in the^t ceremonies of court, that have been used with us at the making of knights bachelors. And then among other things, speaking of those *stigmata*, or *insignia militaria*, as necessary concurrents to knighthood by the imperial laws, *Item quinto* (saith he; his other four things necessarily concurrent, are *genus, scriptura, fides, examen*, and the sixth is *ensis*) *quod stigmata sive insignia militaria ei imponantur ut C. de Fabricensis L. III. lib. XI sic ut illi milites qui creantur per balneum de consuetudine in humero sinistro suum stigma militare album* [ferunt;] *quod quidem stigma dictus tyro portabit quousque fecerit aliquod notabile factum, nisi aliqua notabilis domina illud tollat, ut docet consuetudo Angliae.* That *stigma album*, as he means it (although the phrase bear it not) is the *cordeau de soie*, or the silk ribband in that cited out of *Froissart*. I add here, that to a *French*^u relation of the ceremonies, written about our *Henry* the seventh, this title is prefixed, *Le ordre pur faire les chevaliers de la Bathe selonque le custome d'Engleterre & auxi selonque le cu-*

stome de les auncient Romanes; and that *Henry* the VII. sent writs to divers lords and gentlemen to come *ad ordinem militiae de balneo suscipiendum*, at the making of *Henry* his second son duke of *Tork*, *juxta* (as the words^x of the writ are) *antiquam consuetudinem in creatione usitatam*. And this was commanded by *subpoenas* of five hundred pounds.

XLVI. After these orders of knighthood, we come to the lately erected title of baronet, which follows according to our first division of the dignities of *England*. The word *baronet* was antient, as is already shewed in the title of *banneret* both of *France* and *England*. But as it was in such use, it hath no relation to this later title. The first creation of this was in the ninth year of king *James*. He in that year,^y on the two and twentieth of *May*, made divers by patents that differed not one from another in any syllable, more than the names of them that were created. The form was thus.

JACOBUS Dei gratia, &c. salutem. Cum inter alias imperii nostri gerendi curas, quibus animus noster assidue exercetur, illa non minima sit, nec minimi momenti, de plantatione regni nostri *Hiberniae*, ac potissimum *Ultoniae* amplae & percelebris ejusdem regni provinciae, quam, nostris jam auspiciis atque armis, foelicitate sub obsequii jugum redactam, ita constabilire elaboramus, ut tanta provincia, non solum fincero religionis cultu, humanitate civili, morumque probitate, verum etiam opum affluentia, atque omnium rerum copia quae statum reipublicae ornare vel beare possit, magis magisque efflorescat; opus sane, quod nulli progenitorum nostrorum praestare & perficere licuit, quamvis id ipsum multa sanguinis & opum profusione facpius tentaverit; in quo opere, sollicitudo nostra regia, non solum ad hoc excubare debet, ut plantatio ipsa strenue promoveatur, oppida condantur, aedes & castra extruantur, agri colantur, & id genus alia; sed etiam prospiciendum imprimis ut universus hujusmodi rerum civilium apparatus, manu armata, praesidiis videlicet & cohortibus, protegatur & communiatur, ne qua aut vis hostilis, aut defectio intestina, rem disturbet aut impediatur: cumque nobis intimatum sit, ex parte quorundam ex fidelibus nostris subditis, quod ipsi paratissimi sint, ad hoc regium nostrum inceptum, tam corporibus, quam fortunis suis promovendum: Nos commoti operis tam sancti ac salutaris intuitu, atque gratos habentes hujusmodi generosos affectus, atque propensas in obsequium nostrum & bonum publicum voluntates, statuimus apud nos nulli rei deesse, quae subditorum nostrorum studia praefata remunerare, aut aliorum animos atque alacritatem, ad operas suas praestandas, aut impenas in hac parte faciendas, excitare possit; itaque nobiscum perpendentes atque reputantes, virtutem & industriam, nulla alia re magis quam honore ali atque acui, omnemque honoris & dignitatis splendorem, & amplitudinem a rege tanquam a

^p §. XXXVIII.
^q §. XXXIV. supra.

^q Ms. de militia, lib. 1. cap. 3.

^u Ms.

^x Dorf. claus. 10 Hen. VII. 20. Sept.

^y Part. 2. chap. 1. §. LXII.

^y Part. 9 Jac. 1. part. 45.

^z Cap. 3. §. XXIIV.

fonte, originem & incrementum ducere, ad cuius culmen & fastigium proprie spectat, novos honorum & dignitatum titulos erigere atque instituire, utpote a quo antiqui illi fluxerint; consentaneum duximus (postulante usu reipublicae atque temporum ratione) nova merita novis dignitatibus insignibus rependere: ac propterea, ex certa scientia & mero motu nostris, ordinavimus, creximus, constituimus, & creavimus, quendam statum, gradum, dignitatem, nomen & titulum *baronetti*, (Anglice *of a baronet*) infra hoc regnum nostrum *Angliae* perpetuis temporibus duraturum. Sciatis modo, quod nos de gratia nostra speciali ac ex certa scientia & mero motu nostris, creximus, praefecimus & creavimus, ac per praesentes pro nobis, haeredibus & successoribus nostris, erigimus, praeficimus & creamus dilectum nostrum *A. B. de C.* in comitatu *D.* virum, familia, patrimonio, censu, & morum probitate spectatum (qui nobis auxilium & subsidium satis amplum, generoso & liberali animo dedit & praestitit, ad manutenendum & supportandum triginta viros in cohortibus nostris pedestribus in dicto regno nostro *Hiberniae*, per tres annos integros pro defensione dicti regni nostri, & praecipue pro securitate plantationis dictae provinciae *Ultoniae*) ad, & in dignitatem, statum, & gradum *baronetti* (Anglice *of a baronet*) ipsumque *A. B. baronettum* pro nobis, haeredibus, & successoribus nostris, praeficimus, constituimus, & creamus, per praesentes, habendum sibi & haeredibus masculis de corpore suo legitime procreatis imperpetuum. Volumus, etiam & per praesentes de gratia nostra speciali, ac ex certa scientia & mero motu nostris, pro nobis, haeredibus & successoribus nostris, concedimus praefato *A. B.* & haeredibus masculis de corpore suo legitime procreatis, quod ipse idem *A. B.* & haeredes sui masculi praedicti habeant, gaudeant, teneant, & capiant locum atque praecedentiam, virtute dignitatis *baronetti* praedicti, & vigore praesentium, tam in omnibus commissionibus, brevibus, literis patentibus, scriptis, appellationibus, nominationibus & directionibus, quam in omnibus sessionibus, conventibus, coetibus & locis quibuscunque prae omnibus militibus, tam de balneo (Anglice *of the bath*) quam militibus baccalariis (Anglice *bachelors*) ac etiam prae omnibus militibus banneretis, (Anglice *bannerets*) jam creatis, vel imposterum creandis illis; militibus banneretis tantummodo exceptis, quos sub vexillis regiis, in exercitu regali in aperto bello, & ipso rege personaliter praesente, explicatis, & non aliter creari contigerit. Quodque uxores dicti *A. B.* & haeredum masculorum suorum praedictorum, virtute dictae dignitatis maritorum suorum praedictorum, habeant, teneant, gaudeant, & capiant locum & praecedentiam, prae uxoribus omnium aliorum quorumcunque prae quibus mariti huiusmodi uxorum, vigore praesentium habere debent locum & praecedentiam; atque quod primogenitus filius, ac caeteri omnes filii & eorum uxores & filiae ejusdem *A. B.* & haeredum suorum praedictorum respective, habeant, & capiant locum & praecedentiam ante primogenitos filios, ac alios filios & eorum uxores, & filias omnium quorumcunque respective, prae

quibus patres huiusmodi filiorum primogenitorum, & aliorum filiorum & eorum uxores, & filiarum, vigore praesentium habere debent locum & praecedentiam. Volumus etiam, & per praesentes pro nobis, haeredibus, & successoribus nostris, de gratia nostra speciali, ac ex certa scientia, & mero motu nostris concedimus, quod dictus *A. B.* nominetur, appelletur, nuncupetur, placitet & implacitetur, per nomen *A. B. baronetti*; & quod stilius & additio *baronetti* apponatur in fine nominis ejusdem *A. B.* & haeredum masculorum suorum praedictorum, & omnibus literis patentibus, commissionibus, & brevibus nostris, atque omnibus aliis chartis, factis, atque literis, virtute praesentium, ut vera, legitima, & necessaria additio dignitatis. Volumus etiam, & per praesentes pro nobis, haeredibus, & successoribus nostris ordinamus, quod nomini dicti *A. B.* & haeredum masculorum suorum praedictorum, in sermone *Anglicano*, & omnibus scriptis *Anglicanis*, praeponatutur haec additio, videlicet Anglice, *Sir*, & similiter quod uxores ejusdem *A. B.* & haeredum masculorum suorum praedictorum, habeant, utantur, & gaudeant hac appellatione, videlicet *Aanglice lady, madame, & dame*, respective, secundum usum loquendi. Habendum, tenendum, utendum, & gaudendum, eadem statum, gradum, dignitatem, stilius, titulum, nomen, locum, & praecedentiam, cum omnibus & singulis privilegiis, & caeteris praemissis, praefato *A. B.* & haeredibus masculis de corpore exeuntibus imperpetuum. Volentes & per praesentes concedentes, pro nobis, haeredibus & successoribus nostris, quod praedictus *A. B.* & haeredes sui masculi praedicti, nomen, statum, gradum, stilius, dignitatem, titulum, locum, & praecedentiam praedictam, cum omnibus & singulis privilegiis, & caeteris praemissis successive, gerant & habeant, & eorum quilibet gerat & habeat, quodque idem *A. B.* & haeredes sui masculi praedicti successive *baronetti* in omnibus teneantur, & ut *baronetti* tractentur & reputentur. Et ulterius de uberiori gratia nostra speciali, ac ex certa scientia & mero motu nostris concessimus, ac per praesentes pro nobis, haeredibus & successoribus nostris concedimus praefato *A. B.* & haeredibus suis masculis praedictis, quod numerus baronettorum hujus regni *Angliae* nunquam posthac excedet in toto, in aliquo uno tempore, numerum ducentorum baronettorum: & quod dicti *baronetti*, & eorum haeredes masculi praedicti respective, de tempore in tempus in perpetuum, habebunt, tenebunt, & gaudebunt locos & praecedentias suas inter se, videlicet, quilibet eorum secundum prioritatem & senioritatem creationis suae *baronetti* praedicti; quotquot autem creati sunt vel creabuntur *baronetti* per literas nostras patentes, gerentes datas uno & eodem die, & haeredes sui praedicti, gaudebunt locis & praecedentis suis inter se secundum prioritatem, quae cuilibet eorum dabitur, per alias literas nostras patentes in ea parte primo conficiendas, sine impedimento, & non aliter, nec alio modo. Et insuper de abundantiori gratia nostra speciali, ac ex certa scientia & mero motu nostris concessimus, ac per praesentes, pro nobis, haeredibus & successoribus nostris concedimus praefato *A. B.* & haeredibus suis

ſuis maſculis prædictis, quod nec nos, nec hæredes vel ſucceſſores noſtri, de caetero in poſterum erigemus, ordinabimus, conſtituemus, aut creabimus infra hoc regnum noſtrum *Angliae* aliquem alium gradum, ordinem, nomen, titulum, dignitatem, ſive ſtatum, ſub vel infra gradum, dignitatem, ſive ſtatum *baronum*, hujus regni noſtri *Angliae*, qui erit vel eſſe poſſit ſuperior vel æqualis gradui & dignitati *baronettorum* prædictorum, ſed quod tam dictus *A. B.* & hæredes ſui maſculi prædicti, quam uxores, filii, uxores filiorum & filiae ejuſdem *A. B.* & hæredum maſculorum ſuorum prædictorum, de caetero in perpetuum libere & quiete habeant, teneant, & gaudeant, dignitates, locos & præcedentias ſuas prædictas præ omnibus, qui erunt de talibus gradibus, ſtatibus, dignitatibus, vel ordinibus in poſterum, ut præfertur, creandi reſpectively ſecundum veram intentionem præſentium abſque impedimento noſtro, hæredum vel ſucceſſorum noſtrorum, vel aliorum quorumcunque. Et ulterius per præſentes declaramus, & ſignificamus beneplacitum & voluntatem noſtram in hac parte fore & eſſe; & ſic nobiſcum ſtatuiſmus & decreviſmus, quod ſi poſtquam nos prædictum numerum ducentorum baronettorum hujus regni *Angliae* compleverimus & perfece-
rimus, contigerit aliquem, vel aliquos eorundem baronettorum ab hac vita diſcedere, abſque hærede maſculo de corpore vel corporibus hujusmodi *baronetti* vel *baronettorum* procreato, quod tunc nos non creabimus, vel præficiemus aliquam aliam perſonam, vel perſonas in baronetum, vel baronettos regni *Angliae*, ſed quod numerus dictorum ducentorum baronettorum ea ratione de tempore in tempus diminuetur, & in minorem numerum cedet & redigetur. Denique volumus, ac per præſentes, pro nobis, hæredibus & ſucceſſoribus noſtris de gratia noſtra ſpeciali, ac ex certa ſcientia & mero motu noſtris concedimus præſato *A. B.* & hæredibus ſuis maſculis prædictis, quod hæc literæ noſtræ patentēs erunt in omnibus, & per omnia firmæ, validæ, bonæ, ſufficientes & effectuales in lege, tam contra nos, hæredes & ſucceſſores noſtros, quam contra omnes alios quoſcunque ſecundum veram intentionem earundem, tam in omnibus curiis noſtris, quam alibi ubicunque. Non obſtante aliqua lege, conſuetudine, præſcriptione, uſu, ordinatione ſive conſtitutione quacunque antehac edita, habita, uſitata, ordinata, ſive proviſa, vel in poſterum edenda, habenda, uſitanda, ordinanda, vel providenda: & non obſtante aliqua alia re, cauſa vel materia quacunque. Volumus etiam &c. Abſque fine in hænaperio, &c. Eo quod expreſſa mentio, &c. In cujus rei, &c. teſte, &c.

Afterward divers others were made by the like patents that paſſed to ſome by warrants of the privy ſeal, and to others by warrants of commiſſioners authorized under the great ſeal for treating with ſuch as deſired to be created upon the terms in the preamble of the patent, and for giving warrant for the creation of them. And to thoſe commiſſioners inſtructions were alſo annexed to their commiſſion in theſe words.

FOr ſiſmich, as we have been pleaſed to authorize you to treat and conclude with a certain number of knights and eſquires, as they ſhall preſent themſelves unto you, with ſuch offers of aſſiſtance for the ſervice of *Ireland*, and under ſuch conditions as are contained in theſe preſents, wherein we do repoſe great truſt and confidence in your diſcretions and integrities, knowing well that in ſuch caſes, there are ſo many circumſtances incident, as require a choice care and conſideration. We do hereby require you to take ſuch courſe as may make known abroad both our purpoſe, and the authority given unto you, that by the more publick notice thereof, thoſe perſons who are diſpoſed to advance ſo good a work, may in time underſtand where, and to whom to addreſs themſelves for the ſame; for which purpoſe we require you to appoint ſome certain place and times for their acceſs, which we think fitteſt to be at the council-chamber at *Whitehall*, upon *Wedneſdays* and *Fridays* in the afternoon, where you ſhall make known to them, as they come, that thoſe who deſire to be admitted into the dignity of baronets, muſt maintain the number of thirty footſoldiers in *Ireland*, for three years, after the rate of eight pence, ſterling money of *England*, by the day; and the wages of one whole year to be paid into our receipt, upon paſſing of the patent.

Provided always, that you proceed with none, except it ſhall appear unto you, upon good proof, that they are men for quality, ſtate of living, and good reputation worthy of the ſame; and that they are at the leaſt deſcended of a grandfather, by the father's ſide, that bare arms, and have alſo of certain yearly revenue in lands of inheritance in poſſeſſion, one thouſand pounds *per annum de claro*; or lands of the old rent, as good, in accompt, as one thouſand pounds *per annum* of improved rents, or at the leaſt two parts in three parts to be divided of lands, to the ſaid values in poſſeſſion, and the other third part in reverſion, expectant upon one life only, holding by dower, or in jointure.

And for the order to be obſerved in ranking thoſe, that ſhall receive the dignity of a baronet, although it is to be wiſhed, that thoſe knights, which have now place before other knights, in reſpect of the time of their creation, may be ranked before others, *caeteris paribus*, yet becauſe this is a dignity which ſhall be hereditary, wherein divers circumſtances are more conſiderable, than ſuch a mark as is but temporary, that is to ſay, of being now a knight, in time before an other, our pleaſure is, you ſhall not be ſo precise, in placing thoſe that ſhall receive this dignity, but that an eſquire of great antiquity, and extraordinary living, may be ranked in this choice before ſome knights. And ſo, of knights, a man of a greater living, more remarkable for his houſe, years, or calling in the commonwealth, may be now preferred in this degree, before one that was made a knight before him.

Next, becauſe there is nothing of honour, or of value, which is known to be ſought or deſired

red, be the motives never so good, but may receive scandal from some; who, wanting the same good affection to the publick, or being in other considerations incapable, can be contented out of envy to those that are so preferred, to cast aspersions and imputations upon them, as if they came by this dignity for any other consideration, but that which concerneth this so publick and memorable a work, you shall take order, that the party, who shall receive this dignity, may take his oath, that neither he, nor any for him, hath directly or indirectly given any more for attaining the degree, or any precedence in it, than that which is necessary for the maintenance of the number of soldiers, in such sort, as aforesaid, saving the charges of passing his patent.

And because we are not ignorant, that in the distribution of all honours, most men will be desirous to attain to so high a place as they may, in the judgment whereof, being matter of dignity, there cannot be too great caution used to avoid the interruptions that private partialities may breed in so worthy a competition.

Forasmuch as it is well known, that it can concern no other person so much to prevent all such inconveniences, as it must do ourself, from whom all honour and dignity, either temporary or hereditary, hath his only root and beginning; you shall publish and declare to all, to whom it may concern, that for the better warrant of your own actions, in this matter of precedence, wherein we find you so desirous to avoid all just exceptions, we are determined upon view of all those patents, which shall be subscribed by you, before the same pass our great seal, to take the especial care upon us, to order and rank every man in his due place; and therein always to use the particular counsel and advice, that you, our commissioners, shall give us, of whose integrity and circumspection, we have so good experience, and are so well perswaded, as we assure ourself, you will use all the best means you may to inform your own judgments in cases doubtful, before you deliver us any such opinion as may lead us in a case of this nature, wherein our intention is, by due consideration of all necessary circumstances, to give every man that satisfaction, which standeth with honour and reason.

Lastly, having now directed you, how, and with what caution you are to entertain the offers of such as shall present themselves for this dignity. We do also require you to observe these two things, the one, that every such person as shall be admitted, do enter into sufficient bond or recognizance, to our use, for the payment of that portion, which shall be remaining after the first payment is made, which you are to see paid, upon delivery of the letters patents; the other, that seeing this contribution for so publick an action, is the motive of this dignity, and that the greatest good which may be expected upon this plantation, will depend upon the certain payment of those forces, which shall be fit to be

maintained in that kingdom, until the same be well established, the charge whereof will be born with the greater difficulty, if we be not eased by some such extraordinary means; we require you, our treasurer of *England*, so to order this receipt, as no part thereof be mixed with our other treasure, but kept apart by itself, to be wholly converted to that use, to which it is given, and intended; and in regard thereof, that you assign it to be received, and the bonds to be kept by some such particular person, as you shall think good to appoint, who upon the payment of every several portion, shall both deliver out the bonds, and give his acquittance for the same. For which this shall be yours, and his the said receiver's sufficient warrant in that behalf.

That commission held but for some part of that year. Since, divers have been created into that dignity, and their patents are obvious in the rolls. And the year following a decree was made touching their place and precedence which is at large in the last chapter of this part. To that decree was also added that the baronets and their eldest sons ², being of full age, should be knighted; and that they and their descendants should bear either in a canton in their coat of arms, or in an escutcheon, at their election, the arms of *Ulster*; that is, in a field *argent* a hand *gules*, or a bloody hand, and also that baronets, for the time being, should have place in the armies of the king's majesty, his heirs and successors, in the groûs, near about the standard, with some other particulars for their funerals.

XLVII. The last title of our division here, is that of esquire, or *armiger*, which is between the dignity of knight bachelor and the common title of gentleman. And it is of that nature with us now, that to whomsoever, either by blood, place in the state, or other eminency, we conceive some higher attribute should be given, than that sole title of gentleman, knowing yet that he hath no other honorary title legally fixed on him, we usually stile him an esquire, in such passages as require legally that his degree or state be mentioned; as especially in ^a indictments and actions, whereupon he may be outlawed. Those of other nations that are barons or great lords in their own countries, and no knights, are in legal ^b proceedings stiled with us, esquires only. Some of our greatest heralds have their divisions of our esquires applied to this day. I leave them as I see them, where ^c they may easily be found. The original of this title doubtless was with us also from the office or function of *armiger* or *scutifer*, touching which we have already spoken in the dignities of the empire and of *France*. From the time of king *Henry* the fifth, when the statute of additions was made, it often occurs as a legal addition. Yet long before it was a general name with us for such as were, it seems, by their military employment, *militaris ordinis candidati*, and being beneath knights bachelors, were either attendant on them or some greater

^a Pat. 10 Jacobi part. 10. n. 2. fol. 29. & Br. tit. Nofine 61.

^b Juxta stat. 1 Hen. V. cap. 1. c Camden. in Br. pag. 127. *Glover Somerset* apud *Segar*, lib. 4. cap. 14. &c.

^c Coke part. 9. fol. 117. quin & vide 32 Hen. VI.

ter persons, or employed otherwise in the wars under that name; or had it by creation, whereof some example also is anon shewed. Thence it is that in *Froissart* we have so frequently *chivalers* & *esquiers* to expresse the best part of the army, and the like of *milites* & *armigeri* in others. In the elder times *serviens*, seems to supply the title of esquire, and yet is sometimes distinguished from it, and divers other observable passages are found touching both titles, some of which I had rather here select, and offer them to the view of better judgments, than rashly extract any conclusion from them.

The antientest mention that I can remember with us of the title of *armigeri* is in *Ordericus Vitalis*, speaking of *William Fitz-Osborne* earl of *Hereford*, and *Odo* earl of *Kent*, in the time of the Conqueror; *nimia cervicositate tuebant* (saith ^a he) & *clamores Anglorum rationabiliter audire eisque aequitatis lance suffragari despiciebant*. Nam *armigeros suos, immodicas praedas & incestos raptus facientes, vi tuebantur*. And at *Barham Down*, (saith *Matthew* ^e *Paris*) *aestimati sunt inter milites electos & servientes strenuos & bene armatos sexaginta millia virorum fortium*. In the army also at *Lincoln* in the beginning of king *Henry* the third, on the king's part, *recensiti sunt* (says the same ^f writer) *milites cccc bachilarii ferme ccl; servientes quoque & equites tot & tales affuerunt innumeri quot vices militum possent pro necessitate implere*. And there were taken of the barons part, *milites cccc praeter servientes, equites, & pedites qui facile sub numero non cadebant*. And *interfectus est in illo conflictu serviens quidam ex parte baronum omnibus ignotus*. And afterward ^g *militibus etiam omnes & servientes sine poena & redemptione relaxati sunt a rege*. *Bracton* also speaking ^h of the knights that are to be sent by the sheriff to make the view upon an effoin *de malo lecti*, says, that it is not sufficient *si vicecomites mittat servientes*. *Milites enim esse debent propter verba brevis*; as if clearly *serviens* had been next in dignity to knight. Yet the young heirs that were to be knighted, and so in the next degree to a knight, were comprehended also under the title of ⁱ *valetti*. And *valet* or *vadlet* was antiently with us as in *France*, also a name specially denoting young gentlemen, though of great descent or quality, although it be now both with us and them given to those of the rank of yeomen. And so was it taken under *Henry* the sixth with us, as we see in the statute of his three and twentieth year touching the choice of knights of the shire. They must be (saith the statute) either knights *ou autrement tielx notables esquiers, gentilshomes, del nativite des mesmes les counties come soient ables desfre chevalier, & nul home desfre tiel chivalier que estoite en le degree de vadlet & desouth*. And it is but the same word which is become to be *varlet*, and signifies sometimes as *knave* now doth, although both of them were antiently

names of civil degrees or service only; As among divers other testimonies, in an old little ^k glossary of *nomina graduum*, of about two hundred years since; the words are, *garconet* little boy, *garcon* knave, *varleton* grome, *varlet* yeoman, *gentilhome* gentleman, &c. But for *servientes*; the rolls of the *vadia militum* in the tower, and the account books of the wardrobe, have them frequently distinguished from *scutiferi* or *armigeri*. Yet in our year-books, in the time of *Edward* the third, the name of serjeant, the same *serviens*, is used for the next to knight also. As where the court gives direction to the four knights to chuse the grand assize in a writ of right, *ne eslies*, say ^l they, *nul serjeant tant come vous poies avez chevaliers convenient*. And in another case, where the four knights said they could not find so many knights in the county, as might with themselves make up the grand assize, by assent of the parties they were directed *d'eslier* (says the ^m book) *le meulx valiaunts serjeaunts*; and accordingly they did so. With these, other of that time, ⁿ agree for the name of *serjeant* or *serviens* in this sense, which about that age grew out of use. But under *Richard* the second, we find the name of esquire expressly given as a created and honorary title by patent. One *John de Kingston* was so by this patent ^o received into the state of a gentleman, and made an esquire by king *Richard* the second.

LE roy a tous ceux as queux cestés lettres viendront, salute. Saches, que come un *chivaler Franceys*, a ceo que nous soumus enformez, ad chalenge un nostre liege *Jehan de Kingston* a faire certains faits & points d'armes, ove que le dit chivaler; nous a fin que le dit nostre liege soit le mieulx honorablement receives & faire puisse & performir les dits faits & points d'armes, luy avons receives, & a faire puisser & performir les dits faits & points d'armes, luy avons receivez en l'estate de *gentilhome* & luy fait *esquier*. Et volons que il soit conus per armes & porte desorenavant *d'argent ove un chaperon d'azure oveques un plume d'Ostriche de gules*; & ceo a touz yceux as queux appartenent nous notifions per ycelles. En testimoniance de quelle chose, nous avons fait faire cestés nos lettres patentes; donez fouz nostre grant seale a nostre paleys de *Westminster*, le primer jour de Juyl.

Par brieve de privy seale.

And it might be reasonably conceived, that the title of esquire was then only such as was either thus created, or otherwise acquired by service or imployment. For else, what could that mean which *Thirning* relates in 7 *Hen. IV. fol. 8.* that a lord at the font (as is before also remembered) knighted his son, saying, *be a good knight, for you shall never be a good esquire*, as if that not only the knighting him prevented his being an esquire afterward, the greater title drowning

^a Hist. eccles. lib. 4. pag. 507.

^b Bracton. lib. 3. de corona, fol. 116. b.

^c Pag. 312. ed. Lond.

^d Ms. apud Moretonum Lambard, eq. aurat.

^e Pag. 415.

^f Traict de effonnis,

^g 22 Ed. III.

^h 1 Part. pat. 13 Rich. II. membr. 37.

ⁱ 39 Ed. III. fol. 2. & videlicet Br. tit. Droit. 18.

^j 26 Ed. III. fol. 57. a.

^k 39 Ed. III. fol. 2. & videlicet Br. tit. Droit. 18.

the lefs, but alfo that he was no efquire before knighting of him. We may juftly remember here amongst thefe occurring testimonies of the title of efquire, that of *Chaucer* in his character of one. After the defcription of his knight, whom as the reft, he defcribes with fuch particulars as beft defign the nature of him, he fays that

With him there was his fomme a yong fquire,
A iouer and a luftie bachilere,
With his locks cruill as they were laid in pefse
Of twentie yere of age he was as I gueffe.
And he had be fometime in chivauchie
In Flaunders, in Artois, in Picardie,
And bozne him well, as of fo little fpace,
In hope to ftand in his ladies grace.
Curteis he was, lowly, and ferviceable ;
And kerft before his father at the table.

Here both his practice of arms, and his attendance on his father, being a knight, are noted. His attendance being as that of thofe *τῶν ὑπὲρ ἐπιποροῦντες* or *shield-bearers*, or efquires that waited on the old *Gauls* at their round tables, whereof *Poffidonius* fpeaks in *Athenæus*.⁽²⁷⁴⁾ And for the neceffary attendance of an efquire upon every knight in the elder ages long before *Chaucer* ; obferve this of Sir *Francis Tias* his recovering five pounds damages, under *Edward* the firft, in *Wakefield* court in *Yorkfhire*, againft one *German Mercer*, for arrefting the horfe of one *William Lepton* that was his efquire, and fo making him to be unattended. *Franco Tyas miles* (fo^a are the words of the court-roll) *tulit actionem verſus Germanum Mercer, qui arreſtavit equum Willielmi Lepton armigeri fui ad dedecus & damnum prædicti Franci, quia fuit ſine armigero. Et prædictus Franco recuperavit c ſolidos. Ideo Germanus Mercer ſit in miſericordia. Chaucer* alfo in his merchant's tale ;

All but a fquire that hight Damian
Which caſt before the knight many a day.

The like is elfewhere alfo in him. The attendance likewise of two efquires on every knight at his receiving the order of the bath, at this day from the elder times, is obſervable. And they are fomewhat proportionable to thofe *δυνεταί*, or *minifters* or *efquires*, that, together with the third horfeman, on whom they attended, made the *trimarcia* among the *Gauls*, which *Pauſanias* mentions. And the name of efquire with a poſſeſſive relation to knights and others above them, is often uſed in the elder times as it is at this day, when we ſpeak of the efquires of the body. Under *Edward* the third, the lady *Elizabeth* counteſs dowager of *Kent*, vowed herſelf a nun, and afterward ſecretly married Sir *Euface de Abridg*-court at *Wingham* in the dioceſs of *Canterbury*. The archbiſhop therefore cites her by one *John Litton* his clerk, *quem clericum* (ſaith the^f re-

giſter of archbiſhop *Iſlip*, in whoſe time it was) *quidam Johannes de Topclive ſcutifer dicti militis apud Roſſiam, propter citationem huiusmodi in brachio uſque ad ſanguinis effuſionem graviter vulneravit*. So about the ſame time Sir *Walter Manny* deviſes, a *Simpkin Chamberlein mon efquire*, ten marks ; as the words of the^t will are. But note alfo the uſe of the title of efquires and gentlemen, as if there had been no difference in the dignities, in the old ſtatutes of apparel of *Edward* the^u third's time. Employment perhaps, and being without employment or ſervice, diſtinguiſhed them. In *Richard* the ſecond's time alfo, *William* earl of *Salisbury* deviſes^x to four *des mes efquiers, ceſtaſta-voir*, *William Greene*, *Rawlin Buſhe*, *William Kildrington*, & *Thomas Warin*, a *cheſcun d'eux* XL s. *Item je deviſe a l'III autres des mes efquiers, ceſtaſta-voir* *Jankin Lawrence*, *Robert Cammel* & *Walter Marſhal*, a *cheſcun de eux v markes*. Divers more ſuch occur in the wills of ancient times. Under *Henry* the fourth, in our year-books, y the plaintiff had been entertained by indentures, to be the defendant's efquire in time of peace. And *Walsingham* ſays of the ſame king's time ; *ſuſpenſus eſt eo tempore (mcccci) miles Rogerus Clarendon (filius ut dicebatur nothus quondam nobilis principis Edwardi filii regis Edwardi tertii a conquēſtu) & cum eo ſuus armiger & valettus*. And it ſeems plain, that by this time, the title was fixed on ſome, without any reference to the wars, but only by ſervice on great perſons. For the witneſſes examined in that great caſe between the lord *Gray of Ruthen* and the lord *Hafſings* under the ſame king ; one *John Lee* of *Buckinghamſhire* is titled efquire, as many more are, and it is ſaid of him, as from his own mouth, that he^z was a gentleman by birth, and had land of twenty marks yearly by deſcent, & *nad uſe point de travailler en guerre ne ſon pier devant luy, & pour ce ne priſt gard d'apprendre ſes armes* : for he ſhould have answered to the queſtion whether he were a gentleman and had arms or no. And in truth this *John Lee* was retained to that lord *Ruthen* as a ſurveyor of his^z lands for a time, and beſides of perpetual fee with him for other ſervices, whence it ſeems he was called efquire. And for ſome like cauſe, perhaps all the reſt, or the moſt that in thoſe examinations have that title, for many there have it, were ſtiled ſo. The lord *Roos* alfo under *Henry* the fifth, deviſes by his will, that his ſeoffees ſhould make an eſtate^b *Thomae Gower armigero meo*. And about that time it was, as it hath been ſince, very common to uſe the addition of efquire abſolutely alſo, either in the firſt or third perſon, as you may ſee both in the pleas of that time, and in the wills then made, of which divers are in the firſt part of the regiſter of *Chicheley* archbiſhop of *Canterbury*. And in the officers of the houſhold and elfewhere, divers times *militēs, armigeri, valletti*, and *garciones*, occur,

^p Dipnoſoph, lib. 4.
gentleman of thoſe parts.

^q Rot. cur. *Wakefield* in comit. Ebor. It was noted to me thence by the courteſy of Mr. Roger Dodeſworth a

^r In Phocidis, lib. 10.

^s In archiv. Cant. pag. 166. b. ms. circa 34 Ed. III.

^t Regiſt. ms. archiep.

Cant. Wileſey fol. 120. 42 Ed. III.

^u 37 Ed. III. cap. 10, 11, & 13.

^x Regiſt. ms. archiep. Cant. Arundel part. 1. fol. 159.

20 R. II.

^y 13 Hen. IV. tit. entry congeable 57.

^z Ms. inter instrumenta nobiliſſimi H. comitis Kantiae ad art. 36, & 37.

fol. 34.

^a Ibid. pag. 33. ad art. 15, & 17.

^b Regiſt. ms. arch. Chicheley, part. 1. fol. 272. a.

one immediately after the other. See also the statutes of apparel under *Edward the 4th*.

But in the ancient creation of the dignity, when such as otherwise had it not, were created into it, it is ^d noted that a collar of SS. was given by the king as an ensign of it received. It seems that passage in *Walsingham* hath relation to these collars, where he speaks of the earl of *Kent's* coming to *Sunnings*, in the beginning of *Henry the fourth*, to persuade the queen, wife to *Richard the second*, who lay there, that king *Richard* was at liberty, and had a thousand of his party at *Pomfret*. *Ut autem*, says ^e he, *fidem faceret dictis, detraxit signa regis, scilicet, collaria de collis quorundam quos vidit ibi habentes signa talia, dicens non esse gestandum de caetero tale signum*. And justice *Newton*, under *Henry the sixth*; *If a writ of debt be brought against the serjeant of the kitchen in the king's house, I may name him cook, and my writ is good enough; and yet he hath a collar, and is a gentleman*. Here he uses the word gentleman, applying it to those that were so made esquires by the king's favour, because also they were by their creation put in the rank of the most eminent sort of gentlemen, on whom the title of esquire hath since been so fixed. In an old dialogue *de miseris terrae Anglicanae*, ^f personated as between the kingdom of *England*, under the name of a queen, and her three sons, the nobility, the clergy, and the commons, of the time of *Henry the sixth*, noon was wont (saith the author in the name of the clergy) to be called a squire, but if hee hadde be founde in dede of soveraigne prowesse. The noon was wont to be called to the wages of a man of armes, if hee had not honestly taken a prisoner with his own hands. And now to kenne gyde him with a swerde, and to were a habergeon, it sufficeth to make a new capitaine. But the dialogue is a plain imitation, almost a very translation, of *le quadrilogue of maiestre Alan Chartier*, secretary to *Charles the seventh of France*. And is fitted to *England*, as that of *Chartier's* is to *France*. And those very words before cited, as the most of the rest in it, are translated *verbatim* out of the speech of the clergy in *Chartier's* dialogue, which was printed with other little works of his, at *Paris* about a hundred years since. Nor is that old pamphlet of the tanner of *Tamworth* and king *Edward the fourth*, so contemptible, but that we may thence note also an observable passage wherein the use of making esquires by giving collars is expressed.

A collar, a collar, our king gan cry;
Quoth the tanner it will breed sorrow;
For after a collar cometh a halter
I trow I shall be hanged to morrow.

Be not afraid, tanner, said our king
I tell thee so mought I thee,
Lo here I make thee the best esquire
That is in the north countree.

A special example of this kind of collar we have on that statue of *John Gower*, famous for his poesy in the time of *Richard the second*; which is in *St. Mary Overies* church in *Southwark*. I know some deliver it to be an ensign of knighthood on him, as *Bale* in that passage before cited ^h out of him touching *Gower* to another purpose, and *Pitfaeus* ⁱ also. But they are deceived. *Gower* was no knight but an esquire only. The epitaph there joined to the statue shews it.

Armigeri lutum nihil a modo fert sibi tutum, &c.

Yet also this kind of collar was heretofore a wearing of knights likewise, as we see in the statues ^k of apparel. And of this title, as it was anciently used or acquired, thus much.

Now as in those elder times of military action, such gentlemen as were employed in service receiving their dignity, either at home or abroad, were frequently, it seems, for distinction from the rest, and as by a note of honour called esquires, into which title also some were created; so at length, especially in the times of peace, when military service could make but little distinction, they that by birth or other eminency were commonly thought worthy of some note of distinction above the ordinary rank of gentlemen, have had the same title given unto them. (²⁷⁵)

C H A P. VI.

- I. Titles of honour in Ireland. Of earls, both palatine and others, there.
- II. Of viscounts and barons in Ireland.
- III. Of other dignities there, and the ancient form of knighting used by the Irish kings.

Ireland, which, though it be a kingdom it self, is yet subordinate to the crown of *England*, hath almost the same titles of honour that are in *England*, founded upon the same original course of creation.

I. But the titles of duke and marquess they have not; nor ever were either of those names under the *English* kings in use, with relation to *Ireland*, saving in those examples of the title of marquess of *Dublin*, and duke of *Ireland* ^l in *Robert* earl of *Oxford* under *Richard the second*. And in him they began and ended. Before the time of *Henry the second*, since which the kings of *England* have been lords and kings of that island, we find in-

^c 3 Ed. IV. cap. 5. & 22 Ed. IV. cap. 1.

^e Anno 1400.

^f 14 Hen. VI. fol. 15.

^g Tetralogus de miseris terrae Anglicanae ms. apud Moretonum

^h Cap. 1. §. XLIII.

ⁱ Aetat. 15. script. 731. & videlicet Stow in notit. Londini pag. 411.

^k 24 Hen. VIII. cap. 13.

^l See before lib. 1. cap. 4. §. II.

deed the title of *duces* there; as in that council of *Mell*, where the four archbishops were first constituted in MCLII. *Interfuerunt* (saith the^m story) *episcopi, abbates, reges, duces, & majores natu omnes* Hiberniae, quorum consensu (the popes legate was present also) archiepiscopatus constituti sunt quatuor, *Armachanus, Dublinensis, Castiliensis, Toamensis*. But *duces* denoted here generally the chief princes of the country that had not the title of kings, as *majores natu*, the chief of *septs* according to their old law of *tanistry*; not any distinct dignity as at this day with us. But indeed Pope *Gregory* theⁿ thirteenth, if it be worth the memory, took upon him to give the title of marquis of *Leinster*, earl of *Wexford* and *Catherlogh*, viscount *Morough*, baron of *Ross*, and *Idron*, to that famous *Stukeley* that lost his life by the way in *Barbary*, while he was coming to possess the territories that so vainly denominated him. And for the title of kings there, under our kings of *England*, enough is already^o said. But earls, viscounts, barons, baronets, knights bachelors, and esquires, are in that kingdom, as with us.

The title of local earls, palatine as well as of other earls, occurs in the records of that kingdom. *George* earl of *Shrewsbury* and his ancestors that had been earls of *Shrewsbury*, till the statute of *absentees*^p made in the eight and twentieth of *Henry* the eighth, were *comites palatini comitatus Wexford*^q or earls palatine of *Wexford*. Divers others also that had regal jurisdiction, as the palatines in *England*, in their territories enjoyed that name, and their territories by the name of counties palatine, as *Ulster*,^r *Tiperary*, and some more. Touching these, see the case of that county palatine of *Wexford*, published by Sir *John Davies*. But I do not believe that any man was ever created into the title of count palatine there, or his county expressly made a county palatine by patent; but as in other countries (whereof before) so here, the enjoying the title of earl, and sometimes of lord, together with a territory annexed to that title, wherein all royal jurisdiction might be exercised, was the original whence in speech and writing, the titles of of earl palatine or county palatine grew; touching the reason whereof, enough in the palatines of the empire, of *France* and *England*. For other earls, being not palatine, the antientest forms of creation that I have seen, is this^t of *Edward* the second, his creating *John* the son of *Thomas* of *Ireland*, or *Thomas Fitz Gerald*, earl of *Kildare*.

Edwardus Dei gratia, rex Angliae, dominus Hiberniae, & dux Aquitaniae, archiepiscopis, episcopis, abbatibus, prioribus, comitibus, baronibus, justitiariis, vicecomitibus, praepositis, ministris & omnibus ballivis & fidelibus suis salutem. Sciatis quod nos pro bono & lau-

dabili servitio quod dilectus & fidelis noster *Johannes* filius *Thomae de Hibernia*, celebris memoriae domino *Edwardo* quondam regi *Angliae* patri nostro & nobis haecenus impendit & nobis impendit in futurum, dedisse, concessisse & hac charta nostra confirmasse eidem *Johanni* castrum & villam de *Kildare*, ipsumque praefecisse in comitem ejusdem loci, habendum & tenendum eidem *Johanni* & haeredibus suis masculis de corpore suo legitime procreatis una cum feodis militum, advocacionibus ecclesiarum, abbatiarum, prioratum, hospitalium & aliarum domorum religiosarum in comitatu de *Kildare*, homagiis, serviciis libere tenentium, firmariorum & betagiorum, wardis, maritagiis, releviis, escaetis, molendinis, stagnis, vivariis, aquis, ripariis, piscariis, boscis, moris, mariscis, pratis, pascuis, pasturis, libertatibus, liberis consuetudinibus, & omnibus aliis ad praedicta castrum, & villam pertinentibus quoquo modo, excepto officio vicecomitis comitatus de *Kildare*, & his quae ad officium vicecomitis ibidem pertinent, quae nobis & haeredibus nostris volumus remanere, de nobis & haeredibus nostris per servitium duorum feodorum militum imperpetuum. Et si idem *Johannes* obierit sine haerede masculo de corpore suo legitime procreato, tunc praedicta castrum & villa cum terris, redditibus, feodis militum, advocacionibus ecclesiarum, abbatiarum, prioratum, hospitalium, & aliarum domorum religiosarum, homagiis, serviciis libere tenentium, firmariorum, betagiorum, wardis, maritagiis, releviis, escaetis, molendinis, stagnis, vivariis, aquis, ripariis, piscariis, boscis, moris, mariscis, pratis, pascuis, pasturis, libertatibus, & liberis consuetudinibus, & omnibus aliis, ad praedicta castrum & villam pertinentibus, ad nos & haereds nostros integre revertantur. Quare volumus & firmiter praecipimus, pro nobis & haeredibus nostris, quod praedictus *Johannes* habeat & teneat sibi & haeredibus suis masculis, de corpore suo legitime procreatis, praedicta castrum & villam cum terris, redditibus, & aliis pertinentiis suis sub honore & nomine comitis de *Kildare* simul cum feodis militum, advocacionibus ecclesiarum, abbatiarum, prioratum, hospitalium, & aliarum domorum religiosarum, homagiis, serviciis libere tenentium, firmariorum, betagiorum, wardis, maritagiis, releviis, escaetis, molendinis, stagnis, vivariis, aquis, ripariis, piscariis, boscis, moris, mariscis, pratis, pascuis, pasturis, libertatibus, liberis consuetudinibus & omnibus aliis ad praedicta castrum & villam pertinentibus quoquo modo, excepto officio vicecomitis comitatus de *Kildare*, & hiis quae ad officium vicecomitis ibidem pertinent, quae nobis & haeredibus nostris volumus remanere, de nobis & haeredibus nostris per servitium duorum feodorum militum imperpetuum. Et si idem *Johannes* obierit sine haerede masculo de corpore suo legitime procreato, tunc praedicta castrum & villa cum terris & redditibus, feodis militum, advocacionibus ec-

^m Ms. penes reverendiss. Jacob. archiepiscopum Armachanum. & videlicet Camden Brit. pag. 765. ubi male MCLXII pro MCLII.
ⁿ Camden. Brit. pag. 752. ^o Part. I. cap. 5. §. I. ^p Stat. Hib. 28. Hen. VIII. cap. 23. Johannes enim, qui primus ex Talbotorum familia comes erat Salopiae, comes etiam *Wexford* dicitur cart. 24 H. VI. part. 2. m. 16. & Camden. Brit. pag. 740. ^q In-
quif. 27 H. VIII. in Sir J. Davies his Reports fol. 58. b. ^r Videlicet J. Davies in commentar. Hib. pag. 61. Camd. Brit. pag. 743.
^t Rot. cart. 9 Ed. II. n. 12. ^u This with other liberties is granted to him, in cart. 11 Ed. II. membr. 15. part. 1. num. 79.

clefiarum, abbatiarum, prioratum, hospitalium, & aliarum domorum religiofarum, homagiis, ferviciis libere tenentium, firmariorum, betagiorum, wardis, maritagii, releviis, efcaetis, molendinis, ftagnis, vivariis, aquis, ripariis, pifcariis, boscis, moris, marifcis, pratis, pafcuis, pafuris, libertatibus, liberis confuetudinibus & omnibus aliis ad praedictum castrum & villam pertinentibus, ad nos & haeredes nostros integre revertantur, ficut praedictum eft. Hiis teftibus venerabilibus patribus *W. Cantuar.* archiepifcopo totius *Angliae* primate. *I. Norwicensi* & *W. Exoniae* epifcopis. *Johanne de Britannia* comite *Richmond*, *Hugone de Despenfer* seniore, *Rogero de Mortuo Mari de Wigmore*, *Hugone de Despenfer* juniore, *Rogero de Mortuo Mari de Chirk*, *Johanne de Crumbwel* fenefcallo hofpitii nostri, & aliis. Datum per manum noftram xrv die *Maii*.

Per ipsum regem.

And a year or two after, ^u in a patent dated to *John de Bermingham* earl of *Louth*, of the mannor of *Atherd* in that county, there is this recital of a creation of him into that title in the parliament that fate at *York*; *Sciatis quod cum nos pro bono, & laudabili fervicio quod dilectus & fidelis noster Johannes de Bermingeham nobis nuper in partibus Hiberniae impendit, &c. dedimus, concessimus, & carta nostra confirmaverimus praefato Johanni, viginti libras annui redditus de exitibus comitatus nostri de Loueth, in terra praedicta, sub nomine & honore comitis de Loueth, ipsumque Johannem in comitem de Loueth, praefecerimus, habendum, percipiendum & tenendum eidem Johanni, & haeredibus suis masculis de corpore suo legitime procreatis, de nobis & haeredibus nostris per servitium quatae partis feodi unius militis imperpetuum, &c.* And then for the better fupport of the honour, that mannor of *Atherd* is given him likewise to hold by the fervice of one knight's fee, and of three parts of one knight's fee.

The patents of creation in the following times; which I fee in the rolls of *England*, being all fuch as paffed the great feal of *England*, agree; for the moft part, with the *Engliſh* form. And in terra nostra Hiberniae, de dominio, or regno Hiberniae, added to the denominating place, the feat in parliaments, and what other parts require the like, makes the main diftinction. *Henry* the eighth created *Thomas* viscount *Rochford*, by the felf-fame patent, earl of *Wiltſhire*, infra regnum noſtrum Angliae, and earl of *Ormond* in terra & dominio noſtro Hiberniae, with feveral clauſes of inveſtiture, feveral habendums, and feveral creation-monies for each title.

II. As earls, fo barons, and afterward viſcounts came to be created in this kingdom, as in *England*; and by like forms of patents, and under either great feal, and fometimes under both. But diftinguiſhed from the *Engliſh*, by in terra, or

regno ac dominio noſtro Hiberniae, or the like, in due places of the patents. We ſpeak not of barons by writ or tenure there; more than it ſeems they had the ſame kind of original and being, as is ſhewed for ſuch barons, in thoſe of *England*. The like notion of baron alſo as we have had in *England*, by reaſon of our counties palatine, they have in *Ireland* likewiſe; and it remains in divers that are there yet called barons, ^y though they be not honorary or of the parliament. But I have a form of *Edward* the ^z fourth's creation of the baron of *Ratbauth*, that much differs from our ordinary *Engliſh* form. For the good ſervice that *Robert Bold*, Eſq; had done, both to his father the duke of *York*, and to himſelf in both kingdoms, and elſewhere in his wars; *Attendentesque* (ſaith he) quod decus principum conſiſtit multitudine ſubditorum, & eo magis regale attollatur ſolium; & terrae regimen roboratur, quo magis plures ſibi ſubſtituit nobiles, de gratia noſtra ſpeciali de aſſenſu chariſſimi conſanguinei noſtri *Johannis comitis Wigorniae* deputati chariſſimi fratris noſtri *Georgii ducis Clarentiae*, locum noſtrum tenentis terrae noſtrae Hiberniae, ordinavimus, fecimus, & conſtituimus dictum Robertum unum dominum & baronem omnium, & ſingulorum parliamentorum, & magnorum conciliorum noſtrorum in terra noſtra praedicta tenendorum, habendum & tenendum, una cum ſtilo, titulo, nomine, honore, loco & ſeſſione inde ſibi & haeredibus ſuis masculis imperpetuum prout decet. Conſiderationem etiam habentes qualiter *Philippus Dominus armiger*, habens ex conſeſſione noſtra viginti marcas habendum, & percipiendum annuatim de exitibus, & proficuiſ, manerii & dominii de *Rathtouth*, ſicut per literas noſtras patentes eidem *Philippo* inde conſectas latius expreſſatur, quas quidem literas eidem *Philippus* in cancellariam noſtram Hiberniae reddidit cancellandas, & ut exaltationem nominis ſequatur augmentatio facultatum, cum ſemper honoribus onera ſunt annexa, dedimus & conſeſſimus praefato *Roberto* manerium ſive dominium de *Rathtouth* praedicta una cum ſtilo, titulo, nomine & honore domini & baroniae de *Rathtouth*, necnon redditus, exitus, &c. Habendum, &c. the mannor, una cum ſtilo, titulo, &c. to him; and the heirs males of his body begotten. In cujus, &c. Teſte praefato deputato apud *Drogheda* xiii die *Auguſti*, anno regni noſtri octavo. I had this, with ſome others, tranſcribed out of the chancery of *Ireland* by the favour of *Mr. James Ware*, a learned gentleman, and a ſingular honour to his country. We add here only that parliament robes belonging to theſe parliamentary titles, were from ancient time of like form with thoſe of the lords of parliament in *England* reſpectively. Which yet from ſome part of the later years of *Edward* the fourth, till about the middle of *Henry* the ſeventh they had not uſed, whereupon it was enacted that ^a every lord, as well ſpiritual as temporal, ſhould appear to every parliament that ſhall be holden within the ſaid

^u Cart. 12 Ed. II. num. 11. m. 5.
^z Rot. pat. 8 Ed. IV. in cancel. Hiberniae,

^z Pat. 21 Hen. VIII. part. 2. 8 Decemb.
^a 10 Hen. VII. ſtat. Hib. cap. 16.

^y Sir J. Davies his Reports, fol. 65.

land, in like manner and form as the lords of the said realm of England do appear to the parliament, holden within the said realm, upon pain of forfeiture of five pounds for every default.

III. Baronets have lately also, since the institution of them in *England*, been made there, in like form to that of *England*. And for knights, which are also as with us; the lord-deputy usually hath the power of making knights, knights bachelors, or *milites*, as they are generally called, by his commission. And the title of esquire is there as with us. But an antient custom of knighthood among the *Irish*, before they received the manners of the *English* civility, is here observable; which we have in the story of four kings of several provinces in *Ireland*, that submitted themselves to *Richard* the second; and though they were before knighted according to their own customs, yet received the order of him again after the *English* solemnity. These kings were under the especial care of one *Henry Castile*, an *English* gentleman, that spake *Irish* well, and was commanded by king *Richard* to inform them of the *English* manners in diet, apparel, and the like; and in particular to prepare them for the receiving the order of knighthood. To that purpose, he asked them if they were willing to receive the order which the king of *England* would give them according to the custom of *England* and *France*, and of other countries. They answered that they were knights already, and that the order they had taken was enough for them, that they had been made knights when they were seven years old in *Ireland*, and that every king makes his son knight; and that if the father live not, then the next of kin doth it, *le plus prochain du sang de son lignage le fait*, as the words are in *Froissart*,^b where this is related. That the young knight at his making runs with slender launces, such as he can easily wield, against a shield set up on a stake in the middle of a meadow; and that the more launces he thus breaks, the more honour continues with his dignity. And this they said was the form of making young knights in their country, especially when the sons of kings were knighted. But the *English* gentleman told them, that this young kind of knighthood was not enough with the king of *England*, and that from him they should receive it with more state, and in the church. Which they, afterward, being persuaded and instructed, especially by the earl of *Ormond*, received from the hand of king *Richard* in the church at *Dublin*, with much solemnity, after their vigils performed in the same church, and a mass heard. And some others were thus knighted with them. But the four kings in robes agreeable to their state, sat that day with king *Richard* at the table. This was when king *Richard* was first in *Ireland*. And the vigils were on *Wednesday* night, and the day of the solemnity on *Thursday* day the five and twentieth of *March*, as *Froissart*

sart^c says. That was the beginning of the year *MCCCXCV*, according to the *English* account. But how that stands with king *Richard*'s returning about *Shrovetide* before, for then some of our common stories bring him home again, I understand not.

CHAP. VII.

- I. Prince of Scotland; duke, marquess, and viscount, or procomes there. And the investitures, or solemn creations of a duke, marquess, or viscount.
- II. Of the title of earl and baron there, and of thanes. The investiture of earls and barons.
- III. The solemn creation of knights in Scotland.

IN *Scotland* the chief subordinate titles are prince, duke, marquess, earl, viscount, baron of parliament, and knight.

I. The prince and heir apparent there, they stile the prince of *Scotland*, and the rest of the king's children they call also princes, as in other nations. The prince of *Scotland* is, as prince, duke of *Rothsay*, and high steward of *Scotland*. And this duchy of *Rothsay* was also the first duchy there. For however some tell us, that the title of duke was as antient in *Scotland*, as the time of *Malcolm Mackenneth*, who reigned about *MX*, and made some distinction of dignities there (that distinction others attribute to *Malcolm* the third, king there about fifty years after) yet neither in their laws, nor otherwise, occurs it as a distinguished title from earl, until the time of king^d *Robert* the third, who created his eldest son prince *David*, duke of *Rothsay*, in *MCCCXVIII*, or thereabout. (²⁷⁶) Others were soon made of the same dignity. And in the body of a parliament about two^e years following held at *Scone*, dukes are reckoned, and there first occur, as distinguished from earls in that state. *Vocatis more solito episcopis* (so are the words) *prioribus, ducibus, comitibus, baronibus, libere tenentibus & burgenfis, qui de domino nostro rege tenent in capite*.

The investiture, or creation of a duke there, when the creation is with ceremony, is done by the king's putting on the belt and sword, the cap and the coronet, giving him a golden verge, and then the charter-patent of creation. The coronet is fleury, or a circle raised into many leaves like unto strawberry leaves, as it is described in the forms of creations of the dignities there, which the noble courtesy of the right honourable Sir *George Hay*, lord chancellor of *Scotland*, through the hands of my worthy friend the learned and honoured Sir *Robert Aiton*, Kt. secretary to the queen's most excellent majesty, communicated unto me. And from those forms I most thank-

^b Vol. 4. chap. 63.
III. in epigraph.

^c Chronic. hist. Holinsh. pag. 73:

^d Camden. in Scot. pag. 684, & 615.

^e Parl. 11. Robert.

fully acknowledge the receipt of all that I have here, for matter of investiture or ensigns of creation of the present or later times of Scotland. The ducal robes also are put on with ceremony before he that is to be created be brought to the king, and he taketh, besides the oath of allegiance, another oath also proper for such as are to be created; which is, to defend true religion in that kingdom, and justly to counsel the king; and is ministered to him by their Lyon king at arms. Standards also and pensils are carried, but folded up, before the duke as he comes to the creation, and displayed as soon as he is created. And all this is done with the assistance of the lords in their robes of state and coronets, and such more circumstances of honour, which are almost proportionably the same in creation of all their greater dignities.

The title of marquess began there under king James the sixth. The first marquess was ⁱ John son to James duke of Chastean Herald and earl of Arran, created by him into the title of marquess of Hamilton. The ensigns and circumstances of investiture of a marquess are almost as those of an earl here anon shewed; only his coronet hath the flowers higher than the points, the flowers being made like strawberry leaves.

King James the sixth also created the first viscount; for although the officary name of *vicecomes* for sheriffs were there, as in England, also very antient and frequently hereditary; yet *vicecomes*, or viscount, was never honorary until he created Thomas lord ⁱⁱ Ereskine, viscount of Felton. They use, at least sometimes, for this title, after the analogy of the *Latins* in their *propraetor* and *proconsul*, and as the polite lawyers of France do often for their viscount, the word *procomes*; which I saw under the *Scottish* seal, in letters of procuration, or a commission under the great seal of Scotland by king James the sixth, ⁱⁱⁱ to John earl of Montrose, and, in his absence, or if he were sick, to Alexander earl of Dunfermlin, for the creation of Sir John Ramsay, late earl of Holderness, into the title of lord Ramsay of Barnes, and viscount of Haddington. *Damus & concedimus* (so were the words after an apt preamble) *nostram plenariam potestatem, procuracionem seu commissionem charissimo nostro consanguineo & consiliario Johanni Montis Rosarum comiti, domino Grahame & Mukdok, nostro primario procuratori seu commissionario in regno nostro Scotiae, eoque aegrotto sive absente, praedilecto nostro consanguineo & consiliario Alexandro Fermeloduni comiti, domino Finiae, & Ureguart dicti regni nostri Scotiae cancellario, creandi, faciendi & inaugurandi eundem dominum Johannem, dominum Ramsay de Barnis, ac procomitem de Haddington, dantes & concedentes sibi suffragium & locum in omnibus ordinum regni nostri Scotiae comitiis publicis seu parliamentis generalibus & publicis conciliis & conventibus dignitati & ordini suo correspondentem, & congruum, cum omnibus honoribus, dignitatibus &*

privilegiis consimili qualitati incumbentibus. Eandemque hanc dignitatem & honoris titulum cum dicto domino Johanne Ramsay, suisque haeredibus masculis de se legitime descendentibus omni tempore a futuro permanere volumus. In cujus rei testimonium praesentibus hisce nostris literis magnum sigillum nostrum apponi praecepimus. Datum apud palatium nostrum Albae Aulae VIII die mensis Aprilis anno domini MDCVI & regni nostri annis XXXIX & IV.

Per signaturam manu S. D. N. regis
supra scriptam.

The investiture of a viscount, when ceremony is used at his creation, is by the sword, cap, and coronet, or circle, beside the charter or patent, which are solemnly brought to the lord commissioner appointed for the creation, when he that is to be created is presented with much court ceremony; his standard and pensil also carried before him; but both folded up until after the creation, when they are displayed. But also he first taketh the oath of a viscount, which is, *that he shall maintain and defend the true religion professed to the uttermost of his power; he shall be loyal to his sovereign, and shall not conceal any point of treason intended against his majesty's royal person, nor the estate or liberty of the laws of the realm. He shall be ready, as he shall be required, to give his sacred majesty true counsel, as well publick in the courts of parliament, and general conventions, as in secret, according to his knowledge. So help him God, and be his part of paradise.* Then the lord commissioner putteth on him a sword and belt, using these words; *In token that his majesty communicateth authority to you, I do gird you with this sword and belt.* He putteth on him also the cap, coronet, or circle, saying words to this purpose. *To make you the more respected within the bounds of your commission, his majesty allows you the wearing of this circle or coronet.* And this done, the charter of creation is delivered to him.

II. But the titles of earl and baron are much antienter there, than any of those before shewed. Before about king Malcolm Mac-kenneth, there was no higher title than knight, beside that of thane or abthan; thane, denoting a thane of less dignity, and abthan of greater. *Superioribus seculis* (saith ⁱ Buchanan) *praeter thanos, hoc est praefectos regionum sive toparchas, & quae-storem rerum capitalium, nullum honoris nomen equestri ordine altius fuerat, quod apud Danos observari adhuc audio.* And, nunc sermone Anglico, says he, *patrium superante, regionum thani plerisque in locis Stuarti vocantur, & qui illis erat abthanas, nunc Stuartus Scotiae nominatur.* *Paucis in locis vetus thani nomen adhuc manet.* (²⁷⁷) The word thane used among them was, it seems, but the same which we had in England. For in their *Pictish* or *Irish* they called a thane, *tofsche*, ^k and the son of a thane,

ⁱ Camden, Scot. in Damiis. ⁱⁱ Idem ibid. pag. 688. ⁱⁱⁱ Lit. pat. Scot. 8 April. 1606. ⁱ Rer. Scotie. lib. 6. & videbis Hest. Boet. lib. 11, & 12. ^k Sken, in reg. majest. lib. 4. cap. 31, 36, & 38.

matfofche. But this king *Malcolm* (or *Malcolm* the fecond, that reigned about fifty years before him; for fo fome will have it) was the firft author in *Scotland* of the titles of earl and baron. But the name of thanes afterward continued, and was of fpecial reputation, whatfoever it was in matter of honour, as you may fee in divers paffages of the *Scottifh*¹ laws. (278)

And with thefe obferve that livery, or the promife of a livery of the earldom of *Mar* made by *William* king of *Scotland* to *Morgund Fitz-Gillicher* earl of *Mar*, in MCLXXI, where thanes are exprefly diftinguifhed for barons or *baronias*, as they are there called.

W*illielmus rex Scotorum*, univerfis epifcopis, comitibus, abbatibus, prioribus, baronibus, militibus, thanis, & praepofitis, & omnibus aliis probis hominibus totius terrae suae tam clericis, quam laicis, salutem aeternam in Domino. Sciatis praefentes & futuri *Morgundum* filium *Gillicheri* quondam comitis de *Marre* in mea praesentia venisse apud *Hindhop Burnemuthe*, in mea nova foresta, decimo kalendarum Junii, anno gratiae MCLXXI, petendo jus suum de toto comitatu de *Marre*, coram communi consilio & exercitu regni *Scotiae* ibidem congregato. Ego vero cupiens eidem *Morgundo* & omnibus aliis jura facere, secundum petitionem suam, jus suum inquisivi per multos viros fide dignos, videlicet per baronias & thanos regni mei; per quam inquisitionem inveni dictum *Morgundum* filium & haeredem legitimum dicti *Gillicheri* comitis de *Marre*, per quod concessi & reddidi eidem *Morgundo* totum comitatum de *Marre*, tanquam jus suum haereditarium sicut praedictus *Gillicherus* pater suus obiit vestitus & faistus, tenendum & habendum eidem *Morgundo* & haeredibus suis de me & haeredibus meis in feodo & haereditate cum omnibus pertinentiis, libertatibus, & rectitudinibus suis adeo libere, quiete, plenarie, & honorifice, sicut aliquis comes in regno *Scotiae*, liberius, quietius, plenarius, & honorificentius, tenet vel possidet; faciendo inde ipse & haeredes sui mihi & haeredibus meis forinsecum servitium, videlicet *servitium Scoticanum* sicut antecessores sui mihi & antecessoribus meis facere consueverunt. Eodem vero die & loco post homagium suum mihi factum coram communi consilio regni mei, praedictus *Morgundus* petiit sibi jus fieri de toto comitatu *Moraviae* de quo praedictus *Gillicherus* pater suus obiit vestitus & faistus, super qua petitione sua per quamplures viros fide dignos, barones, milites, & thanos regni mei inquisitionem facere feci, & per illam inquisitionem inveni dictum *Morgundum* verum & legitimum haeredem de comitatu *Moraviae*, & quod eodem tempore propter guerram inter me & *Anglicos*, graviter fuisset occupatus, & *Moravienses*, pro voluntate mea, non potuissent justificare, dicto *Morgundo* nullum jus facere potui. Sed cum guerram inter me & adversarios meos complere

& rebelles *Moravienses* superare potero, & dicto *Morgundo* sibi & haeredibus suis promitto, pro me & haeredibus meis, fideliter & plenarie jus facere de toto comitatu *Moraviae*. Et ut hoc factum meum aliis certificaretur, praedicto *Morgundo* has literas meas dedi patentes. Teste me ipso eodem anno, die & loco supradicto.

I have it written in parchment, in a hand of the time wherein it is dated, but without any seal to it. But it is observable also for the dignity of an earl there, which is now given, after such an oath in substance taken as a duke takes, by a sword put on, the lord commissioner (in case it be done with ceremony, besides the patent or charter, and by commission; and the investiture used by a commissioner gives light enough to that which is done by the king himself) using these or the like words, *in sign and token that his majesty communicates authority to you, within the bonds of your commission, I gird you with this belt and sword*. Then he puts on his head a cap and circle or coronet pointed, saying, *to make you the more to be respected within the bonds of your commission, or elsewhere, his majesty allows you the wearing of this cap and circle or coronet*, after which the charter of creation is given him. His comital robes, and the rest of the solemnities, and appointing of lords and officers, I omit here.

But for their barons; the first mention I find of that title is in the laws attributed to king *Malcolm Mackeneth*, or the second of that name. *Dominus rex Malcolmus dedit & distribuit totam terram regni Scotiae hominibus suis: & nihil sibi retinuit nisi regiam dignitatem & montem^m placiti in villa de Scone. Et ibi omnes barones concesserunt sibi wardam & relevium de haerede cujuscunque baronis defuncti ad sustentationem domini regis*. And to these barons, with jurisdiction, he granted (saith *Hector Boetius*) *fossam & furcam*, that is, *pit and gallows*. Whereupon, as Mr. *Skene* tellsⁿ us, in *Scotland* he is called *ane baronne, quha baldis his lands immediately in chief of the king, and hes power of pit and gallows, and infangthief and outfangthief*. The gallows is for the hanging of men offenders, and the pit to drown women. But *generaliter* (saith he) *in hoc regno barones dicuntur, qui tenent terras suas de rege per servitium militare per albam firmam, per feudi firmam vel aliter cum furca & fossa. Et nonnunquam generalissime accipitur pro quolibet domino proprietario rei immobilis*. So that all such tenants to the king, have the general name of barons, as our lords of manors have also. And, it seems, they all are wont to come to the parliament of *Scotland*, until, by an act under king *James*^o the first, in MCCCCXXVII, it was ordained, that two commissaries of every shire should be chosen by the small barons, and sent, as the use is, in like sort almost as the knights of the shire to the parliaments in *England*. (279)

¹ Reg. majest. lib. 4. cap. 31. & 36. leg. Williel. regis cap. 7. §. 1. & Alexandri II. cap. 15.

ⁿ Ad *Malcolm*. leg. & in de verb. signif. & videtis parl. 6. Jacobi cap. 91. & leg. *Malcolm*. II. cap. 9. & 13.

^m The mute hill of Scone.

^o 23 Jacobi vel

parl. 7. cap. 101. & vide parl. 11 Jacobi VI. c. 113. & parl. 5 Jacobi VI. cap. 275. parl. 6 Jacobi II. cap. 76. parl. 6 Jacobi IV. cap. 78.

But the distinct honorary title of baron, was, and is only due to such as were barons of the parliament, or banrents as they call them. In the same act of king *James* the first; *all bishops, abbots, priors, dukes, earls, lords of parliament and banrents, the which the king will be received and summoned to council and parliament by his special precept.* The reason of their title of banrent, will perhaps appear out of the solemnities used at their creation of a baron. He that is to be created, is brought with much court ceremony in his robes of state before the lord commissioner, if it be done by commission and with ceremony. For no doubt can be but that the king, by his charter alone, may at his pleasure give any of these dignities without any ceremony. But before him, as he comes in, beside the belt, sword and charter, there are also, as before the rest that are created into greater dignities, carried on a spear's point by some gentleman, a pensil of taffata rolled up till he be created and his stiles proclaimed, and then also on another spear's point by another the standard of taffata, whereon is painted his whole achievement, the pensil having on it only his crest and word. After his oath taken (which is but the same that a viscount takes, and from the use of it in the creation of a baron^p was received also into the creation of a viscount) and the girding of him with a sword, and delivery of the charter, as in the making of a viscount; their *Lyon* king at arms proclaims his stile, saying, *Sir I. H. of E. knight, baron, bannerent, or banrent, or, (as I find it sometimes written) baronrent, lord of our sovereign lords parliament, lord of B. and at the word bannerent, the points of the standard, are (as my instructions say) showed from it.* But saith^q *Skene*, it is manifest by the act of king *James* the first before cited, that a banrent is a kind of estate greater and more honourable than barons, because every banerent is by that act to be summoned to parliament, but not every baron. It is true, I think, that banrent is of more dignity than baron as baron, in its larger signification than baron of parliament, extends also to those small barons or lairds that are excluded by the act. But as baron is a title of honour, and hath relation to the parliament, it seems, they are meerly synonymies; and that originally out of that antient custom of the bearing of a banner, which is square, being allowable to no subject but barons, except those that have the title of banneret, to that particular purpose given them, or such as are above barons in dignity, and have yet the title of baron also in that general notion, wherein it is communicated not only to all that have the distinct title, but to all other that are above it; whereof enough already in the dignities of *France* and *England*. Therefore also are their earls, and, it seems, their other greater dignities, called barons banerents. For all men (saith *Skene*) *when they are belted and made earls, are called barronnes banrent, and lords*

of our souveraine lordis parliament; Quhairby it is manifest that the said dignitie (of banrent) is common to many, and nocht proper to any man, that is, as I understand it, common to barons of parliament, and to all other parliamentary dignities that are above the distinct title of baron.

III. The title of knight is given there (as those greater dignities) after an oath^r taken also proper to that dignity; and sometimes, at least, with more ceremony than for ought I know at this day in any place of the world, and nearer the antient fashion, when the girding with a sword, and the putting on of spurs were necessarily used in the giving it. Those gentlemen that carry the ensigns of honour, as the standard, pensil, and such more before the baron and the viscount, and, I think also, before the rest of the greater dignities at their creations, are, usually after the creation at the request of him that is created, knighted by the king, or some power derived from him. And from this form of knighting them, the most solemn order of giving knighthood there, may be best learned.

The new created baron, for the purpose, with due regard thanks him that created him, and craveth favour that according to the antient custom, the gentlemen bearers of the ensigns of his honours may be dubbed knights. The lord commissioner commandeth the same to be done. The king of arms places the new created baron among his peers that are present, and then calls the gentlemen that bare the sword and belt, the standard, and the pensil, by their names, and in the order that we mention them. They kneeling before the lord commissioner, the king of arms maketh some speech to them concerning knighthood, or what else he thinks proper for the time, and then causeth them to hold up their hands, and take this oath.

1. *Ye sall fortifie and defend the christian religion, and Christ's holy evangell, presently publickly preached in this realm, at the uttermost of your power.*

2. *Ye sall be leyl and trew to our soverane lord the king's majestie, to all ordoure of chivalrie, and to the noble office of arms.*

3. *Ye sall fortifie and defend justice at your power, and that without fear or favour to any partie.*

4. *Ye sall never flie from your soverane lord the kings majestie, nor fra his hienes lieutenant in time of melle.*

5. *Ye sall defend your native cuntrie from all alienars and strangers.*

6. *Ye sall defend the just actioun and que-ruelles of all ladies of honor, of all true and*

^p The oaths at the creation of the several dignities in Scotland, are printed also in a book of certain matters of Scotland, at Edinburgh 1597, and at London 1603.
^q De verb. signif. verb. banrent.
^r Videfis Camden Brit. pag. 684. Demister. de juramento lib. 3. cap. 19. &c.

friendles widowes, orphelins, and maids of good fame.

7. Ye sall do diligence qubaire ever ye hair thair are any murtherars, traytors or maisterfull thieves and ravaris that oppresseth his majestes ledges and poore, to bring them to the lawes or justices with diligence at all your power.

8. Ye sall mainteine and uphold the whole estaites of chivalrie with horse, barnes, and other knightly abviliments, and sall help and succor all thame of the samen ordoure if they stand in need.

9. Ye sall acquire and seek to have the knowledge and understanding of all the articles and points requisite for you to know, contained in the books of chevatrie.

10. Ye will promes to observe, keep, obey, and fulfill all the premisses to the uttermost of your power, so help you God, be your owen band, and be God himself.

Then the king of arms giveth the sword of honour to the lord commissioner, who striketh the first of the gentlemen thrice with it on the right shoulder, saying, *avances chevalier*. And at the same time his spurs are put on by some antient knights present. Then the king of arms pronounceth his stile, *Sir I. N. of O. knight*. Then the heralds and the pursevants, the trumpets founding forth at the windows, proclaim it. And in the like fort the other two gentlemen are knighted. The court solemnities of the first meeting, departing, feasting, and the like, in this, as in the rest, we omit here. For the antient times; something before occurs in that which king *Alexander* the third said, when he was knighted in *England*. And *induere armis militaribus* was antiently the phrase there to give the order. *Alexander rex Scotiae* (saith the chronicle of *Mailrose*) *Johannem Scotum comitem de Huntedone cognatum suum, filium David comitis, & plures alios nobiles viros armis militaribus induit, in die Pentecostes in castello de Rokesbyre*. This was *Alexander* the second mcccxxvii. For the order of Saint *Andrew* there, I refer you to *Menenius, Miraeus, Favyn*, and such more.

That oath is but the substance which antiently was either sworn, or profess by knights in most other countries also, at their creation. Whence it was also, that to perform that belonged to the order of knighthood, was esteemed as meritorious as to do all that a monk, frier, or canon regular should. I have an old direction^t of life to all sorts of persons in *French* verse, where I read thele to that purpose.

*Si vous seietz de teu valour
Ke resteyure devez l' honour
E l' ordre de chivalrie
Le honour sovereyn de ceste vie*

*Adunke vous pri en amisetz
De bien e nettement guardetz
Les reules qe doyt garder
Cely qe est dreit chivalier.
Nad frere precheour, ne chanoygne;
Ne frere cordeler, ne moyngne
Ke l'alme puisse meulz sauver
Ke ne puyt ly chivalier.
Pur quey qe y faces dreytement
Ceo qe a soun ordre apent.
Le ordre demande nette vie
Chastete & curteyse;
De feat & de dit establete,
Et tote manere leaute &c.*

C H A P. VIII.

- I. Of the title of gentleman, as it is absolutely used in common speech, or nobilis. Gentlemen of blood.
- II. *Edelman*, frey vom adel, ædel. Whence the names of gentleman, gentilhome, gentiluomo, gentilhombre, and hydalgo, are to be deduced.
- III. Of creations of the title of *edelman*, gentiluomo, or nobilis, by codicilli honorarii, charters, or such instruments. Enobling by the pope. Creation by a kind of adoption to a family.
- IV. The form of enobling in France by edict and letters patents, and of the like in Spain, remissive.
- V. Forms of enobling or raising to the state of a gentleman, or nobilis, by letters patents in England.

WE reserved the title of gentleman, that is, our last title in our first division of this part, until this place; where we shall at once speak of it as it is in use in several countries, whose subordinate titles are before severally delivered.

I. The title of gentleman, as we use it absolutely in common speech, when we attribute it to any man to whom it belongs in the largest acceptation, in any of those countries, denotes one that either from the blood of his ancestors, or the favour of his sovereign, or of them that have power of sovereignty in them, or from his own virtue, employment or otherwise, according to the laws and customs of honour in the country we speak of, is enobled, made gentle, or so raised to an eminency above the multitude, perpetually inherent in his person, that by those laws and customs he be truly *nobilis* or noble, whether he have any of the precedent titles or not fixed besides on him. Understand *nobilis* here in that sense, as it hath been frequently used since the declining times, especially of the *Roman* monarchy, as well for one that is by let-

^t Ms. in bibl. Cotton.

^t Ms.

ters patents of the emperor, or otherwise made *nobilis*, as for him that is by birth so. For the ancient use of *nobilis*, especially before the monarchy, was such, that it was justly given to none but him that had ^a *jus imaginum*, or some ancestor at least that had born some of their greater offices, or their *magistratus curules*, as censorship, consulship, and some such more, from whose image kept he had the *jus imaginum*. The first ancestor upon whose death this nobility or gentry began, was called *novus homo* only, being before his offices, that gave him the title of *novus*, only *ignobilis*, as the rest of the multitude. Neither was that use, it seems, to this purpose, different from that of the *Greeks* and ancient *Jews*, among whom the expressions of their gentry or nobility, which is all one in the sense we now use it, was with relation to the ancestors. Εὐγενής, γενναῖος, εὐπαίδειδος, εὐπαιστος, that is, *one descended from great parentage*, among the *Greeks*, denoted a gentleman, or *nobilis*; and so εὐγενής *nobilitas*, which *Aristotle* ^x calls ἀρετῆς, εὐδαιμονίας, ἡλικίας, or *ancient wealth and virtue*, or εὐδοκίαν, εὐφροσύνην, *the dignity of the ancestor*, or the like. The first authors of it being stiled ἡσυχασταὶ καὶ ἀγαθοὶ, or *famous and honourable*, or the like. And for the *Jews*; learned men conceive, that whereas they had two words, that signified as *homo* and *vir* in their stricter sense do, אדם *adam*, and איש *ish*, they called ^y such as were in the state of *nobiles* among them בני איש *beni ish*, or *filii viri*, or the sons of great men, and the rest בני אדם, or *filii hominis*, or the sons of men of common rank; And so that place of the psalms, ^z *Hear all ye people, give ear all ye that dwell in the world, the sons of great men as of men of common rank, both rich and poor together*, or as *Munster* both turns and explains it, *tam filii hominum (ignobilium) quam filii cujuscunque nobilis, simul dives & pauper*. The vulgar hath there, *quique terrigenae & filii hominum*; where *homines* is taken for the best kind of men, as in *Latin* also, where it is not opposed to *vir*. Just so the LXX. אֱלֹהִים אֵלֶּיךָ וְאֵלֶּיךָ אֱלֹהִים, with which in substance both the *Arabick* and *Syriack* agree, as if the LXX translators for אדם *adam*, which is *homo*, had read אדמה *odamah*, that is, *earth*, in the text. But where our *English* translations have *high* and *low*, there, the *low Dutch* to the same sense beide gemeynen man ende heeren, and expressly the *French*, *tant ceux de bas estat que les nobles*. But some ages after the *Romans* were under a monarchy, the title of *nobilis* was given also to such as by the emperor's patents of offices, or their *codicilli honorarii*, were first raised out of the lowest rank. And *adjudicari nobilibus*, ^a and *creari nobilem*, and the like, were phrases to be so made noble, whence it is that *Ausonius*,

using the phrase of his own time, makes ^b *Solon* say,

Pulchrius multo parari, quam creari nobilem.

And in this sense also hath *nobilis* since continued; and so we here use it. That other notion of noble which we use in *England*, when we express our lords by noblemen ^c absolutely, is peculiar to us only, and belongs not at all to this place. Neither will we trouble it further with other notions of *nobilis* that express not the dignity we handle here; nor add more of the common distinction of nobility into that which is theological or christian, philosophical, or from manners and virtue, and political or civil, than that we speak here only of civil nobility or gentry. This consists in some countries in enjoying divers privileges both personal and real, as well as, or more than in the eminency of dignity whereunto the gentleman by his birth or quality is raised, as in the *Empire*, *France*, *Spain*; in some, chiefly in eminency of dignity. And it is in all, either derived from noble or gentle ancestors, or otherwise according to the divers laws and customs of honour, newly acquired. The ways of acquisition of it are very various according to those laws and customs; and are variously disputed by the many writers that have published whole volumes *de nobilitate*, or with the like titles. After that arms also, or the ensigns of distinction born upon shields, grew to be in many families hereditary, which was about four hundred years since, it came into frequent use, that he who was either formerly enobled by blood, or newly by acquisition, either assumed ^d, or had by grant, as his case and the custom of his country permitted, from his sovereign, or some other lawfully exercising sovereign power, some special note of distinction by arms also to be transmitted with his gentry to his posterity. And a common use of giving arms, together with gentry, or in charters of *ennoblement*, as the *French* call it, hath continued to this day, although to all that have been enobled, it hath not been used, as is anon shewed in some examples. But before such time as arms were hereditary, all gentlemen, it seems, in these nations of *Europe* that have been states of themselves, bred out of the declining of the empire, and out of the irruptions of those of the north, were supposed to have their shields distinguished by some arms of their own fancy, that so they might be known one from another in the field; in such sort as ^e *Vegetius* says, in the ancient empire, the soldiers were distinguished by the *digmata*, or devices of their companies, and by their own names expressed on their shields. And thus in the customs of *Europe*, which for the most part came immediately from those northern nations, that about the declining of the empire

^a Videfis Rosin. antiq. Rom. lib. 10. cap. 19.

^b Politic. lib. 4. cap. 8. lib. 5. cap. 1. Rhetoric. ad Theodest. lib. 2. cap. 15. quem vide porro in fragmento libri *de re publica*, qui tamen an sit Aristotelis dubitat Plutarchus sub finem Aristidis.

^c Kimchi in Rad. *ש* Druf. observat. lib. 3. cap. 19. alii.

^d Psal. xlix. 2.

^e Symmach. lib. 10. epist. 25. & vide infra §. III.

^f In septem. sap. sent.

^g Sed & videfis 33 Hen. VIII. cap. 28. in titulo capituli.

^h Vide Bonum de Curtili de nobilitate part.

ⁱ 3. §. 172. Pompon. Roch. de insignibus familiar. lib. 1. cap. 9. & 13. Stephan. Forcatul. in cupidine jurisperito cap. 22. Felicem Malcolium, de nobilitate & rusticitate, cap. 29. Abraham Fransum populareum nostrum, insignium, lib. 2. & c.

^j De re militari lib. 2.

c. 18.

planted themselves almost throughout it, the right of having arms hath been from ancient time an ensign of gentry; and that almost as the right of having images was in the old *Roman* itate. Those warlike nations, and the rest with whom they are mixed in *Europe*, so esteemed the noble office of a soldier, and were so much all soldiers, that from what belonged to the wars only, rather than from any thing else, they would take the ensigns of gentry; whence also, *miles*, *chevalier*, *cavaliero* and *escuyer* also, or *scutarius*, or *armiger*, all being names framed first as proper for the wars, are used sometimes in a notion that means only a gentleman, as may be observed out of what is already delivered touching them. Thence it is also, that arms have been usually given to an enobled person, though of the long robe^f, wherein he hath little use of them as they mean a shield. But being a gentleman, he is supposed also either to be a soldier, or ready upon occasion to be one, and therefore hath that ensign to denote him. The same may be said of crests. But for arms and crests, the several ways of enobling, by feuds, by employment, by degrees in learning, or the like, according to the laws of several countries, and the great harvest of other particulars touching gentry; the store of former writers is so great of them, that we have singled out for this place only these two heads touching them. One of the several names by which gentlemen or *nobiles* are in the most parts of *Europe* stiled, and especially of the original of the name *gentilman* and *gentilhomme*, and the like; the other of the instruments or charters by which gentry hath been given. For by those, we suppose, we shall make some estimable addition to what others have done that have herein gone before us.

II. In the *German* empire *nobiles* or gentlemen (we suppose gentlemen still in our *English* use of it, convertible with *nobiles*) are sometimes expressed by *die freye vom adel*, or *die freye adeliche reichs ritterschafft* that is, *the free gentlemen*, or *ordo equestris* (as they are called also) of the empire. Which means only those gentlemen that are^g immediately subject to the emperor in *Francken*, *Schwaben* and *Rheinlander*, or some parts belonging to these. Their privileges of being free from taxes, being subject to no other court but the emperor's, and such like, make them of a singular eminency. Other gentlemen there, whether mediate or immediate to the emperor, are called *edelmen*. In both, the word *adel* (whence also with some variance of dialect the *Danes* and *Swedes* call their gentlemen) or *edel* denotes *nobilis*, whence *edel-dom* and *edelheitt* are *nobilitas*, and *veredelen*, and *edelmaecken*, to enoble. From the same word was that *edilingi*, for *nobiles* among the *Saxons* in *Germany*, made in^h *Nithardus*, and *Adalungus*ⁱ in the same sense is in the old laws of some parts of *Ger-*

many. And our *English Saxons* also called their gentlemen *æþelum*, speaking but a dialect of the old *Dutch*. Touching that, see what is before^k said, where we speak of *etheling*. And for *nobilis decurio*, which is the attribute of *Joseph of Arimathea*, in the vulgar; our old^l *Saxon* translated out of it, hath *æðela gerefa*. But in *Poland* they call their *nobiles* *Gzchlacta*, as we see frequently in their laws. But in the most other parts of *Europe* the very name of gentleman, expressed in the several provincial languages, is used, as *gentilhomme*, *gentilhuomo*, and *gentilhomme* among the *Spaniards*; who also have that other title for a gentleman, which they call *hidalgo*; whereof more anon. The reason of the whole name in every country where it is used, will appear clearly, if we know how *gentil* came to it. And it is not likely, but that upon the self-same ground and original it came into all places that have received it. There be two special opinions concerning the original and cause of the use of *gentil* in this sense. Some that are earnestly willing to derive all into the provincial tongues especially, of which this word is, from the purer times of the *Latin*, fetch it from *gentiles*, as *gentiles* was used before the *Roman* monarchy began. It signified such as were of the same name and stock, free born, retaining their *Roman* liberty, and whose ancestors were always free. And *Cicero* calls *Tullius Hostilius*, *gentilem suum*,^m only for name's sake. *Festus* also; ⁿ *Gentilis dicitur & ex eodem genere ortus, & is qui simili nomine appellatur*; to which purpose he cites this of *Cincius*, *gentiles mihi sunt, qui meo nomine appellantur*. And *Cicero*, speaking of arguments drawn from definitions, and shewing how they should be made, brings this for an example; *Itemque*^o *ut illud; Gentiles sunt qui inter se eodem nomine sunt. Non est satis. Qui ab ingenuis oriundi sunt. Ne id quidem satis est. Quorum majorum servitutem servavit. Absit etiam nunc, qui capite non sunt diminuti. Hoc fortasse satis est. Nihil enim video Scaevolam pontificem ad hanc definitionem addidisse*. The relation thus made between men, was called *gentilitas*, as we see in *Varro*. *Ut in hominibus*, saith^p he, *quaedam sunt cognationes & gentilitates, sic in verbis. Ut enim ab AEmilio homines orti AEmilii ac gentiles, sic ab AEmilii nomine declinantes voces in gentilitate nominantur*. In the same sense he hath *gentiles* in that phrase of the twelve tables which he uses proverbially, where he speaks of the care of having a country fear healthful and fruitful. *An non borum* (says^q he) *si alterutrum decollat, & nihilominus quis vult colere, mente est captus, atque ad agnatos & gentiles est deducendus*? For such as were mad, by the law of the twelve tables, were to be committed to their *agnati* and *gentiles*, or to the next of their kin and name. They that were *gentiles*, every of them being singularly gen-

^f Videbis Paschal. de coronis lib. 10. cap. 15.

^g Paurmeist. de jurid. lib. cap. 10. §. LXXI. Nolden de statu nobil. cap. 1. & 30.

^h cap. 17. §. XIV. &c. Befold. de ordine equestr. cap. 6. §. 5.

ⁱ Lib. 4.

^l Leg. Anglorum tit. 1. 2. 3. & 4.

^k Cap. 5. hujus partis §. 1.

^m D. Marc. cap. 15. comm. 33.

ⁿ Tusc. quaest. lib. 1.

^o De verb. signif. verb. Gentilis.

^p Topici.

^q De lingua Lat. lib. 7.

^r De re rustica, lib. 1. cap. 2.

tilis, were collectively also called *gens*, which was so distinguished from *familia*, that the surnames denoted the *familia*, and the names only the *gens*. As the *gens Aelia* extended to as many as had the name of *Aelius*; But the families of that *gens* were distinguished by the surnames of *Lamia*, *Paetus*, and such like. Whence it is that *Festus* says, *gens Aelia appellatur quae ex multis familiis conficitur*. And in this sense *Horace* hath *sine gente*, for one that is a slave, or at least, that had servile ancestors. For such had not *gentem*, nor were called *gentiles* one to the other.

Qui [†] *quamvis perjurus erit, sine gente cruentus.*

Now because *gentiles* thus denoted men only that were *ingenui*, and of one name and stock; and that such as were *servi* or *capite diminuti*, as banished men, or otherwise capitally condemned, were excluded from having *gentem*, or the title of *gentiles* among them, therefore it hath been conceived that *gentilman*, or *gentilhommes* hath been used in the provincial tongues, as if it should literally express [†] one that were *nobilis ab origine gentis*, or enobled by his stock. In which sense, we see, the name of gentlemen, in an acceptation according to this original only, should signify one only that were enobled by blood, as *nobilis* did in the more antient times in *Rome*, or as *generosus*, which is frequently used for gentleman, out of its own notation doth. For *generosus*, in its primary and most used acceptation is, *qui bono genere ortus non degenerat*, or one that being born of worthy parents is by kind also like them. In which sense it is applied also to beasts, trees, fruits, and other things when they are commended for their quality, with reference to the stock whence they come. The examples are obvious. But when it is spoken according to the antient sense, of a gentleman, it expresses more his own personal worth than the dignity of his ancestors, though it suppose both. No otherwise than as the Greek *γενναῖος*, which signifies the self-same. To this purpose *Aristotle*, Εἰς τὸ δὲ γεννῆς λόγῳ (saith [†] he) καὶ τὸ τῷ γένει ἀρετὴν. *γενναῖον* δὲ καὶ τὸ μὴ ἐξίστεσθαι ἐκ τῷ εὐγενεῖ. *The being noble* (in that more antient sense of noble) *is by the virtue of ancestors, or the stock, but the being generous is not to degenerate from the birth*, which, ὡς ἔστι τὸ πολὺ ἐ συμβαίνει τοῖς ευγενεσιν ἀλλ' εἰσιν οἱ πολλοὶ ἐυέλεις, *very often happens not to those that are noble, but many of them are of no estimation*. For as in the fruits of soil, so in the generations of men there is a frequent change from the original. From a good stock; for some time excellent men are propagated, and then the posterity often degenerate, as he notes there.

The Dutch have a good word of *generosus*, *wellgebozen*, or *well born*; and in an antient *Latin* Saxon ^u glossary, *generositas* is interpreted by *æþelbornnesce*, *noble birth*. Though also vul-

gar use now hath so altered the genuine sense of *generosus*, that it frequently denotes any kind of gentleman, either by birth, or otherwise, truly enjoying that name, as well as *nobilis*. But it was long before the constant use of *generosus* was with us for the title of gentleman in our writs, counts, pleadings, and such like. Till about *Henry* the eighth, the very word *gentilman* was often retained for the addition in the *Latin*, as we see in the rolls of the precedent times. But then *generosus* came to be constantly with us used for a gentleman of what sort soever, if his title were no greater. And plainly we see some steps of such a use of *γενναῖος* (which is but the same) in that old proverb, *ὁ γενναῖος ἂν ἐν βαλγίῃ*, *you are generous even by your purse*, spoken ^x of such as were rich, and therefore would seem noble also. And the glossary but now cited interprets also *generosam*, by *ἡ ἀεδία*, or a woman that is noble, absolutely without relation to birth.

The other special opinion touching the original of the word gentleman, is, that it came from the word *gentilis*, used in a most different notion about the declining of the empire, and afterward; that is for one that was no *Roman*; but of some of those other nations that had made irruptions into the empire, and in a manner destroyed it. For the understanding of this opinion; we first shew that use of the word *gentilis*, and the original of that use, and then how it might thence come to be used for *nobilis*. Beside, the common notion of *gentes*, whence *gentilis* is made, wherein it signifies nations, or all men indefinitely, as it doth in *jus gentium* from antient time to this day, there was another notion of it, in the declining times, restrained only to such nations as were not *Roman*; no otherwise than as antiently *barbari* was used first for all beside *Grecians*, and then for all, except them and *Romans*, as in *Claudian*.

— *jam* [†] *foedera gentes*
Exuerant. Latique audita clade feroces,
Vindelicos saltus & Norica rura tenebant.

In the same sense *Justinian*, in a commission or rescript to *Zeta* the *magister militum* of *Armenia*, *Pontus Polemoniaco*, and the neighbouring countries; *cum* ^z *propria divinitate Romanorum nobis sit delatum imperium, sollicita cura, cauta diligentia pertractantes perspeximus oportere etiam partibus Armeniae & Ponto Polemoniaco & gentibus proprium magistrum militum per hanc legem constituere*. And as *gentes* thus collectively denoted them, so every of them were called *gentilis*, and all plurally *gentiles*, and *barbari* also, and the *Romans*, that lived among them, *provinciales*. The fullest testimony of this, is a law of *Valentinian* and *Valens*, *de nuptiis gentilium*, forbidding that any *Roman* or provincial woman should marry a *gentilis*, or that any provincial man should take a wife of that kind, or *uxor*

[†] Serm. 2. satyr. 5.
verb. *γενναῖος*.

[†] Bud. in annot. ad *Pandectas*.

^z De bello Getico.

^z C. tit. de officio mag. militum, l. 5.

[†] Rhetoric. ad Theod. lib. 2. cap. 15.

^u Ms.

^x Suidas in

barbara,

barbara, as they call her. The words of the law are, *Nulli provincialium, a cujuscunque ordinis aut loci fuerit, cum Barbara sit uxore conjugum, nec ulli gentilium provincialis foemina copuletur. Quod si quae inter provinciales atque gentiles affinitates ex hujusmodi nuptiis extiterint, quod in iis suspectum vel noxium detegetur, capitaliter expietur. Datum v kal. Jun. Valent. & Valente Coss.* Elsewhere also in *Theodosius* his code^c the same use is of *gentiles*. But the original of this use is to be deduced from the antientest times, and that from among the *Jews*, through the *Greeks*, into the *Latin* christians. For before christianity and the idiotism of christian language received into *Latin*, this use of it was not in the *empire*. The *Jews* so used their word גוים *gojim*, which signifies *gentes*, absolutely spoken, for other nations according the subject matter, that they excluded themselves, and comprehended others only in it. In that sense we have it in *Moses*, where he says, ^d that the posterity of *Japhet* divided the isles of the nations or גוים *gojim*, which is the same. Thus it is used very frequently in the old testament, in those passages where גוים *gentes*, or the *nations*, occur. And thence it is also that the *rabbins* have the singular of it גוי *goi*, for a man of any other nation than of *Israel* or a *Jew*. בל אש שאני (saith *Elias* ^e *Levita*) מני ישראל קראו לי גוי כלומר שהוא מני *Every man that is not an Israelite they call goi, as if you should say, he is of another nation. And if it be a woman, they call her goiah.* To the same purpose *rabbi D. f Cimchi*, and others. From that use of גוים in *Hebrew*, גוים *gentes* (which among those of the purer times of the *Greeks*, that wrote in *Greece*, signifies as *gentes* did in the purer times of the *Latin*) was in like sense used in the *Greek* translations of the old testament, instead of it. Thence is it also that we have גוים *gentes* in that notion so frequently in the new testament. Πλάττω δὲ ὑμᾶς ὡς ἡμεῖς τὰ ἔθνη, saith our ^b saviour, instructing the *Jews*; *all these things the nations, or the Gentiles seek.* And so גוים *gentes* signifies, most frequently in the acts of the apostles^h and the canonical epistles: whence also the *Latins* in the idiotism of christianity at first used their word *gentes* for the self same, which our *English* most commonly turns *gentiles*, especially in the new testament, but the *French* *payens* for *pagans*, and the *Dutch* *heyden* or *heydenen*, which is but our *beathen*. But in the primitive times both גוים *gentes*, and *gentes* soon got another signification, and meant not all such as were not *Jews*, as in the old and new testament, but those only which were neither *Jews* nor *christians*, but followed the superstitions of the *AEgyptians*, *Greeks*, *Romans*, and such more. So that as the *Jews* used the word *nations*, or גוים for all people besides themselves, so the *christians* גוים and *gentes*, for all people besides themselves

and the *Jews*. Thence is that title *adversus gentes* in *Tertullian* his *apologeticus*, *Arnobius*, and such more that wrote in the primitive times, in the same sense that *St. Augustine* in his *de civitate Dei*, and *Orosius*, use *contra paganos*. In this sense it continued among the christian writers also, until their propriety of speech with their religion was publicly, and by authority of the state received in the empire; soon after which also *gentilis*, made from *gentes* in this signification, was used for those of the *gentes*. But as *gentes* and גוים *gentes*, were used by the *christians* in such a sense that excluded all nations but themselves and *Jews* by it, as the *Jews* before had done all nations whatsoever but themselves, so after the word *gentes*, and the conjugate *gentilis* were received into the christian state of the empire, they both had another kind of signification, and from this original, whence we now deduce them, it seems, a double one. When they were used in treatises or laws that concerned matter of religion, then they denoted such as were *pagans*, or, being not *Jews*, were no *christians*; but when they wrote merely of civil government without relation to point of religion in laws or otherwise, then they used *gentes* and *gentiles* (proportionably as the *Jews* antiently did their גוים, and as the *christians* their גוים *gentes* and *gentes*) for all, such as were not *Romans*; that is, for those that were not of the *Roman* empire, or of the *orbis Romanus*. For all of the *orbis Romanus*, were *cives Romani* by that old constitutionⁱ of *Antoninus Pius*, and the rest were now called *gentes* or *gentiles* as well as *barbari*, which word came among the *Romans* in a like sort also, as this use of *gentes* and *gentiles* did. For all, save the *Greeks*, were first called *barbari*, and so *St. Paul* also uses it, and afterward the *Romans* stiled all *barbari* save themselves and the *Greeks*. The use of *gentes* in matter of religion is obvious in the fathers; and of *gentiles* only for such as were not *christians* in this law of *Honorius* and *Theodosius* concerning religion; *Ne Donatistae vel caeterorum vanitas haereticorum, aliorumque error quibus catholicae communionis cultus non potest persuaderi, Judaei atque gentiles, quos vulgo paganos vocant, arbitrentur legum ante adversum se datarum constituta tepuisse, noverint iudices universi* &c. And the same emperors^m; *qui profano pagani ritus errore seu crimine polluantur, hoc est gentiles, nec ad militiam admittantur nec administratoris vel judicis honore decorentur*. Other like occurrences are of it. And from this notion of *gentiles*, we have *professiones gentilitiae* in another of theirⁿ laws. But in laws of civil government only, *gentilis* is used in that other sense for such as were not *Romans*, or as opposed to all that were *Romans* and *provinciales*, which to this purpose were of equal condition; as we see especially in that law of marriages before cited, and another

^a C. Theodof. l. 3. tit. 14.

^b Haec vera lectio; uti ex ms. diffimus, sed in vulgatis libris quibus utimur, male *susceptum* & detegitur legimus.

^c Lib. 11. tit. 33. de appellationibus l. 62.

^d Genes. cap. x. 3.

^e In Thisbite.

^f In Radicibus.

^g Matth. cap. vi. 32. & D. Luc. cap. xij. 40.

^h Act. Apost. cap. xvij. 6. ad Rom. cap. 1. 5. &c.

ⁱ ff. De statu homin. l. 17. & novell. 78. cap. 5. 6.

^k Ad Rom. cap. 1. & videlicet Fess. in Barbari.

^l C. Theod. lib. 16. tit. 5. de Haereticis, lib. 49. & vide l. 43. &c.

^m Eod. lib. tit. 10. l. 21.

ⁿ Eisdem lib. & tit. l. 10.

of appeals noted in the margin with it. There we see *provinciales* opposed against *gentiles*, which in the body of the law is as a synonymy to *barbari*. And the old scholiast there clears it fully. For thus he expressly sums it up in other words; *Nullus Romanorum barbaram cuiuslibet gentis habere praeſumat uxorem, neque barbarorum conjugii mulieres Romanae in matrimonio conjungantur, quod si fecerint, se capitali sententiae noverint subiacere.* Here plainly he takes *provinciales* and *Romani* to be the self same. For *provinciales* signified all that had *domicilium in provincia*, as ^p *Ulpian* says, and were by consequent *Romans* and *gentiles*; and *barbari*, he uses as a synonymy to be opposed against both *provincialis* and *Romanus*. And in *Cassiodore*, ^q of *Opulio* made *comes sacrarum largitionum*; *gentiles victi*, *Romanos sibi iudicis obligabat*. And the like kind of different notions we see in other words. *Chaldaeus*, where the discourse is of predictions, often signifies an astrologer. But in geographers, historians, and such like that speak of state, story, or situation of countries, it denotes only one of the country of *Chaldaea*. So *hellenismus* in the old story of the church, and some fathers, signify as much as a *gentile* and *gentilism*, in such sense as either of those are opposed to christianity; but in others that use not the words with relation to religion, even in the same time where that notion of them is found frequent, they mean only *Grecians*, or what hath reference to *Greece*, as it is a peculiar country. The like may be said of the name of a *Jew*. The notions of the word *gentilis* being thus deduced and stated, they that are of this other opinion touching the original of *gentile* or *gentil* in gentleman, conceive that those northern nations in their framing of words out of the *Latin* (which they found in the provinces where they seated themselves) to make up their *provincial* or *Roman* tongues (as the *Goths* and *Vandals* in *Spain*, the *Spanish*; *Goths*, *Salians*, and some such more in *Gaul*, the *French*; and the *Goths* also and *Lombards* in *Italy*, the *Italian*) so esteemed of the word *gentilis*, by which they found themselves stiled in the *Latin*, that they now made it in those tongues a distinction or note of honour for such of them as were of the more eminent quality, or in truth *nobiles*, and were, it seems, ambitious to be thus honoured by that very name by which the *Romans* had before with some scorn so expressed them. And that especially because all being in those parts after the irruptions of those nations, either *gentiles*, or *Romani*; the *Romans*, if you consider them that were subjects of the empire, were generally in a far worse condition in regard of subjection, tribute, and the like, than any subjects, that were not as slaves to the better sort, among those other nations. And therefore the better sort of those nations to express their liberty perhaps,

which was dearest to them, and so much differed from that of the *Romans*, were the forward also to use that very word which so properly distinguished them from the *Romans*. To this purpose, *Hinc nimirum fluxit* (saith the learned *M. Velserus*) *quod cum Barbari in devictis provinciis meliori quam Romani jure uterentur (cujus vel una haec ex Ripuariis legibus fidem facit.* Si quis ^r *Riparius* advenam Francum interfecerit c. fol. culpabilis judicetur. Si quis *Riparius* advenam Burgundionem interfecerit, c. lx solidis mulctetur. Si quis *Riparius* advenam Romanum interfecerit c solidis mulctetur. Si quis *Riparius* advenam Alemannum seu Frisonem, vel Bauvarium, vel Saxonem interfecerit c. lx solidis culpabilis judicetur) *gentilitatis nomen dignitatis existimationem induxerit, paulatimque eo res prolapsa sit, ut gentiles homines absolute pro nobilibus dicerentur, quae in Italia & Gallia consuetudo, item Hispania, & Britannia quodammodo ad hoc aevi tenet; Atque ut ineptias inanum opinionum rideas, si quem ibi gentilem compelles, honori deputet; si, quod idem est, barbarum, insignitam sibi illatam contumeliam opinetur.* For, we have, we see often likewise, *tam barbari quam Romani*, and *barbari seu Romani* in king *Theodorick's* edict in the laws of the *Burgundians*, and such more. For they thought not *barbarus* to be more disgraceful, than *Plautus* did when he called *Naeius*, *barbarus*, or speaking of his *Asinaria*, says that *Demophilus scripsit, Marcus vertit barbarare*. For in *Plautus* his time, *barbarus* in *Rome* signified any that was not a *Grecian*, as it was now taken by these nations we speak of, for any among them that was not *Roman*. And it was nothing stranger that *gentilis* from that more general signification should come to this restrained notion in the *provincial* tongues, than that *dux*, *comes*, *baro*, *miles*, *scutarius*, and such more, being all of a very large sense, should so come to denote particular dignities both in the *Latin* of the middle times, and in the *provincial* languages, being but varied according to the *provincial* idiotisms. *Nobilis* it self also in *Latin* was and is very large, and yet hath been by a like kind of use restrained also in another notion to that which we call a gentleman.

Of these two opinions touching the name of gentleman, I incline most to the latter. For they of the first, who would have it from the more antient and purer word *gentilis*, seem to forget that which specially should have been thought on in the disquisition; that is, that the word *gentilhomme* having been begun in the *provincial* tongues out of the *Latin*, should most likely come from such a *Latin* word as was then in familiar use, and from such a sense of that word as was in like use also. But, *gentilis* in that antient sense will not, I think, be found a very usual word, neither about the time that these *provincial* tongues began, nor since.

^o Interp. l. unic. tit. 14. lib. 3. C. Theodos. Aug. Vindelic. lib. 8.

^p L. 190. ff. tit. de verb. signif. ^q Ripuar. tit. 36. §. 1, 2, 3, 4. vide leg. Salic. tit. 15. §. 2, & 3, & tit. 34. §. 3, & 4. tit. 43. §. 1, 6, 7, 8. Sed vero, ut plurimum eodem jure potiebantur & Romani & barbari seu gentiles, qui simul gentiliū imperio parebant, quod videre tutius est in edicto Theodorici regis, legibus Burgundionum aliisque id genus testimoniis.

^r Variar. 8. form. 17.

^s Rer.

Other reasons might be given against it. And *Velferus* judiciously of it; *Alia scio originatio est* (so he says after those words before cited out of him) *a Budaco allata, quanto magis antiquaria & elegans, eo a barbarie seculi quo hoc vocabulum usurpari coeptum alienior*. But that later opinion is more like to truth, both by reason of what we find in the stories of the times, wherein those northern nations planted themselves in the parts of the empire, as also of what continues in most of the parts where the word gentleman is used, from those times till this day. For the stories; the occurrences are many, wherein both the liberty and professed purpose of maintenance of that liberty, by the eminent persons of those nations, and the great estimation of themselves and their associates, or of them that were *gentiles*, above the name of *Romans*, whose subjection, according to the imperial laws, they esteemed a servitude unworthy of their own dignity. Therefore they rebelled and slew some of their own princes, only because they would have brought them either into the state of *Romans*, or under the subjection of the empire. The examples are in that of *Theodatus* especially, *Ataulfus*, and *Sigericus*,^u all kings of the *Goths*, and slain because they endeavoured some such thing. Nay, *Ataulfus*, according to the mind of his free subjects, had resolved to have utterly extinguished the names of the *Romans*, and have called it the *Gothick* empire; and so they used the word *Gothia* instead of *Romania*, and the name of *Ataulphus* for *Cæsar Augustus*. But he observed that the liberty claimed by his *Goths*, and the rest of the like nations with them, was such as that he could not so hope enough quietly to govern them. And therefore he altered his resolution, chiefly by the persuasion of his queen *Placidia*, a *Roman* lady, and daughter to *Theodosius* the first, and endeavoured to restore the dignities of the *Romans*, and of their laws in his government, and to be *Romanæ restitutionis auctor postquam esse non poterat immutator*, as *Orosius*^x says of him. But when this purpose was discovered, he was soon murdered, as an enemy to their national liberty, which was to great also, that divers of the *Romans* chose rather to be of their condition, though poor, only for their liberties sake, than to live as *Romans*, or under the empire, in such a wealthy subjection that was so toward a servitude. *Hucusque Romani* (saith *Isidor*) *qui in regno Gothorum consistunt, adeo amplectuntur, ut melius sit illis cum Gothis pauperes vivere, quam inter Romanos potentes esse, & grave jugum tributum portare*. And *Orosius*; *Barbari execrati gladios suos ad aratra conversi sunt; residuosque Romanos ut socios modo & amicos fovent, ut inveniantur jam inter eos qui malunt inter barbaros pauperem libertatem quam inter Romanos tributariam sollicitudinem sustinere*. It may be hence collected, that those nations were all willing enough to distinguish their men of any eminency by a

general name, in their provincial tongues, which might most fully deny them to be *Romans*. And nothing could better do that than *gentiles*, which was then so used for such as were not *Romans*; and so for these nations principally, in exposition of civil business, also as distinguished from *Romans*. Of whom yet as many as lived in such eminence with the *gentiles* as themselves did, retained still the stile of *nobiles* in their *Latin*, though they were afterward known also in their provincial tongues by the name of *gentilhommes*, or the like, because out of those reasons before shewed, *gentilhommes* was become to be a provincial word for *nobiles*. Now for what continues to this day, and seems at least, to give light here; observe the principal privileges belonging to gentry in most of those places, where the word *gentilhomme*, or the like, is used, and the name also of *hydalgo*, which is a gentleman in *Spain*, both which may add strength to that conjecture. The principal privileges at this day consist in being free from such tribute and taxes, as the *Romans* were in those elder times subject unto, and the chief of the *gentiles*, or not *Romans*, or those other nations that so dispersed themselves in the empire, were out of their national liberty discharged of; as if that continuing freedom were also a perpetual character of the origination of the name *gentil* in this sense fixed on them; which also together with *gentilezza*, or the like, by reason of the dignity of them that were stiled by it, and the fair manners which both in arms and peace they affected, or at least pretended, hath denoted^a, and to this day doth we see in these tongues, *mansuetus, comis, liberalis, perhumanus*, and such more epithets and their abstracts, as may express a noble spirit. And for *hydalgo*; good authors have supposed the name originally to be *hijo d'Algodo*, or *filius Gothi*, or *the son of a Goth*, making it thus wholly from the nation whence the *Spaniards* are chiefly descended. *Gaspar Baetius*, in his book *de inope debitore creditori addicendo*^b says, that *Laurentius Padilla*, archdeacon of *Rando*, and a professed historian in *Spain*, told him that he saw in the library of *Malaca* church a very ancient book, wherein wheresoever mention was made of *hydalgo*, it was written *hijo d'Algodo*, as if it had plainly meant *the son of a Goth*. And as this particular name might be from a particular nation of those *gentiles*, so it seems, for a more general expression, they made also their *gentilhomme* from the general name of *gentiles*. And as they, so other nations that have their provincial tongues. Neither need we think of it with relation to *England*, otherwise than as it came out of the provincial tongue of *France* to us. Before the *Normans* we had it not. From the *French gentilhomme* we then made our word gentleman, which was before called *a^cdel*, as is already shewed. And our *Norman French* calls gentlemen *gentils gens*^c sometimes also, and sometimes *gentils*^d only.

^u Jornand. de reb. Geticis, cap. 60.

^x Chron. Gothorum, &c. aera 447.

^c 37 Ed. III. cap. 11.

^a *Isidor. chronic. Goth. aera 454.*

^b Hist. contra pag. lib. 7. cap. 41.

^d *Rich. II. cap. 5.*

^x Contra paganos, lib. 7. cap. 43.

^a Leg. Burgund. tit. 26. §. 1.

^y Chron. Cap. 16. §. XLIV.

I know some fetch it into *France* from the word *gentiles*, as it occurs about the declining times in *schola gentiliū*, in *Ammianus* ^c *Marcellinus*, under *Julian* the apostate and his nearer successors. But I cannot think that so narrow a number as the *schola gentiliū*, or any regiment, or company so stiled, could propagate so universally through the provincial tongues such a name for all that were *nobiles*. Neither perhaps would the author of that fancy have thought so, if he had observed the so extensive notions of *gentiles* which are before shewed. And for that of *schola gentiliū*, and *gentiles* otherwise mentioned in *Marcellinus*, in the wars; there can be no great doubt but that they were only some regiment or company stiled so, because the chief of them, or the most of them were, or had been *gentiles* in that sense, as it denoted such as were not *Romans*, according to the use of denominating such regiments and companies in that time. Some from the honour given to all, or most, or some of the chief of them, as *comites foelices*; some from their arms wherein they were most exercised, as *sagittarii* and such more; others from their number distinguished according to the time of their being chosen, as *primani*, *undecimani*, *quarti*; some from the nations whence they were taken, as *Arcades*, *Batavi*, *Persae*; and so these by the general nature of the several nations out of which they were taken, by the name of *gentiles*. But of these names, thus much.

III. The use of instruments, or charters, by which gentry hath been given, is very antient in the empire, of which we first speak here, and then of some of other nations. But let not the common objection be made here, that no charter can make a gentleman, which is cited as out of the mouth of some great princes that have said it. They without question understood gentleman for *generosus* in the antient sense, or as if it came from *gentilis* in that sense, as *gentilis* denotes one of a noble family, or indeed for a gentleman by birth. And to say, that a gentleman in such a notion may be created, is in itself a contradiction. No creation can make any man to be really of another blood than he is; though yet we have anon an example of a creation of one to be reputed, as if he were of the blood of a noble house.

The same may be said of *nobilis* in the antientest sense, as it denoted him that had *jus imaginum*, or as it is taken by some writers ^b of our age while they dispute of gentry, as if all *nobilitas* were *nativa*. And in that sense also is the Spanish proverb to be understood, *el rey no puede hazer hidalgo*, or the king cannot make an *hidalgo*. But we take gentry here for *nobilitas*, and a gentleman for *nobilis*, as those words have been used since the declining of the empire, and are obvious to this day in the feudists, and other lawyers that write of what con-

cerns this *nobilitas*, which is *dativa*; as they call it, not *nativa*, and is then regularly given, when by the sovereign's favour, or of one exercising sovereign power, as *quis ultra*, as ^b *Bartol* says, *honestos plebeios acceptus ostenditur*. Though we want not example of a creation by a kind of adoption. Some touch is before, in the beginning of this chapter, of the creation of a gentleman or *nobilis* in the empire. It was at first done by charter, or *codicillis honorarii* (we mean done alone; for by commissions of great offices and other employments, it was consequentially also, and most antiently, as also by feuds and otherwise; but of that kind, or other like, we speak not at all further) in granting the *dignitates vacantes*, or the titles and ensigns of great offices without employment, to no other end but to enoble, or put the grantee into the rank of them that were *nobiles*. Remember what is already ¹ shewed of the *comitivae* granted. And of such grantees there is special mention in that old law of *Zeno* the emperor, touching the judges before whom the persons of eminency in the empire should be questioned in criminal causes. *Viros illustres, in hac inclita urbe degentes, qui sine administratione honorarii decorati fuerint codicillis, licet talem praerogativam nostrae jussionis meruerint ut, quod non egerint, videantur egisse, in criminalibus causis magnificae tuae sedis* (he writes to *Arcadius*, his praefectus praetorio) *et illustrissimae urbicae praefecturae necnon etiam viri magnifici magistri officiorum* (quoties tamen ad ejus judicium specialis nostrae pietatis emanaverit jussio) *sentiis respondere decernimus, ita ut hujusmodi viri sedendi quidem in cognitionibus dicendis minime sibi vindicent facultatem*. And out of this text the civilians commonly fetch their greatest and almost their sole testimony of the use and antiquity of enobling by charter in the empire. And *Hermannus Kinknerus* speaking ¹ of the office of a chancellor; *Quamquam per se tam illustre cancellarii officium sit, ut quod supra declaravimus etiam nobilitatem ei, qui ipsum administrat semper tacite conferre intelligatur; est tamen et antiquis Caesarum imperiis, nobilitandi bene meritis praemioque dignitatis atque honoris excellentiore afficiendi eos, qui tum in hoc tum in aliis muneribus versati fuerint, consuetudo observata et a temporibus Zenonis in Romana republica retenta*. But there is a whole title de *honorariis codicillis* in *Theodosius* his code (wherewith the civilians do seldom consult) and some laws that shew the use of those *codicilli*, as antient as *Constantine*, about cix years before *Zeno*. *Si quis* (saith ^m he) *judicio nostro se adeptum codicillos adstrinxerit, et idem vel suprema codicillorum impressio vel scriptura adstipuletur interior, tamen si ad hoc pecuniam constabit spectatam, nihilominus rejectus in plebem, quo plus extorquere comatus est, abdicetur. Hos enim solos, qui*

^a Lib. 20. & 26. & videfis Pasquier en les recherches de la France liv. 2. cap. 15.
^b Alberic. Gentilis de nuptiis lib. 4. cap. 13.
^c tit. ubi senatores vel clarissimis, &c. §. II. & videfis novel. 70. cap. 1.

^f Videfis Panciroll. ad notit. orientis cap. 33.

¹ Supra cap. 1. §. IX. &c.

^k Lib. 3. quo-

¹ De officio & dignitate cancellarii lib. 4. cap. 6.

intra palatium versati sunt vel administrationibus functis ad honores excipi oportebit, caeteris functis exemptis & suis restitutis. Divers other laws are in that title concerning these charters of honour or of *ennoblishment*. But the nobility thus gained (in respect of that other which was from real and not fained employment) was about that time of *Constantine* slighted by the name of *umbra* and *nomen*ⁿ *dignitatis* only, though afterward by the laws of other emperors (especially, I think, of about *Gratian* and *Valentinian*) these *dignitates codicillariae*, as they were also^p styled, became to be and continued afterward of much better reputation. About the same time also the emperors would sometimes, by patent, give the dignity of the *ordo equestris*, as *Constantine* the younger, and *Julian* gave it to all the *navicularii*. But at this day, and in those ages that have passed since arms have been frequently hereditary, this kind of enobling in the empire, saith *Kirknerus*, is by giving of arms, together with the privileges belonging to gentry, *per insignium & armorum uti vocant, collationem, concessis una privilegii ordini usitatis*. These are limited to the heirs of the body usually. And the charter or patent they therefore call a *wapenbrieff*, as if you should say a *grant of arms*. And how the power of this kind of enobling belongs to the princes of the empire, or to others that have the power given to them, see the collections especially of^r *Nolden*, and what occurs before in the patents of creation of counts palatine. Forms of patents of enobling by the emperors, in the later ages, you may see especially in the history of *casu Monaldesca*, written by *Alonso Cecarelli*.

For the popes power also exercised in enobling or making a gentleman, we observe here only that of *Petrus Rebuffus*, a great lawyer of France; *Item nobilitare potest papa* (saith^s he) *& seculares principes, unde cum in fundatione caveatur, quod nullus nisi nobilis recipiatur, poterit papa creare impetrantem nobilem ad effectum obtinendi beneficium, sicut videmus de canonico ad effectum habendi dignitates in S. fide reservat. in concord. vel, non obstante fundatione isti concedere; & ita frequentius fit, quod vix sustinerent canonici S. Joannis Lugd. aut Briodi in Arvernica.* But the most especial form of creation of a gentleman in the empire (I take *Italy* here, as before, for part of the empire) is in that form which I find in *Salustius Tiberius a Cornetto*, his formulary of instruments according to the stile of the court of *Rome*, where the greater part of a gentle family assembling^t themselves do, by consent, as it were adopt a stranger that hath well deserved of them to be of their family, as if he were descended by a male from among them, and so create him a gentleman to be reputed *de domo & agnatione ipsorum*, and grant him also their arms, and limit the whole honour to him and the heirs of his body. It is titled;

Creatio alterius de aliqua nobili domo.

Illustres & nobiles viri DD. A. M. & N. omnes de nobili familia & agnatione de N. convocati, & congregati in loco infra scripto, & infra scriptorum occasione, asserentes se praesentare majorem & saniores partem ipsorum nobilium de N. & quod ad praesens non est alius ex ipsis nobilibus qui ad infra scripta commode intervenire valeat, & nihilominus pro aliis nobilibus absentibus de rato, & rati habitatione promiserunt, & quatenus opus fuerit praesens instrumentum & omnia contenta in eo ratificabunt, approbabunt ad omnem simplicem requisitionem infra scripti D. P. etiam per publicum instrumentum cum clausulis, & solemnitatibus debitis & opportunis, alias &c. & dictis resp. & nominibus considerantes, & attendentes eximias virtutes & immensa benemerita & obsequia D. P. qui retroactis temporibus se promptum & facilem reddidit, & obsequiosum pro praedictis nobilibus & augmento honoris domus, & agnationis praedictae, personam, virtutes suas, ac industriam diversimode exercendo & occupando; volentes praefati nobiles DD. de N. quibus supra nominibus aliqui recompenfatione illorum & amoris suiⁿ offensione eum sublevare, & sese obsequiosos illi reddere, ne vitium ingratitudinis ullo unquam tempore eis ascribi valeat, & ut etiam ipse D. P. de caetero animosior reddatur ad idem perseverandum, habito prius super praemissis inter eos, ut asseruerunt, colloquio, & tractatu sponte, &c. omnibus melioribus modo &c. unanimiter & concorditer dictum D. P. ibidem praesentem & gratiose acceptantem, & quoscunque ejus descendentes, & descendendum descendentes usque in perpetuum fecerunt constituerunt & creaverunt, ac faciunt, constituunt, & creant de domo, agnatione & familia de N. ita ut de caetero dictus P. & ejus descendentes, ut supra, sint & esse debeant, & intelligantur, ac habeantur, teneantur, tractentur, & reputentur, & nominentur &c. haberi, tractari, vocari, & reputari debeant ubique locorum de domo & agnatione ipsorum nobilium de N. ac si originarius ex dicta domo & agnatione natus & procreatus ex ipsis nobilibus, & ex alicujus ex eis corpore in lucem productus per lineam masculinam, ac si esset vere & naturaliter ex dicta domo & agnatione ex corpore alicujus ex eis procreatus per lineam masculinam legitimam, & naturalem, ut supra, absque alio medio in tantum quod de caetero, & perpetuis futuris temporibus ipse P. & ejus descendentes ut supra, infinitum possint, & valeant, & eis liceat ubique locorum deferre arma, & insignia ipsorum nobilium de N. & agnationis sub forma infra scripta videlicet &c. [*Hic ponatur scutum praefatorum nobilium de N.*] Quae omnia & singula &c. Pro quibus &c. jurarunt tactis &c. super quibus &c. actum &c. praesentibus N. & N. testibus &c.

ⁿ L. 2. ibid.

^o L. 4. & 5. ib. & l. 15. lib. 13. tit. 5.

^p L. 7. C. Theod. lib. 6. tit. 21.

^q L. 7. C. eod. lib. 13.

tit. 5.

^r Synoptic. tract. de nobil. cap. 2. & vide eum cap. 6.

^t Praxis beneficiaria part. 3. pag. 264. Lugdun. 1620.

^s Formular. lib. 3. pag. 382. edit. Romae 1621.

^u L. ostensione.

IV. The forms of enobling in *France*, appear in the edicts and ordinances of that country, and the stile or protocolle of the chancery there. For the purpose; *Henry* the third, in 1576, first reciting in an edict* that the nobility of the kingdom was much diminished (which because of the preservation of military forces there, consisting in the nobility or gentry, was necessary to be repaired) and that he was advertised that divers persons being not noble, or *roturiers*, were of such virtue and quality as that they deserved to be honoured with the title of noble, *moyennant quelque honneſte ſecours en deniers comptans en l'urgent neceſſite de noz affaires & finances telle que chacun ſait*, ſhews that he had took it into deliberation with the advice of the queen mother and divers lords of his council, and by their advice had resolved to enoble, and by this his edict did enoble in divers parts of *France* a certain number of persons contained in a roll or volume made of them. *Auons, ſaith he, de noz certain ſcience, plein puiſſance & auctorite royale, par ceſt edict perpetuelle & irrevocable annobly & annoblifſons es provinces & generalitez eſtablis a Paris, Roan, Caen, Amiens, Chaulons, Tours, Bourges, Poyters, Lyon, & Orleans, le nombre des perſonnes contene au rolle & cayer ſur ce fait*, and that they and their children born in wedlock ſhould enjoy all honours, privileges, preeminences, prerogatives, franchiſes, and immunities that other nobles of the kingdom enjoyed, that they might freely alſo purchaſe and poſſeſs all noble ſiefs, and be free *de noz tailles, creve, taillon, aides, equivalent, & toutes autres impositions qui ſe levent a preſent ou ſeront cy apres impoſez per form de taille*; Provided always that they and their children lived nobly and without any thing^y that might derogate from nobility or nobleſs as they call it, with this, that every of them pay a ſinance for the preſent according as by commiſſion they ſhould be taxed (but for this once only) by the contributory lands which they before held. This edict was read, publiſhed, and regiſtered in the chamber of accounts, in the preſence of the *procureur* general, who conſented to it, for the number only of one thouſand to be thus enobled; and with this, that every of them ſhould ſue out particular letters of *ennoblifſment* to be preſented in the court (letters of *ennoblifſment* are there by the law to be preſented) by the eighteenth of *June* following, in which month the edict is dated. Some other edicts of the like kind are in their laws, as one eſpecially for the enobling of divers persons in the dutchy of *Bretagne*,^z wherein there is a proviſion that the reſt of the *roturiers*, or the like, be not the more charged with taxes and impoſts, becauſe they that were ennobled were diſcharged, but that the receivers ſhould take only the former rates of them. But the form of particular letters of *ennoblifſment*

are in the ſtile or protocolle of the chancery, where we have examples both of them without paying any ſinance, and of them with ſinance paid, according as thoſe edicts ſuppoſe. For indeed the king there loſes ſo much, by diſcharging one that he nobles, of all taxes and impoſts, that it is reaſon enough that a good ſinance ſhould be paid for it; and therefore without a ſpecial diſcharge from the king, the ſinance of common right is due and to be aſſeſſed by *meſſieurs de la chambre des comptes*, or treaſurers of *France*, as the protocolle ſays. A form of an *ennoblifſment* without paying a ſinance, we tranſcribe here out of that protocolle or ſtile of the chancery there;

L *Udovicus*, &c. probitatis merita, nobiles actus, geſtusque laudabiles, & virtutum inſignia quibus perſonae decorantur & ornantur, merito nos inducunt ut eis juxta opera creatoris propria exempla tribuamus, & eos, eorumque poſteritatem, favoribus congruis attollamus, quatenus hujusmodi praerogativa ipſi laetentur, caeterique ad agenda quae bona ſunt ardentius aſpirent, & ad honores, ſuffragantibus virtutum bonorumque operum meritis, adipiſcendos alliciantur & advolent. Notum igitur facimus tam praefentibus quam futuris, quod attentis vita laudabili, morum honeſtate, fidelitate, & aliis quamplurimis virtutum generibus, quae in dilecto noſtro *N.* nonnullorum fide dignorum teſtimonio novimus ſuffragari, pro quibus non immerito ſe nobis gratum quamplurimum & acceptum reddidit; Nos ipſius perſonam honorare volentes ſic quod toti poſteritati ejus & proli perpetuum creſcere valeat ad honorem, eundem *N.* liberae conditionis, cum tota ejus poſteritate & prole utriusque ſexus in legitimo matrimonio procreata & procreanda, ac eorum quemlibet, de noſtrae regiae plenitudine poteſtatis & gratia ſpeciali *nobilitalimus & nobilitamus* per praefentes, *nobilesque facimus*, & habiles reddimus ad omnia & ſingula quibus caeteri *nobiles* regni noſtri utuntur, ac uti poſſunt & conſueverunt. Itaque ipſe *N.* ejuſque proles & poſteritas maſculina in legitimo matrimonio procreata, ac etiam procreanda, *quandocunque & a quocunque milite voluerit, valeat cingulo militiae decorari*. Concedentes eidem *N.* ejuſque poſteritati ac proli univerſae ex ipſo in legitimo matrimonio procreatae & procreandae, quod ipſe & eorum quilibet in omnibus & ſingulis actibus, rebus, & locis, & rebus in judicio & extra, non ut *ignobiles ſeu plebei*, ſed *pro nobilibus & ut nobiles* habeantur, ab omnibus de caetero teneantur, ac imperpetuum cenſeantur quibuſlibetque nobilitatibus ac juribus univerſis, privilegiis, praerogativis, franchiſiis univerſis & ſingulis, quibus caeteri *nobiles* dicti regni noſtri gaudere poſſunt, plenarie, pacifice, libere, & quiete utantur & imperpetuum potiantur. Et quod ipſe *N.* ejuſque proles & poſteritas in legitimo matrimonio procreata & procreanda *feuda & retrofeuda no-*

* Edict & ordon. tom. 3. tit. 5. §. 7.

^y See for the gentry of France, and exerciſing merchantiſe (beſides the common writers of gentry) Trajan. Boccalini, 2. raguagl. cent. 2. rag. 39. and of the nobleſſe of France, Code des Decifions liv. 12. tit. 2. Rebuffus in praxi beneficaria. part. 3. p. 294.

^z Edicts & ordon. tom. 3. tit. 5. §. 8. That title is de la nobleſſe & actes derogans a y celle, where more particular: are of the gentry of France,

bilis aliasque possessiones nobiles quaecunque sint, & quaecunque praeferant auctoritate seu nobilitate, libere tenere & possidere acquisita & jam habita, per cum ejusque posteritatem & prolem habere & etiam in futurum acquirenda & habenda perpetuo retinere & habere licite valeant atque possint, ac si fuissent & essent *ab antiquo & originaliter nobiles* & a personis nobilibus ex utroque latere procreati: absque eo quod ea vel eas vel aliqua eorum in parte vel in toto vendere seu extra manus eorum ponere nunc, vel quomodolibet in futurum cogantur. Nec finantiam qualemcunque hac vice seu alias solvere teneantur. Quamquidem finantiam intuitu servitorum &c. per praefatum *N.* multipliciter diuque impensorum, & quae non desinit impendere, aliisque de causis nos moventibus, donavimus & quittavimus, donamusque & quittamus de gratia speciali & auctoritate regia per praesentes eidem *N.* suaeque posteritati ac proli natae & nasciturae. Quapropter dilectis & fidelibus nostris gentibus compotorum nostrorum, ac caeteris iusticiariis & officariis nostris, nec non quibuscunque commissariis ad praedictas finantias exigendas deputatis aut deputandis, & cuilibet ipsorum prout ad eum pertinet & poterit quomodolibet pertinere, praesentium tenore damus in mandatis, quatenus eundem *N.* & ejus posteritatem & prolem utriusque sexus in legitimo matrimonio procreatam ac etiam procreandam nostra praesenti nobilitazione, donatione, & aliis praemissis uti & gaudere faciant & permittant pacifice & quiete, nec ipsis aut eorum quemquam, contra praesentium tenorem, ullatenus inquietent, seu inquietari aut molestari a quocunque permittant nunc vel in futurum, ordinationibus, statutis, editis, inhibitionibus, revocationibus, & mandatis in contrarium factis vel fiendis, non obstantibus quibuscunque, quod ut firmum &c. Nostro &c. Datum &c.

The privileges by which gentlemen are made in *Spain*, as also for the rest that belongs to their *hydalguia* or principal gentry, I refer you chiefly to that *summa nobilitatis Hispanicae* of *Joannes Arce ab Otolora*, and to the sixth book of the *Recopilacion* of the laws of *Spain*, tit. 2. *de los hijos dalgo* with *Alphonso de Azavedo*, his commentaries upon it, *Jo. Garcia de Nobilitate*, *Guardiola* of the same subject, *Joseph de Sesse*, *Decis. Aragon.* 1, &c. *Armen-dariz* in the laws of *Navarre*, lib. 2. tit. 7. the second book *das ordenaciones* of *Portugal*, *Castillo de Bonadilla*, in his *politica para coregidores*, lib. 1. cap. 4. Where also you have a most copious enumeration of testimonies concerning that subject. Add to these *Gaspar Baetius* lib. *de inope debitore creditori addicendo* capite 16. §. 34. &c. Where also he disputes how far a gentleman of one country is to be admitted to be so in another. See also before chap. IV. §. VII. & VIII.

V. For *England*; something of the form of enobling or making a gentleman by the king's

charter, appears before where we speak of esquires. *John de Kingston* is there raised to the state of a gentleman. And other of like nature are. *Henry* the sixth, by the word *nobilitamus* creates *Bernard Angevin* a *Burdelois*,^a a gentleman, and gives him arms, for him and his heirs of his body, or his descendents; as also *Bernard*^b *de Guares* a *Norman*. And in the rolls, their arms are painted and expressed also in blazon. Other more such are; some by the kings themselves, some by some kings of heralds thereunto authorized. And for an example of later time, we have this upon the rolls to a *Hollander*, granted by king *James*.

Jacobus Dei^c gratia magnae *Britanniae*, *Franciae* & *Hiberniae* rex, fidei defensor, &c. universis & singulis praesentes literas inspecturis salutem. Quemadmodum reges & principes nil magis decet, aut regiae majestatis celsitudinem plus coruscare aut splendescere facit quam benemerentes condignis remunerare beneficiis & eisdem honoribus prosequi, cumque notissimum nobis sit dilectum & fidelem nostrum *Jacobum Abbas* villae nostrae de *Brill*, in partibus *Hollandiae*, burgomagistrum, proventuum publicorum thesaurarium, & rerum in pios usus designatarum questorem, optime de nobis meritum, atque subditis per multa praeclara officia se amantissime praestitisse summumque amorem & obsequium promptum erga eisdem assidue pro totis viribus suis continuare & ut speramus continuaturum. Nos igitur ne tanti obsequii amoris & benevolentiae erga nos subditosque nostros immemores videamur, considerantes etiam intineque contemplantes officiorum & magistratus dignitatem, quae tam per seipsum quam per progenitores suos continuata serie jam a diu gesta fuerunt, cupientesque tam sui ipsius honorem ampliare, quam posteris suis honorificum inde testimonium relinquere, eundem *Jacobum Abbas*, tanquam benemeritum & nobis gratum, tam pro se & liberis suis jam procreatis quam in legitimo matrimonio imposterum procreandis & descendentibus, nobilitamus, & ipsos nobiles facimus, & creamus, ac in hujusmodi nobilitatis signum ipsi *Jacobo* & haeredibus de corpore suo haec gentilitia sive honoris insignia dedimus & concessimus, & per praesentes damus & concedimus, una cum libertatibus, privilegiis, immunitatibus, juribus, insigniis, nobilibus debitis & consuetis; videlicet, in campo argenteo duas bendas undatas de azurio, & super cantonem rubrum unam anchoram auream cum fimbria argentea & carduis *Scotiae* adornatam. In cujus rei testimonium has literas nostras fieri fecimus patentes. Teste me ipso apud *Westmonasterium* secundo die *Augusti*, anno regni nostri octavo.

G. Carewe.

And in all examples of our charters of enobling, arms are given, as a perpetual and necessary concurrence with gentry. Touching which I add here only this observation out of that pro-

^a Rot. Vasc. 23 Hen. VI. m. 7. n. 3. regis in cancellaria.

^b Rot. Vasc. 24 Hen. VI. m. 6. n. 3.

^c Rot. tractat. amicitiarum tempore Jacobi

ceeding under Henry the fourth in the court of chivalry, between Reinold lord Gray of Rutben plaintiff, and Sir Edward Hastings defendant; concerning the bearing of the manch, gules, in a field, or; which is born by the earl of Kent at this day, as heir to that lord Rutben, by the name of lord Hastings; that whereas by the interrogatories to be ministred to the witnesses produced on either part, the conditions of the persons, whether gentlemen of blood or not, what arms, and the like were to be answered unto, some of them say that they are gentlemen of blood, and yet have no arms; the like whereof, or any thing of that nature, I have not elsewhere observed. One John Boteler of the county of Bedford, having been a servant to the father of the plaintiff, says, *qu'il est gentilhomme mes n'ad my armes, & poet despendre en le counte de Bedford x li. per an.* So Roger Tunstall, mayor of Bedford, having been likewise servant to the plaintiff's father; *qu'il est gentilhomme d'auncestrie, & poet bien despendre per an en la counte de Bedford xx markes, mes n'ad point d'armes come il dist.* And William Parker, that he is a gentleman d' auncestrie, *& n'ad pas d'armes & riens poet despendre par an ne riens ad dount vivre sinon son service.* Thomas Lounds likewise, *qu'il est gentilhomme d'auncestrie mes n'ad my armes come il dist.* These depositions were taken in the motchall at Bedford, by commission from John fils du Roy constable of England, and gardein of the East-march towards Scotland (for that stile he used; he was third son to Henry the fourth) to Sir Oliver Maleverer knight-marshal, master William Bildeston clerk, an assessor of the court of knighthood, and Richard Vaux register of the same court, dated the nineteenth of May, in the ninth of Henry the fourth. But in sum, that of Albericus Gentilis, is ever observable in this matter of gentry; *In nobilitatis vocabulo* (saith he) *consensendo sequi locum debemus, ubi de ipso & ipsius re quaeritur.* And he adds for example; *Ecce in Anglia nobiles censentur, qui vel hodie de plebe sunt educi ad dignitates, veluti baronias & comitatus.*

C H A P. IX.

- I. Of feminine titles; and of the creation of a dutchess, marchioness, countess, viscountess, and baroness in England.
- II. Of the communication of titles of honour to women from their husbands, and of enjoying some as consequents only of the dignity of their husbands or parents. The title of lady, or domina.
- III. Of the hereditary transmission of titles of honour to heirs of either sex.
- IV. Of transmission of them by assignments or grants.

V. Transmission of them by the very possession of the feuds to which they have been annexed.

What hath been hitherto said touching these dignities, chiefly concerns them as they are masculine only. We reserved till now those of the other sex, which have, according as the laws of several nations permit them, the most of those dignities in feminine terminations; as princess, dutchess, marchioness, countess, viscountess, baroness, and what else is or hath been a dignity, either originally feudal, or merely honorary; excepting such as have so personal a relation to arms, as that women are not capable of them; as those of knights, as also the English title of baronet, wherein what interest this sex hath, appears enough in the patent that makes it, which is before at large inserted. Of feminine titles, some are immediately created in women, some are communicated by their husbands, others are transmitted to them from their ancestors, and some also are given to them as consequents only of the dignity of their husbands or parents. And first of those that are immediately created in them.

I. The form of the letters of creation of a dutchess in England, for herein we shall use only English examples, being not furnished with the like of other nations, although their stories are full enough of these feminine titles; we have in that of Richard the second's creation of Margaret countess of Norfolk, into the title of dutchess of Norfolk for life, wherein the investiture is mentioned in the patent, to be by putting on her a cap of honour. But the truth is, that there was no ceremony of investiture used at the delivery of the patent which was sent to her by the king sitting in parliament. The words of that roll are, that the king *en plein parlement, en absence du dit countesse ad fait, & crees mesme la countesse en duchesse, & luy ad dones le stile, title, honor & noun, de duchesse de Norff: a avoir pur terme de sa vie. Et sur ceo luy envoya sa chartre de la creation susdite.* The form of the charter was thus.

REX, &c. Inter caetera regni insignia & sollicitudines varias regis humeris incumbentes, nostrae providentiae ratio arbitrat, quod potissime firmat regale solum, effluens a iustitia condigna praemiatio meritorum. Ibi namque continue virtus crescit & colitur, ubi a debito sibi praemio non frustratur. Cum igitur honor sit virtutis praemium, constat quod virtuosos, & strenuis ex regali iustitia debentur fasces honorum, & praemia dignitatum, quae utique si dignis conferantur, non debent simpliciter aestimari donum seu exhibitio favorum, sed potius debita recompensatio meritorum. Haec sane in regiae celsitudinis armario revolventes, attendentesque no-

^a Hen. IV. ms. in tabulario H. nobilissimi comitis Cantii fol. 39. a. 46. a. 41. a. 46. Respondetur interrog. 37. quod habetur pag. 29. a. ^b Ibid. pag. 24. b. ^c De nuptiis lib. 4. cap. 13. ubi de nobilitate ille fusius, & doctè. ^d Cart. 21 Rich. II. membr. 12. um. 18.

bilitatem, & gestum laudabilem quos in illustri & praeclara consanguinea nostra *Margareta* comitissa *Norff.* quae ex prosapia regali propagata, tam propinqua consanguinitatis linea nos attingit, & quae juxta innatam sibi nobilitatis affluentiam, carissimo domino *Edwardo* nuper regi *Angliae*, avo nostro, dum ageret in humanis, & nobis post coronationem nostram se semper obsequiosam exhibuit & devotam, onera & expensarum profluvia, pro ipso avo, & nobis, ac aliis magnatibus generosis dicti regni nostri subeundo, rerum & facultatum suarum dispendio, &c. conspiciamus, & volentes proinde personam ipsius comitissae juxta claritatem generis sui ac morum suorum merita peramplius honorare, de assensu praeclatorum, ducum, magnatum, & aliorum procerum, & communitatis regni nostri *Angliae* in instanti parlamento nostro apud *Westmonasterium* convocato existentium, ipsam comitissam in ducissam *Norff.* cum titulo, stilo, ac nomine, ac honore eidem debitis praeficiamus, ac inde praefentialiter per appositionem cappae suo capiti investimus, in praemium eximiae virtutis suae & attinentiae praedictarum, habendum & possidendum stylum, titulum, nomen & honorem praedicta praefatae ducissae ad totam vitam suam; & ut ad exaltationem nominis, sequatur augmentatio facultatum, cum semper honoribus onera sint annexa, de assensu praedicto dedimus & concessimus, ac tenore praesentium damus, & concedimus eidem ducissae quadraginta marcas percipiendas singulis annis ad totam vitam suam ad scaccarium nostrum, ad terminos Paschae & S. Michaelis per aequales portiones imperpetuum. His testibus, venerabilibus patribus *R.* archiepiscopo *Eborum Angliae* primate, *R. London.* *Willielmo Winton. E. Exon.* cancellario nostro, episcopis. *Johanne Aquitaniae & Lancastriae*, *Edmundo Eborum* ducibus. *Alfredo Oxon.* *Henrico Northumbriae* comitibus. *Rogero Walden*, clerico thesaurario nostro, *Guidone Mone* custode privati sigilli nostri, & aliis. Datum per manum nostram *Westmonast.* xxix die Septembris.

Per ipsum regem in parlamento.

The words of the self-same preamble, to *recompensatio meritorum*, was in creations of the dukes that were then also made. Those that are remembered before *chap. V. §. XXIX.*

For a marchioness; the lady *Anne Bullen*, afterward wife to *Henry* the eighth, by the name of *Anne Rochford*, being eldest daughter to *Thomas Bullen* earl of *Wiltshire* and *Ormond* and viscount *Rochford*, was created marchioness of *Pembroke*. The words of the^h patent are ----- in marchionissam *Pembroke assensu nobilium inibi existentium praeficiamus, creamus & investimus, necnon nomen, titulum, statum, stylum, honorem, autoritatem & dignitatem* marchionissae *Pembroke* eidem *Annae* damus & concedimus per praesentes, ac etiam de nomine marchionissae *Pembroke*, cum titulo, stilo, honore, autoritate, & dignitate caeterisque

honoribus eidem appendentibus & annexis, per mantellaeⁱ inductionem & circuli aurei in capite appositionem, ut moris est, realiter investimus; (²⁸⁰) the estate being limited to her and the heirs males of her body to be begotten, with twenty five pound yearly for creation money. And another patent^k was given her the same day for her place and precedence, which, in the record, is very observable.

The title of countess was given by king *James* to the lady *Mary Compton*, mother to the late duke of *Buckingham*, the now wife of Sir *Thomas Compton* knight, whom he created countess of *Buckingham* for her^l life, by general words of *praeficiamus, creamus, insignimus, &c.* but without any particular clause of formal investiture, which yet was, it seems, so considered of in the draught, that a special grant with a *non obstante* is added in the close of the patent in these words;

Volumus ac per praesentes pro nobis & haeredibus & successoribus nostris, ex ampliori gratia nostra speciali concedimus praefatae *Mariae*, quod haec literae nostrae patentes vel irrotulamentum earundem sufficientes & effectuales sint in lege ad ipsam *Mariam* durante vita sua naturali titulo, statu, dignitate & honore comitissae *B.* insigniendam, investiendam, & realiter nobilitandam, & hoc absque aliquibus vesturis, ritibus, ornamentis, aut ceremoniis quibuscunque in hac parte debitis & consuetis, quas propter quendam causam, nobis melius cognitam, debito modo peragere & praestare non potuimus, aliqua ordinatione, usu, consuetudine, ritu, cerimonia, praescriptione aut provisione in hujusmodi honoribus conferendis debita, usitata, habenda, fienda aut praestanda, aut aliquo alio in contrarium inde non obstante. Eo quod expressa mentio &c. In cujus &c. T. R. apud *Westmonasterium*, 1. die Julii.

Per ipsum regem.

The example of a viscountess created, is in that of the lady *Finch* made viscountess of *Maidstone* by king^m *James*, to her and the heirs males of her body, with a special clause that such her heirs males should have voice and place in parliament, & inter alios vicecomites, & ante barones, ut vicecomites *Maidstone*; But see in the rolls, her patent of creation since made to her also of the title of countess of *Winchelsea*, for an example of feminine creations.

And for the title of baroness settled by a mixture of creation and restitution, see the example of the baroness *le Dispenser* in the time of king *James*, and the baroness *Ogle* in the time of his majesty that now is.

II. The communication of titles to women, we see in wives that have the feminine of what their husbands are, which is according to the ancient laws of the empire; As, *foeminae nuptae clarissimis personis clarissimarum personarum appellatione continentur*. And consulares *foeminas dicimus consularium uxores*,

^h Pat. 24 Hen. VIII. part. 1. K. Septemb. 1.

mimb. 10.

^m Pat. 21 Jacobi part. 8. num. 45 Julii 8.

palem. l. 22 & c. tit. de nuptiis l. 10.

ⁱ Inductionem.

^k Ibidem.

^l Pat. 16 Jacobi R. part. 17.

ⁿ ff. tit. de senatoribus l. 8. vide item l. 1. & 12. & tit. ad municip.

says *Ulpian*. And *nuptiae prius consulari viro*, saith he, *impetrare solent a principe, quamvis perraro, ut nuptiae iterum minoris dignitatis viro, nihilominus in consulari maneant dignitate, ut scio Antoninum Augustum, Juliae Mamaeae consobrinae suae indulgisse*. That of the emperors *Valentinian*, *Theodosius* and *Arcadius* belongs also to this communication of titles; *mulieres* ° *honore maritorum erigimus, genere nobilitamus*, &c. Such more are obvious, and agree for the most part with the customs of the present states of christendom. But for the question, whether or how far these dignities so communicated continue after the death of the husbands, see the laws cited in the margin, and *Novell. 22. cap. 36.* with the doctors on them, and others that dispute it in their treatises *de nobilitate*; Add unto them *Jo. Boscchius lib. 7. de nuptiis, Franciscus Capiblanicus super rubrica de baronibus & eorum officio, §. 42.* and the rest there cited. For *England*, *Aston's* case, in the new reports, *part 4. fol. 118. b.* the countess of *Rutland's* case, *part. 6. fol. 53. b. 6* § 7 *Ed. 6. Dyer fol. 79. b. temp. Mariae reginae Brook, tit. nosme 69, & 31.* and for *France*, *code des decisions forenses en la France, liv. 12. tit. 2. decis. 7. &c.*

By titles attributed to that sex by consequent only of those which are in their parents or husbands, we mean that of lady given, with us, to knights wives and baronets wives, although the masculine of it lord, be not in their husbands. Of the same kind for matter of consequent only, is the title of lady attributed to all the daughters of earls, and of all dignities above them. But by custom, which makes the rule in all civil matters, the ladies that are knights wives are in conveyance for the most part stiled dames, and other ladies only of greater honour, ladies; which we see is a title much more frequently given with us to this sex than lord to males. Some such or greater indulgence of that kind was in the old empire to that sex. For although the word *domine* were in that notion, wherein it belonged properly to salutation, used frequently without expressing the name of the person saluted, as *domine frater* also in *Apollinaris*, and in like sort as our word *sir* is at this day, *signior*, and the like (where we express nothing of honour but salutation or compellation only, as also *adoni* and *rabbi* was, which signifies but the same, among the Jews) yet the word *domina* was given to women for a special note of honour to them. *Scaevola* remembers it in this part of a will which he cites; *peto p a te, domina uxor, ne ex fundo Titiano partem tibi vindices*. The same lawyer hath another piece of a will, wherein the husband speaks thus to his wife; *domina sanctissima, p scio te de amicis meis curaturam, ne quid hic desit*. And of another, *uxori suae* (saith he) *testamento i ita legatum est, Sempromiae dominae meae hoc amplius argentum balnea-*

re. And in one of the Novels, concerning the solemnities of marriage, *Justinian* finding fault with such as without those solemnities lived together as man and wife, says that it was come to such a pass, that witnesses were ordinarily suborned, who would swear *ὅτι Κυρία ἐγγίλεν τὴν συνοικῶσαν ὁ ἀνὴρ, καὶ κείνη τῶτον ὁμοίως ἀνέμυζε* & *ἔπος αὐτοῖς πλάττεται συνοικασία καὶ μὴ τῆς ἀληθείας συζήντα*, which in the Latin is, *quia vir vocabat mulierem cohaerentem, & ista illum similiter nominabat*; & *sic eis finguntur matrimonia non pro veritate confecta*; I understand it, that the man called the woman, or the lady; or *Κυρία* (under which name also the second epistle of St. *John* is directed to a woman) ⁽²⁸¹⁾ wife or *συνοικῶσαν*, and the woman likewise called him *συνοικούντα* or husband, and so they framed up marriages that in truth were none. Here also *Κυρία* or *domina* is used absolutely for a woman in the third person, *dominus* being not so, as far as I remember, in those times for a man; as also *Julia domina* is in the third person in *" Scaevola*, as if we should say, the lady *Julia*, for one that was niece to *Julius Agrippa*. *Quaesitum est* (the words of *Scaevola*) *an ea praedia extraneus haeres haberet, an vero ad Juliam dominam quae habuit patrum majorem Julium Agrippam pertinerent*. But *Cujacius* understands that use of *domina* proper to matrons in the empire. By this sense of *domina* is that of *Epictetus* to be understood, αἱ γυναῖκες (saith y he) καὶ τῶν ἀνδρῶν Κυρία καλεῖται; *men usually called women* (after fourteen) *Kυρία, dominae, or ladies*. And with us antiently in *Bracton's* time, such women as were to have leave of the king to be married, or to have husbands by his appointment, as the widows of all tenants in chief, and daughters and heirs of his tenants by knights service, were called *dominae* absolutely, as we see in the old articles of the eire. *De dominabus quae sunt* (so are the words of one of the 2 articles) *& esse debent de donatione domini regis, sive sint maritatae sive non.* ⁽²⁸²⁾ *& si sint maritatae, quibus & per quem, & quantum terrae illarum valent per annum.*

III. It rests that we speak somewhat of the transmission of titles to women, which, because it hath divers particulars common with the transmission to males, and for that something is fit to be added touching the transmission as well to the one sex as the other, shall here have joyned with it, what concerns males also. The transmission of titles of honour from those in whom they are first created (it must be understood of such estates in the titles that are extendible any way further than the person in whom they begin) is various. I purposely abstain to speak of all kinds of it. But I shall specially, and that but cursorily note only three. The first by express limitation, and so descent of them to the heirs. The second by assignment of them. And the third by the very possession of the territo-

° L. 13. c. de dignit. & l. ult. c. de incolis & videtis novell. 105. c. 2.

Titio ff. de annuis leg. §. 1.

cap. 36. graece; alibi item.

cap. 62. aut (ut in nonnullis) 55. videtis item Forner. select. lib. 1. cap. 11.

L. ult. medico ff. de auro argento, &c. §. 1.

§. 4. Julius l. 38. pater ff. de legat. & fidei comm. 3.

Bract. lib. 3. de uxora pag. 116. b.

L. 41. uxorem ff. de leg. & fidei committ. 3.

Auth. 74. c. 4.

Observat. lib. 3. cap. 18.

Enchirid.

L. 19.

Videtis Auth. 22.

ries to which they are inseparably annexed. To the limitation of them and descent to heirs, somewhat that is already noted, where we speak of ^a feuds, is applicable. And touching the succession of females in feudal dignities, if in a nearer degree than males, see the feudists and others ^b that obviously dispute it, and usually shew the customs and contracts used that concern these descents in their own countries wherein they wrote. For by those customs and contracts, and the limitations in the instruments of creation, whereof divers examples are before shewed, these transmissions are regulated. And without customs or contracts to the contrary, a female upon a general limitation to the heirs, may be heir as well as a male. And for *England*, observe what was antiently taken for law in cases of descent to or through females, out of that patent to *John* earl palatine of *Pembroke* under *Edward* the third, which is before inserted; that is, in cases where a man died seised in fee of a dignity, leaving two or more daughters or sisters, or others claiming through daughters and sisters, as coheirs to the rest of his inheritance. But to that example of the earl of *Pembroke* join another of the palatine earldom of *Chester*, and of the earldom of *Northampton*, under *Henry* the third, which differs from it. The sisters and their posterity had for the lands of the earldoms, other lands in exchange from the king, but none of them had the title of earl or countess upon the death of *John Scot* earl palatine of the one, and earl of the other, their brother and ancestor that died seised in fee of it. The case is shortly remembered in ^d *Fitzherbert*. And anno 1237, (saith an old little history ^e of that earldom) *Johannes Scoticus comes Cestriae & Huntingdone obiit sine liberis apud Varensale* (others call the place *Darenhall*) *& sepultus est Cestriae. Verum quia terra sua regali gaudebat praerogativa, comitatus ejus ad manus regias devenit, datis aliis terris haeredibus suis sororibus in compensationem, ne tam praeclara donatio inter colos foeminarum dividi contingeret.* And *Wallingham* ^f speaking of *Cheshire* and the death of the earl *John*; *deficiente haerede devolutus est in possessionem regiam comitatus.* Other examples of less note may be collected out of the descents of our earls and barons. But, it seems, *Bracton's* opinion (he lived under *Henry* the third) was according to those lawyers that advised in the case of the earldom of *Pembroke* under *Edward* the third, and that every sister, upon a partition, might, if there were whole dignities enough, have one. He speaking of the partition of inheritance between heirs females, says that chief houses also may be divided, *sive sicut sint in diversis baroniis constituta sive non.* *De hoc autem quod dicitur quod de feodo militari veniunt in divisionem capitalia mesuagia & inter cohaeredes dividuntur; hoc verum est, nisi capitale mesuagium illud sit caput comitatus;*

propter jus gladii, quod dividi non potest; vel caput baroniae, castrum vel aliud aedificium; & hoc ideo ne sic caput per plures particulas dividatur, & plura jura comitatum & baroniarum deveniant ad nihilum, per quod deficiat regnum, quod ex comitatibus & baroniis dicitur esse constitutum. Si autem plura sint aedificia, quae sunt capita baroniae, dividi possunt inter cohaeredes, facta electione, salvo jure esnetiae, quia cum plura sint ibi jura, quodlibet per se poterit integre observari, quod quidem non est in uno, ut praedictum est, licet a quibusdam dicatur, quod in aliis regionibus aliquando de consuetudine dividatur. Sed quod nunquam dividi debeat in Anglia, videtur. Nec visum fuit contrarium. Et erit consuetudo regionis observanda, ubi haereditas est quae petitur, & personae nascantur quae petunt, & unde si dicatur quod in regno Angliae aliquando facta fuit partitio, hoc fuit injustum. For the esnetia and caput in descent of dignities, observe also that division of the inheritance of *Giffardus comes*, *Walter Giffard* earl of *Longueville* in *Normandy*, and of *Buckingham* in *England*, that died without issue in the time of king *Stephen*. His earldoms remained in the king's hands, it seems, until the beginning of king *John*, when the esnetia & caput in *Normannia* was by a partition and *ouster le main*, allotted and given to *Richard* earl of *Hertford*, and the esnetia and caput in *Anglia* to *William* earl of *Pembroke*, and his wife *Isabel* in right of her, who with the earl of *Hertford* were heirs of earl *Giffard*, deriving their right through his sisters. This partition appears in the rolls, and they were to hold all as earl *Giffard* held it, by the words of the ^h charter, which in those times supplied, it seems, both partition and *ouster le main*. Yet I find not the one ever stiled earl of *Buckingham* after it, or the other earl of *Longueville*. Therefore I only note the case, and leave it to clearer judgments. Husbands being also raised into any of the two dignities of earl or baron, by reason of the right descended on their wives, belong to this point of transmission. See *pat. 27 Hen. 6. part. 1. membr. 1. & 28 Hen. 6. part. 2. membr. 23. & pat. 10 Jacobi part. 10, num. 4. pro Sampson Lennard*. But the examples of this kind are also easily found in divers collections of things of that nature, and I willingly abstain from them. Touching the transmission of dignities by inheritance with us, some cases are obvious in the new reports, and the late comment on *Littleton*.

IV. The transmission of the greater titles (understand here those that are feudal) by assignment of them, is most especially seen in the stories of *France*, where counties in the antient time and baronies are frequently assigned by the possessors. But we must herein think chiefly of the antienter times when those titles, or the feuds annexed to them, were given to the per-

^a Supra cap. 1. §. XXXIII.

^b Videfis Choppin. de Doman. lib. 3. tit. 6. & tit. 7. §. 5. Tiraquell. de jure primigeniorum quaest.

10. &c. ^c Extr. tit. de re scriptis cap. 36. significavit & DD. ibid. ^d 23 Hen. III. tit. partition 18. & vide rot. claus. 21 H. III. membr. 1.

^e Ms. in biblioth. collegii S. Benedicti Cantabrigiae n. 329.

^f Ann. 1237. in hypodigm. Neutriae.

^g Ann. 1237. in hypodigm. Neutriae.

^h Cart. 1. Johan. R. part. 2. num. 83. 20 Aprilis.

sons that first bore them, and to their heirs, for the most part, and not restrained to the heirs of the body, or to males only, as the most are at this day, and for many years have been, especially in *England*. Some cases we have of it also in *England*; as in that of the earldom of *Lincoln* granted by earl *Randal* to his sister the lady *Hawise* and her heirs, under *Henry* the third. And it seems by the witnesses to the deed of conveyance, that it was not done without good warrant and advice. Observe that the earl marshal and the lord chief justice of *England* were both among them. The original of it remains yet under the earl's seal.

That of the earldom of *Leicester* under the same king, is of the like nature. *Simon* of *Montford*, earl of *Leicester* in fee, died leaving two sons *Almarick* and *Simon*. *Almarick* the eldest granted and released all his right to *Simon*, and so he was earl of *Leicester*, and received his investiture from the king. Other occurrences of releases, surrenders, and grants of dignities, are found without much difficulty among them that have collected the earls of *England*.

V. How the possession only of such feuds as support the greater titles, carries with it or not the titles first granted with them, may be seen in the feudists and other lawyers that frequently dispute of it. And more specially for this and other kinds of hereditary transmission of dignities; see those disputations of *Franciscus Niger* and *Fredericus Bosius*, one a lawyer of *Mantua*, the other of the empire, concerning the late succession into the dutchy of *Mantua* lately published. But we have a singular example of such possession in *England*, in the case of *Arundel* castle, adjudged in parliament under *Henry* the sixth. *John* lord *Mautravers* and earl of *Arundel* exhibited his petition, as he had done in divers parliaments before, claiming to have place and voice in parliaments and councils, as earl of *Arundel*, considerant *que ses auncestres* (as the words^m are) *counts d'Arundel seigneurs del chastel, honour & seigneurie d'Arundel* ont eue leur lieu a sien en les parliaments & counseils, time out of mind, *per reason de la chastel honour & seignorie avantdites, as queux le dit nom de count adeste unie & annexe de temps suisdit*, and so shewed that he was now seized of the said castle, honour, and lordship. This petition being read, *John* duke of *Norfolk* being within age, and in ward to the king, exhibits first one petition, and then another; shewing in general, that the castle and title belong to him by inheritance, and desires that he may not be prejudiced in his noage. The counsel of the lord *Mautravers* alledge, that he ought not to be delayed by reason of the duke's noage; *quia praefatus comes in pacifica possessione dictorum castri, honoris & domini d'Arundel, diu ante mortem & tempore mortis Jo-*

hannis nuper ducis Norf. patris praedicti nunc ducis, cujus haeres ipse est, & semper postea extitit & adhuc existit, and no special title was shewed in record on the duke's behalf, or found by any office after the death of his father, and therefore they prayed judgment. Thereupon the king and the lords commanded the counsel of the earl to give in his title more particularly in writing. They do so; and therein they claim for him the title, as in their first petition; only by reason of the possession of the castle; and, by reason, they say, it had been in his ancestors. And the castle they derive to him by a special entail, made by fine under *Edward* the third, to the heirs males of the body of *Richard* then earl of *Arundel*, begotten on the lady *Alianor* his wife; the duke of *Norfolk* being the heir general to the same earl *Richard*, and the earl heir male. *Qua quidem scedula* (saith the roll) *in parlamento praedicto lecta, audita, & intellecta, habitaque super materiis in eadem contentis & aliis praemissis cum iusticiariis & aliis legis peritis ac caeteris de consilio domini regis in dicto parlamento existentibus deliberatione, communicatione, & avisamento; auditis etiam hinc inde nonnullis profundis & maturis rationibus, allegationibus & motivis; considerato quoque qualiter Rich. filius Alani consanguineus & unus haeredum Hugonis de Albiniaco dudum comitis Arundel fuit seiscitus de dictis castro, honore & dominio de Arundel in dominico suo ut de feodo, & ratione possessionis suae eorundem castri honoris & domini, absque aliqua alia ratione vel creatione in comitem, fuit comes Arundel, & nomen, statum & honorem comitis Arundel, necnon locum & sedem comitis Arundel in parlamenti & consilii regis quamdiu vixerat pacifice habuit & possedit, absque aliqua calumnia, reclamazione vel impedimento, praefatus igitur dominus rex, hiis & aliis ductus considerationibus & motivis ad personam praefati nunc comitis Arundel cui praedicta castra, honor, & dominium de Arundel speciali jure hereditario ut praedicitur descenderunt &c. — volens proinde eidem Johanni nunc comiti, in hac parte suis tantis exigentibus meritis, quantum (absque juris alieni derogatione) potuit celeris justitiae complementum fieri, de avisamento & assensu praefatorum, ducum, comitum, & baronum in instanti parlamento existentium, ipsum Johannem nunc comitem Arundel ad locum & sedem comitis Arundel, in parlamenti & consilii regis antiquitus usitatos & consuetos eisdem modo & forma quibus antecessores sui comites Arundel hujusmodi locum & sedem melius & liberior habuerunt, habendos & possidendos admisit, & ipsum de caetero sic fore admittendum decrevit, instituit, & declaravit*, saving the right of others, if any were. And in another parliamentⁿ of the same king, it was adjudged upon the same reason of the possession of the castle, that his heirs should have place also in

ⁱ See before page 686.
lit. & diff. feud. cap. 3. num. 19. Vultei. de Feud. c. 8. Rosenthal. de
dicatur dux &c. Petr. Fritz. de nobilit. conclus. 10. &c.

^k Cart. 23 Hen. III. n. 32, & 34. videfis Mach. Paris pag. 647. lin. 28.

^l Videfis Bocet. de qua-
feudis cap. 2. quest. 2. Gaill. lib. 1. observat. 30. D.D. ad tit. quis

^m Rot. parl. 11 Hen. VI. memb. 9. art. 33, 34, 35.

ⁿ Parl.

parliament, the question and place arising between *William* earl of *Arundel*, brother to this *John*, and *Thomas* earl of *Devonshire*. See also *rot. cart.* 15 *Ed.* IV. num. 18. *de creatione Edwardi* Grey *militis domini de L'isle*.

CHAPTER X.

- I. *Honorary attributes.* And of *clarissimus*, and *illustris*, especially in the antienter time of the Empire, or before *Constantine* the great.
- II. Of *illustris*, *clarissimus*, *spectabilis*, *perfectissimus*, and *egregius*, and their abstracts, after the age of *Constantine*. Of *gloriosissimus*, and those that were super *illustres*. The abstracts of *celtutudo*, *magnificentia*, *eminentia*, and such more in the old empire.
- III. Of some such kind of honorary attributes in the present states of Europe, and the great changes that time hath exercised on some of them.

Besides the distinction of both sexes by the titles hitherto declared, which are essential to the honorary dignity of them that bare them; there is another distinction of them by attributes, or expressions that are, and from ancient time, have been accidental to them, and variously given in direction of letters, inscriptions, or speech to them, and in other mention of them. Of those, some are in the concrete, as *optimus*, *amplissimus*, *illustris*, *clarissimus*, and with us, *honourable*, *gracious*, and such like; some in the abstract, *amplitudo tua*, *celtutudo*, as *your honour*, *your grace*, and the rest of that kind; according as those are also which belong to supreme dignities.

I. The giving of those in the concrete to such as had officary dignities (whence the like for honorary and feudal dignities was afterward also received, we see in some use about the beginning of the *Roman* empire, or at least in the first age of it, by a few examples that occur in the holy text of the new testament, and that both in the second and third person. *Joseph* of *Arimathea* is stiled, *εὐσχημὸν βασιλῆως*; or *nobilis decurio* by St. *Mark*. And St. *Luke* directing his gospel to *Theophilus* calls him *καλεῖται Θεοφιλες*, or *optime Theophile*. So the inscription of *Claudius Lysias* his letter, about St. *Paul*, to *Felix* is *τῷ καλεῖται φιλῶνι Φίλωνι* *optimo praesidi Felici*. And *Tertullus* in his speech to *Felix*, calls him *καλεῖται Φίλιξ*; as St. *Paul* to *Festus* the successor of *Felix*, & *μαρτυροῦμαι καλεῖται Φίστες*, or *non infansio optime Feste*.

It came afterward into use, to stile the senators *clarissimi*, and both themselves and their

wives *personae clarae*, and the senate *ordo clarissimus* and *amplissimus* also. And the *sigles* of *v. c.* or *v. cl.* were frequently the expressions of *vir clarissimus* in this sense. This is especially seen in the laws of the empire, taken out of those old writers, *Gaius*, *Scaevola*, *Ulpian*, and such more, and in old inscriptions. And *Lampridius* expressly, that *Alexander Severus* added to his *praefecti praetorio*, or his lieutenants or chief justices under him, the dignity of senators, whence also they might have the title of *vir clarissimi*. *Praefectis praetorio suis senatoriam addidit dignitatem* (saith he) *ut viri clarissimi & essent & dicerentur, quod antea vel raro fuerat vel omnino non fuerat; eoque ut si quis imperatorum successorem praefecto praetorii dare vellet, laticlaviam eidem per libertum submitteret, ut in multorum vita Marcus Maximus dixit.* *Alexander autem idcirco senatores esse voluit praefectos praetorii, nequis non senator de Romano senatore judicaret.* Here the name of *senator* and *vir clarissimus* are supposed plainly convertible. But though *clarissimus* were then a general and the most usual attribute to all senators, yet in the elder times of the empire, *illustres* also was given, as equivalent, both to them, and, it seems, to the rest of the gentry of *Rome*; and the distinct title of *eques illustris* to such of the *ordo equestris*, as had, it seems, the wealth of a senator, or were honoured with the robes and ornaments of a senator, and so in an immediate expectation of being senators, and of having place and voice in the senate, though they were otherwise *dignitate senatoria*, as *Tacitus* calls *Mella* and *Crispinus* under *Nero*, the one being *eques Romanus consularibus insignibus donatus*, the other *eques Romanus consularibus potentia aequatus*. For the giving of it to senators with the rest of the gentry; occurrences are frequent in *Tacitus*, where *illustres* and *illustres* is used as a comprehensive title of them; as in that passage of those that so miserably fell with *Sejanus*. *Facit* (saith * he) *immensa strages; omnis sexus; omnis aetas; illustres & ignobiles, dispersi aut aggregati.* And under *Nero*, *foeminarum illustrium senatorumque plures per arenam foedati sunt.* Such like notions of it are often in him. And for those *equites illustres* that so were of the more eminent in the *ordo equestris*; he stiles *Curtius Abiticus*, one of the few and nearer attendants on *Tiberius* at *Capreae*, *eques Romanus ex illustribus*. So he says the father of *Pompeia Macrina* was *illustres eques Romanus*. And *pergit* *Suillius addere reos equites Romanos illustres quibus Petra cognomentum.* And, *die pacta*, *Tiberius* *Alexander illustris eques Romanus minister bello datus*. Nor was this title of later beginning than *Augustus*, under whom the *illustres equites* are reputed in one place of *Tacitus*, equal in dignity with the senators. *Augustus* (saith ^d he) *inter alia domi-*

^o Cap. xv. 43.

^p Cap. j. 3.

^q Act. Apost. xxiii. 26.

^r Ib. cap. xxiv. 3.

^s Ib. cap. xxvj. 25.

^t *Videlis*, praeter leges nonnullas, superioris capitis §. 2. margine notatas, l. 4. curator ff. de curat. furios. l. 52. §. 2. ff. de iudiciis. l. 35. ff. de legatis 3. l. 16. §. 1. ff. de his quae ut indignis; l. 12. ff. de publicis iudiciis; l. 18. §. 1. ff. de iure fisci; l. 100. ff. de verb. signif. l. 17. ff. de iure patronatus.

^u Annal. lib. 16.

^x Annal. lib. 6.

^y Annal. lib. 15.

^z Annal. lib. 4.

^a Annal. lib. 6.

^b Annal. lib. 11.

^c Annal. lib. 15.

^d Annal. lib. 2.

nationis arcana, vetitis nisi permisso, ingredi senatoribus aut equitibus Romanis illustribus, seposuit Aegyptum. And perhaps ornatissimi ordinis secundi in Statius,^e and eques splendidus,^f elsewhere in Tacitus, and in^g Pliny, both living in the same time, were used to the same purpose, as also eques insignis in Tacitus, though Lipsius^h rather thinks that these two last attributes were only from their reputation and wealth, and not from any distinct character of dignity in the state. But afterward in that age of Alexander Severus, the attribute of clarissimus became, as we see before out of Lampridius, peculiar to senators. The clarissimi were the same also as speciosae personae. For Ulpian, that then lived, says, that speciosae personae did comprehend both all that were clarissimi or clarissimae, and also such as had the right of using the robes and ensigns of senators; that is, such of the ordo equestris as had no less honour than senators, or were senatoria dignitate, but had no place in the senate. His words are,ⁱ speciosas personas accipere debemus clarissimas personas utriusque sexus; item eorum qui ornamentis senatoriis utuntur; as if he had said, all that are clarissimi or senators, and all that have the right of wearing their robes, or are senatoria dignitate, also are comprehended under the title of speciosi, or clarissimi.

II. But afterward about Constantine's time, another change happened to these attributes. For then illustris and clarissimus came to be the attributes of distinct dignities. And illustris superior to clarissimus. In a constitution of that emperor we find, quicumque non illustri sed clarissima dignitate tantum praeditus virginem raperit vel fines aliquos invaserit &c. And the title under which it is placed in Justinian's^k code, is ubi, senatores vel clarissimi civiliter vel criminaliter conveniantur. Here dignitas illustris & clarissima, are plainly distinguished, though the same constitution in Theodosius his code^l have to this purpose only, quicumque clarissimae dignitatis virginem raperit vel fines aliquos invaserit, &c. Many other like passages for this distinction are obvious in both the codes, where illustris thus signifies, and was given to those patricii, among others, which were created by^m Constantine, and his senators, but never as a distinct title to the antient patricii of Rome. And the want of observation of the difference of times, and of these several notions of patricii, hath so perplexed some learned men writing of these attributes, that while they should explicate the acceptation of them, they either grossly confound times and notions that should be severed, or otherwise too rashly instruct their readers. But of the patricii, their rights, and distinction, see Johannes Jacobus Draco, his three books de origine & jure patriciorum. Yet under Valen-

tinian, and Gratian we see illustris and clarissimus joined together to both sexes, inⁿ this that is, or lately was at Rome in cardinal Trivulcie's house.

DD. NN. FL. VALENTINIANO ET
GRATIANO...RATORIBUS SUI
CEIONII RUFUS VOLU...
ANUS V.C. ET INLUSTR...
EX VICARIO ASIE ET CEO
NI RUFII VOLUSIANI V.C.
ET INLUSTRIS EX PRAEFECTO
...TORIO ET EX PRAEFECTO UR...
ET CECINE LOLLIANE CLAR...
ME ET INLUSTRIS FEMIN...
DEAE ISIDIS SACERDOTIS F...
ITERATO VIGINTI ANNIS EXP...
TIS TAURIBOLIS VI. ARAM
CONSTITU...

ET CONSECRAVIT X. KAL. JUN.
D.N. VA...
TINIANO AUG. ET NEOTERIO C..

This was in cccxc of Christ. Afterward it appears, that these two of illustris and clarissimus were so distinct, that a third attribute of honour was made to intercede between them. That was spectabilis. That attribute of illustris was given in the same times both to the patricii of the new creation, the praefecti praetorio, the comes largitionum, comes rerum privatarum, and some other great officers of the state. ^o Spectabilis to the proconsuls of provinces, the vicarii of the praefecti praetorio, and divers such more, and the title of clarissimus generally to all that were senators, according to the antienter fashion. And for that of^p Isidore, where he makes his tripartite division of senators into illustres, spectabiles, and clarissimi; I doubt he had no warrant for it, otherwise than thus; that such indeed of those great dignities, honorary or officary, as were variously fixed on senators, made them either illustres or spectabiles. But I conceive that a senator, as a senator, was to be stiled but clarissimus; other attributes coming to him only as he was in some other dignity, whereunto the use of the time had annexed them. Whence it was that ordinarius was alone taken^q for clarissimus also. Some officers also had that title of clarissimus afterward belonging to them, and that also those that were of less dignity otherwise, than^r senators. And, it seems also, that illustres sometimes in Justinian's age, the change of the use of those attributes being not unfrequent, was also a comprehensive title of all senators. For to that age belongs the words of the latter part of L. 12. ff. tit. de senatoribus, which Tribonian hath left added there, though it be usually read, as if it were as antient as Ulpian, out of whose books de censibus, the first part of that law is taken.

^e Epist. ad Marcell. in sylvarum 4.

num. 15.

^f L. 100. ff. tit. de verb. signific.

^g C. lib. 3. tit. 24.

^h C. Th. lib. 9. tit. 1. de accusationibus & inscriptionibus.

ⁱ Zeno l. unic. c. ut omnes judices tam civ. quam crim. vide novellam. 7. in epilog. novell. 31. c. 1. §. 2. & c.

^j L. 8. c. de princip. agent. in rebus & novell. cap. 71. C. ut omnes judices tam civil. quam crim. l. unic. novel. 44. cap. 1. §. 4.

^k Gruter. inser. fol. 28.

^l L. 8. c. de princip. agent. in rebus & novell. cap. 71. C. ut omnes judices tam civil. quam crim. l. unic. novel. 44. cap. 1. §. 4.

^m Constantine, and his senators, but never as a distinct title to the antient patricii of Rome.

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^o Spectabilis to the proconsuls of provinces, the vicarii of the praefecti praetorio, and divers such more, and the title of clarissimus generally to all that were senators, according to the antienter fashion.

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^q Ordinarius was alone taken for clarissimus also.

But some learned men have ¹ justly deemed it to be of *Justinian's* age only, and to have been thither taken out of his *novella* LXII, which though indeed we have but in epitome, yet it so gives the sense of that in the title *de senatoribus*, that we have not reason enough to believe it of other original, especially for that it stands not with the *Roman* use of *Ulpian's* age. The words are, *senatores accipiendum est eos, qui a patriciis & consulibus usque ad omnes illustres viros descendunt; quia hi soli in senatu sententiam dicere possunt*; which is shortly expressed in the *Synopsis Basilicon* ², οἱ δὲ πατρικίων ἕως ἰλλυστρίων εἰσὶν οἱ συγκαλητικοί, that is, *all are senators from the patricii to the illustres*, inclusively; Which place, together with that epitomized *novella* of *Justinian* before cited, compared with that in *Photius*, which he hath corruptly in the print, as if it were a piece of *Diodorus Siculus* (in whose time *illustres* was not yet received for a peculiar attribute of honour; for he lived in the beginning of the empire) well explains it. In *Photius*, ³ we read near the end of his *Diodorus*, ὅτι τὸ ἰλλυστρίων ἀξίωμα τέττατον δὲ πατρικίων πᾶσιν ἐπέχρειν ἔχει φησὶ, he says, *that the dignity of illustres is the third degree from the patricii*. Clearly *Diodorus* could say no such thing. Nor was that dignity in his age. The sense is, out of the laws of *Justinian*, that senators, that were nothing but senators, and ordinary *illustres*, were the third from the *patricii*, next to whom the consuls were, as in that also of *L. 12. ff. de senatoribus*, it is apparent.

But beneath *clarissimus*, they had likewise the attribute of *perfectissimus* and *egregius*, for the officers of less note both in the court and in provinces, and *perfectissimus* ⁴ *primi, secundi & tertii ordinis*. And from these attributes in the concrete they made those abstracts of *illustratus*, *spectabilis*, *clarissimus*, *perfectissimus* and *egregius*, to denote the dignities of them to whom those attributes were due. *Avus Cassiodorus* (saith ⁵ *Cassiodor*) *illustratus honore cinctus*. And the emperors also expressly created men into these attributes for the name of their dignities, giving them *illustratum*, *clarissimum*, and the like. The forms of such creations are observable in *Cassiodor*, as *illustratus vacantis* ⁶ *lib. 6, form. 11, spectabilis lib. 7, form. 37. clarissimus ibid. form. 38*.

These, with the other two, are often mentioned in both the codes, and other good authors, especially of between a thousand and thirteen hundred years since, or thereabout, as in *Ammianus*, *Sidonius*, *Symmachus*, and such more. And *codicilli perfectissimus*, or letters patents of the attribute of *perfectissimus* are ⁷ remembered in both codes.

But there was also a greater than any of these, though not expressed antiently in any one word, which yet the lawyers of the later ages have called *superillustris*, properly enough for the

sense. For when *illustres* are sometimes mentioned, others *qui super eos sunt*, or with such like expressions, are joined with them. As *jubemus illustribus quidem personis*, ⁸ *sive eas precedentibus minime licite ultra tertiam partem centessimae usurarum nomine in quocunque contractu vili, vel maximo stipulari*. And in the ⁹ institutions, *hoc observando quod Zenonia constitutio introduxit ut viri illustres, quique super eos sunt* (which *Theophilus* there turns by ἰλλυστριοι οἱ μετ' αὐτοὺς τὸ ἀξίωμα, that is, the *illustres*, and such as are of greater dignity than they) *per procuratores possint actionem injuriarum criminaliter, vel prosequi, vel suscipere*. So in the authenticks; *ut* ¹⁰ *ab illustribus, & qui super eam dignitatem sunt, &c.* Who those were, clearly enough appears not. It is like enough the *caesars* were of them. And perhaps about that time, the *praefecti praetorio*, whose dignity was called *illustrissima*, and themselves sometimes *illustres* & *magnifici* together in the same passages, where others ¹¹ were titled only *illustres*, and that before *Justinian's* time, of which all those texts are, which fo mention them that were *super illustres*, were also of them and the *patricii*. But it seems that *illustres* & *qui super eos sunt*, or the like was not in use until *Justinian*. For that very constitution of *Zeno* which he cites in the institutions, and is at large in his ¹² code, speaks not of any *super illustres*, but of *illustres* only. But when in *Justinian's* time there was a distinction made betwixt the *illustres* and some above them, he mentions *Zeno's* law touching *illustres*, as if it expressly comprehended both of them. It being indeed reasonable enough to extend that to the greater dignity, which was so made in favour of the less; whence perhaps it is also, that the *Latin* title of that in the authenticks hath *ut ab illustribus, & qui super eam dignitatem sunt*, while the *Greek* mentions only the *illustres*. But also, it seems, that in *Justinian's* time the attribute of *gloriosissimus* was for that above the title of *illustris*. For most usually he calls his *praefecti praetorio* by that name, as *Joanni gloriosissimo orientali praetoriorum praefecto*, and the like frequently occur in the authenticks. The *Greek* being always ἐνδοξοτάτω for *gloriosissimo*. But for *illustris*, the very word is with a little variation retained and made ἰλλυστρίω, which shews in those authenticks an express distinction from *gloriosissimus*. As in a constitution concerning the tribute or subsidy to be received ¹³ of the shops, and houses of trade in *Constantinople*; some are discharged, and the rest are to pay, whosoever be lord of them, and whether they belong to any of the *gloriosissimi senatores*, or the *magnificentissimi illustres*, or the *spectabiles*, or any else whatsoever. Here *gloriosissimi senatores* I take for such as being senators, were by reason of their being, or having been *praefecti*

¹ Vide, ante alios Leunclavium notatorum, lib. 2. pag. 253

latin. sac. larg. & C. Th. lib. 6. tit. 29. l. 8.

² Var. lib. 1. 4. de perfectissimus dignitate l. unic. & C. Th. eodem tit. 37. & leg. 4.

lib. 4. tit. de injuriis §. X.

quando C. de injuriis.

³ Novell. 71. in lemmate.

⁴ Novell. 43. cap. 1.

⁵ Eclog. 7.

⁶ Cod. 244. pag. 2090.

⁷ Videfis l. ult. §. 2. ubi senatores vel clarif.

lib. 8. tit. 4.

⁸ Honor. & Theodof. l. 8. C. de defensoribus.

⁹ Institur.

¹⁰ L. 11. si

¹¹ L. 11. si

ther peculiar privileges ^t belonging also than we have mentioned here.

As they used honorary attributes in the concrete, so also did they variously in the abstract. To a *praefectus praetorius*, *magnificentia tua* or *vestra*, *magnitudo tua*, *celstudo tua*, *sublimitas tua*, *miranda sublimitas*, *eminentia*, or *μεγαλοτι*, and such like are obviously used in both the codes and the authenticks. And some of those to other that were *illustres*. A *spectabilis* was saluted with *spectabilitas tua*, and a *clarissimus* with *claritas*, and *sinceritas* sometimes, as also with *gravitas* which was also given to a *perfectissimus*. But nor these nor the concretes were always given. Often the officers of state are named with them, and often without them. And in the authenticks, the *Greek* hath no attribute sometimes where the *Latin* wants where sometimes it is in the *Greek*. For more particulars touching these attributes, I refer you to ^a *Pancirollus*, *Antonius* ^{*} *Surgens*, *J. Caesar* [†] *Bullinger*, [‡] *Valdesius*, ^{*} *Brissonius*, and some such more, beside both the codes and the doctors that write especially upon the last book of *Justinian*. And see before at the end of the VIII §. of the first chapter of this part.

III. In the following ages, these titles and the like in the concrete and abstract, have been variously used to the dignities of princes, dukes, counts and the rest. *Illustris* (as is shewed in the first part) came to be peculiar to the stile of kings in the court of *Rome*, and according to the forms of that court, it was used also in divers other places. To what dukes also ^a *Alciat* would allow it, is there ^b remembered in his own words, as also to whom the titles of *superillustris* (made into one word from *iis qui sunt super illustres*) should be in his sense attributed. And he allows *spectabilis* to dukes of less note, or such as are meer subject dukes, and to marquesses and counts, *quos quidam principes vocant*, as his words are, *diu tamen ab ipso Caesare dignitatem suam acceperint*. He meant, I think also, or from any absolute prince. And *clarissimus*, he says, belongs to counts, barons, vasaors, *atque id genus pagani reguli*, that depend on dukes as on their makers or immediate sovereigns. (²⁸³) But for *illustris*, *superillustris*, *spectabilis*, see also *speculum Saxonicum*, lib. 1. art. 3. §. 2. lib. 3. art. 45, 53, 57, 58, 99. And for that of *celstudo*; *hoc titulo* (says ^c *Pancirollus*) *hodie principes paulo regibus inferiores honestantur*. Something occurs also of *celstudo*, before in the first part; whereunto I add that of *Bodin* speaking of some princes that are beneath kings in sovereignty. *Quo fit* (saith ^d he) *ut Saxoniae olim, Bavarorum, Allobrogum, Lotharingorum, Ferrariensium, Florentinorum, Mantuanorum duces & majestatis appellatione abstineant, celstutudinis verbo contenti aut serenitatis, quam sibi dux Venetorum tribuit*. And

we see in common use that *celstudo*, *altezza*, *hautez*, and *highness* is given to such dukes. Neither is any greater abstract given to the princes of *Wales* with us. But *Bodin*, you see, takes *serenitas* as indifferent for those and the like dukes. And *serenissimus* and *excellentissimus* is often attributed to them in letters of other princes at this day, and sometimes *illustrissimus* and *excellentissimus*. But *serenissimus* is taken for the far greater attribute, and one of the greatest that can be given to any prince that hath not the supreme title of king. Whence it was that in the treaty at *Bologne* between the commissioners of queen *Elizabeth*, of the king of *Spain*, and of the archduke of *Austria*, among other exceptions among them to the forms of the commission of the *English*, one was *contra adjunctum illustrissimi* (as the learned *Camden* ^e relates it; of which attribute, more is said, as of others communicated also to subordinate dignities, in the first part) in *titulo archiducis, qui, ut dixerunt, sacris imperatoribus ortus regum Hispaniae gener & frater, maritus & caput serenissimae Isabellae infantis Hispaniarum primogenitae, ab omnibus principibus serenissimi titulo honoretur, Anglis dicentibus archiducem regi in titulo non adaequandum, nec alium quam illustrissimi titulum in antiquis tractatibus archiduci Philippo, Caroli V. patri, fuisse delatum. Responderunt Hispani minime mirum, illustrissimi titulum eo seculo archiduci Philippo fuisse delatum, cum non alius in eodem tractatu regi Henrico VIII. attribueretur*. Whereupon *post pauculos dies* (saith he) *titulo serenissimi, quotiescunque archiducis nomen occurrit, in reginae autographo rite inserto, Angli postularunt ut praesentes convenirent (hactenus enim per scripta & colloquia cum archiducis delegatis egerant) atque loci prioritas reginae deferretur*. And so that precedence was disputed, as is before noted, near the end of the first part. But the attributes of *illustrissimus*, *excellentissimus*, *potentissimus*, *serenissimus* & *celstissimus*, and such more have been variously given to subordinate dignities, according to the fancies of the writers, and the variety of ages and customs, which have ever governed most in these kind of attributes and the changes of them. For the title of *excellentissimo*, given not only to princes or other *titolati*, but also to doctors of law or of physick in *Italy*, see *Traiano Boccalini* his *raguagli di Parnasso*, cent. 1. 49. where he hath a particular decision before *Apollo* of it. And see before in the *pragmatica* of *Spain*, chap. 4. pag. 624. for these kind of attributes in that state. The titular books of the *Dutch*, the stiles of the court of *Rome*, and of the countries of *France* and *England*, and such more, shew divers more particulars of them, to which I refer you.

^a Videfis c. tit. ubi senatores vel clariff. l. 1. & novell. 71. &c. adde Panciroll. in notit. utranque cap. 2, 3, & 4. ^b In notit. utranque cap. 2, 3, & 4. & in thesaur. var. lect. utriusque juris lib. 1. cap. 2, 3, &c. ^c Neapolis illustrat. lib. 1. cap. 19. 14. &c. ^d De imperio Romano lib. 2. cap. 18, 19, & sequi. ^e De dignitate regis catholici. ^f De formulis lib. 3. pag. 317. edit. 1592. Francof. ^g Lib. de singul. certam. cap. 32 & 33. ^h Pag. 228. ⁱ Ad notit. utranq; cap. 2. ^j De repub. lib. 1. cap. 9.

^k Annal. sub. anno 1600.

C H A P. XI.

- I. Of precedence in general; and more particularly of the precedence of some officers, dignities, and other qualities, in the old state of the Jews.
- II. A summary designation of the laws of the empire, touching place and precedence between secular dignities.
- III. Of some laws and decrees of like nature in some other states; especially in England. And of laws of precedence between ecclesiastical dignities.
- IV. Of lists, commentaries, or treatises touching precedence.
- V. Of particular questions and decisions touching precedence.

IT were agreeable to the subject to speak largely here of place and precedence belonging to the titles hitherto handled, either as among themselves, or with relation to other dignities that are either merely officinary, ecclesiastical, or of other nature whatsoever. *Nulla est quidem contumelia secundi* (says^f *Aufonius*) *sed ex duobus, gloria magna praelati*. And therefore this matter of place is civilly very considerable. And by reason of the frequent commixture of all kinds of such as have offices and dignities and degrees, as well ecclesiastical as secular, and for that the reasons of precedence among all of them are applicable frequently in cases of such as we have handled; therefore the several places and precedence of them all, were proper enough to be disputed here together, though the subordinate titles themselves, which we have handled, be only such as are temporal and primarily honorary. But the same kind of reason also, that was used why in the first part, no question of precedence was disputed, persuades here also. We have chosen therefore rather to make only such a summary designation of laws, writers, decisions, and some other particulars that chiefly concern precedence, as may give a good and estimable light to find materials for them that would seriously study the questions of it.

I. The antientest cause of precedence was, it seems, taken from the elder age or priority of birth among men, that were otherwise of equal dignity. Of that we see some testimonies in the old testament. And the same cause remains in our age in some places, where the antient simplicity in things of this nature continues, though they have other manners that are too barbarous. And this cause of precedence was in our age in *Sparta*, and especially in the college of *Augurs of Rome*, where *ut quisque aetate an-*

tecellebat (as^g *Cicero* says) *ita sententiae principatum tenebat, neque solum honore anteceden- tibus, sed iis etiam, qui cum imperio erant, majores natu Augures anteponebantur*. Priority of choice or creation among men of the same dignity afterward for the most part gave^h precedence, as the several eminency or honour of the dignities did among men of several dignities. That eminency or honour in secular offices was esteemed by the nature of the employment, by the long or short robe,ⁱ by the usefulness of them to the state, by the power joined with them, and such more, according to the judgment of them that determined it. The antientest express distinction of precedence that I have seen of offices, dignities and other qualities mixed together, is that in the old state of the Jews, which occurs in their *misnaioth* כהן קודם ללוי לוי לישראל ישראל לממור ממור לנחן נתן לגר גר לעבר משחרר אימתי כמון שכולן שוין אבל היה ממור תלמיד חכם וכהן גדול עם הארץ ממור תלמיד חכם קודם לכהן גדול עם הארץ that is; *A priest is before a Levite, a Levite before an Israelite, an Israelite before a mamzer, or bastard gotten^k in incest, a mamzer before a nethin, one descended of the^l Gibeonites, a nethin before a proselyte, a proselyte before a manumitted bondman. But this is understood, so long as they be otherwise of equal quality. For if a mamzer be well studied in the law, and the high priest a meer ignorant, in such case a mamzer is preferred before the high priest*. Upon which text of the *misnaioth*, in the *gemara* of^m *Jerusalem*, we have a note of like nature that mentions other offices and dignities. חכם קודם למלך מלך קודם לכהן גדול כהן גדול קודם לבניא נביא קודם למשח מלחמה משח מלחמה קודם לראש משמר ראש משמר קודם לבית אב בית אב קודם למרכל והמרכל קודם לגובר גובר קודם לכהן הדיוט קודם ללוי לוי לישראל ישראל לממור ממור לנחן נתן לגר גר לעבר משחרר אימתי כמון שכולן שוין אבל היה ממור תלמיד חכם קודם לכהן גדול עם הארץ ממור תלמיד חכם קודם לכהן גדול עם הארץ *A master of the law is before the king, the king is before the high priest, the high priest before the [priest] anointedⁿ for the war, the anointed for the war before a chief of any of the [priests]^o courses, such a chief before the head of a family, the head of a family before a commander [of the revenue of the temple] such a commander before a treasurer [of it,] a treasurer before an ordinary priest, an ordinary priest before a Levite, a Levite before an Israelite, an Israelite before a mamzer, a mamzer before a nethin, a nethin before a proselyte, and a proselyte before a manumitted bondman. But this is understood so long as they be all otherwise of equal quality. For if a mamzer be well studied and taught in the law, and the high priest a meer ignorant, such a mamzer is before such a high priest. But this was, it seems, only for places in the schools or at publick lectures of their law.*

^f In gratiarum actione.^g De fenestura.^h Agell. lib. 14. cap. 7. &c.ⁱ Cicero orat. pro Muraena & vi-

defis quaest. quodlibetic. de toga & fago (subiunctum Famiani Stradae prolusionibus academicis) autore Valerio Andraea.

^k Deut.

xxiii. 2.

^l Josu. ix. 23.^m Talmud. Hierosolym. tit. Horajoth, fol. 48. col. 2. & Babylon. ad eund. fol. 18.ⁿ Ex

lege Deut. xx. 2.

^o Quales in 1. paralip 24. & Luc. i. 5.

For that of the *misna*, on which this later of the king and others, is noted, hath been antiently to interpreted by their doctors, that have written the *thospoth*, or additional expositions upon it. And so expressly notes *rabbi Abraham* ז"ל *Zacuth*; הדסר שאומר בסוף הוריות הוא בבבלי המדרש ז"ל זכרבי הריספות ז"ל *The order* (for precedence) *at the end of the title horaijoth* (which is before cited) *belongs to the schools*; and so write also the authors of the additional expositions. So that the great place and precedence here of a *master of law*, or a *great student*, is to be interpreted no otherwise, than as that of *Accius* in the college of poets, who knowing his own worth in that art, would not there rise to *Julius Caesar* when he came in. *Non majestatis ejus immemor* (as *Valerius* ⁹ says) *sed quod in comparatione communium studiorum aliquanto superiorem se esse consideret. Quapropter insolentiae crimine caruit, quia ibi voluminum, non imaginum certamina exercebantur.* Other particulars there were for place and precedence at the sacrifices, when persons of different quality brought them; and in the courts of justice, which I shall shew more largely in a work *de confessu Ebraeorum magno*, or of *their great sanhedrin*. But after that, mere honorary titles without employment, were usually given by the emperor's *codicilli honorarii*, very many laws also concerning the eminency and honour of one kind of dignity, officary, or honorary, or both, before another, with the reasons for the most part that induced them, were published in the empire. Out of these and the like, many customs variously grew in several states, whence also some laws, severally proper to these states, have been made for the clearing of such controversies as might arise about precedence. Divers charters also, and the like. Upon these customs, laws, and the rest, many controversies, decisions, and commentaries have succeeded. But, for the order of our summary designation of these; we shall first speak of the laws and decrees of the old empire (for out of the reasons of them the lawyers usually dispute cases of this nature especially) and of some other states that concern precedence of our subordinate dignities; and then add also such notes of the lists, commentaries and decisions touching precedence, as may best conduce to the direction of them that would have more distinct knowledge of it.

II. The antientest laws in the *Roman* empire (unless you will except those customs that are dispersed in the elder histories of that empire touching prerogative of place and voice in the senate, and the like) appear in that of *Ulpian* in the *pandects tit. de albo scribendo*. Neither is there, I think, in the *pandects*, any other law that expressly concerns precedence, although some doctors [†] take occasion to speak of it upon some others. Afterward very many were made soon after *Constantine*, which, although they were proper to the personal dignities, with officary and honorary, of those ages,

yet are frequently applicable in rational disquisitions touching the placing of such different dignities, as have been bred in the later times. The best collection of these laws is in the code of *Theodosius*, especially in his sixth book, the chief part whereof consists of no other kind but such as belong to matter of place and dignity, And to these of the sixth book add also some in *lib. 8. tit. 7. § lib. 7. tit. 3.* and *legum novellarum Theodosii tit. 45. de honoratis, & quis in gradu praeferatur.* Divers of those laws, with others of the antient emperors touching precedence, are in *Justinian's* code. For the most part in the twelfth book. But there are others also dispersed, in some other titles, in that code of *Justinian*, which belong hither. They are usually cited upon obvious occasions by the lawyers, that either write commentaries on that twelfth book, or treatises, or decisions touching this matter. But I note here also such of them as have occurred to my observation, *c. de decurionibus l. 9. in albo* (whereto join *c. Theod. lib. 12. tit. 1. l. 54.) tit. de officio praefect. praetoriorum Illyrici & orientis l. 6. praefectorum* (which is brought thither out of the *Synopsis Basilicon lib. 6. tit. 1. cap. 12.) tit. de officio vicarii l. 1. in civilibus causis, tit. de officio praefecti urbis l. 3. praefectura urbis, tit. de advocatis diversorum judicum l. 1. suggestionem.* Add to these *novell. 24. cap. 24. § collocatus autem*, of the praetor of *Pisidia. Novell. 25. c. 5. §. 2. sed neque comitibus*; of the praetor of *Lycaonia. Novell. 26. cap. 5.* of the praetor of *Thrace, & novell. 27. cap. 2.* of the comes *Isauriae, novell. 62. de ordine senatorum, novell. 70, & 71, & 102. c. 1. & 103. c. 1. & edict. Justiniani 4. c. 1.* in all, or the most of which in the novels, we have laws for ranking some provincial magistrates when they were made; as that they should be of the *specetabiles*, or the like. Now it is true that *Justinian* at the review or *repetita praelectio* of his last code, which is now used by lawyers, as the code which is only authentical for the imperial constitutions of the elder times, abrogated all other constitutions that were of former time, and not received into that code. *Quod in praesenti purgato* (saith he) *& renovato codice nostro scriptum invenitur, hoc tantummodo in omnibus rebus & judiciis & obtineat & recitetur.* So that where we consider the laws of his code merely as laws, and suppose them to have a binding power as laws at this day, there we have recourse in vain to those many other, that being in that of *Theodosius*, were excluded out of this of *Justinian*, which, according to the sense of his charter of confirmation upon his review, stand wholly repealed. But the whole body of the old imperial law is no where at all in force. And beside the city of *Rome* [†] and some other parts in *Italy* and *Germany*, and the kingdom of *Portugal*, (where in those cases only, for which the ordinances of the same kingdom have not special provision, these imperial laws, if the case be such as that it *nam*

^P Sopher Juchasin fol. 16. a. emendat. codicis,

⁹ Lib. 3. cap. 7.

[†] Statut. urbis Romae lib. 1. cap. 42.

[†] Dec. ad l. cum quid ff. tit. si certum petatur &c.

[†] De

tragua peccado, or be not spiritual, are by an ordinance^u there made of force) there is no state can be named wherein any part of the body of those imperial laws hath the just force of a law, otherwise than as custom hath particularly induced it. And where no such settled custom hath made it law, there it hath force only according to the strength of reason and circumstance joined with it, or as it shews the opinion and judgment of them that made it, but not at all as if it had any commanding power of obedience. That is, *valet pro ratione* (as a great lawyer^x says) *non pro inducto jure*; & *pro ratione quantum reges, dynastiae & respublicae intra potestatis suae fines valere patiuntur*. But this he says more especially for France. And for Spain; *Didacus Perez*^y expressly; *Hispani duplex habent jus solum, canonicum scilicet & regium*. *Civile enim* (meaning the imperial laws) *non habet vim legis sed rationis*. The same may be said of other kingdoms and states, which being free from all subjection to the empire, have laws of their own, that in many volumes are publicly sold, and exclude all imperial power and law, otherwise than as custom, hath variously made some admission.

Because therefore that among the laws touching precedence in *Justinian*, divers are that have not yet been so received every where by custom, that they have obtained the full force of laws, but remain useful only as they have authority in shew of reason, which binds not always alike as a law doth, but varies according to circumstance of time, place, state, age, and what other convenience or inconvenience meets with it: and for that the laws in *Theodosius*, which are not received into *Justinian* his code, considered only from the reason of them, are still of as great force as those in *Justinian*'s, that are not become laws by particular custom, that is, they are both estimable by the reason found in them and applied to the case emergent; and because also divers of the laws received into *Justinian* out of *Theodosius*, may be explained and mended by what remains of them in *Theodosius*, we have designed aswell those of the one code as of the other, that for the reader of *Justinian*'s to this purpose (the most of readers, or too many, of the old imperial laws, read only *Justinian* or parts of him) may the more easily take better light, by comparing those in him with what is of them, more largely or more perfectly, in *Theodosius*, than perhaps any ordinary comment will afford him. With that of *L. unic. C. tit. de equestri dignitate*, see *Cod. Theodof. lib. 6. tit. 36. with C. tit. ut dignitatum ordo servetur, l. 1. see Cod. Theodof. lib. 6. tit. 5. l. 2. with C. tit. de privilegiis eorum qui in sacro palatio militant l. 4. omnes*, see *C. Theodof. lib. 6. tit. 35. l. 13. with C. tit. de domesticis & protectoribus l. 1. domestici*; see *C. Theod. lib. 6. tit. 24. l. 4.* but that is only for the amending the inscription which should be *Valen-*

tinianus, Theodosius and Arcadius, not *Valent. & Valens*; as the consuls there also shew, with *C. tit. de proximis sacrorum scriniorum l. 3. in scriniis*; See *C. Th. lib. 6. tit. 26. l. 8. with C. tit. de comitibus consistorianis l. unic.* See *C. Theod. lib. 6. tit. 12. l. unic.* with *C. tit. de comitibus qui provincias regunt l. 1.* See *C. Th. lib. 6. tit. 17. with C. tit. de comitibus & tribunis scholarum l. unic.* See *C. Th. lib. 6. tit. 13. with C. tit. de proximis sac. scrin. l. 5.* See *C. Th. l. 6. tit. 26. l. 16. with C. tit. de praepositis laborum*; See *C. Th. lib. 6. tit. 25. with C. de praepositis sacri cubiculi l. 1.* See *C. Th. lib. 6. tit. 8. l. 1. with C. tit. de professoribus qui in urbe Cp. l. unic.* See *C. Th. lib. 6. tit. 20.* and to conclude these, with *C. tit. de consulibus l. 1. antiquitus*, which is of great use in matter of precedence; See that in the novels of *Theodosius tit. de honoratis 45.* as the number is in the edition of his code & 46. as it is in the collection of the novels of the old emperors, first published by *Petrus Pithoeus*. For by that of *Theodosius*, was the other in part at least repealed; as *Pithoeus* also notes, although it were revived by *Justinian*'s authority, added to it in the instrument of confirmation of his code. To the laws of the antient empire add also *Cassiodor. Var. lib. 6. form. 10. & 6.* and divers more passages in him, that will soon be found by the nature of his prefixed titles. For the present empire; see the *aurea bulla* of the emperor *Charles* the fourth *tit. 3 & 4.* touching the places of the electors and other princes there. And *Charles* the fifth, his constitutions of the place and precedence of the princes of the empire, and some others in 1530, which you have in *Goldastus* his *constit. imperiales tom. 3. pag. 511. &c.* to which add also *Petrus Denaisius* his *jus camerale, tit. 210.*

III. For *France, Spain*, and other foreign countries; the volumes of their laws and lawyers have obviously particulars concerning place and precedence of their magistrates and dignities. And what we have before delivered concerning titles of honour, gives often light to matter also of place and precedence among them, as also of the like in *England*; But in *England* I observe here chiefly those decrees, one by power of parliament under *Henry* the eighth, concerning the ranks of nobility, the greater clergy, and some of the greater offices of state, and two other concerning baronets and some other dignities made by king *James*. That act of parliament under *Henry* the eighth, is in these words. It is not in the printed statutes, though some others have also formerly^z published it, but not exactly enough according to the bill that passed of it; thence we literally give it here.

^u O segundo libro das ordenações tit. 5 de dominio lib. 2. tit. 15. §. 5.

^y Ad ordinat. reg. quaest. prooemial. 3. & videfis Alphonsi. part. 1. tit. 1. l. 15. part. 3. tit. 4. l. 6. & ib. Gregor. Lopez & ad ad part. 5. tit. 14. Azeved. ad rubric. tit. de las Leys, in reg. consilii. item Taurin. l. 2. vide item de Scotia parlia. 3 Jacobi IV. cap. 79 & de aliis regis Hieronym. Gigantem de crimine laesae maiestatis lib. 3. quaest. 23. §. 18. & 19. & Ludovic. Vivem de causis corrupt. art. 7. &c.

^x Bertrand d' Argent. ad rubric. consuet. Britanniae tit. 22. vide item Choppin.

^z Ad ordinat. reg. quaest. prooemial. 3. & videfis Alphonsi. part. 1. tit. 1. l. 15. part. 3. tit. 4. l. 6. & ib. Gregor. Lopez & ad ad part. 5. tit. 14. Azeved. ad rubric. tit. de las Leys, in reg. consilii. item Taurin. l. 2. vide item de Scotia parlia. 3 Jacobi IV. cap. 79 & de aliis regis Hieronym. Gigantem de crimine laesae maiestatis lib. 3. quaest. 23. §. 18. & 19. & Ludovic. Vivem de causis corrupt. art. 7. &c.

^z Milles in the catalogue of honour, pag. 62.

The title of it indorsed on the bill, is ;
For placing of the lords.

FOR as much as in all great councils and congregations of men, having sundry degrees and offices in the common-wealth, it is very requisite and convenient that an order should be had and taken for the placing and sitting of such persons as have been bounden to resort to the same, to the intent that they knowing their places, may use the same without displeasure or let of the council. Therefore the king's most royal majesty, although it appertaineth unto his prerogative royal to give such honour, reputation, and placing to his counsellors and other his subjects, as shall be seeming to his most excellent wisdom, is nevertheless pleased and contented for an order to be had and taken in this his most high court of parliament, that it shall be enacted by authority of the same, in manner and form as hereafter followeth.

First, It is enacted by the authority aforesaid, that no person or persons, of what estate, degree, or condition soever, he or they be of, except only the king's children, shall at any time hereafter attempt or presume to sit, or have place at any side of the cloth of estate in the parliament chamber, neither of the one hand of the king's highness, nor of the other, whether the king's majesty be there personally present or absent. And so far as much as the king's majesty is justly and lawfully supreme head in earth under God of the church of *England*, and for the good exercise of the said most royal dignity and office, hath made *Thomas* lord *Cromwel*, and lord privy seal, his vicegerent for good and due ministration of justice, to be had in all causes and cases touching the ecclesiastical jurisdiction, and for the godly reformation and redress of all errors, heresies, and abuses in the said church; It is therefore also enacted by authority aforesaid, that he the said lord *Cromwel* having the said office of vicegerent, and all other persons which hereafter shall have the said office of the grant of the king's highness, his heirs or successors, shall sit and be placed, as well in this present parliament, as in all parliaments to be holden hereafter, on the right side of the parliament chamber, and upon the same form that the archbishop of *Canterbury* sitteth on, and above the same archbishop and his successors, and shall have voice in every parliament to assent or dissent, as other the lords of the parliament.

And it is also enacted, that next to the said vicegerent, shall sit the archbishop of *Canterbury*, and then next to him, on the same form and side, shall sit the archbishop of *York*: and next to him on the same form and side the bishop of *London*, and next to him on the same side and form, the bishop of *Durham*; and next to him on the same side and form, the bishop of *Winchester*, and then all the other bishops of both provinces of *Canterbury* and *York*, shall sit and be placed on the same side

after their antienties, as it hath been accustomed.

And so far as much as such other personages which now have, and hereafter shall happen to have other great offices of the realm; that is to say, the offices of the lord chancellor, the lord treasurer, the lord president of the king's most honourable council, the lord privy-seal, the great chamberlain of *England*, the constable of *England*, the marshal of *England*, the lord admiral, the grand master, or lord steward of the king's most honourable household, the king's chamberlain, and the king's secretary, hath not heretofore been appointed and ordered for the placing and sitting in the king's most high court of parliament, by reason of their offices; It is therefore now ordained and enacted by the authority aforesaid, that the lord chancellor, the lord treasurer, the lord president of the king's council, and the lord privy-seal, being of the degree of barons of the parliament, or above, shall sit, and be placed as well in this present parliament, as in all other parliaments hereafter to be holden, on the left side of the said parliament chamber, on the higher part of the form of the same side, above all dukes, except only such as shall happen to be the king's son, the king's brother, the king's uncle, the king's nephew, or the king's brothers or sisters sons.

And it is also ordained and enacted by authority aforesaid, that the great chamberlain, the constable, the marshal, the lord admiral, the great master or lord steward, and the king's chamberlain, shall sit and be placed after the lord privy-seal, in manner and form following; that is to say, every of them shall sit and be placed above all other personages, being of the same estates or degrees that they shall happen to be of; that is to say, the great chamberlain first, the constable next, the marshal third, the lord admiral the fourth, the grand master, or lord steward the fifth, and the king's chamberlain the sixth.

And it is also enacted by authority aforesaid, that the king's chief secretary, being of the degree of a baron of the parliament, shall sit and be placed afore and above all baronies, not having any of the offices aforementioned. And if he be a bishop, that then he shall sit and be placed above all other bishops, not having any of the offices above remembered.

And it is also ordained and enacted by authority aforesaid, that all dukes not aforementioned, marquesses, earls, viscounts, and barons, not having any of the offices aforesaid, shall sit and be placed after their antienties, as it hath been accustomed.

And it is further enacted, that if any person or persons, which at any time hereafter shall happen to have any of the said offices of lord chancellor, lord treasurer, lord president of the king's council, lord privy-seal, or chief secretary, shall be under the degree of a baron of the parliament, by reason whereof they can have no interest to give any assent or dissent in the said house, that then in every such case, such of them as shall happen to be under the said degree of a baron, shall sit and be placed at the uppermost

part of the sacks, in the midst of the said parliament-chamber, either there to sit upon one form, or upon the uppermost sack, the one of them above the other, in order as is above rehearsed.

Be it also enacted by authority aforesaid, that in all trials of treasons by peers of the realm, if any of the peers, that shall be called hereafter to be triers of such treasons, shall happen to have any of the offices aforesaid, that then they having such offices, shall sit and be placed according to their offices, above all the other peers that shall be called to such trials, in manner and form as is above mentioned and rehearsed.

And it is also enacted by authority aforesaid, that as well in all parliaments, as in the starchamber, and in all other assemblies and conferences of council, the lord chancellor, the lord treasurer, the lord president, the lord privy-seal, the great chamberlain, the constable, the marshal, the lord admiral, the grand master or lord steward, the king's chamberlain, and the king's chief secretary shall sit and be placed in such order and fashion, as is above rehearsed, and not in any other place by authority of this present act.

In the ^a roll of that parliament, the title of it is, *An act concerning placing of the lords in the parliament chamber, and other assemblies and conferences of council.* Concerning the passing it, it is observable out of the journal of the lords house of that year, that on *Monday* the first day of *May*, being the third day of the parliament, the lord chancellor *quandam introduxit billam concernentem assignationem locorum quorundam procerum & capitalium officiorum hujus regni Angliæ, viz. vicegerentis domini regis in spiritualibus, domini cancellarii, domini thesaurarii & aliorum in eadem billa declarationum, quam quidem billam affirmabat regiam majestatem jussisse fieri, ut per eandem dicti proceres sua loca cognoscentes contentionem in posterum evitarent.* And it had that day two readings. The lord *Cromwel*, being vicegerent in the spiritualities, was placed as a baron (in the journal) between the lord *Hungerford* of *Hatfieldbury* and the lord *Audley* of *Walden* that was chancellor, both on that day, and for divers days after. But he is noted to have been present. The next day it had a third reading by the name (in the journal) of *billa concernens assignationem locorum quorundam procerum.* On *Friday* following, or the ninth of *May*, it was read a fourth time. The journal says, *in pergamenum redacta jam denno est lecta.* On the morrow, the lord *Cromwel* by the name of *dominus Cromwel, vicegerens domini regis in spiritualibus*, is placed before the archbishop of *Canterbury*. And the lord *Audley* with the name of chancellor, the earl of *Oxford* with the name of chamberlain of *England*, and the earl of *Southampton* with the name of admiral, are placed according to the act; being before otherwise placed without regard to their offices. But it was not returned up from the house

of commons, with their assent, till the *Monday* following, as appears by the same journal.

The first decree concerning baronets is thus, as it is ^b enrolled. But it was printed heretofore also by the command of king *James*.

James, by the grace of God, king of *England, Scotland, France, and Ireland*, defender of the faith, &c.

To all to whom these presents shall come, greeting. Know ye that We have made a certain ordinance, establishment and final decree, whereof the tenor followeth in these words.

The decree and establishment of the king's majesty, upon a controversy of precedence, between the younger sons of viscounts and barons, and the baronets, and touching some other points also concerning, as well bannerets, as the said baronets.

The king's most excellent majesty, having upon the petition, and submission of both parts, taken into his royal audience and censure, a certain controversy, touching place and precedence, between the younger sons of viscounts and barons, and the baronets, being a degree by his majesty newly created, which controversy did arise upon an inference only out of some dark words contained in the letters patents of the said baronets: And having in person heard both parts, and their learned counsel, three several days at large, after information taken from the heralds, and due consideration of such proofs as were produced on both sides, hath declared and decreed as followeth.

His majesty well weighing that the letters patents of the baronets have no special clause or express words to give unto them the said precedence; and being a witness unto himself, which is a testimony above all exception, that his princely meaning was only to grace and advance this new dignity of his majesty's erection; but not therewithal any ways to wrong tacitly and obscurely a third party, such as the younger sons of viscounts and barons are, in that which is a flower of their father's nobility:

And having also had the attestation of the lords of his privy-council, who did declare that the precedence (after debate and deliberation, while the patent of the baronets was in consultation) was with one consent resolved and ordered for the younger sons of the viscounts and barons.

And finding also that the clause whereby the precedence is challenged by the baronets, as by a kind of consequence in regard of place given unto them above some bannerets, doth not warrant their claim; forasmuch as the precedence between the bannerets themselves, and the younger sons of viscounts and barons, appeareth not to have been regular or certain, but full of confusion and variety, and therefore not sufficient whereupon to ground such their pretence; but being chiefly moved by the clearness of his ma-

^a Rot. parl. 31. Hen. VIII. n. 10.

^b Rot. pat. 10. Jacobi part. 10. membr. 8.

jesties royal intent and meaning, and the explanation thereof by his counsel, which his royal meaning doth, and ever must lead his majesties judgment in the interpretation of his own acts, hath finally sentenced, adjudged, and established, that the younger sons of viscounts and barons, shall take place and precedence before all baronets.

And further, the better to settle, and clear also all question of precedence that may concern either bannerets, or the younger sons of viscounts and barons, or the said baronets, either as they have relation amongst themselves, or towards others respectively: His majesty for himself, his heirs and successors, doth ordain and establish, that such bannerets as shall be made by the king's majesty, his heirs and successors, under his or their standard displayed in an army royal in open war, and the king personally present, for the term of the lives of such bannerets, and no longer, according to the most antient and noble institution, shall for ever hereafter, in all places, and upon all occasions, take place and precedence as well before all other bannerets whatsoever, no respect being had to the time, and priority of their creation, as likewise before the younger sons of viscounts and barons, and also before all baronets.

And again, that the younger sons of viscounts and barons, and also all baronets, shall in all places, and upon all occasions, take place and precedence before all bannerets whatsoever, other than such as shall be made by the king himself, his heirs and successors in person, and in such special case, manner and form as afore-said.

Nevertheless, for a singular honour to the person of the most high and excellent prince *Henry* now prince of *Wales*, his majesties eldest son, aswell the younger sons of the viscounts and baronets, have freely voluntarily consented and agreed at the hearing of the said cause, in the presence of his majesty, and his privy council, and all hearers, to give place and precedence, to such bannerets, as shall be hereafter made by the said most noble *Henry* now prince of *Wales*, under the king's standard displayed in an army royal in open war, and the said prince there personally present.

Saving the right of the younger sons of viscounts and barons, and of the said baronets, and of the heirs males of the bodies of such baronets, for the time being, in all other cases according to the effect, and true intent and meaning of their letters patents, and of these presents.

And his majesty doth likewise by these presents, for himself, his heirs and successors ordain, that the knights of the most noble order of the garter, the privy counsellors of his majesty, his heirs and successors, the master of the court of wards and liveries, the chancellor and under treasurer of the exchequer, chancellor of the dutchy, the chief justice of the court commonly called the king's bench, the master of the rolls, the chief justice of the court of common pleas, the chief baron of the exchequer, and all

other the judges and barons of the degree of the coife of the said courts, now, and for the time being, shall by reason of such their honourable order, and employment of state and justice, have place and precedence in all places, and upon all occasions before the younger sons of viscounts and barons, and before all baronets, any custom, use, ordinance, or other thing to the contrary notwithstanding. But that no other person or persons whatsoever, under the degree of barons of parliament, shall take place before the said baronets, except only the eldest sons of viscounts and barons, and others of higher degree, whereof no question ever was, or can be made. And so his majesties meaning is, and accordingly he doth by these presents, for him, his heirs and successors, ordain, and decree, that the said baronets, and the heirs males of their bodies, shall in all places and upon all occasions, for ever, have, hold and enjoy their place and precedence, next unto, and immediately after the younger sons of viscounts and barons; and that no person or persons, nor state or states of men, shall have or take place between them, any constitution, order, degree, office, service, place, employment, custom, use, or other thing whatsoever now or hereafter to the contrary notwithstanding.

And that the wives of the said baronets, and of the heirs males of their bodies, shall likewise by virtue of the said dignity of their said husbands, in all places, and upon all occasions, have, take, and enjoy their place and precedence during their lives, next unto, and immediately after that place that is due, and belongeth unto the wives of the younger sons of the viscounts and barons, and to the daughters of such viscounts and barons, any constitution, use, custom, ordinance, or other thing whatsoever, now or hereafter to the contrary in any wise notwithstanding.

And further his majesty doth by these presents, for him, his heirs and successors, of his certain knowledge and meer motion, promise and grant to the said baronets, and every of them already created, and hereafter to be created, and the heirs males of their bodies, that neither his majesty, nor his heirs or successors, shall or will, at any time hereafter, erect, ordain, constitute or create any other degree, order, name, title, stile, dignity or state, nor will give place, precedence or preeminence to any person or persons whatsoever, under or beneath the degree, dignity or state of lords of parliament of this his realm of *England*, which shall or may be taken, used or accounted to be higher, before, or equal to the degree, dignity or place of the said baronets, or any of them. And therefore his majesty doth for him, his heirs and successors, ordain, grant, and appoint, by these presents, that all and every of the said baronets, and their said heirs males, and the wives, sons, sons wives, and daughters of the said baronets, and of their said heirs males, shall and may for ever hereafter, freely and quietly have, hold and enjoy their said dignities, places, precedence, and privileges before all other which are

or shall be created of such degrees, states, dignities, orders, names, styles, or titles, or to whom such place, precedence, or preeminence shall be so given as aforesaid, their wives and children respectively, according to the true intent and meaning of these presents.

Saving nevertheless to his majesty, his heirs and successors, full and absolute power and authority, to continue or restore to any person or persons, from time to time, such place and precedence, as at any time hereafter shall be due unto them, which by any accident or occasion whatsoever shall be hereafter changed, any thing in these presents, or other cause or respect whatsoever, to the contrary notwithstanding.

And then follow those particulars which are before remembered at the end of the XLVII section of the fifth chapter. Some four years after this, there passed under the great seal the other decree concerning this dignity, which is a brief recital of the first erection of it, and that other concerning it, and a declaration of the king's purpose that it should continue, and that the privileges formerly granted to it should always be held; and then,

Forasmuch as the degree of a baronet is an hereditary degree in blood; therefore we do declare, that the eldest sons of the same baronets and their wives, as well during their husbands lives as after, and the daughters of the same baronets, the said daughters following next after the said wives of the eldest sons of the same baronets; shall have place and precedence before the eldest son and wife of the eldest son of any knight, of what degree or order soever. And likewise that the younger sons of the same baronets, and their wives, as well during their husbands lives as after, shall, after the same manner, have place and precedence next after the eldest sons, and the wives of the eldest sons, and before the younger sons, and before the wives of the younger sons of any of the knights aforesaid. And our will and pleasure is, and we do for us, our heirs and successors, hereby further grant and appoint; that if any doubts or questions, not hereby, nor by any of our recited letters patents, cleared and determined, do or shall arise, concerning any place, precedence, privilege, or other matter touching or concerning any place, precedence, privilege, or other matter touching or concerning the same baronets, and the heirs males of their bodies, and their wives, their eldest sons and their wives, their daughters, their younger sons and their younger sons wives, or any of them; such doubts or questions, shall be decided and determined by and according to such usual rules, customs, and laws, for place, precedence, privilege, or matters concerning them, as other degrees of dignity hereditary are ordered and adjudged.

With these, in the disquisitions about the laws of precedence with us, consider also the royal decrees or declarations touching it in divers pa-

tents to singular persons, which I only quote, that they may be the easier found, without any particulars here taken out of them. Observe that to the first viscount *Beaumont* in *pat. 23 Hen. VI. part. 2. membran. 21*, part of which is cited before §. xxxi. that to *Henry Beauchamp* earl of *Warwick*, in *pat. 22 Hen. VI. n. 35*. and to him being duke, *rot. cart. 23 Hen. VI. memb. 26. n. 24*. that to *Richard Nevil* earl of *Warwick* in *pat. 28 Hen. VI. part. 2. m. 23. cart. 25. H. VI. n. 31*. to *Humfrey* duke of *Buckingham*, *pat. 24 Hen. VIII. part. 1*. for the precedence of the lady *Anne Rochford* created marchioness of *Pembroke*; *pat. 14 Elizab. part. 9*. to *Walter* earl of *Essex*, *pat. 4 Jacobi r. part 1. primo Junii*; that of *pat. 16 Jac. r. part. 14*. to *Charles* earl of *Nottingham*, and *pat. 2 Car. r. part. 5. n. 17*.

For ecclesiastical dignities, see especially the first six books of the excellent *epitome veteris juris pontificii* of *Antonius Augustinus*, where the many canons that concern them are noted. Take also pope *Eugenius* the fourth his bull for the precedence of the old patriarchs in *Laertius Cherubinus* his *bullarium tom. 1. constit. 17. pag. 285*. And, for the precedence of bishops, and of protonotaries, see *constit. 4. of Pius* the second in the same *bullar. tom. 1. pag. 316*. of the advocates of the pope's consistory, *constit. 62. of Sixtus quintus ib. tom. 2. pag. 589*. of the secular canons of *S. George* in *Alga* before the canons of the *Lateran* congregation, *constit. 127. of Pius quintus ibid. tom. 2. pag. 340*. Of the precedence of those of *Lateran* before the *Benedictin* monks of *Cassino*, and all other regulars, *constit. 75. of Pius quartus tom. 2. pag. 106*. & *constit. 116. of Pius quintus tom. eod. pag. 324*. Divers other bulls are in the same bullary concerning the precedence of the *Cistercian* monks, *Carmelite* and *Franciscan* friars, and divers others that are obviously found in it.

IV. The Lists that shew practice and custom in matter of precedence, are seen in the published assemblies of the states, and other solemnities of coronations, funerals, and the like in several kingdoms. For the empire, *Goldastus* hath some in the beginning of the first tome of his *constitutiones imperiales*, *Modius* in his *pandectae triumphales*; others also that write *de statibus*, or *de jurisdictione imperii*, usually. And for the old dutchy of *Bretagne*, see *Bertrand d'Argentre* in his history of it, *fol. 95*. In *England*, divers, of coronations and funerals especially, remain with the heralds, and some^d are published. Of the same nature with lists are the namings of dignities in commissions, acts of parliament, subscriptions, and the like. The commentaries are either such as are written on the text of the imperial or other laws, or in several treatises. Those upon the texts of the imperial laws are almost as easily found as the texts themselves. And although divers passages concerning precedence are in the commentaries on texts both of the imperial and other

^c Rot. pat. 14 Jacobi part. 2. num. 24. 13 Martii.

^d Milles in the catalogue of honour, pag. 67, &c.

laws, that of their own nature hath no relation to precedence, yet these also are so much used with the rest, by such as have in several treatises disputed of precedence, that these rests not much difficulty of finding them. But oftentimes you shall meet with questions disputed with relation to one country, that were ridiculous to name in another. As *an comes* ^c *praeferatur qui antiquior, recentiori qui majorem obtinet dignitatem*? And *utrum comes cui noviter obvenit comitatus paternus* & *antiquus, praeferatur comiti noviter facto, antequam illi comiti pervenisset feudum ex successione*? and the like. The several treatises useful here are very many. That of *Leonellus Bartholinus* mentioned before, where we speak of precedence between supreme princes, for the most part concerns only subordinate dignities. And the other treatises there mentioned have much that is applicable to questions that may concern subordinate dignities also. With these we may reckon treatises inscribed of nobilitate, de dignitatibus, or with titles of that nature, as *Tiraquellus*, *Rebuffus*, *Bonus de Curtili*, *Josias Nolden*, *Chassanaeus* his *catalogus gloriae mundi*, *Sir William Segar* *Garter*, his honour *military and civil*, *Ferne's* glory of generosity, *Charles Loyseau* des *seigneuries*, *Camden's* *ordines Angliae* in his *Britannia*, and the like. Every of these dispute something of precedence. The same may be said of the writers of *singulari certamine*, as *Alciat*, and such more; and of them that write de *jurisdictione*, or de *statibus Imperii*, as *Tobias Paurmeister*, *Matthias Stephani*, *Reinhardus* ^f *Konings*, and the rest of that kind, with *Garzia Masirillo*, lib. 4. de *magistratibus*, cap. 14 de *jure praerogativae inter titulos*. Add especially also *Marcellus Corcyrensis*, his *sacrarum ceremoniarum liber*. Where much is touching the ranking of dignities, as well temporal as spiritual. In the treatises also of place between ecclesiastical dignities or degrees of the universities, such reasons and authorities are commonly used as may be applied likewise to temporal dignities. See therefore *Ugonius*, bishop of *Famagoza*, his question *quo ordine sedere, & se subscribere debeant praelati in concilio*? in his *Synodia Ugonia*, cardinal *Jacobatus* in lib. 1. de *concilio* art. 1. §. 103, where the places of all the most eminent titles ecclesiastical, are handled; *Navarr.* his *consilia* l. 1. tit. de *majoritate & obedientia*, *Marta* de *jurisdictione* lib. 1. cap. 16. *Barlaam* ^{seu} ^{et} ^{re} *Πατριάρχης*, *Michael Roussel* hist. *pontificiae jurisdictionis* lib. 2. cap. 10, & lib. 3. cap. 2. besides those that write of councils, cardinals, and the like, *Sbrozzius* de *officio vicarii episcopi* lib. 2. cap. 25, &c. Add *Stephanus Gratianus*, *disceptat. forens.* part. 1. cap. 106, & III, & part. 2. cap. 298, and *Antonius Massa* his *informationes & allegationes* for the place of the abbots of the congregation of *Cassino*, against the regular canons of *Lateran*, printed at *Venice* 1562. See also

Georgius de Cabelo, in his decisions of the supreme court of the kingdom of *Portugal*, lib. 1. decif. 5. de *praecedentia senatorum palatii*, where these two questions are; I. *Utrum ille qui prius actualem possessionem cepit & officium exercuit, sit praeferendus illi qui prior fuit in data, & prius literas gratiae per cancellariam expedit*; in quibus continebatur quod princeps eum statim in possessionem mittebat? II. *Utrum ille qui prius actualem possessionem cepit, praecedat illum, qui provisionem regiam habet in qua continetur, ut ei antiquitas curret a tempore & data prioris provisionis*? In *Antonius a Gama*, his decisions of the same court also, decif. 1. divers particulars are disputed concerning as well temporal as ecclesiastical precedence. *Casillo* de *Bovadilla* in his *politica para corregidores, &c.* tom. 2. lib. 3. cap. 2, disputes likewise de *las precedencias y assientos de los corregidores y sus tenientes*. See also *Azorius insit. moral.* part. 2. lib. 11. cap. 8, 9, 10 & 11, & *Francis. Vasquez* in *praefat. ad illustres controvers.* §. 126 & seq. *Hugonius Matthaeacius*, a professor at *Padua*, his apology or disputation about precedence between doctors of law and knights, at the end of his book de *via & ratione artificiosa universi juris*, printed at *Venice* 1591, and *Johannes Baptistae Magonius* his *lucerna moralis*, at *Padua* 1602, part. 1. cap. 19, 20, 21, &c.

V. The antientest question that I remember mentioned concerning precedence, judicially raised between temporal dignities, since the time of the *Roman* empire (between ecclesiastical, the questions are as antient as the differences between *Rome* and any other of the old patriarchats; and the decisions of them, according to the perswasion of the sides that dispute it, occur in stories and other writers of the church, and divers more betwixt ecclesiastical persons have been antienter than any that I find between temporal) is that in a parliament at *Nantes* held in 1087, under *Alan Fergent* duke of *Bretagne*, where the priority of place was questioned between the *seigneur d' Ancenis* and the *seigneur du Pont*. But because the proofs were not clear enough on either part, the matter was adjourned till another time, with this ordinance concerning it, that in that parliament the *seigneur du Pont* should have precedence, and sit as the ninth baron, and before the *seigneur d' Ancenis*, and that in the next parliament the *seigneur d' Ancenis* should have like priority before him; and that so they should have priority by turns, until the question between them were fully cleared. The words of the ordinance are; *Ad finem evitandi debitum, seu dissensionem eorundem dominorum [de Ponte &] de Ancenesio, deinde tunc dictum quod pro illa vice dominus de Ponte sederet & computaretur pro barone, & alia secunda vice, quando primum dux teneret suum parlamentum, dominus de Ancenesio computaretur pro barone, & sederet primus ante dictum*

^c *Matth. de Affictis* praeclud. in *consil. Neapolit.* quaeft. 26. *gentre* hist. *Bret.* liv. 1. cap. 13. pag. 95.

^f *Juris publici* tom. 2. discurs. 18.

^g *Apud Bertrand d' Ar-*

dominum de Ponte, & de caetero sic alternis vicibus in parlamento sederent, donec fuerit latius discussum per ducem inter ipsos, quis eorum debebit sedere primus. Somewhat like this; for the alternation of precedence, is that between the dukes of *Warwick*^h and *Buckingham*, under *Henry* the sixth, who were to have it of each other every other year. See also that decision in a provincial synodⁱ held at *London* under *William* the first, *Lanfrank* being then archbishop of *Canterbury* and president of it, touching the place and precedence of the archbishops and bishops of *England*. And in truth, of the decisions that concern precedence, the most are upon questions that have risen between ecclesiastical persons. For the various dignity of their several churches, and of their many functions, rules and orders in them, by reason of the frequency of their synodal and processional meetings, have necessarily raised many questions of place among them. But there is scarce any of those decisions, but gives good light by way of authority or reason to some questions that arise also between temporal dignities, especially to cases wherein some of our subordinate temporal titles have part in the controversy. The canon law is much used in the disputation of such questions; but rarely without intermixture of the imperial civil laws. And in the decisions; the texts and authorities of both are commonly noted, and divers occurrences in them

also expressly declare the precedence of secular dignities. Therefore they are as useful in disquisitions touching the precedence, whereof we now chiefly speak; as any thing else whatsoever. They are dispersed in divers that have collected decisions. But see especially *Aloysius Riccius*, his *collectanea decisionum*, *decis.* 147. 470. 674. 1069. 1446. where very many other are also cited. The places cited before §. IV. out of *Cabedo* and *Gama*, have decisions also of precedence. In *Thuanus* also, and the history of the council of *Trent*, several questions are about precedence between ambassadors of some dukes. And for the precedence of dignities both temporal and ecclesiastical in *France*, see the *recueil de reglements notables*, &c. *donnes enter ecclesiastiques, juges, magistrats*, &c. by *Jean Chenu*, printed in quarto at *Paris* both in 1602; and in 1603, and that *tractatus de autoritate & praeceminentia sacri magni concilii & parliamentorum regni Franciae*, by *Jo. Mountaigne*, with the addition to it of *Nicolaus Boerius*. Observe also the reasons and fancies in the questions of precedence before *Apollo* in *Boccalini*, his *raguagli di Parnasso*, *centur.* 2. *rag.* 8, & 21. Men that know books well may have a better store. But we doubt not but such as are not much conversant with the variety of authors, may have some leading helps to their studies of points of precedence, by this slight designation. (284)

^h Bundell petit.parl. 23 Hen. VI. num. 12. antiquit. eccles. Briann. pag. 111.

ⁱ Apud Guil. Malmesb. lib. 1. de gestis pontificum Anglorum, & aut. historiae de

DEO SERVATORI honor & gloria.



ADDITIONS

ADDITIONS

OUT OF THE

First Edition in Quarto.

Fol. 109.

Numb. 1.

Community of life, and civil society, beginning first in particular families, under oeconomick rule, representing what is now a common-wealth, had, in its state the husband, father, and master, as king. Hence many colonies; which, whither soever deduced, were cities, towns, villages, or such like. In them, deserved honour added to the eminency of some fit man's virtue, made him, by publick consent, or some by his own ambition violently got, to be what every of them were in proportion to their own families; that is, over the common state, and as for the common good, king. Thus came first cities to be governed by kings, as now whole nations are. And in the heroic times, before the *Olympiads*, when most of the *Grecian* fables are supposed, such as shewed themselves first publick benefactors to the multitude, either by invention of arts, martial prowess, encreasing of traffick, bettering or enlarging the country, or such like, were, saith *Aristotle*, by several nations, constituted kings over them; and, by general consent, left lines of hereditary succession. So that naturally, all men, in oeconomick rule, being equally free, and equally possessed of superiority, in those antient propagations of mankind, even out of nature itself, and that inbred sociableness, which every man hath as his character of civility, a popular state first raised it self, which, by its own judgment, afterward was converted into a monarchy; both by imitation of as well the subordinate as supreme rule, where under the whole system of the world is governed, as taking also example from unreasonable creatures; in whom, because the liberty of discourse was wanting, nature it self had placed that instinct of choosing always one for their prince or leader. Hardly was any so idolatrous that could not, upon mature consideration, as ^a *Orpheus* did in his last will and testament, confess an unity of nature in that multiplicity of names, which fabulously they applied to the deity, and acknowledge, that ^b *quod est in triremi gubernator, in curru rector, praecentor in choris, lex in urbe, dux in exercitu, hoc est in mundo Deus*; Which was long since affirmed, by such,

as knew not how to worship the true God, yet were resolved of his unity. Hæreto are according divers and frequent testimonies, of the antient *Gentiles*, dispersed both in ^c prophane and holy writers. Hence they could not but think, that the imperfections of the giddy-headed multitude's government would be much repaired, if they subjected themselves to some eminent one, as they saw themselves, and what else was, to be in regard of the unseen creator. And confirmation of the fitness of this unity in government they had from ^d irrational creatures; amongst whom that one kind specially, which is commended in both prophane and holy authority, to man, for its exemplary qualities, hath herein preeminence; that of bees. All honour, assist, and obey one:

*Ille operum custos: illum admirantur, & omnes
Circumstant fremitu densò, stipantq; frequentes:
Et saepe attollunt humeris, & corpora bello
Objectant, pulchramque petunt per vulnera
mortem.*

as the divine ^e *Virgil* of them. And the *Grecians* have a proper word for the king of bees, whom they call *εἰσῶς*; and by translation, *Calimachus* calls *Jupiter*, *Θεὸν εἰσῶνα*. Neither is in a human monarchy what hath not in their common-wealth some most remarkable proportion, if that curious searcher of nature, our ^f philosopher deceive not. Hence, as ^g some, amongst other arguments, prove this eternal unity in the deity, so those who first tried the inconveniences of popular rule, saw that in their government likewise should be some one selected monarch; under whose arbitrary rule their happy quiet might be preserved.

Fol. 114. No. 2. The first monarch of a nation, we read of, is that *Nimrod*, nephew to *Cham*, the mighty hunter before the Lord. His kingdom was in *Babylon*, *Erec*, *Accad*, and *Calna*, in the land of *Sinaghr*, which is called usually *Senaar*; by which name also the *Babylonian* monarchy was known. For where ^h *Moses* speaks of *Amraphel* king of *Sinaghr*, the paraphrase of *Onkelos* hath expressly king of *Babel*. His time was about *CR. DCC. XX.* from the creation. *Josephus* calls him *Nabroder*, and makes him first author of the building of that tower of

^a Theophil. Antioch. ad Autolyce. lib. 3.

^b Apuleius de mundo, &c id ipsum autor libri qui eo nomine Aristotelis falso nuncupatur.

^c Macrobi. Saturn. 1. Justin Martyr *ἀπὸ τῶν πρ.* Lactantius de fals. relig. cap. 5. alii. ^d Senec. ep. 91. ^e Georgic. 4. ^f Arist.

ἀπὸ ἱσρ. ^g *ἱσρ.* lib. 9. cap. 40.

^h Cyprian. tract. 4. de Idol. van.

ⁱ Gen. 14. com. 1.

confusion of tongues. In profane story you find not his name, unless, with common error, you make him *Ninus*, in whom *Trogus*, *Ctesias*, and from him *Diodorus*, with others, begin the *Assyrian* or *Babylonian*, for to this purpose I admit them as the same and one, monarchy. If likelihood would well endure it in story, it might not be hard to make *Nimrod* and *Ninus* one name. Greater changes are in words of oriental language expressed in *European* characters. Their *Iehezkel* is *Ezechiel*, *Ruben Rubel*, *Mofche Moses*, *Nun Nave*, *Esaraddon Asbazarith*, and in *Arabick* propagated from *Hebrew*, our *Hispalis* is *Sevil* in *Spain*. To shew also how differently they express our names; in the lives of the four evangelists, published by *P. Kirstenius*, in *Arabick*, *Vespasian* and *Domitian* are called *Asubasiannusu* and *Damthianusu*, and *Nerva* is *Neirune alshagbir*, that is according to them, *little Nero*. Such like more occur in antient and later story very frequent, inasmuch that scarce any community oft-times appears; as in *Cyxares* and *Assuerus* or *Achassuerus*, which name is *Xerxes* also, and *Oxyares*. But the first *Babylonian* monarch is not called *Ninus*, but *Belus*; and his son is, by consent of best authorities, *Ninus*. It follows then that *Nimrod* was father to *Ninus*. *Justin* indeed delivers, *primus omnium Ninus rex Assyriorum veterem & quasi avitum gentibus morem nova imperii cupiditate mutavit*. But regard the testimony of those, which out of the more antient authors have transcribed their chronologies, as *Julius African*, *Cedren*, and others, and *Ninus* will appear clearly the son of *Nimrod*, that is, of *Belus*, the first of that state. And although erroneously in historians, for the most part, *Ninus* be the root of chronologick calculation, whereupon *Justin* expressly affirms, that this first monarchy remained in the same blood ^k c i o c c c years, and then ended in *Sardanapalus*, otherwise called *Tonosconcleros* or *Conosconcleros*, and was by *Arbaces*, then transferred to the *Medes*, so that if you reckon back from the beginning of *Arbaces*, *Arbactus* and *Pharnaces* he is also written, that number of years, you shall fall near exactly upon the beginning of *Ninus*, according to some, and that most curious chronology: yet withal, take the years of *Belus* his reign, being, as some will, l v. but as others ^l l x v. which seems less distant from truth, and add them to the c i o c c c. and then take the whole number out of the year of the world, which was at *Sardanapalus* his death, the residue will fall near the first year of the *Chaldean epocha*, placed in the beginning of that empire. Than which, what can more properly design out *Nimrod's* beginning, being about l x v before by *Ninus*? Which is well enough confirmed also by that number c i o c c c l x. delivered by ^m *Ctesias* for the continuance of this monarchy; as also by ⁿ *St. Augustine*. *Regnum* (saith he) *Assyriorum* in *epistola Alex-*

andri, (he means an ° epistle of *Alexander* to his mother *Olympias*) *quinque millia excedit annorum*. In *Graeca vero historia mille ferme & trecentos habent ab ipsius Beli principatu: quem regem & ille Aegyptius* (that was one from whom *Alexander* had his instruction) *in ejusdem regni ponit exordio*. By this supputation, *Nimrod's* kingdom began some l x i i. years after the flood, that is, c i o c c c x i i i. from the creation. Howsoever, if *Belus* were he, as is most probable, and that *Belus* reigned l x v. years only, which is the greatest account, the common error of those which place *Nimrod* and *Abraham* together seems intolerable. Witness holy writ, which affirms, that in *Peleg's* days the earth was divided, by dispersion of the people. That division was immediately after *Babel* built, and by most likely conjecture, the same year that *Peleg* was born; for *Moses* * relating his name to be *Peleg*, adds, *for in his days the earth was divided*; as if, according to the *Jewish* custom, he had had his name imposed presently upon his birth, by reason of that division. And how could his name be, by reason of the division, before it? And it is questionless that *Peleg* was born c i. years after the flood, which falls, by this calculation, into the x x x i. of *Nimrod*; but *Abraham* plainly was born c x c i. years after *Peleg*. How then could *Nimrod* and *Abraham* be coetaneous? I know the accounts of divers antient writers are in this point of the continuance of this empire, out of which, as *a posteriori*, the beginning is found, much differing both among themselves, and from what is before delivered, those which occur in ^p *Paterculus*, *Eusebius*, *Orosius*, and others; And some *Grecians* have made *Nimrod's* beginning to be ^q d c. x x x. years from the flood, others more, against apparent truth of scripture; others of later times placing him diversly. But I see none so near most probable conjecture as the learned *Christopher Helvicus*, whose laboriously composed and most useful *historical theatre*, in this and other of this nature, affords instructing helps. And whereas the fabulous traditions of some *Europeans* make *Semiramis* the author of *Babylon*; it was delivered, for most false, long since by ^r *Berosus*, he was *Belus* his priest in *Babylon*, and some ^t antients of this part of the world also, have justly followed him, attributing it to *Belus*, which even holy writ proves to be the work of *Nimrod*. So some will have *Ninus* the builder of *Nineveh*, which profane story also calls *Ninus*, whereas upon good reason, out of greatest authority, *Nimrod* was he that built it. In *Genes. x. he went out of the land* (he means *Shinaghr*) *into Assyria and built Nineveh*: But I know the usual translation hath it otherwise, that, *out of the land went Assur and built Nineveh*. But *Assur* is not, before that time, as a proper name of a man, spoken of in holy writ, neither in that passage is there a declaring of *Sem's* posterity, in which *Assur* was, but

^k Constantinus Manasses hallucinatus hunc numerum a Belo auspiciatur.

rem sunt apud Glycam ex aliis antiquioribus. annal. part. 2.

^l *Genes. x. ubi* is de hac re. ⁿ De civ. Dei lib. 12. cap. 10.

^m *Peleg* ^p *est* dividit. Gen. 10. 25. ^p V. Lipp. ad 1.

^q Cedrenus, Glycas, alii.

^r Joseph. 1. adv. Apionem.

^t August. de civ. Dei. lib. 16. cap. 17. & 56. anni ad hanc

^u Diodor. Sicul. bibliothec. 3. unde pro ^u lege apud Agathiam hist. 2.

^v Cyprian. de idol. van. & ipse Aug. de civ. Dei 8. cap. 5. hujus memi-

^w Vell. Paterculi & si placet, Thalam apud Lactant. instit. 1. cap. 23.

^x Q. Curr. lib. 5.

of *Cham's* only. And the holy tongue endures either of the interpretations, as hath been by the learned heretofore observed. It may possibly be, that its name was from *Ninus* his successor and son to *Nimrod*. For in that nation the first city built was titled according to the name of the builder's son, as appears in the story of *Cain* and *Enoch*. The *Hebrew* orthography of it is נִינוּר composed, as it were, of *Nin* and *Neveh*, which may well signify the habitation or city of *Nin*, being easily, according to the *European* course, turned into *Ninus*. And ^c *Josephus* expressly calls it, Νινωϊς πόλις & Νινωα, which words without difficulty give the same sense with the *Hebrew*. All this is in a manner confirmed by an antient and most learned ^u father, delivering that the *Assyrians*, ex nomine *Nini* *Beli filii*, *Ninum* considerunt, urbem magnam, quam *Ebraei* appellant *Niniven*. Which is as if he had said, *Nimrod* had done it. For what were the *Assyrians* but his subjects? The first empire then began in *Asia* under *Nimrod*, the same with *Belus*, called also *Arbelus* or *Abyrlus*, king over the *Babylonian* and *Assyrian* territories chiefly, having in them two cities royal, but extending his power over the greatest part of the inhabited and neighbouring country. Why he was called *Belus* is no wonder. Take it not as a name proper to him while he lived; but refer it to an effect of idolatrous application after his death: For whether adoration of statues began in *Sherug's* days, as is usually delivered out of ^x antient authority, or whensoever; it is certain, by all probability, that sacred statues were first such as had been made in memory of some best beloved and most honoured great men, or of their fathers, ancestors, children, wives, or dearest friends being ^y dead. To these were, at length, by flattery of servants and sycophants of such as had erected the statues, given divine worship and ceremonies with suffumigations, crowns of flowers, and other rites, which to the dead, of later time, by the *Gentiles* have been used; being at first invented by them for such as they stiled *Gods*. And, as the ceremonies due to their deities, so as a consequent, grew the names of them also at last to be applied to those whom the statues had first honoured. Now it is not unknown to any, that the *Babylonians* held their greatest god to be *Bel*, which is the same with the *Phoenician* and *Punick* *Baal* (the difference proceeds only out of the *Hebrew* and ^z *Chaldean* dialects) and was first understood for the sun, whom they called ^a *Baal-samaim*, that is, the lord of heaven, and in substance, even by idolatrous origination, was the same with *Jupiter Olympius*, *Pan*, *Apollo*, and the rest of their

greater gods, differing in name only, as *Baalpheor*, *Baalzebub*, *Moloch*, and the rest did in *Palestine*; whence, it seems, the *Lacedemonians* had their βᾶλγ for the sun, as *Hesychius* is author; and perhaps the *Phrygians* and *Thuri-ans* ^b their word βαλῶ for a king, and the western parts their *Belenus*, *Belinus*, βᾶλις, as *Herodian* calls him, or ^c *Abellio*, as an old inscription found in *Guienne*. For all these names that *Apollo* hath, which the *Gauls* and *Britons* worshipped, and to whom the sacrificed at the cutting down of their mistletoe, expressing him, in their language, ^d omnia sanans, which every school-boy knows also to be proper to *Pæan* the same with *Phœbus*. And, that *Belin* is no other than *Apollo*, is both proved out of an old ^e poet of *Gaul*, calling his priest, *Phœbitius*;

*Nec reticebo senem
Nomine Phœbitium,
Qui, Beleni aedituus,
Nil opis inde tulit.*

as also from a ^f testimony, delivering that the herb called *Apollinaris*, some take it for *henbane*, is the same which the *Gauls* named *Bilinumria*, being at this day ^g in *Spain* titled *Velenno*, as from one original; both having the steps of *Belin*; which also in *British*, as our most learned antiquary, and light of *Britain*, *Camden Clarendieux*, observes, with *melin* and *felin* (the difference of orthography proceeding from the tongue's idiotism) signifies *yellow*, a colour, as all men know, even proper in attribute to *Apollo*. And most likely it is, that that the topic god of the northern parts of this kingdom, called in antient ^h monuments *Belatucadre*, had hence part of his name. Neither is the most superstitious regard which those eastern people had to the sun in particular, unknown to any, which hath observed the ⁱ horses and chariots dedicated to his deity by the idolatrous *Jews*, and mentioned in ² *Reg.* xxiii, or those sun-images (חַמָּנִים ^k) in ² *Paralipom.* xxxiv. 4. or the adoration of the morning in *Ezech.* viij. 16, or such like, derived from the *Babylonians*, *Persians*, and others; Whence the *Persian* period of cxx solar years, and the product of that multiplied by xii, that is, cxx. cccc. xl. their great period used before their *Jezdigerd's*, as also the sun's revolution in astrological directions, are, and have been of antient time by them called *sacchodai*, i. e. the year of God, as the most noble *Scaliger* reaches me, as if the Sun were the chiefest deity; Whom they stiled also *Mithra*, from their word מִתְרִי ^l which interprets the same with *Baal* or *Beli*, a lord or governor; their significant name for the sun being

^a Archæolog. Judaic. 9. in hist. Ionaæ.

^u D. Hieronym. tradit. Ebraicis.

^x Euseb. in 107. χροστ. α. Epiph. in prolegomenis.

^y Hinc idolum dictum est (si Diophanti fides apud Fulgent. mythologic. 1.) ἰσχυρὸν, quasi, species doloris. Quod sane lingue sanctæ optime convenit, in qua יָצַד, i. e. dolores simulachra dicuntur. Psal. 106. 38. & 39. & alibi. Originatio autem idololatriæ ad hunc modum docetur, Scq. cap. 14. ab Epiphano in prolegom. & Jul. Firmico de errore profan. religionum, aliis v. si placet, & Ciceronem de consolatione.

^z Chaldaicis; Ebraice autem, i. e. Punice מִתְרִי dictus est. Elementum n. y Chaldaicis sæpius excidit, & a grammaticis observatur. Dominum vero interpretatur.

^a AEthylis Perfas & Hefych. in βαλλῶ.

^b Sanchoniaton apud Euseb. parafr. evangelic. 2.

^c Scholiast. ad

^d Append. Dioscorid. cap. 62.

^e Scalig. Aufon. lect. i. cap. 9.

^f Plin. hist. nat. 16. cap. 44.

^g Vulcan. ad glossar. Latino Græc.

^h Camden in Cumbria.

ⁱ R. Levi Bengerfom. & R. C. Cinchi & Iarchi, equis & quadrigis, dum solem orientem adorabant, ab introitu templi usque ad cameram Nathanaelech, solenni pompa vestos fuisse adnotant. Verum & videlicet Sext. Pompeium verb. October de Rhodiis, nec rabbinis hic adfensior.

^k De iis optime (ut de omnibus) Jos. Scalig. ad Catulli epig. 91. fed rabbi Solomon, figuras ad solis imaginem fidas fuisse, est male commentus ad loc. designatum.

^l Jos. Scalig. de emendat. lib. 5.

both כִּרְשָׁר *coreshed* (whereupon *Ctesias*, and some following him, delivered that *Cyrus* in *Persian* was the sun) and אֶפְתָּחָאב *aphethaab*^m. Neither was it strange that they, being ignorant of the true God, so worshipped the sun, when as even the greatestⁿ masters of philosophy had not a better means to design out their first mover and maker, or the *son of what is good*, as divine^o *Plato* expressly, than by the name of light, or the sun. Nor is it hard to believe that the chief deity of the *Gauls* and our *Britons* should have its origination from the so far distant eastern nations. For beside the reasons of conjecture, there hath been found in^p *Gaul* a stone thus consecrated;

MINERVAE
BELISAMAE
SACRUM
Q. VALERIUS
MONUM....

Where questionless is the very name, differing in termination only, of the goddesses *Astarte*, or *Ashtaroth*, whom they called^q *Belisfamaïm*, that is, *the lady of heaven*, the moon. The same is confirmed also out of divers inscriptions conceived *DE AE SYRIAE, & DIS SYRIS*, both in *Italy* and this island antiently found. But, to return to the reason of that name in *Nimrod*; when court flattery amongst them grew so servile, that nothing, but the most obsequious respect that possibly might be, and the highest honour that imagination could invent, was thought worthy of the first author and progenitor of their royal line, which their obsequious baseness would not any longer endure to be accounted mortal, they gave the title of their God to his statue, and their sacrifices and ceremonies; they made his sepulchral monument his temple; and at length so confounded their god *Bel*, and first king *Bel* into one, that they admitted no difference. Thus came also the *Phoenician Belus*; thus the *Cretan Jupiter* (whom the^r *Grecians* make the same with *Marnas* the god of the *Gazaeans* in *Palestine*) to be both a god and a dead man, in ridiculous confusion. For they gloried always of his burial and epitaph on his tomb, which they shewed for his and their antiquity, thus;

.....ΔΙΟC ΤΑΦΟC.

indeed it may be englished, *Jupiter's tomb*; but the worn-out place should have^t been supplied thus:

ΜΙΝΩC ΤΟΥ ΔΙΟC ΤΑΦΟC.

that is, *the tomb of Minos the king*; for so I rather *English* it, than *Minos Jupiter's son*. Although I know his epitaph there, is delivered very differently by^u others, yet it is certain,

that the *Cretans* are most fit examples herein to shew what the *Babylonians* did. Where, by the way, note that this false tradition amongst them, was the ground of that true imputation where-with *Epimenides*, an antient poet and priest, cited by *St. Paul* to *Titus*, brands them, and, after him, *Callimachus*,

Κρήτες ἀεὶ ψεύται ———

i. e. *the Cretans always are liars*; and, to that acrostick somewhat altered,^v one expressly, long since, joined that misunderstood epitaph:

Κρήτες ποτα ψεύται, καὶ Διὸς ἔστι τάφος.

But this turning of kings into gods receive elegantly delivered by^x *S. Cyprian*. *Reges, scilicet he, olim fuerunt, qui ob regalem memoriam colunt apud suos postmodum etiam in morte coeperunt: inde illis instituta templa; inde ad defunctorum vultus per imaginem detinendos expressa simulachra. Nam & immolabant hostias, & dies festos, dando honores, celebrabant. Inde posteris facta sunt sacra, quae primitus fuerunt assumpta solatia.* And even in this sort came the antient martyrs of the christian church to be accounted by some even as gods; the error proceeding^y from the solemnities used at their shrines to the true God, in honour only of their constant profession. And, you see it grew usual in later times among other nations, to make every emperor almost, a god after his death, and some in their lives, with application to them, of names known proper to antient deities. Some also have given the name of *Saturn* to this *Nimrod*; and who knows not how usually *Belus* is titled by interpretation *Saturn*, as others call him *Jupiter*? For those names, as they signified gods, are with the rest of that nature in an inextricable confusion.

Fol. 116. No. 3. And *Ulysses*^z in his return from hell reports as much. Which is as plainly justified by the astronomical description of him. For he is not without his dog there by him (which they call *Procyon*, and the *Arabians Celebat zaijr*, i. e. *the lesser dog*, known also by the name of *Algomeiza*) neither is the dog without his game, having a hare before him.

Fol. eod. No. 4. Whose position and motion the *Phaenicians* observed for their sea direction, as the *Greeks* did *Helice*, or the *greater bear*.

Fol. eod. No. 5. There being also betwixt those two constellations such an agreement in longitude, that one great circle, drawn through the poles, cuts them both, to make, as it were, a lineal and direct regard betwixt them. They are both, if you respect *Cynosura's* stars next the pole, between fifty and sixty degrees. But doubtless this application of *Nimrod* to *Orion* proceeded rather from *Grecian* vanity. And those eastern people had another name for *Orion*,

^m Quod & in vetust. glossis Arabicis. ⁿ Aristot. de sap. secund. Aegypt. lib. 11. c. 4. ^o De repub. lib. 6. ^p Apud Con-
feranos in Novempopulonia extat. ^q Baddjis (בדלגיס) dicta Philoni Bibliensis juxta Phaenicum idiotismum. Baddis vero
Megastheni, secundum Chaldaeorum formam. ^r Stephan. mel. πολ. in Γαζα. ἐς νέγκτας vero ridiculum illud erymon apud eum.
Sane nonne Marnas מרנס loquitur? i. e. dominus, ut cum Belo quadret. ^s Scholiast. ad Callimach. hymn. 1. ^t Laetant de
falsi. relig. cap. 11. (de cujus ms. consulas I. Obfopaeum in Sibyllia. orac. 8.) & Porphyry. ap. Cyrill. advers. Julian. l. 10.
lic. epig. 3. cap. 22. aliam de hoc Cretensium opprobrio historiam habes ap. Ptolem. Hephaestionem. ^u Tractat. 4. ^v D. Hie-
ronym. epist. adv. Vigilantium: & ad Riparium D. August. lib. 3. de civ. Dei cap. 27. ^w Odyss. λ.

if interpreters deceive not, which in ^a holy writ, turn **בסל** *Orion*; and in such things the *Affyrians* and *Jews* had most community. But, of our first monarch, thus much.

Yet it is not to be doubted, but that before him and the flood there were, among his ancestors, some monarchick states, but not of any large extension perhaps. To what other end was *Cain's* building of *Enosha*, the first city in the world, but for his own supremacy among the citizens? But the large and supreme government of a nation, is that which must give the honour of a king, as we now take it. The supposition of that age of kings in the heroic times, or golden world is most idle, as it is delivered especially in fables and philosophy. What *Hesiod*, *Ovid*, *Virgil*, and others, have of that kind, children know. *Et officium erat* (saith ^b a philosopher) *imperare, non regnum. Nec erat cuiquam aut animus in injuriam aut causa: cum bene imperanti bene pareretur, nihilque rex majus minari male parentibus posset, quam ut abirent e regno.* And the like, or rather what was nearer to perfection is largely, and in example delivered by ^c *Plato*, who, had he read *Moses*, as some think he had; (for long before his time was the ^d pentateuch turned into *Greek*) would not, I think, have given that indulgence to fabulous relations. Nothing is more ridiculous to truth than those golden ages, when also *populus nullis legibus*, as *Justin's* words are, *tenebatur*; but *arbitria principum pro legibus erant*. Can we believe that in humanity this could at all continue? Inbred corruption never endured it. The absolute power of the one, and the unlimited liberty of the other, were even incompatible, unless they be referred to some short time in the beginning of states, when, by necessity, no laws were, but only the arbitrement of princes, as ^e *Pomponius* speaks of *Rome*. Yet, I know, it is observed that *Homer*, writing of the heroic times, hath not ^f the word *νόμος*, i. e. *a prescribed law*, but only *Σέμει*, i. e. *an arbitrary rule*. And I wonder, how learned men durst make such use of that observation. Read *Plato's* *Minos*, and there you shall have *Talus* his laws in *Crete* written in brass. And *Talus* is made coetaneal with *Rhadamanth* son to *Jupiter*, whose time although uncertain, yet must be far antienter than any *Greek* testimony. Nay, and *Homer* himself hath ^g *ἐνομίμην*, and ^h *νόμος ὁδός*, *the law of musick*, which fingers and players were strictly bound to; And *νόμοι* absolutely are songs so called, ⁱ *ὅτι πρὸν ἐπὶ τῶν ᾠδῶν ᾤοντο τῶν νόμων ὅπως μὴ ἐπιγὰθόνται*, i. e. *because they used to sing their laws before invention of letters, lest they should forget them*; as, in *Aristotle's* time, the *Agathyrrians* did. And, were not letters in use in the heroic times? If no authority were, yet *Proetus* his privy

^k letters, to the king of *Lycia*, for *Bellerophon's* death, would justify it. It is well known also, that *νόμος* is no stranger in *Hesiod*, being both ^l kinsman, and nearly coetaneal with *Homer*; nay, as some think, before him. Which were it true, how vain were that observation of *Homer's* not having it? The *Greeks* also have, some ^m of them, left written, that *Prometheus* king of *Thebaly*, *Deucalion's* son, was the man

Ὁς πρῶτος ποιήσας πόλεις καὶ εὐδείμειναι νηὺς Ἀθηναίοις, πρῶτος δὲ καὶ ἀνδρώπων βασιλεύσε.

that first built cities and temples, and was the first king on earth. Others of them tell of *Lycosura* ⁿ in *Arcadia* to be the first city erected under heaven. Nay, some of later ^o times, and christians, have translated the title of the first monarchy into *Egypt*, as if they had not read holy writ, but rather followed ^p them, which tell us that *Vexoris* king of *Egypt*, and *Tanaus* king of *Scythia*, preceded the *Affyrian* monarchy. Indeed the story of *Abraham* justifies great antiquity in the *Egyptian* *Pbarahs*; and in *Europe*, that *Ægialeus* king of the *Sicyonians*, rightly challengeth perhaps as much. But we can rely for truth herein only upon *Moses*; and must slight both those fabulous reports of *Grecians* and others, as also what occurs in the fragments of the true *Berosus*, *Hestiaeus*, *Alex. Polyhistor*, *Adiabens*, *Julius African*, and the like, touching who reigned before *Nimrod* and the flood. For the *Chaldeans*, from whom some of these had their original relations, pretended, that they had a true story remaining in *Babylon* of ^q *c. l. c. io.* years (*Diodore* and *Cicero* speak of a far greater number, but this is enough) in which they reckoned descents of kings, part whereof yet remains incapable of likelihood in some of those authors. As them, for this point, so much more have we neglected those *Annians* and counterfeits, *Archilochus*, *Xenophon*, *Berosus*.

Fol. 119 No. 6. Yet so, that, for continued majesty, and note of powerful rule, in both those affections of state, peace, and war, the first was, of antient time, the greater.

Fol. eod. No. 7. *Ἀυτοκράτωρ*, i. e. *imperator*, or *στρατηγός*, i. e. *the general of an army*, was for any which had to him committed supremacy in martial discipline, although but for some particular host. In the *Roman* story occurs frequent testimony of it. And thence came it that *Julius Caesar*, being dictator, and a general, after he had gotten even the monarchy of *Rome*, wrote himself in his edicts and coins *ΑΥΤΟΚΡΑΤΩΡ*, & *DICTATOR PERPETUO* & *IMPERATOR*, the first and last of which titles continued in his successors. But it is observable to this purpose, that by neither of those were the years of their empire reckoned, but a long time by their *tribunitian* power, be-

^a Amos v. 8. Job x. 9. & xxxviii. 31. perquam variae autem sunt de **בסל** opinioniones, & apud Judaeos, uti videre est in Baal Aruch.

paeter R. R., ad f. vis Hug. Grotium ad imagines Arari.

^b Senec. ep. 91.

^c In viro civili, & in Minoe.

^d Aristotul.

^e ff. de orig. jur. l. 1. §. 2.

^f Joseph. adv. Ap.

^g In hymn. ad Apollinem, ejus tn. authorem sunt qui faciunt

^h Odyll. p.

ⁱ Aristot. problem. sect. 19. §. 28.

^j Pausan. lib. 8.

^k Iliad. 2.

^l Suidas in Hesiod. v.

^m Constant. Manasses in annalibus.

ⁿ Tro-

ginning in *Octavian*, whence they were as sacred against all violence and wrongs. Amongst many, one coin thus inscribed shews it. IMP. CAESAR AUGUST. PON. MAX. TR. POT. XVI. COS. XI. IMP. XIV, which was made in the XVI year, from the states giving him that inviolable title. The number added to IMP. being only so often increased in his and others coins, as they had by themselves or their generals performed some great matters in the wars.

Fol. 121. No. 8. For these royal habiliments; they were at length used by *Aurelian* about CCLXX after Christ. *Iste* (saith *Victor* of him) *primus, apud Romanos, diadema capiti innexuit: gemmisque, & aurata omni veste, quod adhuc fere incognitum Romanis moribus videbatur, usus est.*

Fol. 122. No. 9. Which, their supposed coat also, of later time, being four *betas*, justifies. The *betas* are interpreted as the sigles of βασιλεὺς βασιλέων βασιλεύων βασιλῶν, i. e. the king of kings reigning over kings.

Fol. 123. No. 10. Which is an essay also of that ages unhappy affectation of Greek patches, frequent in many of that kind.

Fol. 125. No. 11. And the princes of *Sicily* received of *Constantine* the great (take it on my author's credit) *rex* for an hereditary title.

Fol. 126. No. 12. Some of the German* emperors also (as it seems) thought not *rex* alone unfit for themselves in prescribed titles of their letters to other princes.

Fol. 127. No. 13. Which one of his successors long since as rightly challenged. For, when *Anselm*, archbishop of *Canterbury*, having incurred *William* the second's displeasure, durst yet adventure to ask leave of him to go to receive his pall of P. P. Urban II. when *Rome* was even bleeding of her wounds taken in that great schism about *Wibert* archbishop of *Ravenna*, whom *Hen. IV.* taking upon him the imperial supremacy, would have invested in the popedom; the king, at the very name of the pope, was extremely moved, and thus was his reason. *Dicebat* (saith *Matthew Paris*) *imperator sui officii esse quem vellet papam eligere, nec erat alterius apostolicum etiam nominare. Rex Willielmus allegavit eandem rationem, quod nullus archiepiscopus, vel episcopus regni sui curiae Romanae, vel papae subesset, praecipue cum ipse omnes libertates haberet in regno suo, quas imperator vendicabat in imperio*; which withal shews how false that of *Bertold* of *Constance* is, slandering *William* the first with slavish submission of *England* to the see of *Rome*. So when *Alfonso* the VII, king of *Castile*, circ. CIO. C.L. had gotten most of *Spain's* territories under him, *rediens* (saith the story) *Legionem, imposuit sibi imperii diadema, & vocatus fuit deinceps imperator.* Which

notwithstanding, is against the flattering rules of the imperial and barbarous^a *Civilians*, who, of the German emperors, have durst deliver, that *ratione protectionis & jurisdictionis, imperator est dominus mundi, quia tenetur totum mundum defendere & protegere: sed particularium rerum non dominus sed princeps.* As if that weaker greatness extended in any of their times beyond *Italy* and *Germany* (for, that long since spoken of the *Roman* empire, that it was^b *imperium quod tenet imperium*, long since also failed) and, in those countries, had not been so gelded, that scarce any king is, but hath his power nearer to his name. The *Tramontan* doctors have been of another opinion, as they had reason, living in other states. They allow the^c emperor to have supremacy, but not over the king of *France*, nor *Spain*; they might well add, nor of *England*, *Scotland*, *Denmark*, or the like, which by prescription of time, regaining of right, or conquest, are (as the other) in no kind subject or subordinate to any but God.

Fol. 129. No. 14. Not derived from *caesar* (which interpreters mistaking, wrote him emperor; and thence it was that we now usually call him emperor of *Russia*, because *caesar* is grown as it were proper only to an emperor) but a meer *Russian* word, they using *kefsar* expressly and antiently for the emperor of *Germany*, different from *czar*.

Fol. eod. No. 15. They are neighbours, and therefore the more suspect each other. But that *Basilius* held himself rather the better man, being compared with the emperor, *nomen suum & titulum imperatorio semper praeponens, sive loqueretur, sive scriberet.* With his precedence I meddle not. But I see not reason why he might not use either the name of king or emperor out of his own authority, as well as the emperor. Neither needed he have written to the pope for the name of king, as some affirm he did; but *Sigismund* believes it not, because he was ever an enemy to the pope, and the best title he could find for him was never above doctor.

Fol. 132. No. 16. Which act, it seems, had it not been for the imperials there in use, according^d to which, publick notaries are to be made only by the emperor, his palatines, or such like, need not to have been made. For what might not a king (absolute in regard of any superior) do, which the emperor could? And, in *England*, that constitution of publick notaries^e was long since without scruple, or any act for it. Therefore, as the name of emperor was, notwithstanding some particular differences, lawfully given, as well to him of the east as of the west, and allowed so by the western^f part; in like form it is or may be without difficulty applied to, or used by any which is truly a king.

Fol. 133. No. 17. In later times the emperor created kings, as other titles. *Frede-*

* Dio Cassius hist. 42.

Henrici IV.

nem.

Orig. fol. 114. q. in brevi de deceptione.

† In ap. ad Herm. Contract. ann. 1084.

‡ Lampird in Alex. Severo.

§ Chassan. catal. glor. mundi part. 5. confid. 27. vide, si placet, Alciat. de sing. ceries. cap. 32.

¶ Bald. in feud. quis dicatur dux.

‡ Act. 8. synod. oecumenic. dist. 63. c. Hadrianus.

⁂ Bodin. de rep. i. cap. 9.

⁂ Roderic. Toletan. lib. cap. 7.

⁂ Barol. ad con. ff. §. omnem.

⁂ Et Wesenbech. in paratit. ff. De fide instrument.

⁂ Regist.

⁂ Niceph. Gregoras hist. 7.

⁂ Epistolae

⁂ Act. 8. synod. oecumenic. dist. 63. c. Hadrianus.

⁂ Regist.

⁂ Act. 8. synod. oecumenic. dist. 63. c. Hadrianus.

⁂ Act. 8. synod. oecumenic. dist. 63. c. Hadrianus.

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⁂ Act. 8. synod. oecumenic. dist. 63. c. Hadrianus.

rick Barbarossa in CIO. CLVIII. made ^f Ladislaus, duke of Bohemia, king of the same territory. For, that which Otto de S. Blasio hath of it, under CIO. C. LXXXVI. is to be referred to that time. And other such examples are.

Fol. eod. No. 18. *Petrus vero, accepto ab ipsius manu regno, fidelitate & hominio ei obligabatur. Ita corona regni per manum principis sibi imposita, in die sancto pentecostes, ipse coronatus gladium regis sub corona incidentis portavit.* He means, by this Peter, Sueno IV. king of Denmark, for he was known by both those names, betwixt whom and his cozen Cnuto was great controversy, for the kingdom, determined thus by the emperor at Martinesburg in Saxony. The mention of the like made in Otto de S. Blasio, must be understood of Waldemar I. who received both this and Sweden of the emperor at Bissonce. And king Harold, before that, when ^g the Danish nation was first christened, received it of *Otho the great*. Now it acknowledges no superior. But so many as have, or do, as feudatories to other princes, are excluded out of their rank which before are indifferently titled kings or emperors. The king of Bohemia, when it was in another hand from the empire, although he were crowned and anointed, yet, being in a manner the emperor's ^h subject, wanted perfect supremacy for it; As also they of Sicily, when they had investiture from the pope, they of Cyprus being anciently as tenants, yet crowned, to ⁱ both empires, and such like; Even as much almost as that *Persus*, who, when *L. AEmilius Paulus* had spoiled him of his kingdom of Macedon, and compelled to flight, yet was so ambitious of his former title, that he made the inscription of his letters to *AEmilius* thus: ^k *Rex Persus, consuli Paulo S.* it being, at that time, under *AEmilius* and the state of Rome's arbitrement, whether ever he should be king again or no. Wherefore *AEmilius* would not so much as give answer to his messengers, until they had brought him letters inscribed with a meaner title. As, on the other side, when *Edward III.* besieged Tournay, and sent letters of challenge to a single combat, to the then pretended French king, he would not call him king, but only, *Philip of Valois*, whereupon he had this answer: ^l *Philip per la grace de Dieu roy de France, a Edward roy d'Engleterre. Nous avons vous lettres apportees a nostre court envoyez de par vous au Philip de Valois, en quels lettres estoient contenuz ascun requestes que vous fezistes au dit Philip de Valois. Et pur ceo que les dits letters ne veignant pas a nous, & que les dits requestes ne estoient pas faits a nous, come appartient clerement per le tenure des letters, nous ne vous en feson nul response.*

Fol. 135. No. 19. Those inferior kings are like in some proportion to those of *Man*, who have had it always by a tenure from their sovereigns, the kings of *England*, especially ever since *Henry IV.* possessing it by the forfeiture of the lord

Scrop, invested *Henry Percy* earl of *Northumberland* in it, in fee simple, to hold it *per servitium portandi diebus coronationis nostrae* (as the ^m patent speaks) & *haeredum nostrorum ad sinistrum humerum nostrum & sinistros humeros haeredum nostrorum per seipsum aut sufficientem & honorificum deputatum suum, illum gladium nudum, quo cincti eramus quando in parte de Holderness applicuimus, vocatum Lancaster sword.*

Fol. 138. No. 20. But all these are little otherwise kings than dukes or earls are. They bear the name, but not the true marks of royal majesty; rather to be stiled *reguli* than *reges*, being subjects in respect of those whose majesties they were bound to observe and obey.

Fol. 140. No. 21. And, it seems, in *Moses*, as much is signified; whence he, reciting the wars of divers petit kings, begins, ⁿ *And it came to pass in the days of Amraphel king of Shinagor* (i. of *Babylon*) that the other kings did thus and thus. Keeping his note of time, under his name, which was kings of those kings.

Fol. eod. No. 22. But that whole relation seems rather a holy poem than a story, as by comparing of times, in it, and authentick writ, appears. Neither is any such matter known among the *Hebrews* but from *Europe*; although they have her name in ^o another report of some *ci.* before Christ, which hath scarce any community in matter with this.

Fol. 141. No. 23. But I guess the composer of the story, in a later age, was bold hither to transfer it, as a fit form of command for his supposed *Nebuchodonosor*.

Fol. eod. No. 24. Grounding himself on that of *Judith*, which indeed, without special regard to profane story, cannot be understood.

Fol. 142. No. 25. Understand *Chester*; not *Leicester*, as some idly.

Fol. eod. No. 26. I suppose him then a king of *Ireland*, *Man*, or some adjacent isles.

Fol. eod. No. 27. *Marian* the *Scot*, which for good part, is very *Florence of Worcester*; his common chronicle, published, being a defloration composed by *Robert* of *Lorrain* bishop of *Hereford* under *Hen. I.*

Fol. eod. No. 28. But those commanding honours in *Edgar*, added enough also to the allowance of the title of emperor, which, you see he used. Others by making our sovereigns as successors (in this part) to *Constantine* the great, confirm it. It is the more to be regarded coming from a great lawyer and a *Palatine* ^p doctor, who commenting upon a piece of that fabulous oracle of *Diana* given to *Brute*;

*Hic de prole tua reges nascentur: & ipsi
Totius terrae subditus orbis erit.*

makes it fulfilled in *Constantine*, and cites *St. Gregory* writing to king *Ethelbert* of *Kent*, & *eum quasi Constantini magni successorem alloquentem*. I confess, his genius must have better understanding of *St. Gregory* than mine, or else

^f Radevic. lib. 1. cap. 13. verum titulo regio a Philippo Anti-Caesare donatus est Primislaus CIO. CXCIX. Arnoldus Lubecensis Slav. lib. 6. cap. 2. ^g Helmold. hist. Slav. 1. cap. 9. ^h Aur. Bull. Caroli IV. cap. 8. ⁱ Arnold. Lubecens. chron. Slav. lib. 5. cap. 2. ^k Liv. decad. 5. lib. 5. ^l Ex ms. vet. fed latine literas habet Tho. Walsing. sub. ann. 1340. ^m Pat. 1. Hen. IV. rot. 2. & Tho. Walsingham. ⁿ Gen. 14. ^o Brought. in concent. ^p Basingstoch. hist. 2. not. 20.

there is no such matter to be collected in him. You may see his ^a epistles. But he may not be blamed for insinuating upon *Constantine's* birth here: It is most likely that in *Britain* he was born. *Liberavit ille* (saith ^r one to him, speaking of his father *Constantinus*) *Britannias servitute, tu etiam nobiles, illic oriendo, fecisti*. Which testimony I prefer before *Nicephorus Callistus*, affirming his birth at *Drepanum* in *Bithynia*; or ^r *Julius Firmicus*, that says, at *Tarsus*; or *Cedren*, that writes, in *Dacia*. I doubt not, but the panegyrist could as well know, as any of them, and better, save only *Firmicus*, whose passage thereof may well be thought corrupted; the other two being of latter time. *Lipsius* here ^r erroneously follows *Callistus*, and one *Levinæus*, a new scholiast upon the panegyrics, after him. His mother was ^u *Helen* (she is honoured in the church to this day, in the feast of her invention of the cross) a *British* woman, and, as is supposed, daughter to king *Coil*. But for his birth in this isle, you shall have imperial authority, of which, as used to this purpose, I dare challenge the maidenhead. *Constantine Porphyrogenettes* (he was emperor of *Constantinople* about *cccc.xx.*) advising his son *Romanus*, that he should by no means marry a stranger, because all nations dissonant from the government and manners of the empire, by a law of *Constantine the great*, established in *St. Sophia's* church, were prohibited the height of that honour, excepted only the *Franks*, adds reason of the exception *ὅτι ἐξ αὐτῆς* (i. *Constantine the great*) *ἐκ τῶν γένεσιν αὐτοῦ τῶν τοιούτων ἔχε μερῶν, because Constantine was born amongst them*; which could aim at no other country but *Britain*. For where, in *Europe*, hath any man supposed him born, but here or in *Dacia*? And the barbarousness of *Dacia*, in those times, could not admit the exception, by all likelihood. And who knows not that familiar use of *Franks* for western *Europeans*, among the *Constantinopolitans* of later times? The tradition then acknowledged by his successors, preserved amongst us, and appearing in such monuments of antient times, cannot easily be impugned. And, for men of this age, our light of *Britain*, most learned *Camden clarencieux*, and that great chronologer cardinal *Baronius*, are confident on this part. Hereto take an antique ^x rhyme spoken as to king *Arthur*.

Now it worth iended that Sibile the sage sed hi-
voze,

That there sold in Britaine thre men be ybore,
That sold win the Aumpire of Rome; of twey
ybo it is,

As of ^y Bely & Constantin, & thou art the thrid
twis.

Fol. eod. No. 29. Immemorally possessed

right. Remember what I have before of *William II.* and observe that unreasonable and most unjust request of the emperor *Lewes* of *Baviera* to our *Edward III.* in their mutual salutations of state at *Cologne*.

Fol. 143. No. 30. Kissing the forefinger joined with the thumb, and turning about their bodies on the same hand; of which form, a good relique is in the court-salutations used in most places at this day, as learned men have observed.

Fol. eod. No. 31. But for kissing the mouth, (to omit that of *Samuel* to *Saul* in his anointing) its apparent that in the *Julian* empire it was very usual at first.

Fol. 144. No. 32. And some reason for it may be collected out of that of *Pliny*.

Fol. eod. No. 33. Where, note by the way, the word *προσκυνῶ*, i. *adoro*. And as *adoro* hath its derivation from putting the hand to the mouth, *quod ad ora sive ad os manum* (or rather *digitum* ^a *salutarem*, whence the forefinger had that name *a salutando*) *admoveamus*, which, against other idle etymons, will be justified; so *προσκυνῶ* is truly interpreted in *adscutor*, if the composition be lawful, or *adoro*; both signifying to honour by kissing the hand. *Qui n. adorant* (saith *St. Jerom*) *solent osculari manum & capita submittere* ---- & *Hebraei, juxta linguae suae proprietatem, osculationem pro veneratione ponunt*; whereupon he turns *נשקו בבר* in *Psalm 11.* *adorate filium*, which others make *osculamini filium*. And that in this sense, *adorare* is alone taken, this passage in ^b *Tacitus* will enough explain. *Nec deerat Otbo protendens manus adorare vulgum, jacere oscula, & omnia serviliter pro dominatione*.

Fol. 145. No. 34. Whereas plainly adoration, and salutation with a kiss of the hand, is all one in the right sense of the word. How the *Jewish* nation avoided it, the story of *Haman* and *Mordechai* discovers. And you may remember ^c *Philip II.* of *Spain* his answer to the ambassadors of *Germany*, reproving him because he would have every man speak to him kneeling. He excused it, *only lest, he being so short, his taller subjects should be above him*. But among the *Persians* ^d also it was in use to kiss at their farewells, as likewise among the ^e *Jews*. And some think, that it was, as an honour in the *Roman* state, to their women, whom their ^f kinsmen only, not others indifferently, as the use was betwixt men, kissed at their salutations, although divers other reasons are delivered for that matter. And when *Eumæus*, in the fields, first saw his young master *Telemachus* newly come home,

— ἅντιθι ἡλῦθ' ἀνεκτός·

Κύστε δ' ἔμιν κερὰ λῦθ' ἐπὶ χεῖρ' ἄμρω παῖα χαλκῆς

Χαίρας τ' ἀμφοτέρως —

^a Gregor. lib. 9. epist. 59. & 60.

^r Panegyric. dixerint licet & v. panegyric. facerem.

^u De hac heroína, post alios innumeros, consulas Luitprand. Ticinen. hist. 1. cap. 3. ubi legendum, *Britannica mater*, non *Ritannica*, ut in prooefum nonnullis.

^x Robert. Glocestrenf. ms. hist. metrica.

^y Belinus.

^z Vide vero Hefychium in *Αἰσχησέας*.

^a Defens. contra Rufin. lib. 1.

^b Histoiar. 1. verum etiam *adorare* & *προσκυνῶν* nonnunquam pro *corpus humi prosternere* antiquitus accipitur, ut videre est in *Euth. apoc. cap. 13. com. 20.* *Aemilio Probo* in *Conone*, alibi.

^c Pet. Viñ. hist. septenarie livre 1.

^d Xenoph. Cyropaed. 1. & 5. & in *Agésilao*.

^e Odyss. 30.

^f Plutarch. problem.

he met him, he kissed his head, his eyes, and both his hands. And when the *Argonauticks* came to *Chiron's* den to see *Achilles*, *Chiron* entertained them, and

—^h κῦσεν δ' ἄρα φῶτα ἔκασον.

kissed every one of them : Where, and in other examples, it appears that a kiss given and taken, was accounted as a speaking and mutual sign of obsequious ¹ or peaceful love, according to the quality of the persons receiving and giving. And in *Greek*, φιλειν is both *to love and to kiss*, as it is also to this purpose observed, I remember, somewhere in *Xenophon*. So I understand *Laban's* kissing of *Jacob*, and *Esau's* also ; although a *Jewish* ^k fable supposes, that he fell on *Jacob* to bite him, and that *Jacob's* neck presently became as hard as marble, and so resisted his teeth. In like manner understand that of the ¹ evangelist, *thou gavest me no kiss, but she from the time I came to her, ceased not from kissing my feet* ; and sufficient analogy is betwixt this kind, and the *holy kiss*, or *kiss of charity*, in the primitive church, which is spoken of in the holy epistles, and, with which christians, after ^m their solemn prayers, used to salute each other. In the story also of *Thomas of Canterbury* under our *Henry II.* oft, as elsewhere, occurs, the receiving him in *osculo pacis*.

Fol. eod. No. 35. Hence at this day it so far continues, that when the tenant doth homage to his lord or king, he is, among other ceremonies, to kiss him.

Fol. 146. No. 36. And for the subjects to kiss their king; I readⁿ it was usual in *India*; whereas, on the other side, those of *Numidia*, *more gentis suae, nulli mortalium osculum ferebant*; which my^o author commends in them, and gives this his reason. *Quicquid n. in excelsis fastigio possum est, humili & trita consuetudine, quos fit venerabilis, vacuum esse convenit*. But of kissing too much.

It must be then concluded, that to such princes as have their own right next under God (as our sovereigns, and divers other) may well be challenged, with respect to what they rule, any title, that the emperors have had to express them as monarchs or great potentates ; those other kings having their monarchies, regarding the particular liberty of every one's country, as in supreme and sure right διὰ τὸ πατέρα καὶ κατὰ νόμον εἶναι, i. *by reason of their lawful succession*, as any emperor possibly could have.

The *Latin*, *Greek*, and the chief eastern tongues for *king* are before mentioned. In the provincial languages or romances, as the *French* and *Spanish* are called, *il re*, *roy*, & *re* are plainly from *rex*. But the *Dutch*, *Danish*, and *English* word *coning*, *konig*, or *king*, which is but a contraction of the first, is of a particular notation, and by original of its own. It signifies

mighty or potent : not so much *wife or valiant* as some will. Who sees it not in our common word *can*, for *posse*? So that *coning*, or *king*, is literally *dynesas*. A word somewhat near among our antient *Britons*, signified king or some such like ; I mean *cuno*, being so often in their and the *Gaulish* kings names, as, in *Cunobelin*, *Cuneglas*, *Cyngetorix*, *Cunedage*, *Congolitan*, which occur in *Caesar*, *Tacitus*, *Dio*, *Polybius*, and others; and *cnoc* in *British*, (so most learned *Camden* teaches me) is *chief* or *principal*. But their special word for king is *brenniu* or *ubrennin*. In old *Indian* देवुस was a king, if you believe some ^a grammarians thence deriving *Dionysius*, that is *Bacchus*, from देवुस तिस Νυκτος. But I remember, the phoenix ^r of learned men flights it as a toy of daring grammaticasters, as questionless he might well. In the *Ionick*, παλις; whence *Lycophron* calls *Jupiter* ἀποβίτων παλις; and ^r *Hippocras*, Ολυμπιον παλιν. The *Libyans*, if you credit ^r authority, used for him the word βατ(θ). In the holy tongue of the *AEgyptians* οκ expressed this title, as some^r say. In *Ethiopian*, negush. In *Turkish* and *Persian*, padefcha. In *Slavonick*, crah, and the queen, crahna, which the *Polonians* call crah, and crahna; whence the later *Greeks* have ^x κεράλις *Serbias* and Ουγγείας for the king of *Servia* and *Hungary*, and κεράλινα and κεράιττα for queen.

Fol. eod. No. 37. That *Sesosis* king of *Egypt*, on his columns, inscribed, with *king of kings, lord of lords*, to himself; *Ξασιλῶδης βασιλεύων καὶ δεσπότης δεσποτών*; a title too high for humanity, and proper ² indeed to the great and almighty king of heaven.

Fol. eod. No. 38: *Atque hujusmodi blandi-
tias etiam inter ipsos prohibuit.*

Fol. eod. No. 39, As divers places in *Mar-*
tial make apparent. Take this * one to *Olus*;

*Quod te nomine jam tuo saluto,
Quod regem & dominum prius vocabam,
Ne me dixeris esse contumacem.*

Fol. 148. No. 40. Derived perhaps into their Arabick from the Chaldee מרע, i. a lord, whence that kind of excommunication ^a maranatha, i. the lord cometh, otherwise, to the same purpose, called semiba, or sematha, as it were ^b שם אתא, hath its origination.

Fol. 149. No. 41. As also from the *Hebrew* רב, the *Arabick* uses for it *alrabbui*, i. lord or prince.

Fol. eod. No. 42. That is *semhammephoras*, i. *nomen explicatum aut separatum*, as they usually call the *tetragrammaton*.

Fol. 150. No. 43. And the *Arabians* ^d have
their title of الشيخ, *alsheich*, *shah*, or *shach*,

i. *senior* or *elder* for men, it seems, of the better condition; and that the epistles of St. *John*,

^h Orpheus in Argonautic.

ⁱ V. si vis, c. de domestic, l. 1. & ibid. DD. ubi ad osculum admitti, honos maximus.

^k Rabbi

Janna ap. Buxtorf. thesaur. gram. 1. cap. 5

¹ D. Luc. 7. com. 45.

^m Tertullian lib. de orat. & Origen lib. 10 in epist. ad

ⁿ R. Abenezra ap. Drus. observ. 2. cap. 16

o Valer. Ma

^p Aristot. politic. 3. cap. 19.

⁹ If, Tzet. in Chiliad, & Mésf. ἐπὶ μολογ. in Δίουωσ.

μολογ. in Δίουωσ. ^r Scalig. animadvers. in Euseb. p. 41.

Euseb. p. 41. If. Tzet. ad Lycophron. Scho-

liast, Pindar. Pythionic. ♂ & Herodot. ♂.
Iun Theodorus. Deuge. ♂ & Dio.

Manetho apud Diodor. Sicul. biblioth.

Aliter alij & Elias Thib. i.

² D. Paul, ad Tit. c. 6. com. 25.

* Martial, epig. 68. lib. 2.

^d Mahumed Ben David.

cf. *Antler am.*, & *Enas* *Fols.*
cf. Antler am., & *Enas* *Fols.*

21120. V. Brul. praeterit 4. ad D. Joh. cap. 9.

c Psal. 20. Arabic.

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published by that learned linguist, Mr. *Bedwell*, out of an antient *Arabick* copy, have that word for *παρὸν* *παρὸν*, i. *the elder*. It is attributed to their princes and great lords. *Schachi* appellatio, faith *Leunclavius*, *vel regum vel magnorum est principum, praeferunt apud Persas: sicut apud Hispanos doni vocabulum in usu est*. The present *sophi* is called *schah Abas*, i. e. lord or signior *Abas*. So *Thamas* and others before him have been titled. It is the same with *saa*, *saa*, occurring in some *Greek* ⁱ passages of the *Persian* state, and hath like signification with them, so the incomparable *Joseph Scaliger* ^s instructs, as *monsieur* or *seignior* are with the *Europeans*, or *domnus* among writers of middle times, which is used often in *Cassiodore* and such more, corrupted from *dominus*, and is in different copies frequently so written. Of *Pipin*, king of *France*, faith ^h one of them, *primus erat in omnium dispositione rerum gentis Francorum, quibus videlicet olim moris erat domnus, i. e. regem, secundum genus principari*. And the empress, by *Oppian* in his *cygneticon* to *Antoninus*, is, in like form, corruptly stiled *δούνα*, and *ΙΟΥΛΙΑ ΔΟΜΝΑ* CEB. is often in coins of *Severus*, which remains almost yet in the *Italian* *donna* i. e. lady or mistress. But whether the *Spanish* *don* have hence its original, or from *adonai*, perhaps derived through the *Moorish* *Arabick* into *Spain*, I doubt. The community of the antient *African* with *Hebrew* or *Phoenician* is known to the learned, as also that the provincial *Spanish* is exceedingly mixed with that *African* *Arabick* which the *Moors* use; and I have read the censure of a most judicious linguist, that the fourth part, at least, of it is *Moorish* *Arabick*, which hath its chief root in *Punick* or *Hebrew*. Now the *Punick* or *Phoenician* salutation was with the word *donni* (doubtless from *adon* or *adonai*) as appears, if no more authority were, in *Plautus* his *Poenulus*;

AG. *Saluta hunc rursus Punice, verbis meis.*

Mi. *Ano donni, hic mihi, tibi, inquit verbis suis.*

Where note by the way, you must read *avo* or *havo donni* i. e. *vive*, or *salve domine*, from *דון*, which is *vive*, and remains almost in the *Latin* *have* used in salutation; and by corruption it is likely they pronounced it *havdoni*, as in some copies it is; whence that ⁱ epigram upon *Meleager*, expressing the several forms of salutations or farewells of the *Syrians* or *Hebrews*, *Phoenicians* and *Greeks*,

Αν' εἰ πῶς Σύνες ἔσσι, ^k ΣΑΛΑΜ' εἰδ' ἐν οἴῳ
Φοινίῃ,
ΝΑΙΔΙΟΣ' εἰδ' Ἐλλῶ, ΧΑΙΡΕ' ὃ δ' αὐτὸν ῥέζων.

is corrected by the divine ¹ *Scaliger*, reading for *ναίδιος*, *αὐδωνος*, made of *audoni* or *havo donni*. Observe withal the agreement of the *Phoenician* and *Punick* salutations with the *Roman* and latter *Grecian*.

Fol. 151. No. 44. For this you must know, that their title to *Ireland* is derived from *Henry II.* although long before, I mean in king *Edgar's* time, good part of it was under the *English* crown. *Edgar's* own words, in a charter dated the VI of his reign, and DCCCCLXIV. of *Christ*, are, ^m *mibi concessit propitia divinitas cum Anglorum imperio omnia regna insularum oceani cum suis ferocissimis regibus, usque Norwegiam, maximamque partem Hiberniae, cum sua nobilissima civitate Dublin, Anglorum regno subjugare; quos etiam omnes meis imperiis colla subdare, Dei favente gratia coegi*. But this continued not in his successors.

Fol. eod. No. 45. This *Adrian* was his natural subject, born at *Langley* in *Hertfordshire*, and had to name ⁿ before he was pope, *Nicholas Breakspeare*.

Fol. eod. No. 46. By the way, for that of *Constantine's* donation, a vexed question, if you read *Ulrich Hutten*, *Valla*, the cardinal of *Cusa*, *Hierom Cuthalan*, and others of that kind, against this donation; but especially that ^s note out of the *Vatican*, where it, being written in golden letters, by one *Johannes cognomento Digitorum*, is subscribed with this,

Quam fabulam longi temporis mendacia finxit.

you will scarce believe it for a truth, no more than *Eugubin's* translation of it into *Greek*, for it was extant only in *Latin* till that imposture, to be legitimate.

Fol. 152. No. 47. Whose wife he had, but not against her will, dishonoured.

Fol. 153. No. 48. Than whom, no lieutenants in *Christendom*, as our most judicious antiquary observes, come nearer kinglike state.

Fol. 156. No. 49. In origination of our *English* name *lord*, whereby we and the *Scots* stile all such as are of the greater nobility, i. e. barons, as also bishops, it's not easy to satisfy you. In our antient *Saxon* it was written *hlaford*, and was a relative to *þeop* and *þeop* man, i. e. a servant or bondslave, and tenant, not any title or dignity. To talk of *allodium* or *allodius*, to this purpose, as some do, is more than idle. It would be nearer our present pronunciation if you drew it from *lars* or *lartes* (for so also is the first case used by ^p *Cicero*) an old *Tuscan* word signifying prince, or such like, as a ^q great man delivers by conjecture; whence you have *lartem Porfenam*, and *lartem Tolumnium* in *Livy*, *Plutarch*, and *Halicarnassensius*, and *Aremoricus lars*, in *Ausonius*. But *lar lartis* (faith an old ^r *Roman*) praenomen est sumptum a laribus; *Tusculum autem creditum est praenomen esse*. It were not much stranger, at first sight, to suppose this *lar* or *lartes* to be hither transferred, than that *lar* should yet remain (as I have seen somewhere noted) a word for a chief house, about *Bayeux* in *France*. And many worse etymologies make their authors proud of them. But I know you

^e Pandect. Turcic. cap. 81.

non. Magog. lib. 3.

braeis ultatissimum.

den. in Cartiuchlan.

^f Lartem Tolumnium Philippic. 9.

^g Agathias hist. 4. cui Vararanes rex Syaxorum Persice dictus i. e. Syaxorum βασιλεύς.

^h Landulph. Sagax miscell. hist. 22.

ⁱ In not. ad Berof. & alior. fragmenta.

^j Bodin. de repub. 1. cap. 9. consulas diploma

^k Jos. Scalig. ad Propert. 4.

^l Antholog. lib. 3. cap. 24.

^m Infeximus pat. 1. Ed. IV. part 6. memb. 23.

ⁿ Othonis imp. editum inter epistolas pp. Sylvest. II. pag. 73.

^o Tit. Prob. epit. de nom. rat.

^p Can-

^q Pax tibi, E-

^r Cam-

^s cannot

cannot but laugh at this, and I will so with you. Touching it only as there is such community of name betwixt it and our present idiom, or rather betwixt the *Scottish* lairds, a degree next beneath knights among them. It was afterward pronounced *lawerd* and *loured*, as you shall see among other testimonies in this, being a metrical translation of the first psalm, transcribed out of the whole psalter, so turned and fairly written, about *Edward II.* his time, as the character persuades, which I have. ^f Some wicked hand, by cutting the first capital, left it thus imperfect.

- I. ^ely beerne that nought is gan . . .
In the red of wicked man,
And in strete of sinful nought he stode
..... of scoyne un gode
- II. Bot in the lagh of loured his wil be at
And his lagh think he night and day.
- III. And at his lif swa sal it be,
As it fares be a tre,
That streme of water sett is nere,
That gises his fruit in time of yere,
And lese of him to dreve nought sal.
What swa he does sal soundfull al.
- IV. Nought swa wicked men nought swa.
Bot als dust that wind the erthe tas sca.
- V. And therfor wick in dome noght rise,
He sinfull in rede of rightwile.
- VI. For loured of rightwile wot the way
And gate of wick forworth sal ay.

Gloria Patri.

Blisse to fader and to the Sone,
And to the Holy Ghost with them one
His first was, is, and ay sal be,
In werld of werldes unto the the.

and in the xv Psalm,

- I. Loured who in thi ^u teld who sal wun
In thi hili hille or who rest mun?
- II. He that incomes ^x wemles,
And euer wickes rightwisenesse.

The more willingly I inserted them also, that by this occasion you might tast an essay of our ancestors neatness in their holy meeters, which, howsoever abounding with liberty and the character of their times, yet have, I confess, my admiration. *Loured* and *loured* indifferently occur in old *Robert of Glocester*. But note, in the more antient *English*, *Saxon*, or *Dutch*, not *hlapose* is used for *dominus*, where *dominus* is attributed to the *Almighty*, but usually *drihten* or *truchtin*, being the same words varied, as ^y *Drihten* paes *ppaecen* *ðær* *yoper* to *Moÿse* i. e. *the Lord spake these words to Moses*. And ^z *githrit si Truchtin Got Israel*, *blessed be the Lord God of Israel*; and, in our Lady's *magnificat*, *Dikkilso min sela Truchtin*; i. e. *my soul doth magnify the Lord*. Now

since this *Truchtin* seems to have somewhat of truth or faith in it, and that *loof* or *loef*, in old *Saxon* or *Dutch*, signifies *faith* also, as one of that country, ^a fantastically ravished with the word to other purposes, tells me, could I assume liberty, as he doth in derivation, I might, with casting about, frame the nature of feuds or patronage, which consist in mutual faith betwixt the tenant or client, and lord or patron, out of the word. But I will not, nor dare I. One ^b derives it from *blate-afford*, as if it were essential to the name, that he which bears it should be a *late*, *lose*, or *breadgiver*, and so *lady* from *blate-die*, i. e. *a breadserver* or *divider*, referring his conceit to ancient, now worn out, hospitality. That satisfies me not; if it do you, then will you less impute to my ignorance, that I have not here furnished myself with any probable origination. In these and the like, where I see no better ground for certainty of conjecture, I abstain from further inquiry. By reason of this word *lord*, which particularly applied we make *my lord*, divers outlandish writers call our noblemen *milords* and *milortes*; the ridiculous use proceeding from their ignorance of our language. It is no where so frequent as in the epistles of that Spaniard *Anthony Perez* to the late earl of *Essex*. Touching the name of *dominus*, *lord*, and *signior*, hitherto.

Fol. 156. No. 50. Yet good ^c authority makes in most of those passages, to be rather noted the general dignity of mankind, than titular supremacy of princes.

Fol. 157. No. 51. Worse after him; and that of *Belus* remembered in the first chapter; with much such more among the *Grecians*, where *Zeus*, or *Jus*, signified both gods and kings. And *Alexander*, you know, would needs be *Jupiter Hammon*'s son, and so had his picture made with rams horns like *Jupiter Hammon*'s statue; as scorning mortal progenitors.

Fol. 158. No. 52. And in ^d *onirocriticism*, dreams of superior deities were referred to such as had rule and command. It being at this day among the *Muscovitch* christians in use, to account their great duke rather a god than a man.

Fol. 159. No. 53. This *Harmenopulus*, whom I cite, was a judge in *Theſſalonica*, now called *Saloniche*, under *Emanuel Comnenus*, about *CIO.CXLIII.* after *Christ*, as is ^e conjectured.

Fol. 160. No. 54. Which the ^f *Jews* idly say was a cock, but without any great scruple, will be proved to be the sun, or some perpetual fire honoured with respect to the sun.

Fol. eod. No. 55. For in ^g holy writ it is called שֶׁרַח, which by the *Ethiopian* idiom, is pronounced *fibri*, faith the noble *Scaliger*, signifying black, according as the *Greeks* stiled it ἡ Ἀρμενίσις, and with them the *Latins* *Melas* ^h of the same interpretation; and, from the eastern word, questionless came the *Greek* Σιγῆς for it,

Σιγῆς ἢ Αἰδοῦσθαι καὶ δεισέειν —

^f In bibliotheca Bodleiana Oxonii exemplar psalmodum huic nostro extat. ^g *Help.* ^h *Tilt for tent.* ⁱ *Spotless.* ^j *Legib. Aluredi.* ^k *Vulcan. in specim. ling.* ^l *Goropius hieroglyphic. 8.* ^m *Veritegan. cap. 10.* ⁿ *Cyrrill. adverb. Julian. lib. 8.* ^o *Artemedor. onirocritic. 4. cap. 71.* ^p *Marquhard. Freher. chronolog. ad jus Graeco Romanum.* ^q *R. Salomon larchi ad 2 Reg. 17. מלך. n. interpretari potes.* ^r *fontem, tumulum, sorte & sphaeram ignis. Et cum magorum (unde Cuthaei) νεφελισσος confersas.* ^s *Isa. cap. 23. com. 3. Ierem. ca. 2. com. 18.* ^t *Odyss. 4.* ^u *Festus in eo vocab. alii.*

faith *Dionysius Afer*. Where his commentator *Eustathius* hath other, but frivolous, etymologies of it.

Fol. eod. No. 56. Neither was that twearing by their names proper only to them. I remember *Cosmas* patriarch of *Constantinople*, in the controversy betwixt him and *Eustratius*, about the coronation of *Irene* empress and wife to *Alexius Comnen*,^k swears by himself, *Νὴ τὸν Κοσμάν* i. e. by *Cosmas*. But, that of divine names among them, as it was communicated to nobility, so very likely was not extended to the vulgar, or ignoble. For we see often a special regard had among the antients, that princely names should not be born by base persons. One cause, why *Domitian* put to death *Metius Pomposianus*, was for that he had given his slaves the names of *Mago* and *Hannibal*; that of *Hannibal* having plainly in its composition (as *Asdrubal*, *Adherbal*, and the like) the *Phoenician* or *Punick* god *Baal*. In the scripture you have the very name, but inverted, *Baal-Hanan* in *Gen. cap. xxxvi.* As on the other side one of *Alexander's* chief requests to the high-priest of the *Jews*, they say, was, that he^l might so much be honoured, as to have his name imposed on every of the priests children that year born. Although it be certain that slaves sometimes had the names of greatest kings. And in *Athens*,^m the names of *Harmodius* and *Aristogiton* were not suffered to be given to any bond-man. The *Turks*ⁿ have their several names usually proper for their sultans, beggars and slaves, if my author deceive not. But for that of giving a king the title of *GOD* (without respect only to his delegat power and substitution) you may note *Anaxarchas* his jest upon *Alexander* pretending himself a god, and lying dangerously sick: *τὸ μὲν τὸ Θεῷ ἡμῶν* (said *o Anaxarchus*) *ἐν τρυβλίῳ ῥοφῆται αἱ ἐλπίδες κέντηται*; i. e. the hope of our god lies now in a spoonful of potion. And when *Hermodotus* in his poems^p styled *Antigonus* the son of *Phoebus*, and a god, the king well answered his flattery: *But, faith he, the groom of my close stool denies me to be so.* Astrologers approprier certain stars to kings only, and great men, in their significations; and some of them place those *regiæ stellæ*,^q as they call them, in the dodecatemories only of *Taurus*, *Leo*, *Scorpio*, and *Aquarius*; others otherwise. They have delivered also, that every king^r hath a singular star for the ruler of his royal life, common persons having only the mixtures of several influences, according to their genethliack figures.

I note it here as it touches their acceſſion of ſpecial and a kind of holy honour to princes. Regard it at your pleaſure; if you will, but as I, then read it for a relation, but alſo laugh at it.

Fol. 161. No. 57. Which by tranſpoſition of letters, is even the ſame with the *Greek* and *Latin* *elephas*.

Fol. eod. No. 58. But, under favour, was not the old *Mooriſh* the ſame with *Punick* or *Hebrew*? Good authority^s tells us, that in the *Tingitana Mauritania*, where the now *Bar-*

bary is, at *Tingis*, were two white columns of ſtone erected antiently with an inſcription in *Phoenician* letters (they were, ſome ſay, very near the *Ionick* or *Greek*, and *Herodotus* expreſſly affirms ſo, which had ſeen both kinds) to this effect: *We are ſled from the preſence of Joſuah Ben-Nun the ſpoiler.* Than which, what can more apparently ſhew the *Moors* at firſt to have had their immediate original out of *Canaan* where *Hebrew* was the language?

Fol. 162. No. 59. A too daring conceit, and taſting ill of grammatical arrogance!

Fol. 165. No. 60. Theſe two of *Cæſar* and *Augustus* continued in their ſucceſſors, and do at this day.

Fol. 166. No. 61. The ſame perhaps which *Herodotus* calls *Apries*, and^u *Shiſac*, the ſame with *Seſoſtris*, *Seſoſis*, or *Seſonchoſis*. But the reaſon of that difference, upon anothers credit (I will not warrant it) thus take. Hence is it (I interpret to you *Joſephus* y his words) that *Herodotus* *Halicarnenſeus*, when he tells of c c c x x x. Egyptian kings ſucceeding after *Menis* that built *Memphis*, ſpeaks not of their names, becauſe they were all called x Pharaohs. For when after them a woman had the crown, he names her *Nicaulé*, becauſe that of Pharaoh was only for males, not for feminine capacity; wherefore it was requiſite to give her a ſpecial name.

Fol. eod. No. 62. Underſtand, by *Pharaoh*, without addition, and that, after him, that woman came to *Solomon*, ſhe then being queen of *Egypt* and *Ethiop*. For her being queen of *Ethiop* and *Egypt*, it will perhaps be more hardly juſtifiable, than the ſuppoſition of that queen whom *Herodotus* remembers to be coetaneal with *Solomon*. The queen of *Saba*, methinks, might beſt be referred to the *Sabæans* in *Arabia Felix*. But, for that point, ſee eſpecially *Luis de Vretta* his *Ethiopick* hiſtory in *Spaniſh*, lately publiſhed. Neither is *Herodotus* his queen named *Nicaulé*, but *Nitocris*. And, I am much deceived, if that *Moeris*, which he remembers there in his *Euterpe*, be not one of thoſe c c c x x x. whoſe names he rather omits becauſe of their want of memorable acts, than for *Joſephus* his reaſon, as the ſtory eaſily perſwades.

Fol. 167. No. 63. But, as fooliſhy, called *Phe-ludianus* in the tranſlation of *Haly*, inſtead of *Peluſiæus*.

Fol. eod. No. 64. Which withal convinces a piece of^z *Apocrypha*, where *Haman* is called a *Macedonian*, in the letters of *Artaxerxes*. Unleſs you take it that *Artaxerxes* (*Abasuerus*) living eaſtward in *Suſa* of *Persia*, might call the more weſtern, but far diſtant, parts of *Asia*, by the name of *Macedon*, as the *Grecians* did the weſtern *Europeans*, *Celts*, and as the *Conſtanti-nopolitans* now do, *Franks*, or *Latins*; whereas thoſe names in truth are of much narrower comprehension. If *Artaxerxes's* letters had been

^k Anna Comnena Alexiad. 3.

^l Elian. var. hiſt. 9. cap. 37.

^m Polog. adverſ. Mahomet. 2.

ⁿ 102. ^o 2 Paralip. c. 11.

^p Abrah. Ben-David in cabalâ.

^q Plutarch. lib. de ſiſid. & Ofiride.

^r Procopius de Bell. Vandalic. 2.

^s Archaeolog. lib. 3. cap. 2.

^u Agell. lib. 9. cap. 2.

^v Firmicus mathef. 6. cap. 1.

^w Terpſichore. & de hijs videas Joſ. Scnlig. ad Eufebium pag.

^x Vapavâ 555.

^y Georgieutz de cerem. Turcar.

^z Apud Canticuzen. A.

^{aa} Apoc. Eſth. cap. 16. com. 8.

written after *Alexander's* conquests, that interpretation might have been permitted the better. For since his time, its well known that the western *Asia* and *Greece*, or *Macedon*, are names confounded. The author of the first of the *Maccabees*, cap. 1. says that *Alexander* overcame *Darius* king of the *Medes* and *Persians*, καὶ ἐβασίλευσεν αὐτὸν αὐτὸς πρότερον ἐπὶ τὴν Ἑλλάδα i. e. and reigned first in his stead in Greece. All men know, *Darius* reigned not in any *European Greece*, therefore *Asia* may be understood. For after *Alexander's* dominion there, being a *Greek*, and his leaving it to *Grecians* or *Macedonians* (to this purpose, betwixt them, is no difference) it became denominated from the rulers country. And hence may that in *St. Mark*, cap. VIII. be best understood; where a woman is affirmed to be Ἑλλήως Σύρο-Φοινίκισσα i. e. a *Græcian* a *Syrophœnician*; as if the evangelist had said, of the western part of *Asia*, a *Syrophœnician*. And in the ^a *Hebrew* story of later times in i. e. *Greece* is often used for *Syria*. Yet how this later use can save that of *Esthers* apocrypha I conceive not; unless it be supposed that it being written in a newer age, the words of the time were inserted. The place rather may be thought corrupted: But this, out of the way.

Fol. 168. No. 65. And the princes of the *Hagaren*^b *Arabians* had the common name of *Aræta*.

Fol. 170. No. 66. He is also called the eldest son of the church, filz aîné de l'esglise, which came to him, it seems, from that his predecessors were emperors. For the emperor ^c was accounted major filius ecclesiæ, the king of *France*, filius minor, and of *England*, filius tertius and adoptivus. Of these and particular messages to him, in proof hereof, and such like, his own subjects *Du Haillan*, *Hierom Bignon*, *Claude Fanchet*, *Du Tillet* and others, have more.

Fol. 171. No. 67. Defensorem appellans ecclesiæ, which is the same with defender of the faith. And one, in his ^c speech to *Henry VIII.* about holy wars to be undertaken against *Mahumædans*, hath, tu non frustra, divino inspirante spiritu, hunc & talem titulum quem rex nullus habet, adeptus es, ut christianæ fidei defensor scribaris, tenearis, & sis.

Fol. 178. No. 68. And in the old *Roman* provincial, a catalogue of kings, is, expressing rex Castellæ, rex Legionis, rex Portugalensis, rex Aragoniæ, with divers others of other territories, and then REX CATHOLICUS by that general name. The provincial was written, I am sure my copy was, before *Alexander VI.* yet I cannot understand who is there meant by catholicus, except their king of *Astures*, whose dynasty was joined about 1100. with *Castile*. For *Castile*, *Leon*, *Portugal*, and *Aragon* are reckoned beside, and that *Alfonso* about 1000. had the *Asturian* kingdom, and to him, most refer the original of catholicus.

Fol. eod. No. 69. Puellæ pater, he was father to *Joan* wife of *Philip* archduke of *Austria*.

Fol. 179. No. 70. Which held part of his empire with *Alexander*, about 1000. and was son to *Leo VI.*

Fol. eod. No. 71. Φιλόχρῆσι καὶ Πορφυρογένιτο βασιλεῖς Ῥωμαίων.

Fol. eod. No. 72. Quid sit ὅτι τὸ Καννιδεύηαι inter doctos satis constat. Maxime sane dignitatis officium fuisse liquet, & a magno constantulo secundum: tametsi locum ejus ignotum tradit *Georg. Codinus*; ad quem consulas *Fr. Junium*. Sed *Gregentij verba*, *Mcurfio citata*, perpendas, & cancellarium fuisse forte non injuria dixeris. Si de loco testimonium quaeris, adi *Juris Græco-Romani lib. 2. p. 184. v. Radevic. de gest. Frederic. 1. lib. 1. cap. 47.*

Fol. eod. No. 73. Who this *Camaterus* was, or to what emperor he wrote, I confess I cannot tell.

Fol. eod. No. 74. Wrote her fathers acts and affairs of war and state, in the later and corrupted idiom of the *Greeks*. Her copies being very corrupt and maimed.

Fol. 180. No. 75. *Cæion. Posthum. in epistola apud Jul. Capitolin. in Clod. Albino; filius mihi natus est, ita candidus statim toto corpore, ut linteamen, quo exceptus est, vinceret.*

Fol. eod. No. 76. And however it be supposed that the *Phœnician Hercules* first finding out the pleasing colour of purple, by the dye of his dogs mouth, that had bitten the fish, whence it is, gratified his sweet-heart with it; yet a tradition is amongst the *Grecians*, that he presented it to the king of *Phœnicia*; who, by edict, prohibited all but himself, to wear the colour, whence the beginning of it as proper to greatness, our scarlet being now its successor, is derived.

Fol. 182. No. 77. Thus, methinks, those things concur as it were to make up on both sides, that truth, at which learned men have been very purblind. And, by likelihood, how should they fitter have a special tongue for their writings and holy ceremonies, utterly differing from their vulgar, than by being transplanted out of some other nation, and bringing it thither with them? There being in it also a mixture of *Hebrew*, *Chaldean* & *Arabick*; but it is by them, called *Chaldee*, whereupon *Zaga Zabo* faith, that *Helen*, one of their empresses, wrote two books of divinity in *Chaldee*; and tells us furthermore, that their prince, &c.

Fol. 183. No. 78. I cannot but prefer the testimony of *Zaga Zabo* an *Ethiopian* priest, which in this, could not deceive.

Fol. eod. No. 79. Where now the great *cham* or *chan* of *Cathay* hath his dominion.

Fol. eod. No. 80. And, from this *Cinchis*, the *Tartarian* monarchy hath its original. And some more particulars of it you have in the life of *S. Lewis of France*, written by *De Iowville*, a noble baron of *France*, that was with him in the holy wars. He calls him in his *French* prebtre *Iehan*.

^a J. Drus, ad *Hafinon*, cap. 1. & præterit. 2.

^c Camden, in reliq.

^d Jo. Faber orat. habit. Londini ad reg.

^b Jos. Scalig. emendat. temp. lib. 2. vide 2. Machab. cap. 5. com. 8.

& proceres.

^e De administrando Rom. Imp. cap. 45. filium item Romanum in libri titulo hoc nomine compellat.

^f Mich. Glycas annal. par. 2. cap. de turris extructione.

Fol. 183. No. 81. Being a kind of christian, as *Beldigian* is also.

Fol. eod. No. 82. Doubtless the community of sound betwixt *prestigiani*, *presbyter*, and *preciosian*, was a great cause of this error, which, until the *Portugals* further acquaintance with the *Ethiopians*, always possessed *Europe*.

Fol. 184. No. 83. What the *Beldigian* uses. I will only add one example out of *Beldigian David* his letters to ^o pope *Clement VII.* in *Latin* thus: *In nomine Dei &c. has literas is ego rex mitto, cujus nomen leones venerantur, & Dei gratia vocor athani tinghil* (that is, the frankincense of the Virgin) *filius regis David, filius Solomonis, filius de manu Mariae, filius Nau per carnem, filius sanctorum Petri & Pauli per gratiam, pax sit tibi jussu domine, &c.* The like is in divers letters thence to the kings of *Portugal*.

Fol. 185. No. 84. And the *Turkish*, which is but *Tartarian*, interprets prince by *chan*, not *cham*.

Fol. eod. No. 85. *Kara Han* in *R. Zaccuth*.

Fol. eod. No. 86. And one is called *Chiarthan*, which I doubt not but should be *Chiar* or *Car chan*. So in *Froissart*, you have *Lamora-baguin*, plainly for *Almurath chan*, and, in *de l'ouville*, *Barbaquan*, * emperor of *Persia*, whose last termination is perhaps this *chan*.

Fol. eod. No. 87. Unless perhaps in bold derivation it might be fetched from the *Turkish* word ^h *guzel*, i. e. *fair*. For why might not one guess, that *gylas* may come from some such an etymon, seeing that *carchan* is *cara-chan* i. e. *black prince* or *lord* in that language, as all agree. *Fair*, as well as *black*, might denominate. Yet, of it I dare put no assertion. There was a large territory, when those *Turks* came, called ⁱ *cara-Cathay* i. e. *black Cathay*. But I cannot, out of that, see reason for the name of *cara-chan*. Why might not it interpret *praefectus urbis*? a place of high note in the old *Roman* state. For in that *Sarmatian* or *Scythian*, mixed with *Turkish*, language, which held largest territories in *Asia*, *car*, or *carm*, (as in our *British*, *caer*, and in *Hebrew*, *kiriath*) signified a city, if you believe the testimony of a later ^k *Grecian*, telling us that *Macotis*, the now *mar delle Zabache*, is called in *Scythian*, *Carpaluc*, i. e. *the city of fishes*, and thus expressing it in his politick verse:

Τὸ κάρμ γὰρ πόλις Σκυθικῆς, τὸ δὲ παλὸν ἰχθυῖνες.

i. e. *karm*, in *Scythian*, is a city, and *paluc*, fishes. Indeed the *Turks* at this day call a city *scheber*, which is near *car*. But this conceit hardly holds. You know *Pliny* ¹ teaches, that the *Scythians* called it *Temerinda*, quod significat, faith he, *matrem maris*; and at this day the *Turks* name the *mare Maggior*, the old *pontus Euxinus*, next to the *mare delle Zabache*,

Caradinizi, i. e. *the black sea*, which perhaps, being so in in *Tzetzes* his time, may help justify the name of *Carpaluc*, in or near *delle Zabach*. But in these and the like, till I can truly instruct myself, I remain a sceptick.

Fol. 186. No. 88. As if he had said, the king or prince of *Chazaria*.

Fol. eod. No. 89. The word is rather *Tartarian*, than *Sclavonick*; although I see great men say it is *Windish*, that is, *Sclavonick*. But those tongues are much mixed doubtless with each other.

Fol. 187. No. 90. And *Simocatta* remembers more antiently a prince of those parts which they used to call ^m *Taisan*, that is, (take it upon his credit) *the son of God*. In *Turkish* or *Tartarian*, I think *Tangeroglan* is the same.

Fol. eod. No. 91. This *Bagded* is not *Babylon*, as many erroneously think, but the old ⁿ *Seleucia*, seated near the confluence of *Euphrates* and *Tygris*, new built by *Abugepher Almantzor*, caliph there, about DCLX. after our Saviour's birth; and by the doctrine of triangles, if *Ptolomy* delivers their longitudes and latitudes right, making *Babylon* long. 79. lat. 35. and *Seleucia* long. 79. *scrup.* 20. lat. 35. *scrup.* 40. then is the old *Babylon* and this *Bagded* distant about 44 *English* miles; if you put near 60 of our miles to every degree of latitude. But *Benjamin Ben-Iona*, who saw and observed them both, says they are distant but 30 miles. Whilst the caliphate remained undivided, this was the supreme and sole title of him, which as successor to *Mahumed*, had dominion over *Syria*, *Assyria*, *Arabia*, *Egypt*, *Africk*, and *Persia*. Afterward about the year of *Christ* DCCCLXVIII. *Syria* and *Egypt* was taken from the caliph of *Bagded*, by ^o *Achmad Ben-Tolon*, assuming to himself the dignity of caliph of *Egypt*. The chief caliph's amirs also, and lieutenants, constituted in *Africk*, revolting took the name; and those which in *Spain* about *Justinian Rhinotmetus* his time, planted themselves, as it seems, likewise. Between CIO.CC.XL and LX, the caliphate in *Bagded* and *Egypt* ended. That of *Bagded* ended in *Mushtaitzem*, when those numerous armies of *Tartars*, out of whom the *Turks* are, over-ran most part of *Asia*. And the *Mamulechs* (that is, a kind of *equesteris ordo*, or military tenants or servants of state; as the *janizaries* in *Turkey*, or the *timariots*) got the supremacy in *Egypt*. An old monk, speaking of the *Tartars* ^p victories over the *Saracens*, *Arabians*, and the rest of *Asia* under the caliphate, says, *fatigue sunt eisdem Tartaris multitudo gentium in tributum, soldani videlicet, admirabiles, & principes, etiam caliphi*. Where he comprehends three of their special titles, although somewhat mistaking in one, and therefore the rather I added his words.

Fol. 189. No. 92. Since the *Tartarian* state began.

^o Damian a Goes.

^h Verum & aggeres militares, idiomate illo orientali, *barbicanæ* dictæ, unde forsitan illud nomen. *Al-*

^h bert. Aquent. hist. Hierosolym. 6. cap. 10.

^k Jo. Tzetzes chiland 8. cap. 224. floruit sub Eman. Comneno, circa 1170.

¹ Hist. nat. 6. cap. 7.

^m Et

ⁿ Nicéphor. Callist. hist. ecclesiast. lib. 18. cap. 30.

^o Geograph. Arab. ap. Scalig. Can. Ifagor. lib. 3. & *Plin.* lib. 5. cap. 26.

^p Abrah. Zaccuth. in chron. Cæterum de primo apud Aegyptios chalipha consulendus Will. Arch. Tyrius hist. eccles. 19. cap. 19, &

^q & Jacob. de Vitruaco, lib. 1. cap. 8.

^r Matth. Paris, pag. 1278.

Fol. cod. No. 93. And used, and in the very infancy of their rule was affected by them. It is justified by this imperfect title of *Orchan Giazî*, son to the first *Orhoman*, his letters to the states of the ⁹ *Saracens* in *Africk* and *Spain*, for their invasion of the christian *Spain*, written about *MDCCCXL*, and translated by a captive *Saracen* into *Latin*, and thence into *Spanish*, and afterward into *French*, and sent, in certain letters of state-intelligence, to our king *Ed. III.* I will not alter a letter otherwise than my ms. author directs me. *De moy GOLDIFA, vn ley EXERIF, SAVDAN, seignior sages, fort & puissant seignior de la mesen de Mek du seint hauteße, & en la sue saint vertu fesant justices hauts & basses, constreignant sur toux constreignants, seignior du raim di Turkey & de Percyce, retenour des terres de Hermenye, seignior de la dobbie & de les dobbles de la mere mervailouse, perceinor de les febles ore aantz en la seint ley Mahomet, seignior de la fort espee de Elias & de David que tua*—my book instructs me no further, but is here torn. But without doubt, that *goldifa* is but *calipha*. How easily the difference comes, any man may see. I have faithfully transcribed it, but confess I understand not all the words in it. The matter is apparent.

Fol. 190. No. 94. Idem est quod Iariffe in litt. imperatoris Maroci, Hispanice editis ab Hackluito, tom. 2. part. 2. pag. 118, & 119.

Fol. cod. No. 95. The word interprets *high* or *noble*. The late published *lexicon* thus:

شريف *Sheriphban, celsus, illustris, inclutus, nobilis, augustus.*

Fol. 192. No. 96. And, as in *Rome*, the salutations were by *domine*; so in *Turkey* they say *sellam aleich sultann*, i. e. *peace be to you sir*, as *Georgivitz* delivers.

Fol. cod. No. 97. The *Latins* have it *saladinus* sometimes.

Fol. cod. No. 98. In letters lately sent from *Achmet*, the now grand signior, to the states of the *Low Countries*, he is only stiled *sultan Achmet cham*; as the *English* copy speaks, and in their coins the attribute of honour is *sultan* only. But most commonly their titles were wont to be exceeding copious of attributes, with which, or the like, they now use to over-load those princes to whom they write. To *Selim* the first his statue, in his son *Solyman's* bed-chamber was added [†] an inscription, thus expressed in *Latin*, *Soldanus Selimus Ottomanus, rex regum, dominus omnium dominorum, princeps omnium principum, filius & nepos Dei*. But *sultan* is not proper solely to the grand signior. As most of the other names, and the like in other states, it is communicated.

Fol. 193. No. 99. Rex orthodoxorum, or fidelium.

Fol. 194. No. 100. Φορών καὶ τὸ κατὰ δια πανδιον εἰς τὸ τεράχλον αὐτῆς δίκην μαριανίου, λέγει δὲ αὐτὸν εἶναι διὰ τὴν γένεσιν τῆς Ἀλῆμ. i. e. and called himself *Amermounnes*, and wore the alcoran about his neck, with little plates (so I interpret it) like a chain, and supposed himself descended from *Alem*. Where note that all the *Mahumedan* princes, revolting from the see of the first and chief caliph, which was at *Bagded*, refer themselves to *Alem* or *Ali Mahumed's* son-in-law. So did those in *Egypt* and *Africk*; where they were called *Phatemitis*, from *Phateme*, *Mahumed's* daughter, married to *Alem*. And this hanging the alcoran about his neck, was a very emblem of his assumed name; the orthodoxal religion of them, if among them any religion may be laid to be, having its chief root in the alcoran, although beside they respect the pentateuch, which they call [†] *mussalkittabi*; (out of which divers relations, but most absurdly connexed, are inserted in their alcoran) and the new testament also; affirming that our saviour was a great prophet, and that he promised in it to send his prophet *Mahumed*, (O blasphemy!) but the christians, the *gawrlar* in their language, ἡεβαλον αὐτὸ διὰ τὴν εὐαγγελίαν φθορίζοντες, as my [†] author says, i. e. *in spite have taken that out of the gospel*, wherein they say *Mahumed's* name was once written, as likewise on the right hand of the throne of the almighty. But there, [†] they say, he is called *Achmet*, and in paradise *Abultrazim*, and on earth only *Mahumed*. And in their dates, sometimes they use the year of *Jesus*, as they call it, as well as of their ^{*} *begira*, i. e. *Mahumed's* flight out of *Mecca*, in *MDCCII*. of our saviour. So I have seen letters to the late queen *Elizabeth*, of most happy memory, dated *MDCCCXVIII*, of *Mahumed*, and *MDXC* of *Jesus*. And in a letter in *Italian*, from the sultan *Amurad's* chief wife to queen *Elizabeth*, the [†] year of *MDII del propheta*, i. e. of *Mahumed*, and *di Jesu* *MDXCIV*. So in the [†] league betwixt *Rodulph II.* and *Amurad* the third. Remember they use lunar years, as the old *Arabians* did, and that their *epocha* is in *July*; otherwise you may doubt of the concurrence of those numbers. And the *Almunens*, that is true *Mahumedans*, are, beside their general profession, so superstitiously addicted to that foppish volume, the *alcoran*, that in every action almost they undertake, of great or slight nature, they use the formal beginning of the *suareths* or *azoars*, i. e. the chapters of it. Of those *azoars*, are in their books *cxiv* only; the translations amongst us being divided into *cxiv*. but after the *vi*, which is in the *Latin* the *xvi*, agreeing in that point with the original. Every of those *azoars* begin with *Besemi Allabi alrhelmeni alrhehimi*, i. e. *In nomine Dei misericordis miserantis*, which they solemnly speak. And the king of *Morocco* puts it in the beginning of his letters most commonly, as those

⁹ Adam Myrmuth. chronie. Angl. ms.

[†] Lonicer. chronie. tom. 1. lib. 1.

[†] The writings of Moses. Vide Jac. de Vitriaco

li. 1. cap. 6. & Oliver. Scholastic. de captione Damiatæ.

[†] Cantacuzen. apolog. xxi. § Μαριανη. 4. Sampfat. Perf. in epist. Meletio.

& Alcoran. azoar. 71.

[†] Doctr. Machumet.

^{*} Hegir est δῆλωμος, five persecutio, atque in hac re dictum, quali religionis

gratia fugisset Mahumed.

[†] Ap. Hackluit. part. 2. pag. 311.

[†] Waser. de antiq. nummis. lib. 2.

^{*} Arab. vero qui

Christo nomen dederunt, libros suos a nomine Dei Patris, Filii, & S. S. semper auficantur. Uti manuscripti codices veterum monachorum, affix principio sancta Maria meo, plerumque fronte gerunt.

examples, which I have seen, justify. *In omni operis principio*, saith *Georgivitz* in the person of a *Turkish Mahumedan*, *ubique utimur nos musulmani istis^b tribus verbis; cum asseimus mensae ut edamus haec praemittimus verba: cum abluimus manus, euntes ad orationem, & caetera membra corporis. Insuper peracta lotionem ter repetendo haec tria verba, aqua aspergimus capita, dicendo bi sem allah elrahmane elraoahim. Georgivitz* so expresses it, and makes the last word signify *spiritus eorum*, wherein he was much deceived, although indeed *raohaim* might in our characters and pronunciation be understood so, and the *Arabick* in this passage might endure to have it so by us written. But in the original, it is apparent, no such construction can be. For the titles of the *azoars*, which I saw first in a most neat and antiently written *Alcoran*, remaining in that famous *Bodleian* library in *Oxford*, are thus in *Arabisin*

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ where any man which hath tasted these kind of letters, may see that the last word hath a radical, *mim*, which is not in *ruach*, signifying a *spirit*. The three words have over the *alphs*, their point *vashtu*, which some *Arabians* superstitiously observe, as a token denoting that so many words concurring as have that point, are to be pronounced with one breath; which, they say, must be done although a man stifles himself about it. But this, by the way. This *amerelmumenin*, is plainly interpreted in that of the *Tartar Haoloh*, so some call him, to the last *caliph* in *Bagded*, remembered by *Haithon the Armenian*. *Tunc dixit Haolonus calipho: Tu diceris doctor omnium credentium, in falsa secta Mahumeti.*

Fol. eod. No. 101. A strange design! but the *amir* there told the ambassadors, that he lately had been reading *S. Paul's* epistles, where he found many things which liked him; only this, he much disliked *S. Paul*, for that he followed not that religion under which he was born. And of that also in *King Johns* request, he took a very ill conceit, affirming, that if he had been without a religion, of all other he would soonest have embraced christianity, but that every man should live in that law and religion under which he was born. And so discharged them.

Fol. eod. No. 102. Who was wont to interpret their letters to the *United Provinces*, instructs us; which is also to be seen in some of *Mully Hamets* letters, translated into *Spanish*, and^c published.

Fol. eod. No. 103. *Quare*, saith my author, *non attribuitur inferioris conditionis magnatibus nisi imperatoribus & regibus*. A professor of *Turkish*, turns *musulman* by *circumcised*

Fol. eod. No. 104. *Amurad* so titled himself in letters to the king of *Poland*, and so have I seen him written in letters to our queen *Elizabeth*.

Fol. 196. No. 105. Thereby having seated themselves in an empire of greater note than worth in the later times.

Fol. eod. No. 106. And there have been letters sent from this^d state in *Latin*, calling the grand signior (*Amurad III.*) *augustissime & invictissime Caesar*. Which his own countrymen by their interpreters, have also given him. And in *Sinan Bassa's* letters to queen *Elizabeth* of happy memory, *Caesarea celsitudo* is often for *sultan Amurad*.

Fol. eod. No. 107. To the two execrations, first that they might be as much dishonoured as be that for his sins goes in pilgrimage to *Mahumed*, bare-headed. Secondly, as be that had cast off his wife, and taken her again, they added this third, that if &c.

Fol. 108. No. 197. But an *African*^e expressly affirms, that in *Mahumedism* were antiently *lxxii.* sects, and now but two; that is, the *Persian*, which he calls *imamia*, named from the doctrine, it seems, delivered by *imamlar*, i. e. priests or doctors, and *Ali* was specially named *imam*, and *leshari* which those of *Africk*, *Turkey*, *Egypt*, *Spain* and *Arabia* follow. What his *leshari* is, I know not, unless those which follow *Aser Ben Cheter*, of whom *Cantacuzen* speaks, as of one of their special antient doctors, be thereby understood.

Fol. eod. No. 109. The *Turks* call it *culzum denisi*, i. e. the close or shut sea; its usually in our charts *mar de Bachu*.

Fol. 198. No. 110. I think he should rather have said *Etzenaser*.

Fol. 199. No. 111. Thinking withal, that the *Alian* or *Sophilar's* heresy, is not from that *Ali* which was *Mahumeds* son-in-law; but from *Ali Abasides*, whose genealogy you may see in him.^f In *De Ionuille* his life of *S. Lewes*, *Ali* is called always *Hely*, and uncle to *Mahumed*; and his followers, *Bedvins* which accounted all *Mahumedans*, saith he, miscreants. But the name of *sophi*, had its original in that *sbach Sophi*, who, I doubt, had some other proper name; for, *sophi*, by all likelihood, was given him with regard to his reformed profession, as the word interprets; yet^g *Haidar*, who I guess, is called *Erdebil*, or *Arduelles*, as *Iovius* or *Surius* writ him; but from the place *Erdebil*, *Arduille*, or *Ardobille*, where he, and his ancestors were *schachs*, may be affirmed the author of the sect, as it is now royal amongst them; because in his time began the king to oppose it, which opposition was the cause of *Ismael's* following greatness. What *Ramusius*

^b Bi sem n. in numero omittitur, ut quod ad contextum solummodo adhibetur. ^c Hackluit. tom. 2. part. 2. pag. 118. ^d Lit. Elizab. reg. dat. 1579. apud Hackluit. part. 2. pag. 138. Et saepius *Caesarea majestas nostra* occurrit in foedere isto inter dn. Elizab. r. & Turcarum imperatorem, quod videlicet apud eundem pag. 141. 94. v. pag. 158. & in literis *Mustaphae* *Chausij*, *Amurades* dicitur *augustissimus Caesar* pag. 171.

^e Lib. *Elfacini*. ap. *Leon. Afric.* hist. 3. Atqui meminere hic quae habet *Will. Tyrius* hist. *Hierosol.* lib. 1. cap. 4. & lib. 19. cap. 20. de *Sunni* & *Schia*, ut impressi codices loquuntur, atque eum insuper de *Ali* consulas, quin & *Ionuillanum* in vit. *S. Ludovici* cap. 30. & 57. & mira sane est inter scriptores de hoc pseudo propheta, ac de ejus sequacibus discrepantia, quam hic accuratius enucleare non est operae pretium.

^f De ijs, alij eadem affirmant. Sed an *Sophilarij* *Mahumedem* execrantur? minime certe. *Ismaelis* n. nummi inscriptio erat, *Mahumed* *reful allah* i. e. nuntius Dei. *Leuncl. Musulmanic.* lib. 16. ^g *Ismael* dicitur *یسع ۷۵ خاترا* hist. politic. *Constantinop.* a *Zygomal.* transcript.

Minadoi, Iovius, Oforius, Tarik Mirkond, and most other have of this matter at large, you may find compendiously delivered in that late work, composed by great industry out of infinite reading, by my learned and kind friend Mr. *Purchas*. Their variable discourses of this point fit not this place. That derivation, from *tzophi*, plainly however continues.

Fol. eod. No. 112. But why it should be abstained from amongst them as disgraceful, which some^b affirm, because *sophi* signifies there a beggar, I conceive not, no more than why the king of Spain or France should dislike the title of *catholick* or most *christian*. It is certain, according to our pronunciation, it signifies both *wool*, and also *choise, pure or reformed*. But *tzodki*, not *tzophi*, in their learned tongue, is a *beggar*.

Fol. eod. No. 113. Its idle to fetch it from *σοφς*, as some have done. Yet verbally it may be deduced to us from *magus*, which interprets *σοφς*, if you can believe that the old Persian kings were called *magi*, as a title proper to their majesty; which some ignorantly have thought as truth, supposing the *magi*, i. e. the *wisemen of the east* in S. *Matthew* to be kings, and that of old *Persia*. There are at this day, which would prove it and labour at it. They cite *Apuleius*^k his words: *Quippe inter prima regalia docetur, magia, nec ulli temere inter Persas concessum est magum esse, baud magis quam regnare*. He speaks of instructing the kings children, which was done by the^l *magi*, and in their profession. But, is every one with us, that a priest reads divinity to, a priest therefore? Nay, it seems the *Persian* kings never had that name or title after the death of *Prexaspes* and *Smerdis*, who *Herodotus* calls them, *Ctesias* and *Justin* otherwise, which were *magi*. For, in honour of those which freed the *Persians* from their usurped authority, an annual feast was instituted by the state, called *μαγοφονία*, i. e. the *slaughter of the magi*, in which, *μαγόν ἐδένει*^m *ἐξέστησαν ἐκ τῶν πόλεων*ⁿ i. e. it was not lawful for any of the *magi* to be seen abroad; but they all kept their houses. Could this have been, if the kings had been then *magi*? And until *Artaxares*, got the kingdom, about cc.xxx. after *Christ* under *Alexander Severus*, from *Artabanus*, the *magi* continued as contemned of the great ones, and the *μαγοφονία* was still celebrated. But *Artaxares*, so myⁿ author calls him, had before he was king, been a *magus* or priest of that kind among them. And so afterward, as it happens, till the time of *Othman Ben-Ophen*, successor of *Iezdigird*, the *magi* were again in great honour, but by no means can they be found to have reigned about our saviour's birth. This *Othman*, which others call otherwise, began in the year of salvation DC.LXXII. Indeed, for another reason, both they

and their nation might have been called so, if proper names may be translated. For from *AElam*, *אֵלַם*, the son of *Seth*, the old^o *Persians* were, and thence are the *AElamites*; *aElam* is *doctus, sagax, magus*, *σοφς*, as every man may know from S. *Luke*. *Bus Elymas*, saith the text, the *sorcerer*, for so is his name by interpretation, *withstood them*. *Ελύμας ὁ μάγος*^p; and thence, says *Glycas*, as his translation is, *Persas magos appellari lingua ipsis vernacula constat*. But *magus* or *aElam* is not so much a *sorcerer* as a *natural philosopher*, or a searcher into curiosities; not of necessity implying in it any unlawful art, although ignorant ages have used to take all for devilish invention and practise with spirits, which they understood not, as the example was in our friar *Roger Bacon*: whose works of abstruse learning, lying in the *Franciscans* library at *Oxford*, were by lubberly friars and scholars there, under the misty time of our great grandfathers, utterly despairing that ever their laziness could understand them, very learnedly, to the perpetual security of their wits quiet, fastened with long nails to the desks boards; where, being consecrate to the use of worms and moths, they were consumed. I know the *Hebrew* of S. *Matthew*, but not authentick, hath, for the *magi*, *מכשפים*: which is taken for *sorcerers*, as we now use that word, *witches*, and such like. I rather understand them *astrologers*, astrology in itself, not abused, being a most honourable art, to whom it pleased the Lord to permit such knowledge of that means of salvation, to mankind, signified, for this purpose, as some will, in *Balaam's* prophecy^p of the star arising out of *Jacob*.

Fol. 200. No. 114. And *Senigar Saa filius Saa regum omnium Persarum imperator*, is in *Benjamin Ben-Iona*, and *Vararanes* a *Persian* king, is called^q *Κερμασαα* from his being before lord or governor of *Cerma*. About CIO.LXX. after *Christ*, the *Persian* king is in *Abraham Zacuth* named *sultan Melich sa*, the same which a Greek calls^r *Μελιχᾶς*; after whose death, he says, the caliph of *Bagded Mutkadi Ben-Kaim*, at this *sultan's* wife's request, permitted his son *Mahumed* to reign. Which I the rather also note, because *Bodin*^s affirms that the caliphs permitted not the name of *dominus* to any, but themselves, having, at first, supremacy over all those parts, and speaks of a text in the *alcoran* against it, which I could never meet with. There may be some such thing perhaps in some other of those *zunars*, i. e. *counsels* or *laws*, which were after *Mahumed*, composed by the caliphs commandment at *Damascus*. But doubtless no better word for *dominus* can be than *sultan*, by which here this prince of *Persia*, under the caliphat is styled. This *sultan* is called^t *sultan Gelal eddin Melic sa*, but his pro-

^b Ap. Hackluit. navig. part. 1. fol. 397.

^k Chaldaei reges dicti Claudio in epigrammatis v. Psal. 72. com. 10. Caeterum, quo sensu reges dici possint, docebit v. cl. II. Cafaubon, exercit. 2. §. 10. in ann. Baronij.

^l Plato in Alcibiade. Nec aliter intelligo Ciceronem lib. 1. de divin. Nec quisquam rex Persarum potest esse, qui non ante magorum disciplinam scientiamque perceperat. v. Plin. lib. 30. cap. 2.

^m Herodot. in Thalia. ⁿ Agathias histor. 6. ^o Joseph. Archael. 2. cap. 7. corrigendi etiam codices illi qui i. Maccab. cap. 6. com. 1. habent, *ἐν τῷ Περσίδῳ πόλιν ἐνδεξος*. Elymais n. ipsa regio Susianae adjacens. Lege igitur *ἐν τῷ Ελύμας*, &c. atque ita Josephus, ni fallor, Archael. 12. cap. 13. emendandus. Urbs vero illa sane oppidum Charax in Elymaide ab Alexandro conditum, ut videtur, de quo Plin. lib. 6. cap. 27. vide Ptolem. geograph. 6. cap. 3. Stephan. Bizant in Elyma, & Elymaeos Susianam inhabitare ait Marcian. Heracliot. Περσιστ. 6. verum & consulendus Benjamin. Tudelen. Itinerar. pag. 78.

^p Numer. cap. 24. com. 17. ^q Agathias, hist. 4. ^r De repub. 1 cap. 9. ^s Chrysoctocces ap. Scaliger, ubi supra. Idem est, ni fallor, Malicfach apud Leon. African. hist. 3. ^t Ignat. Patriarch. Antioch. ad Scalig. quem consulas de hoc imperatore. lib. 4. de emend.

per name was *Albu Ersalan*; from whom the *Persians* have their annual account, whose root is, *A. Chr.* CIO. LXXIX. in the XIII. of our *March*, and is called the *U. Neuruz* of *gelal sultan*. *Melic*, saith *Scaliger*, *est rex, la vel scha* *Persis est nomen attributum regibus*. *Gelal* is majesty in *Arabick*, and so he turns *Melic sa gelal eddin*, into *Melic sa majestas religionis*. From this word *edin*, is the name *Aladin* in the *Ottomanick* race, which, as *Leunclaw* says, signifieth divine; but he allows not *Reineccius* conjecturing that all the *Turkish sultans* had the name of *Aladin* as a surname or title of honour. From *schah* in the *Persian* title, they have money call *schahlar*, as the *Turks* have *sultanlar*, which we call *sultanis*.

Fol. eod. No. 115. As a corollary, take here another of their titles in the middle times: *Χοσρόης βασιλῆς βασιλέων. δυναστεύοντων δεσπότης κείνου*, &c. i. e. *Chosroes king of kings, lord of potentates, lord of nations, prince of peace, saviour of men, among Gods a good and eternal man, but among men a famous God. Most glorious conqueror, rising with the sun, giving eyes to the night, noble by birth, a king that hates war, well deserving, having the* *U. Afonae* *under pay, and keeping the kingdom for the Persians. To Baram a general among the Persians, and our friend.* *Baram* having before written to *Chosroes* in almost a like fashioned stile. It was about DC. of *Christ*, under the emperor *Maurice*. It the rather is observable, because both *African* and *Asiatick* princes do yet, even as *Chosroes*, sometimes load themselves and other princes to whom they ² write, with strange, and doubtless, by their secretaries, hardly invented attributes.

Fol. 212. No. 116. It is certain that among antient *Latins*, the plural number often was for a singular person in common language; and, against rules of grammar, joined with a singular word. Not with *Accius*, *Naevius*, or *Plautus* only, but in later.

Fol. eod. No. 117. But these, not to our present purpose.

Fol. eod. No. 118. Sometimes it is a mixture of both: as in that of *Ptolemy Philopator* to his *Egyptians*, ^a *ἐγώμαι ὃ καὶ ἐγὼ αὐτὸς καὶ τὰ περὶ ἡμῶν*. i. e. *I am well myself, and so are our affairs.*

Fol. eod. No. 119. Italian, so usually *לשון* is interpreted; but questionless *לשון* was indifferently, at first, used by them for any strangers or *Gentiles* ^b country where their religion was not, having its being out of the *sigles* for *עבר ורר* i. e. *cultus alienus sive extraneus*, or idolatry, which they commonly exprefs by *לשון* in abbreviation, and sometimes *לשון*, for *secundum cultum extraneum*.

Fol. eod. dele No. 120.

Fol. 213. No. 121. They held, it seems, the

plural number not to be formally applied to any; but at least, of the greater nobility.

Fol. 214. No. 122. Yet *Ferdinand* brother to *Charles V.* and archduke of *Austria* hath it in ^c his letters to the emperor.

Fol. 216. No. 123. Neither do I conceive, why princes that want not the substance, but as it were the name of a king only, should of necessity abstain from it.

Fol. eod. No. 124. In more antient times it is familiar in the stiles of far meaner persons than supreme princes. *Rex venerabili in Christo patri J. eadem gratia Dunelmensi episcopo*; and *Gulielmo eadem gratia archiepiscopo Cantuariensi*, are amongst ^d our writs. And in the epistles of *John of Salisbury*, is, *Rogerus Dei gratia Eboracensis archiepiscopus & apostolicae sedis legatus venerabili fratri H. Dei gratia Dunelmensi episcopo*. And from *John of Salisbury* himself, *Venerabili d. & patri carissimo Willielmo Dei gratia Senonenfi archiepiscopo*.

Fol. 217. No. 125. It is frequent in the ^e characters of the archbishop of *Salzburg*, and other churchmen of meaner note in those times. And in a leidge-book of the abbey of *Malmesbury*, I have seen, *Johannes Dei gratia abbas Malmesburienfis, & ejusdem loci conventus salutem in Domino*.

Fol. 220. No. 126. As majesty was there bred of honour and reverence, so proportionably amongst men, and thence the word applied to the supreme of men. But also they used *numen imperatoris*, and *oracula Augusti*, for *edita*, and *δεσποικον* for *διαπύλου*, as if you should say, *divinitus sancimus* for *statuimus*. And before this great communicating of majesty, the emperors ^f had the attribute of *santissimus*, and such like. These beginning under heathenism, continued after christianity. Whence, when they speak of the *crimen majestatis*, they use ^g *δικακήριον* or *ἐγκλημα*. *δει κα. ποινῆς*, which may be interpreted, *a judgment, or accusation touching what is committed against a thing sanctified or sacred*.

Fol. 221. No. 127. And, howsoever that new application in *Pollio's* time was, the civilians since have referred the proper *crimen majestatis* only to the ^h emperor. So, at this day, they do by the imperials alone, as in *France* and with us, in respect of our sovereigns only. But, by their leave, it is not easily conceived how *crimen majestatis* must not be referred to princes acknowledging indeed the emperor's supremacy, but withal having all regal and imperial right in their dominions; as divers of the *German* princes have; although they abstain from this abstract in their titles, as, of the dukes of *Saxony*, *Baviera*, *Savoy*, *Lorrain*, *Ferrara*, *Florence*, *Mantua*, and such, accounting themselves as absolute as any that have but the name of duke, *Bodin* ⁱ affirms; and that they are cel-

^a Ver. Novus dies, si verbum interpreteris.

^b Italos inquit?

^c Ex literis Amuratis III. ad sereniff. Elizabeth. reg. a. 1579. datis constat. quae sunt apud Hackluit. itinerar. part. 2. pag. 137.

^d Lib. 3. Macchab.

^e Elias Thisbit in לשון

^f Fitzh. nar. Br. fol. 132. & 2 E.

^g Chronic. Richeripergent. sub ann. CIO. CI. & seq.

^h Paul. ff. de legat. 2. l. 87. §. Lucius & Scoevola ff. lib. 40. tit. 11. l. 3.

ⁱ Athaliat. tit. dei Δικαστ. 66.

^j & Glossar. vet. & sanctitas regum ap. Jul. Caes. in Tranq.

^k Wefenbech. in Paratit. & ff. ad leg. Jul. majestatis, vide & Gothofred. ad dict. tit. & ad c. eodem, l. 5.

^l De repub. 1. cap. 10.

^a Theophylact. Simocatta histor. 4. cap. 8.

^y Nonne Aufonius i. e.

^m In edit. Freheriana Sigisfundi baronis de Herbestein.

ⁿ Chronie. Richeripergent. sub ann. CIO. CI. & seq.

^o Athaliat. tit. dei Δικαστ. 66.

^p & Glossar. vet. & sanctitas regum ap. Jul. Caes. in Tranq.

^q Wefenbech. in Paratit. & ff. ad leg. Jul. majestatis, vide & Gothofred. ad dict. tit. & ad c. eodem, l. 5.

^r De repub. 1. cap. 10.

situdinis verbo contenti, aut serenitatis, quam sibi dux Venetorum tribuit.

Fol. eod. No. 128. But, as the most learned *Casaubon* observes, that must be understood of the greater *Roman* dignities beside the empire. So that then first court-flattery began to stile the dignities of the emperors favourites, and such as were of higher note, with majesty. For plainly to the emperors, as you see, it was not before unusual. And, until this time of *Trebellius*, it may be well affirmed proper only to supremacy amongst them.

Fol. 222. No. 129. And *majestas est magnitudo quaedam populi Rom. in ejus potestate & jure retinendo.* But when the sum of all things was transferred into the emperors from the people, the *crimen majestatis* became chiefly against them and their state.

Fol. eod. No. 130. But long before that, although not with the first person, yet it was attributed to them. *Sueton* reporting that *Augustus* after the civil wars would not himself, nor suffer his near kindred to call his soldiers *com-militones*, but *milites*, gives the reason; because he did think it *ambitiosus, quam aut ratio militaris, aut temporum quies, aut sua domusque suae majestas posularet.* And in *Claudius* he speaks of *levior majestati principali titulus.*

Fol. 223. No. 131. Or *Patavinitas* ^k for *Li-vy's* stile.

Fol. eod. No. 132. The occasion ^l was from this most arrogant pope his calling himself *dominus totius mundi tam in temporalibus quam in spiritualibus.*

Fol. 225. No. 133. Is *majestas tua*, divers times; and the same is there used also to pope *Adrian.* Grace, amongst us, began in the time of *Henry* the fourth; and excellent grace, as you read in the *remains*, under *Henry* the sixth. *High and mighty prince*, under *Edward* the fourth. But about those times, it was not solely proper to the king, as it seems by the concord, touching the title of the crown, betwixt *Henry* the sixth, and *Richard* duke of *York*, made in xxxix *Henry* the sixth, in parliament at *West-minster*, with this title; *Betwixt the most high and most mighty prince, Henry the sixth, king of England, and of France, and lord of Ireland, on the one party, and the right high and mighty prince Richard Plantagenet duke of York, on the other party.* And the duke of *Glocester*, under *Henry* the ^m sixth, is called *high and mighty prince*; and the duke of *Exeter*, *hault & puissant prince.* Antiently how our sovereigns were, in this kind titled, may be observed upon these examples. *Au tresnoble & treshonorable prince, & son trescher seignior si luy pleist mon-sieur Edward par la grace de Dieu roy d'Engletere, signior d'Irland, & duc d'Aquitaine, le sone Henry Percy reverence & boneurs.* In a letter ⁿ to *Edward* the first, written from *Dun-wich*; and the like in divers other records is; and there the barons of the exchequer send to the king with *nous maund a vostre hautesse, &c.*

But also in times later than *Edward* the first, titles and notes of greatness being not in that distinction or curiosity as now, some such as are with us mean, were competent to highest princes. I remember, I once saw a petition by a bishop to *Henry V.* subscribed with *your worship's headsmen.* About the same time, a treatise written of the order of the coronation, hath thus: *After this the king shall be clothed agen with other clothes, and worshipfully shall go to the auter of seynte Edwardes shyrre; and the king is there called worshipful prince.* So the monk of *Bury*, *Dan Lidgat*, speaking of *Henry* the fifth's commanding him to write the *Trojan* war, saith

The which emprise anon I gynn shall
In his worship, as for memowall.

He usually calls him *most worthy*, or *worthy*, or *noble prince*, and *sovereign lord.* And plainly *worship* is but an abstract from *worthy*, and signifies, as *estimation*, properly. To pupuld pwprieppe ry he þegen lage pyppe i. e. *To worlds worship, (i. e. in worldly estimation) he shall be in equal degree with a thane*, says a canon of *Canutus* his laws, speaking of a priest that lived free from incontinency: and in those so antient times it was a general title, but according to the person qualified. In an old *Saxon* ^o tradition of their nobility; *Then were the wisest of the people* pwprieppeþa aels be his maðe eoþl ꝛ eoþl, þegen ꝛ þeoben i. e. *worship-worthy, every one in his dignity, the earl and cheorl, thane and underthane.* So in later times, dukes and earls have had *worshipful* and *right worshipful* applied to them. An epitaph ^p is at *Warwick*, in *St. Mary's* church there, in part, thus:

Pray devoutly for the soul, whom God
affoile, of one of the most worshipful
knights, in his days, of manhood and cunning,
RICHARD ^q BEAUCHAMPE, late earl of
Warwick, lord Despenfer of Burgavenny,
and of many other great lordships, whose
body resteth here under this tomb.

And his daughter, the countess of *Shrewsbury*, was buried in *St. Faith's* under *Paul's*, with

Here, before the image of Ihesu, lieth
the worshipful and right noble lady
Margaret countess of *Shrewsbury*, &c.

But now every gentleman of better, rather richer, rank is saluted *worshipful.* And, on the other side, what now is one of our particular notes of majesty, not given to any but the supreme, I mean *sovereign, lord or lady*, hath been antiently bestowed on others. The preface and dedication of *Alexander's* life, written under *Henry* the sixth, by a *Dominican* friar thus speaks,

^k Aftinius Pollio apud Quintilian. lib. 8. cap. 1.

art. 1. & 26.

ⁿ Rot. 25 Ed. 1. in arce Londini de rebus Scotiam tangentibus memb. 4. 6. & saepius.

^p Camden. Brit. edit. Anglic. idiomatis, & in reliquiis.

^l Rolewinck in fascicul. temp. sub anno 1294.

^q Rothomagi factis concessit a. CXC. CD. XXXIX.

^o Parl. 3 Hen. VI.

^p Ap. Lambard. in per-

To my soverayn lady benigne and honozable,
Discrette, tull of wisdom, of Gloucetre duchesse,
I humble servant, thogh I be unable,
With deuoute hert with all my besynesse,
Send ioye, worlchepp, welth, pees, and stabynesse,
Betwix you and powre euere more to laste,
And so be schadowide with grace that it neuer breste.

What, that hater of monarchs, Buchanan hath in his malicious dislike of giving titles and attributes of great honour to princes, I omit, and leave him to his error, convinced by the general consent and allowance of antiquity. But touching these, it hath been questioned, which is the more both elegant and honourable to speak in the concrete or abstract. That is, whether to say *serenissime princeps a te peto*, or, *a serenitate vestra peto*. And some have thought the first form the best, because in that, the accidents and subjects are together expressed, in the other, the accidents only being the note of honour. But howsoever, for elegancy, it seems the abstract tastes, as if it were more honourable. For that quality denominates, and from it inherent in the person, is the honour given. Now, as it is inherent, and not predicated of the person, it is best expressed for it's own essence; neither is it otherwise, as logick teaches, properly in any predicament. As *album*, although in a formal signification of the thing designed, it expresses a certain *ens per se*, yet as the formal and material or connotative signification of it, is, it's *ens per accidens*, i. e. *aggregatum quid ex ijs quae diuersis praedicamentis ponuntur*. And *albedo* is the *ens per se*. Then, where the quality is, nearest to its own single essence, expressed, that is in the abstract, it seems, the person is with somewhat more honour saluted, than if it were only *connotative* as they call it. For, *vir excellentissime*, doth but *connotative*, or by way of consequent, speak *excellencia*; as indeed in every *concrete*, but in like form and by an accidental consequence, is both the *accident* and the *substance*. But this is a most frivolous disquisition, which I had not spoken to, if I had not seen it questioned.

Fol. 234. No. 134. For anointing, receive this out of the antient form of doing it. *Tunc dominus metropolitanus*, suppose other concurring ceremonies, at a coronation, past, *ungat de oleo sanctificato caput, pectus, & scapulas, ambasque compages brachiorum ipsius, ita dicendo. UNGO te in regem de oleo sanctificato in nomine patris & filij & spiritus sancti. Et dicant, Amen. Pax tibi, & cum spiritu tuo. Deinde ungat sibi manus de oleo sanctificato, ita dicendo: UNGANTUR manus istae de oleo sanctificato, unde uncti fuerunt reges & prophetae, & sicut unxit Samuel David in regem, ut sis benedictus, & constitutus rex in regno isto super populum istum, quem dominus deus tuus dedit tibi ad regendum ac gubernandum.* As it is here

expressed, every man must needs refer the original of anointing to the *Jews*; which continued, some say, amongst them from their first *Saul*, until *Hircanus*, from whom the kingdom was transferred by *Augustus* to *Herod*. And by this they interpret that of *Daniel*; the anointed shall be taken away, after the end of his weeks. But there were certain *interregna* betwixt *Saul* and *Hircanus*, of which, howsoever the anointing was, regard in this assertion must be taken. From this anointing, could not but a most honouring regard come to the prince, amongst those specially which by effusion of oil made consecrations to the almighty. *Jacob* erected the stone he had slept on in *Luz*, poured oil on the top of it, and called it *Beth-el*, i. e. *the house of God*. Whence the *Gentiles*, by all likelihood, had their *Baetulus*; and perhaps derived their anointing of stones, whereupon *Apuleius* reckons *lapis unguine delibutus* among his sacred objects. And *Arnobius* his *lubricatum lapidem & ex olivi unguine sordidatum*, wherein was comprehended both their bounds and marks of territories, which *unguento velaminibusque & coronis coronabant* (as *Siculus Flaccus* his words are) and also their other sacred trivial statues. And *Theophrastus*, in his character of superstition, remembers for a part, the pouring of oil upon anointed stones or statues in the high ways. Hence the old *Christians* also by example (saith *Theodoret*) used to anoint the shrines of their martyrs, and chancels. The *Jewish* priests consecration was with oil. And often occurs the name of the *Lord's anointed*. In our *Europe*, how sacred a material it was antiently accounted, appears to every one that hath but heard of extreme unction, and the like.

Fol. 236. No. 135. And it was long since said in our law, and applied to our kings, that *reges, sancto oleo uncti, sunt spiritualis jurisdictionis capaces*. Neither is this anointing much disproportionate to that which is delivered of a kind of initiating the old *Persian* kings, at their inauguration, with ceremonies of religion.

- Fol. 237. No. 136. *Rex Castellae non. } isti sunt*
Rex Legionis non. } conjuncti.
Rex Portugalensis non.
Rex Aragoniae non.
Rex Novargiae, (Norvagiae, it seems) non.
Rex Navarrae non.
Rex Danorum non.
Rex Boemiae non.
Rex Ungariae non.
Rex Armeniae non.
Rex Sorbiae (perhaps Scruiae) non.
Rex Cypr non.
Rex Sardiniae non.
Rex Catholicus non.
Rex Comagiae (it is likely it should be Co-
nactiae) non.

Christop. Becman, schediasm. philologic. Aristot. metaphys. 7. cap. 6. text. 21. Ordo Roman. de divin. officiis.
Decret. tit. de sacra unctione. Cedren. pag. 149. v. Casaub. exercit. 1. §. 2. & 3. adv. Baronium. Genes. cap. 28.
Damascius in vita Isidori ap. Photium. & Scalig. ad Euseb. de Baetulo consulendi. Advers. gent. lib. 1.
Minut. Faelix in Octavio. videlicet Pithaeum adv. 2. cap. 14. Quaes. 83. in Genesim. Exod. cap. 39. com. 7.
33 Ed. 111. tit. aide de roy. 107. Alex. ab. Alex. genial. diar. 1. cap. 27. Armeniae apud Rebuffum. Vide
supra No. 68.

Rex Nimianiae (Momoniae, it seems) non.

Rex Ultoniae non.

Rex Colleen non.

Et sciatis quod hodie non sunt plures reges Christianorum, nisi de novo crearentur. So are the words of my ms. copy, antiently written, which supposes, you see, but four kings honoured with unction, the *Hierosolymitan*, the *French*, *English*, and *Sicilian*, and the two emperors of the east and west.

Fol. 238. No. 137. After *rex Bohemiae* follows in that, *In Ibernâ. Catholicus. Rex Coloniensis. Comacinae. Rex Minauiæ. Menæ. Cathelinae. Ibi hodie non sunt reges, sed tota Hibernia est sub rege Angliæ.* What *Catholicus* doth there, I understand not, nor what in my copy, unless you interpret it as I have, with doubt, conjectured, where I speak of the king of *Astures*. The corruption of names is such, that you may well think, the credit of the monument, often changed and transcribed, hath been long of the decaying hand.

Fol. eod. No. 138. *Holy*, and then αἰῶς, i. e. *worthy*. Which was, it seems, the reason why the *Constantinopolitans* cried *αἰῶς phasileos Marchio* at the taking of the empire by *Baldwin* earl of *Flanders*, when they thought verily that *Boniface* marquis of *Montferrat* should have been their emperor. The marquis being then with the earl.

Fol. 241. No. 139. But no good authority will justify this. Is it likely that *Gregory of Tours* so much given to the relation of miracles, would have omitted it? One more ^k judicious, and not flattering the idle traditions of his own nation, denies, and not alone, that there were any *de la premiere liguee, oint ny sacre a Rheims, ny ailleurs*, that is, of the *Merovingian* line, which continued till about 800. of *Christ*. But it is expressly remembered in story, that *Pipin*, the first of the *Carolin* stock was anointed, *mais de la second & troisieme la plus part ont este sacrez & oints en auters lieux q' a Rheims, quoy que les archevesques de Rheims debattent ce droit appartenir a eux & a leux esglise.* By the second and third line, he means the *Carolin*, and *Capetan*; the *Carolin* succeeded the *Merovingian*. And I wonder why *Hierom Bignon* ¹ a *French* antiquary, now living, takes it so clear, that their royal unction began in *Chlovis*.

Fol. 243. No. 140. But I will not be confident that it proves unction in those times. The phrase might be used by him, as at this day an hereditary king, after his ancestors death, is said to be *rex* or *imperator salutatus*; which alludes only to the old *Roman* form of salutation in making their emperor; as we say also *in imperium evectus est*, derived from that custom of taking the designed emperors up on shields in the camp.

Fol. 244. No. 141. By *English* monks, not without sufficient cause admiring this brave prince when he came to the crown, taken also as

a designing omen of his following greatness, and that so they might speak the best and largest of what the pope did, and thereby give a special honour to their king, supposed for an unction in regem.

Fol. 246. No. 142. Then need not the *French* argue their kings honour from the celestial unction,

Unguine cum reliqui sacrentur materiali, as *Brito* says; here is as good and divine an ointment for the *English*. But I think, reader, if you can judge, you believe both alike. I relate this of our Lady, as I find it, and credit it as I do the stories of *Numa's* being instructed by *Egeria*, *Minos* or *Talus* by *Jupiter*. Presence of holiness, and particulars received from saints or angels wrought much amongst the multitude, in establishing state-greatness. Examples are obvious.

Fol. 249. No. 143. Of *ensigns* external, the chief are, CROWN or DIADEM, SCEPTER, GLOBE and CROSS; with other more particular to some only, which by the way we shall also enough touch. *Quis omnino regum*, (saith *Tertullian* upon that in *Isa. cap. 9. 5.*) *insigne potestatis suæ humero præfert, & non aut capite diadema, aut in manu sceptrum, aut aliquam propriæ vestis notam?* So you must read it, not *aliqua proprietate usus nova*, as the published books, before *Pammius* his edition, are in that place. I wonder how *Beatus Rhenanus* and *Francis de la Barre* could not see it. Compare it with the like words of the same author in his third against *Marcion*, cap. 19. and you shall see most plain reason for the correction.

For CROWNS; to speak of them and all their several antient uses, were to straggle exceedingly out of the purpose. So different are they, and far from the present matter. If you desire to know how they had place in banquets and feasts, among lovers, in sacrifices and solemnities of gentilitism, rewarding deeds both martial and mercurial, with such varieties; read the large discourses of them in *Athenæus*, *Pliny*, *Tertullian* in his *de corona militis*, *Clemens Alexandrinus*, *Agellius*, especially the diligent and learned *Pascualius*. Tradition among the *Gentiles* makes *Bacchus* the first inventor of a crown or diadem. He, they say, first made him one of ivy, the same perhaps which he gave *Ariadne*, and by example of his *Maenades* and *Mimallons* wearing such in his orgia; other priests and sacrificers crowned themselves with herbs and plants, dedicated to their several deities. *Antiquitus*, saith ⁿ *Pliny*, *nulla nisi Deo dabatur. Ob id Homerus o cœlo tantum eas, & praelio universo tribuit. Viritim vero ne in certamine quidem ulli. Feruntque primum omnium Liberum patrem imposuisse capiti suo ex edera. Postea Deorum honori sacrificantes sumpsere, victimis simul coronatis. Novissime & in sacris certaminibus usurpatae, in quibus hodie-*

¹ Gunther. hist. Constantinopolit. id est, ἅγιος βασιλεὺς Μάρχιος. i. e. sanctus rex Marchio, idem fere Tillius.

lib. 7. cap. 56.

² De l'excell. des roys livre 4.

³ Coronas Gentium Diis tributas habes apud Jerem. in epist. Baruchi. prophetiae subnexa.

^m Advers. Judæos. cap. 11.

^k Du Hailan des aff. du Fr. livre 1.

ⁿ Hist. nat. lib. 16. cap. 4. &c.

que non victori dant, sed patriam ab eo coronari pronuntiat. Inde natum ut etiam triumphaturis conferrentur in templis dicandae, mox ut ludis darentur. But in all these the honour was chiefly referred to some deity, not to the person crowned. And those set by lovers on the posts of their mistresses door, or elsewhere, were not so much to herself as to Cupid or her Genius.

Florea ferta, meum mel, & haec tibi carmina dono,
Carmina dono tibi, ferta tuo genio.

says Apuleius to his sweetheart. From the use of them in sacrifices and dances sacred to their idols, came the name ^p corona, antiently written chorona, and made Latin from ^χρῶνος (signifying the fame that ^εφαν^Θ, i. e. a crown) which they will from ^χεῖς or ^χερσῶται, i. e. the dancers or singers, and number of the solemnizing sacrificers; whereto questionless ^Ιsfidore ^q had respect in his, nomen coronae hac ex causa vocatum quod initio circum aras curreretur, atque ad imaginem circuitus vel chori est formata. Thus by antient authority, that which is in our idioms corona or crown had its original. But how a crown, except the cloth diadem, whereof presently, by that name was among the Gentiles antiently for a royal distinction, I conceive not. The rewards given in the Grecian games, Roman wars, and elsewhere, shew the contrary. Demosthenes his crown, about which so much rhetorick was spent, betwixt him and Aeschines, and that of Hippocrates^r given him at Athens for his helping their great plague, and such more seem to do as much. But Hippocrates his was of gold, and in value (^χρυσῶν χαλκῶν) DCCC.L pounds of our money; which plainly was not fit to be worn. But the value, being his reward had this name, as other examples are, and as that tribute was called ^ερανον^{ον}, which was paid to the Romans, and other states, by such as gave ^εφρον^{ον} ηγαμῶσι μῆλλον ἢ ^εφανον φίλοις, as Suidas his words are, i. e. not rather a tribute to their superiors, than a crown to their friends. And ^εφανικόν, saith he, λέγουσι πᾶν τὸ ὃν ^χρῶται λόγῳ δίδουμιον, i. e. they call ^εφανικόν (coronarum) whatever is given as a reward or benefit. And hence is it that in the embassages of foreign nations to Rome, so often occurs for presents, ^ερανοι πολλοὶ χρυσοί. And a golden crown was one special, among the rewards given by the Romans; their mural, castrensis, and naval, were of ¹ gold, and in later time the triumphal. I know some make the golden crown amongst them and the Grecians also, an old ensign royal. It might seem out of ^r Euripides his words, that amongst the Grecians it was so. He, speaking of Atrous brother to Thyestes, says,

Ὅτι ἑμματα ἔλωας ἐπέκλωσεν Θεῶ
ἔειπεν ———

which is interpreted, in the published books, cui dans coronam, destinavit Dea (satum, sive Lachesis) discordiam, which is well enough justified by Arsenius the Greek scholiast on that place interpreting ^εμματα for ^εραν^Θ. ² βασιλέων, i. e. a crown proper to kings. And Seneca^u personates Thyestes with

Hoc est vetustum Pelopeiae limen domus,
Hinc auspicari regium capiti debus
Mos est Pelasgis ———

using in his tragedies of those times the word vincula for the diadem or crown. And, of Agathocles in Egypt under the Ptolemys, ^{*} Polybius, as Perot turns him, speaking of Aristomenes the protector, hath vocato ad se Agathocle coronam auream soli ex illis qui praesentes erant imposuerat; id quod solis regibus fieri solet. But none of these proves what some learned would collect. For that of Euripides, methinks his scholiast Arsenius talks as if he could not see wood for trees: he confesses that ^εμματα signifies ^ερα, i. e. the wool that goes about the distaff, circling it as a crown; for as well wool as hempen staff was so spun. And what then can ^ελωας signify better than carding, i. e. carminans? And, the whole thus interpreted, cui, lanam carminans, nexuit Dea discordiam, well justifies the noble poet's using and continuing the known fiction of the destinies in their spinning out of mens fortunes. Nay, what could be more proper in the allusion, than to suppose her first card or pull the wool in pieces, and then make her web of discord? And, for that of Seneca, who knows not the common liberty of good poets, in not keeping themselves to the exact properties of their tragedies or comedies age, nor of the place of their scene? Though it be a great fault, yet it is an ancient one. And worthy Seneca (living in a later time, when it was known that a diadem was a note royal) hath not this example alone of that kind. Whatever Perot hath, Polybius himself proves no such thing: his words are these, ^βῆτι δῶπρον καλέσας ἔ' Αγαθοκλέα, χρυσῶν ^εφανον ἀνέδωκε μόνῳ τῷ παρόντων: ὁ τοῖς βασιλεῦσιν ἑαυτοῖς ἔδ^Θ ^δτι μόνος συχωρεῖσθαι, i. e. he invited him to a feast, and, amongst all then present, gave him only a golden crown, which by custom was allowed only to kings. Because he had a crown of gold as proper to a king at the feast, it follows not, that therefore it was an ornament royal, as it was a crown, but as it was gold. For children in philology know, that at feasts always they all sat crowned. This passage discovers, that the king had his crown of gold, and therein^y differed from the ordinary guests. The old Egyptian kings honoured their heads with images of chosen^z beasts, not gold crowns. And if Agathocles would have been like the Macedonian kings, which the story persuades enough that he would, he must have had the cloth diadem. Briefly, had the ancient heroes used any

^p Apion. ap. Athenaeum, dipnosoph. 15. ex Simonide (cujus ibi citata carmina emendatiora, vide apud If. Casaubon, in dictum locum) & Festus. ^q Origin. lib. 19. cap. 30. ^r Dogma Athen. Inter Hippocrat. epistolas. Vide quod Thucyd. hist. 2. habet de Brasida aurea corona donato, & taeniis ornato. ^s Agell. lib. 5. cap. 6. Polyb. hist. 6. alii. ^t In Oreste. ^u In Agamemnone. ^v Histor. 15. ^w Adis, si vis, Lips. ad 1. Annal. Tacit. num. 129. & Justin. lib. 18. de legatis Romanis in Aegyptum missis. ^x Diodor. Sic. biblioth. 6.

crowns, as royal notes, *Homer* would not have been silent of it. In his time, saith a learned ^a father, the *Grecians* had not use of crowns. For neither the wooers nor the delicious *Phacaces* used them. And in games, at first, the reward was of such things as were proposed (*ἔθλα* ^b) then came in use (*ἐπιχέρου* i. e.) a gathering from the spectators; thirdly, followed the casting of flowers on them (*ρυσόβολια*) and at last (*στέφανος*) the crown. Yet I believe not this whole assertion. For plainly *Homer* hath the word *στέφανος* and *στέφανος*, but to other purposes; and therefore, as the learned ^c have observed, knew what a crown, as it was used, was. For a word in its proper sense always is in being, before it can be made a metaphor. And in the heroick times, good authority expressly tells us of crowns in their kind. *Hesiod* says, that the *horæ* — *ἑρὸν ἄνθεα εἰσενέουσιν*, i. e. crowned with spring flowers *Pandora*. And *Hesiod* is thought, by some, antienter than *Homer*. But what is more obvious than the olive brought out of the northern *Scythia* by *Hercules*, and planted in the *Pantheon* at *Elis*, whereof, the institution was that, all crowns should be made for victors in the ^d *Olympians*? This they especially called ^e *καλλιτέραν*, that is, whose leaves and twigs were fit to make a fair crown. The fabulous referring of the original crowns to *Bacchus*, or *Prometheus*, shew how antient their use was. *Nonnulli*, saith *Hyginus*, in his poetical astronomy, of *Prometheus*, coronam habuisse dixerunt, ut se victorem impune peccasse aiceret. Itaque homines in maxima laetitia atque coronas habere constituerunt. Id in exercitationibus & conviviiis perspicere licebit. But to conclude the purposed point; remember the relation of *Diogenes Epicureius*: He requested *Alexander* to ^f give him the honour of wearing a golden crown with *Virtue's* picture on it, whose priest he professed himself; *Alexander* did so, and *Diogenes* presently gave it to his sweetheart *Lysidos*, and she, without exception, wore it. The golden crown (especially in some part of *Asia*, as *Casaubon* observes) was an ensign of priesthood, and in that regard desired by *Diogenes* professing to be priest to *Virtue*. What thought was of it amongst them as it respected royalty? These testimonies as well prove, that crowns in the *Grecian* state were not antiently notes of a king, as also give light to answer other like occurring arguments against it. For many are, but all, I think, of such kind, as those before remembered.

Fol. 257. No. 142. Used only laurel or gold crowns, which were never thought of or suspected for, nor were royal. Liberty of bearing a laurel continually, was first granted to *Julius Caesar*, by reason of his baldness. After *Augustus*, at every imperial triumph, the laurel was taken only ^g from the plant of that kind,

which *Livia Drusilla* took from the white hen brought into her lap by the eagle, and set at *ad gallinas*, and which was noted to wither away at the end of the *Julian* family in *Nero*, as the progeny of the hen did likewise. But the succeeding emperors used not always to bear it. *Tiberium principem*, (saith *Pliny*) *tonante coelo coronari ea solitum ferunt, contra fulminum metus*. Then always he wore it not. Remember here that antiquity held the laurel to be exempt from all danger of *Jove's* thunderbolts. *Plutarch* and *Diogenes*, say, that *Romulus* was crowned with laurel as in triumph after his victories. If he were, it was not as he was king, but as he triumphed. But if all their triumphal ornaments came from the *Tuscans*, to *Targ. Priscus*, how then had *Romulus* any of them? The truth of those times I think as uncertain, as any story whatsoever. But most probable and according to what is already delivered, saith *Justin* ^h of those kings, *per ea adhuc tempora reges hastas pro diademat habebant; quas Graeci sceptrum dixerunt*. Nam *ab origine rerum pro dijs immortalibus, veteres hastas colere, ob cujus religionis memoriam adhuc deorum simulacris hastae adduntur*. Which well agrees with their name *Quirinus*, and *Quirites*, fetched from *Curis* in the *Sabin* tongue, signifying *hastæ*, or a *scepter*. *Curis Sabine hastæ, saith Festus, unde Romulus Quirinus quæ eam ferebat, est dictus*.

Fol. 261. No. 143. *Justinian* speaks of his imperial crown by the name of *insulæ*, which is the same as *fascia* or *diadema* ⁱ in the proper and first sense. His words ^k to *Florus* are these. *Quæ ergo pro augusto honore & cautela res accipientium, nostra statuit æternitas, hæc tam sublimitas tua, quam caeteri omnes judices nostri observare festinent, ex eo tempore valitura, quo nutu divino imperiales suscepimus insulas*. But the *insulæ* were, it seems, those strings or bands, whereby their crowns, made of precious stones and gold in divers fashions, were tied on. For, as the ^l pictures of *Zeno*, *Justinian*, *Valentinian*, *Anastasius*, *Phocas*, *Constantin*, and divers others, which we have out of their coins, discover, their crowns and diadems were very different in form, but all of them tied behind with fillets, as it seems, going round the head, as the crown or diadem; as it is in that of *Heraclius* more especially; which, being of gold, and raised with variety of conick plates, and the outermost circle not much differing from our dukes crowns, but closed on the top more like what we call imperial, is tied together with a kind of a riband behind. Hence is it that *George Curapalates* said, that what they of late called *σῆμα*, was wont to be *διαδήμα*, i. e. *vinculum*, which word they left off, when the fashion of tying it with ribands ended. Their pictures will better instruct you

^a Clem. Alex. paedagog. 2. cap. 8.

^c Casaubon. animad. in Athen. 1. cap. 16.

^b Pindar. Olymp. 3. Pausanias Eliac. α. & v. scholiast. ad Eurip. Hecubam.

^d Scholiast. Aristoph. ad Plautum. locus vero ille Aristotelis, scholiasti citatus, est in *ἀντιφ. δάμναρ*. unde & legendum *ἐν πανθὶ*, non *παντὶ* quod depravatum apud scholiastem, uti & Suidas in *Κορίω* scripsit. Nec, utrum e Pantheo an ex Hyperboreis, planta fuerit translata, hic disputandum est.

^e Athenæus dipnos. lib. 4.

^f Servius ad AEneid. 10.

^g C. de quadrienn. præscript. l. 3. bene.

^h Xiphilin. in Nerone. Plin. lib. 15. cap. 30. Sueton. in Galba.

ⁱ Hist. 43.

^j Lips. de cruc. 3. cap. 16. verum & qui numismata edide-

in the several forms, than my expressing can. But as the *Asiaticks* antiently, and *Macedonian* kings had their cloth fillets, as the *Turkish* and *Mahometan* princes at this day, their rich *mitre* or *tulipant*; so from the beginning of christianity in *European* supreme kings and emperors, the gold crowns in those various shapes with which they are described, have been in use. And their differences now are of close, and arched, and open, and the like. But what is before transcribed out of the *Roman provincial*, is here to be remembered; and, that the pope in giving the kingdoms of *Sardinia*^m and *Corsica* to the king of *Aragon*, used the words of *per capam auream realiter investimus*. But all supreme monarchs, in later times, of right use arched crowns, and as truly imperial as the emperors, but differing in compofure. For, the emperors is thus described byⁿ one who saw it. *Differt forma coronae imperialis ab alijs: nam ea sub se tiaram quandam habet in modum fere episcopalis mitrae, humiliorem tamen magis apertam & minus acutam: estque ejus apertura a fronte, non ab aure, & semicirculum habet per ipsam aperturam aureum, in cujus summitate crux parvula eminet. Eam tiaram aliae coronae non habent.* And the bearing, or the top of the arch, in the emperors, and in our sovereigns, is a *mound* and a *cross*; in that of the *French* king, a *fleur-de-lis*, on the pope's a *cross*. For he, as a temporal prince, also bears his crown upon grant pretended from *Constantine*^o the great. The words of the donation, as it is offered to the world's sight, are these: *In praesentiarum tradimus primum quidem Lateranense nostrri regni palatium, quod omnibus in orbe terrarum palatiis praefertur & eminet; deinceps diadema id est coronam capitis nostrri.* But the credit of this donation is before^p touched. And the monks have affirmed, that^q the pope's crown, called *regnum*, was that which the emperor *Anastasius* sent for a present to *Chlovis*, the first christian king of *France*, and that *Chlovis* then bestowed it on the pope. The general consent amongst christian princes in wearing them of gold, proceeded from the kings of *Gods* chosen people, who using crowns of gold and precious stones, *οι χριστοι*, saith an antient^r father, *τον Χριστον ἐπὶ τῆς κεφαλῆς οὐμβολικῶς ἐπιφύεροντο*. i. e. being anointed, bare *Christ* symbolically on their head. He alludes to the ointment poured on our favour, and the gold offered to him as a king. How well then this must fit a christian prince, appears plainly. Yet upon occasion, other crowns have sometimes by them been worn; and that, chaplets of leaves, which you see in the example of *Frederick Barbarossa*, whose chaplet, or crown of rue, remains yet born bendwise upon the bars of the dukedom of *Saxony*. For, when *Bernard* son of *Albert Ursö*, marquis of *Brandenburgh*, and brother to *Otho*, the then marquis, and to *Sisrid* archbishop of *Breme*,

was made duke of *Saxony* by the emperor, he desired the emperor to have some difference added to his arms, that so his might be distinguished from his brother's, *tunc imperator*, saith^s *Krantzius*, *ut erat coronatus per aestum, ruream coronam iniecit ex obliquo supplicantis clypeo*, which afterward, saith he, was born fo on their coat, being before *barry sable and or*.

Fol. 263. No. 144. Which was but *XL.* or *L.* years before *Ethelwerd's* time, who being a great man, and of the blood royal, might easily in that know what he said.

Fol. 264. No. 145. And to this *Achais* is attributed the addition of the bordure fleury about the *Scottish* lion, *significans*, saith *Hector*, *Francorum opibus, quibuscum foedus inierat, leonem exinde munientum*.

Fol. eod. No. 146. I have here differed from what *Alexander ab Alexandro, Paschalius*, and others deliver, of crowns and diadems. But I imagine it is easier for me much to justify my assertions, than they those of their's, against which mine are here opposed. I appeal to my cited authors.

Fol. 269. No. 147. The like in proportion hath *Virgil*. The Argonauticks of *Orpheus*, as we call them, but indeed of *Onomacritus*, expressly adorn *Aetes* with a scepter.

Fol. eod. No. 148. The *sun*, and supreme king in course of created nature.

Fol. eod. No. 149. The antientest scepter among the *Grecians*^t must forsooth be supposed to *Jupiter*, who bare his eagle on the top of it; as *Juno* did a cuckoe on her's, *Minerva* an owl, *Apollo* a falcon; although upon a particular reason, the statue of *Jupiter Labraders*, in *Caria* held an^u ax not a scepter. But you must conceive, that king of birds assumed by him upon the good fortune of war he had against the *Titans*, after an auspicious^x flight of an eagle towards him in the field. So they fable. In imitation of this tradition, ensuing princes used to have eagles and others birds on the top of their scepters, but most especially^y eagles. And it is delivered, that most of the old^z *Babylonians* wore seal rings, and bare scepters, or little staves, usually, but none without something on the top; either an apple, rose, lilly, eagle, or some such like. I guess the eagle was most proper for their kings; which amongst the *Persians*^a also was the ornament of their standard. Hence came the eagle to be born by the *Romans* in the field, not upon a banner as now, but, in an image upon the top of a spear, or long piece, fixed at pleasure in the earth, or born, whereof neat *Lipsius* at large in his commentary on *Polybius*. And it was one of the marks consular or rather triumphant in *Rome*, to have an ivory scepter with an eagle on the top of it, which *Juvenal* means in that

Da nunc & volucrem sceptro quae surgit eburno.

^m Act. Vatican. ap. Bodin. de rep. 1. cap. 9.

ⁿ Vide vero Platinam in Sylvest. 1.

^o No. 46.

^p Saxon lib. 4. cap. 37. & lib. 9. cap. 19.

^q Plutarch. in problem. Graec. 45.

^r Scholiast. ad Aristophanis *Opus*.

^s Herodot. in Clito.

^t Marcell. Corcyrenf. lib. 1. ceremon. sect. 5. & de imperiali coronam, Pasch. lib. 9.

^u No. 46.

^x Sigebert. Gemblac. sub anno 510.

^y Scholiast. ad Pythionic. & vide si placet & prophet. Clem. Alex.

^z Anacreon ap. Fulgent. mythol. 1. Isidor. origine 18. cap. 3.

^a Xenophon. Cyropaed. 3.

So they bare it in their triumphs ; whereof^b *Isidore* : *Super Scipionem autem aquila sedebat, ob indicium quod per victoriam quasi ad supernam magnitudinem accederent*. And the chief ornament of great mens tombs hath been in the image of an eagle set on them, as the^c epigrams upon *Aristomenes* and *Plato* shew us. From this antient honour of the eagle was derived, it seems, the wearing of golden eagles painted on the eastern emperors shoes. And it is^d reported that only by this note of greatness, the body of *Constantine Dracosis*, the last Greek emperor there, in the taking of the city by the *Turks*, was found out. My author's words (upon *Pontanus* his credit in the translation, for he is not published in his own language) are these : *Abbluebant capita occisorum plurima, si forte Imperatoris nosterarent : nec poterant, nisi quod corpus exanime invenerunt, idque ex imperatoris calciamenti agnoverunt, in quibus, ut imperatoribus consuetum erat, aquilae aureae depictae viscebantur*. Yet it is certain, the having eagles so painted was not solely proper to the emperors. Both the *despote* and *sebastocrator* had so : *George Codin* is my witness. It was allowed them by the emperors among their ensigns of honour ; as they had also other marks, which in story are as appropriated to imperial greatness. As, *Heracius* was known^e *ex rubris ocreis* i. e. by his purple buskins, in the field between him and the *Persian*. Yet it is plain, that in later times it was given as a liberty of special honour to wear purple or^f red shoes ; which *Nicetas Choniater* calls, as it were, the right *τὸ ἐρυθρὸν πεδίον*. And the old *Alban* kings had the like, whom *Julius Caesar*^g deriving himself from them by *Iulus*, imitated. But the *Roman* consuls had their gilt shoes, if *Cassiodore* deceive not, whose authority, I think, is sole in this point. *Consulatus te decoramus insignibus* (are his^h words) *pinge vastos humeros vario colore palmatae, validam manum victorialis scipione nobilita, lares proprios etiam calceis auratis egredere*. And *Lipsius* thinks hereupon that they were a special ornament consular ; but it is certain that in *Rome* both purple, golden, and variously coloured shoes, were in a more common use, asⁱ *Epictetus* his touching that vanity discovers.

Fol. 270. No. 150. You shall hardly meet with an allusion amongst those lazy monks of so much antique property as this.

Fol. eod. No. 151. And it is expressly reported in the *Greek* story that he swore by the *Gods of Greece*. But howsoever for the truth, this conceit of the scepter was both learnedly and wittily used by him.

Fol. eod. No. 152. Which was to confirm the perpetuity of a *Jewish* supremacy (not of one tribe, it seems, as most learned men have affirmed) amongst that nation until *Christ* came. Which yet was satisfied as well in the priests, and those *aichmatarchae* (they are called *ca-*

pita captivitatis in *Arias* his *Benjamin*) as in kings.

Fol. 273. No. 153. Whereto the *Greek* stories agree, naming it *μῆλον*, and the bearer *μνησφορῶς*, as if you should say, one that bears the apple. By that very name were a thousand known of the *Persian* kings guard in antient time, which bare golden apples on the top of their spears, *ὅτι τὸ σκεπτικὸν μῆλον χρυσοῦν ἔχοντες*, as^k *Athenaeus* describes them. *Poliaenus*, *Aelian*, and others remember them.

Fol. 274. No. 154. Thus delivered by *Osco* : *CONCORDIA AVGG. G. B. CONOB. statua galeata sedens ; dextra pomum cum cruce, sinistra rhabdum*. He was emperor *ccclxxx.* after our Saviour.

Fol. eod. No. 155. But the figure of *Justinian*, in his coins, hath this globe and cross in the right hand, as also have divers other of the emperors. But how conceit came afterward to make this an apple, I understand not, unless with like imagination, as *Jupiter's* statue in *Constantinople* with three apples, was interpreted for his supreme power over the three parts of the world.

Fol. 276. No. 153. For until *Justinian*, it seems, it was not ordinary in their statues. He was emperor in *dxix.* and then was our *Arthur* king of *Britain*. Neither can any question be of his reign, although much is, and justly, of his abused victories.

Fol. eod. No. 154. But the globe was, before *Theodosius*, usually held in the hands of emperors, as their coins witness. And the cross also alone, amongst those which were not christian, hath been found by like testimony. *Figura solata cum cruce* & *victoriae super basim*, is the description of one of *Gallien's* coins by *Adolph Occo*. But the addition of the cross to the globe, and religious use of it in diadems, statues, pictures, banners, and such like, proceeded from the great *Constantine* his so much honouring that divine symbol. For when *Maxentius* usurped the imperial name against him, he *sollitudinibus constitutus in somnio vidit crucis signum coelo splendide collocatum ; mirantique visionem* (the words are^l *Cassiodore's*) *adstiterunt angeli dicentes : O Constantine, IN HOC VINCE. Ferrur autem & ipsum Christum apparuisse ei, signumque monstrasse crucis, ac praecepisse ut figuram similem faceret, & in praeliis auxilium hoc haberet, quo victoriae jura conquireret*. Others supposing it at noon-day appearing to him and his army, not speaking of the dream. But all agree, that hereupon he made his *labarum* most conspicuous with the cross. This *labarum* was a long spear or greatⁿ pole, expressing the figure of a golden cross, on the top whereof a crown of precious stones and gold was fixed. Under the crown in a banner was expressed the two letters of our Saviour's name *Christ* ; the one crossing the

^b Origin. 18. c. 2. & Appian. in Punicis.

^c Anastas. biblioth. hist. 18.

^d faub. in Suetonii lib. 1.

^e hist. 1. cap. 4. Sozom.

^f apud Photium cod. 256.

^g Antipater antholog. lib. 3. cap. 4. & cap. 33.

^h Zathi regi Lazorum indulgetur. Agathias hist. 3.

ⁱ Variar. lib. 6. form. 1.

^j EN TOTTΩ NIKΑ.

^k Enchirid. cap. 61.

^l Euseb. de vitâ Constantin. 1. cap. 25. v. & Metrophanem

^m Georg. Phranz. lib. 3. cap. 18.

ⁿ Dio hist. 43. & videlicet v. cl. I. Ca.

^o Dipnosoph. lib. 12.

^p Tripartit.



other, that is, X and P. So doubtless, as the monuments of those times perfwade, must the place of *Eusebius* reporting this, be understood; although some, by turning $\chi\theta$ ^b & into *in quo*, whereas they should have made it *juxta quod* or *sub quo*, offer an imposture to their readers, which places the X and P in the crown, not in the banner; whereas that crown is no essential part of the standard, but sometimes wanting; the banner only comprehending those two elements of that most saving name. Hence *Prudentius*, who lived some LXXX years after *Constantine* under *Honorius*, by apostrophe to *Rome*:

*Agnoscat regina libens mea signa necesse est,
In quibus effigies crucis, aut gemmata refulget,
Aut longis solido ex auro praeferetur in hastis.*

And of his name signed by $\chi\rho$ mixed,

*Christus purpureum gemmanti textus in auro
Signabat labarum; clypeorum insignia Christus
Scripserat; ardebat summis crux addita cristis.*

— tunc ille senatus

*Militiae ultricis titulum, Christique verendum
Nomen adoravit quod collucebat in armis.*

understand the name by $\chi\rho$. For about those times X alone was a known ^a sigle for our Saviour, which yet they would not, it seems, without P use, because of another interpretation of ill note, which the learned know, by the old *Grecians* was applied to it. After that in his wars against *Maxentius*; this great emperor had, by those holy auspices, such success, that *maximam* ^c *culturam sacratissimae crucis habebat* — denique supplicium crucis, quod primitus apud Romanos erat in usu, lege prohibuit. In figuratibus autem solidorum & in imaginibus, hoc signum jussit inscribi semper & figurari. The apostate *Julian* took from the labarum those notes of christianism, but they were, as is found in ^d antient testimony, restored by *Valens* and *Valentinian*. By edict of ^e *Theodosius II.* and *Valentinian III.* signum salvatoris Christi nemini licet vel in solo, vel in silice, vel in marmoribus humi positis insculpere vel pingere; sed quodcumque reperitur tolli; whereto a publication ^f of *Tiberius II.* agrees. Neither was any subscription or note, without letters, among them, of such authority as this venerabile signum, as ^g *Justinian*, to this purpose, calls it. And as it was in the standard; it is usually in later Greek stories, titled *νικητικόν*; as if you should say, the palm of victory. How frequent it is now, and of antient time hath been, in diadems, coat armors, temples of christians, and the like, every man may see or know.

But, as with us, it is the common ensign of every church, religious house, christian prince,

and army of the holy wars, (whereupon, in antient time, the very erecting of a cross gave privilege ^y against temporal right) as a testimony under whose banner we fight; so with the *Mahumedan Turks*, the *croissant*, or *half moon*, as a religious symbol, is as commonly set on the top of their melchits, seraglio's, turrets, and such like; which is not unfitly here remembered, being the chief imperial ensign of those miserable professors. Neither, I guess, can it but please, if something be added here of the reason and original of that superstition. It may be referred to this fabulous and most ridiculous relation. *Mahumed's* followers, they say, looking on the moon when she was towards ^z conjunction, at what time she is as a croissant also in form, although of a contrary posture in heaven, desired him to shew them some miracle. He with his two fingers pointed at her, whereupon she presently fell in two pieces; the one piece falling down on the hill *Elcais* in one part of *Mecca*, the other on the red bill in the other part of *Mecca*; but at length both pieces came together into *Mahumed's* lap, or ^a his shirt sleeve, and so he put her whole into heaven again. But this is as true, as, that ^b *Gabriel's* wing touching the moon, was the only cause why she differs so much from the sun in light. Laugh at these, and you shall have a better inquiry. The antient and present *Arabian* account is by lunar years, as infants in astronomy know. In the root of their *begira* (which is as much as *persecution*, and in the *alcoran* occurs by the name of *albegire*, and is supposed from the flight of *Mahumed* out of *Mecca*, being under *Heraclius A. Chr.* DC.XXII. is always used for the date of the grand signiors letters as before is remembered) it so fell out that the new moon of their first month *Mucharam* (whence, as we from *March*, they account; saving the unstedfastness happening by intercalations, which lunar years must have) reckoned by their annual course of mean motion, then differing, in this *bagaren* year, near three days from the true motion of the moon, was the third day after the true conjunction or change: at which time commonly in our crescent-form her apparition is in any climate. Neither could the new moon of that *bagaren* year otherwise fall out, it being the XVI of our *July* and *Friday*. Unde sine dubio (saith divine ^c *Joseph Scaliger*) *hodie omnes Mahumedistae in fastigiis summis turrium illarum e quibus lunam nascentem speculantur, imponunt lunam corniculatam pro insigni quemadmodum Christiani crucem*. For it could scarce be likely but that they, who so religiously had fabled of their impostor *Mahumed*, and regarded his particular actions with such superstition, must with all reverence observe and honour the moon, in that form as she appeared when their great prophet was persecuted, when as their whole generation have with such ^d acclamations of joy,

^a Vide Lipsium de cruce, 3, cap. 15. & iconas ibidem.

^b Cassiodor. hist. tripartit. lib. 1. cap. 9.

^c Trull. can. 73. ap. Harmenop. epit.

^d imp. novell. 73. ^e Stat. West. 2. cap. 37.

^f Cantacuzen. xi. ^g *Mosquit*. ferm. 2. & vide Alcoran. azoar. 64.

^h De emendat. temp. lib. 2. ⁱ Scaliger. can. Isagog. lib. 3.

^p Contra Symmach. lib. 1.

^q Julian. in Misopogone.

^r C. lib. 1. tit. 8. & de Judaicis l. 11. & synod.

^s C. de jure delib. l. 22. §. 2. & vide Leonis

^t maniam camisiae Machometi, epitom. sacror. bell. apud Canis. antiq. lect. tom. 6.

^u Doctrin. Machumet. ab Heymann. translata.

dancing, leaping, and hope of foreshewn happiness, always entertained her first, and every monthly apparition, calling her then *nalka* i. e. a horse-shoe, from the likeness of figure. But that is not without example from the Jews, who most anciently held their new moons, as a testimony of holy writ frequently shews, which Horace calls their *tricesima sabbata*. And at this day, so ^f Scaliger teaches me, as soon as they see her after conjunction, they presently cry ^{יִמֵּן טוֹב חַוָּה לָנוּ וְלִכְל יִשְׂרָאֵל} i. e. good fortune to us and to all Israel; as the old Greeks were wont to salute their lights brought to table with ^{ῥῶς ἀγαστήρ}, somewhat like our custom in the same matter. Idem (that is, as the Jews, faith my most noble author) *faciunt* & *Mabum-medani, quamvis neomaenias ex scripto indicere soleant*. But the most ancient Arabians had their chief goddesses *Alilat* (by Herodotus interpreted *Urania*) which by all likelihood was but the appearing crescent known to this day among the *Mabumedans* by the

name of ^{اللّٰل} i. e. *Halilat*, whence *Alilat* is plainly made: unless rather from the spurn *Lilith* ^{לִילִית} mentioned in ^a holy writ, which the Jews say is a spirit very dangerous to young children, or women in childbirth; whereupon their custom is, especially of the German Jews, at the ⁱ birth-times of their women, to chalk out on every of the walls of the chamber in a circle, this charm:

אֲרַם חוּחַ חוּחַ לִילִית

i. e. *Adam, Heve, hence, or out, Lilith*. And in the inner door of the chamber they write the names of three angels, *Senoi, Sansenoi, Samanegeloph*, preservers of young children, which they learned once of *Lilith*, when they would have drowned her in the sea. A learned and discreet tradition! Whether with this *Alilat, Lilith, or Halil*, the name of *Ilethya*, being in *Pindar* somewhere ^{Ἑλθεῖα}, for *Lucina*, among the *Gentiles*, had the same origination, I inquire not here. Their offices and attributes are common ^k enough, to offer perswasion, which may induce you to think so. Children know that *Lucina* and the moon are as one; and *Lilith* had, I doubt not, its beginning from ^{לַיְלָה} or ^{לַיִל} i. e. *the night*, and is, if the latter *iōd* be turned into *vau*, the plural number of ^{לַיְלָה}, whence *Jonathan Ben-Uziel* makes it expressly in his *Chaldee* ^{לַיְלָה}, as if he should have said *nights*; and that *halil* in *Arabism* is but *noctiluca* from the same root. Whence, under great *Scaliger's* favour, I am near perswaded, that their honour to the crescent is more ancient than the *begira*. And have we not authority, beyond exception, that the camels of *Zaebab* and *Zalmunna* ¹ two *Midianite*, or *Ismaelitic*, kings slain by *Gi-*

deon, had about their necks, as acknowledging their royal masters by their ensigas, ^{שְׁמִרָה}, which the rabbins interpret *the images of the moon*. Crescents also were worn upon the senators shoes in *Rome*, which is best derived from their descent out of the *Arcadian* nation, which called themselves ^{ἀντελῦναι} i. e. *antelunares*; not that they feigned themselves more ancient than the moon, as some idly, but because they would undertake no matter of moment before the new moon, as the *Lacedaemonians* would not till the full. Kinds of superstition common to the old *Germans, Gauls*, and others. Hence is the *lunata planta* in *Martial*, the like in others. And ^m *Statius*

*Sic te, clare puer, genitum sibi curia sensit,
Primaque patricia clausit vestigia luna.*

How much the *crescents* or ^{μικροὶ} i. e. *little moons*, were wont to honour statues and images, may be seen in ^a *Greek* antiquities. Although, I know, the most noble and learned ^o *Jos. Scaliger* supposes them set on rather to keep the statue from being defiled by birds sitting on them, than for addition or note of honour; and he finds fault with painters, which in christianism also set them on pictures, where that use of them cannot be. But, I am sure, in divers old coins, you shall have them on the fronts of the faces; to what purpose, I cannot judge, unless for a mark of honour. Yet some learned ^p men have thought that it was a proper ensiga of the *Constantinopolitans* or *Byzantines*, because divers pieces have been found with a crescent, and inscribed *BYZANTIΩΝ*. And thence they imagine the grand signior took it, *ut signum victae gentis penes quam* (as *Lipsius* speaks) *orientis imperium esset*. But I must not subscribe to them. How much, even since the blessed propagation of christianism the new moons have been, and superstitiously, regarded, is known out of their ^q bonfires and such jollities used at them. But for the *Mabumedans* and *Hagarens*, questionless to their moon, *Alilat, Halil, Nalka*, which are all one, you may reduce their *Venus*, on whose week-day their law is supposed given, and to her planet, the change or continuance ^r of it is by astrologers (I inquire not how well) referred, as christian profession to the sun, the *Jewish* to *Saturn*, and the like. But historians think falsely their *Venus* to interpret *cubar* or *cobar* so famous among them. For *cubar* or *cobar* is nothing by interpretation but ^{δύναμις}, *potens, mighty*, and so is but *halil, lunus, or luna*, and by no means (as I guess) *Venus*, if you take *Venus*, as we do, for the first planet, but well enough, if you consider the name, as designing only a goddess or star of sight generally, which *cubar* will well endure. And those eastern parts had ever antiently the moon under both sexes in their devotions. *Lunus* ^s and *luna*. Which seems not of younger

^c Ante alia vero consulas Psalm. 81. com. 3.

^d In prolegomen. ad emend. temporum.

^e Good light: Varro de ling.

^f In prolegomen. ad emend. temporum.

^f Elias in Thisbit verb. ^g *לַיְלָה* ex Ben-Sira.

^g *לַיְלָה* ex Ben-Sira.

^h Theophrastus in *de sensu*.

^h Theophrastus in *de sensu*.

ⁱ Arati in *de sensu*.

ⁱ Arati in *de sensu*.

^j Busbequ. & Lips.

^j Busbequ. & Lips.

^k Chrysothom. hom. 203.

^k Chrysothom. hom. 203.

^l Spartian. in Caracall.

^l Spartian. in Caracall.

^m *beginning*

beginning than the adoration of the sun among the *Perſians*: which, as the crescent now to the *Mahumedans*, was in ſome ſort uſed, and ſet upon their royal pavilions. *Patrio more Perſarum* (ſaith *Curtius*) *traditum eſt orto ſole demum procedere: die jam illuſtri, ſignum e tabernaculo regis buccina dabatur. Super tabernaculum unde ab omnibus conſpici poſſit, imago ſolis cryſtallo incluſa fulgebat.* But of their moon thus much.

Fol. 277. No. 155. The princes of *Aſia* in later times, (I mean chiefly the caliphs) have neither had the diadem or crown as royal. Yet not for the reaſon which *Bodin*^a gives, making ſuch difference betwixt the later ſultans there and the old caliphs; whereas indeed the preſent grand ſignior reckons himſelf for a true caliph, as is before ſhewn; and as other ſupreme princes in *Mahumedism*, challenges at his pleaſure all rights of the old caliphs. But it ſeems the *Tartars* (whence, the *Turks*) uſed, all of them, tulipants, before their kingdom eſtabliſhed at *Bagdad*, and therefore their princes alſo having not before in that kind any diſtinction, unleſs in price and greatneſs, continued to this day, their firſt form. But the *Saracen* caliphs, before their *Orhomanick* empire, had, as it is probable, the old *tiar* or *cidaris* richly ſet with ſtones, and in it the diadem. I affirm not abſolutely ſo. But refer you to conjecture from what was in thoſe parts antiently ſo uſual.

Fol. eod. No. 156. Called by my author *Alghabaſi Ithapitzi*, which I think to be *Muſtezi* of the *Abasfin* family.

Fol. eod. No. 157. Whether this *cidaris* had a diadem or no, he expreſſes not.

Fol. eod. No. 158. And this kind of tulipant, they dare ſay, *Joſeph* the patriarch firſt invented and uſed. The great *ſophi* hath, at his inauguration, a kind of mitre horned * put on by his chief caliph, at his enthronization, which was wont to be at *Caphe* near *Babylon*, but ſince the *Turkiſh* emperor won *Aſſyria* from him, at *Cafbin* ſometimes, and ſometimes at *Iſpahan* it is performed.

Fol. eod. No. 159. Like ſnails horns. Neither might any uſe this horned tulipant but the ſultan, the caliph, or chief prieſt, and thoſe princes which were of higheſt note. It was negligently done therefore of *Bodin*, to infer their not wearing of crowns, out of a ſuppoſed canon made by the caliphs, as if the later princes had not in account been true caliphs. Neither doth he better in ſpeaking to this purpoſe of the *Iſraelitiſh* kings. It is true, they had crowns and of gold, and were anointed. They had thoſe two as the prieſts. But, what other *Aſiatick* kings uſed the like? As they were a peculiar people to God, ſo were their institutions, for the moſt part in every thing, different from their neighbours. They had gold, others cloth. *O nobilem magis quam ſoelicem pannum*; an ancient king ſaid of the diadem delivered to him; and many other teſtimonies make it a white

cloth fillet.—*Cinguntur tempora vittâ alben- te*—ſaith *Silius*^a *Italicus* of *Maſſaniſſa*, be- cauſe he knew it was proper to a king. That alone then being traduced out of *Perſia* by *A- lexander*, gave the times after him, the name of *diadema*, for the moſt ſpecial note of royalty.

Fol. 278. No. 160. And for his ornaments, you ſhall hear an^a embaffador from the archduke to *Baſilius* then emperor there, thus deſcrib'ng his preſence of ſtate. *Princeps in loco eminentiore ac illuſtri, pariete imagine divi cujuſdam ſplendente, aperto capite ſedebat, habebatque a dextra in ſcanno pileum* (kopack) *ſiniſtra vero baculum cum cruce* (poſoch) *atque pelvium cum duobus gutturniis, adjuncto impoſitoque mantili.* *Atunt principem cum oratori Romanæ fidei manum porrigat, credere homini ſe immundo & impuro porrigere, atque ideo eo di- miſſo manus lavare*, which for that ſpecial cuſtom, the rather I cited.

Fol. 345. No. 160. Yet with them, *princeps* alone was equivalent with the name of emperor. *Otho* to his^b army. *Nec privatum me vocari ſuſtineo, princeps a vobis nominatus; nec principem, alio imperante.* And, of *Auguſtus*, the ſame author: *Lepidi atque Antonii arma in Auguſtum ceſſere, qui cuncta diſcordiis civilibus ſeſſa nomine principis ſub imperium accepit.* Thence came *principatus* and *principum* to be abſtracts for their power and government.

Fol. 346. No. 161. Whereupon the diſſem- bling *Tiberius* often^d affirmed himſelf *Αυτοκρατωρ τῶ στρατιωτῶν τῷ δὲ λαοῦ τῶν πόλεων*, i. e. emperor of the army, but prince of the reſt. But thoſe who were conſtituted for ſucceſſion, had always the addition of *juventutis* to *princeps*; which *Zonaras* turns τῆς νεότητος, *πρόεδρος*, i. e. prince of the youth. The two, adopted by *Oſtavian*, are expreſſed by this name in a coin, pictured with them, circled thus: C. L. CAESARES AUGUSTI. F. COS. DESIG. PRINC. IVVENT. in the hands of that noble *Mark Veſſer* of *Auſpourg*. Others like are extant, with that title; being, as is ſuppoſed, worn out of that *Ancyran* monu- ment, where you read; *EQUITES. ROMANI. UNIVERSI. PRINCIPEM. HASTIS. ARGENTEIS. DONATUM. APPELLAVERUNT.* The defect is ſupplied by conjecture of two great and moſt learned critics, *Gaſaubon* and *Lipſius*, with *IVV. C.* for *juventutis Caium*. And as *princeps ſenatus* was chief in their ſenatorian order in their free ſtate, before the *Caſarean* empire, ſo was the name of *princeps juventutis* for a chief in the *ordo equeſtris*. So is the ſon of *C. Curio* named by^e *Cicero*.

Fol. eod. No. 162. From *Oſtavian* until *Adrian*, this title remained for the apparent ſucceſſor. Thence began *caesar* to that purpoſe. For al- though others before, which were apparent ſucceſſors had that name, yet in them it was as a note, of their family, not of their hope to the empire.

^a Curt. lib. 3. & Xenoph. lib. 8. Cyropaed.

^a De repub. 1. cap. 9.

^a Cartwright in peregrinat. vid. & Leunclav. Muſulmanic. 1.

^b Valer. Maxim. lib. 7. cap. 2. §. 5.

^d De bell. Punic. 6.

^e Sigismund. liber in reb. Moſcovitic.

^b Tacit. hiſtor. 1. & annal. 1.

^c Tertull. lib. adv. Hermog.

^d Dio hiſt. 57.

^e Orat. in Vatinius, vide Lipſ. elect. lib. 2. cap. 1.

Fol. 358. No. 163. The *despote* was the heir or successor apparent of the *Constantinopolitan* empire, the *sebastocrator* the second from him in dignity, and next the *caesar*, *protosebastus* and so forth. But, to our purpose, receive this out of their ^f traditions. Before the emperor they called the *despote*, *my lord*, δέσποτά μου, and *majesty* was applied to him: the *sebastocrator*, *my lord*, δέσποτά μου, *sebastocrator*: the *caesar*, *my lord caesar*, in those words as the other; and to both these also was *majesty*, βασιλεία, applied. But if any other great men about the court, τῶν ἀρχόντων, had occasion to use the *despote's* name to the emperor, they thus; *my lord*, ὁ αὐθεντά μου, *your son the despote*. If they speaking among themselves mentioned him, then: ὁ αὐθεντά μου, ὁ δέσποτης i. e. *our lord the despote*. For in later Greek *μάς* is *our*, either corrupted from their antient own, or induced by *Tartarian* or *Turkish*, wherein *babamus* is *our father*. If a great man spake to the *despote*, he might either call him *my lord the despote*, with the word last remembered, or, for greater honour, *our lord the despote*. If any of the *despote's* servants or followers used his master's name to the emperor, he might not call him ὁ αὐθεντάς μου, or, ὁ αὐθέντης μου ὁ υἱός σου, which I interpret to be in fashion the same with *our, my lord*, when we speak indifferently of any nobleman, but ὁ κύριός μου ὁ υἱός σου ὁ δέσποτης i. e. *my lord and master, your son the despote*. For so, I think, κύριός is best here translated. If a man spake to any of their other great men, ἀρχόντων, he never used δέσποτά μου, but κύριέ μου. On the other side κύριέ μου was never used to the *despote*, but δέσποτά μου. Neither could they render reason for all those, but because use and custom had brought them to it. Neither hath the grammatical difference of κύριός and δέσποτης any thing to do here.

Fol. 362. No. 164. But it seems afterward a greater dignity than *despote* was invented by *Michael Palaeologus*, but not with any honorary title which story remembers. Only the translation of a later ^g *Grecian*, whose text is not published, calls it *ut esset imperatori proximus: quem honorem primus Palaeologorum imperator Michael propter filium Constantinum Porphyrogenitum invenit; videbaturque ea dignitas despotarum dignitati antecellere*.

Fol. 363. No. 165. But it is observed, that after *Charles*, surnamed *Crassus*, all the emperors before him being merely hereditary, and enjoying their title not so much by coronation or unction, as right descendible, no other stile was assumed till consecration from the pope, but *rex Romanorum*, and that it being had, thenceforth they were all written *augusti* and *imperatores*; and so in their charters was it by themselves observed, with *anno regni* so much, *imperi* so much. *Quod omnes*, saith ^h *Onuphrius*, *postea ejus*, of *Charles* the *grosse* *successores usque ad nostra tempora religiose admodum ob-*

servarunt. He, more at large, gives you a reason of it in this *Charles*. But he was a child of the *Romish* part, and so, I know, you respect him; yet was he one exceeding well deserving in our age, of the state of this kind of learning, and in this gives you the truth.

Fol. 365. No. 166. The like did *Scipio Africanus* in Spain, when *Edeon* and *Andobal* ⁱ *st*aluted him king. Of whom also * *Cicero*: *Quanta illi, dii immortales, fuit gravitas, quanta in oratione majestas! ut facile ducem P. R. non comitem diceret*. And in another ^k place: *Si qui sunt quibus infinitum sit odium, in quos semel susceptum sit, quos video esse nonnullos: cum ducibus ipsis, non cum comitatu affectatoribusque configant*. In the *caesarean* empire, *dux* was next to *imperator*. The play of *ducatus* & *imperia*, like to our sports sometimes used in making a prince with all his officers and dignities, was by that name ^l known in *Rome*; which *Trebellius Pollio* calls *figere potestates*.

Fol. eod. No. 167. *Count*, or *comes*, which we now call *E A R L*, is, in notation of the word, only as much as a follower, in that kind as we now use follower for such as are attendant about great men; and as the civilians call him *comes matronae*, which mans a gentlewoman in the street, and give an ^m action of the case, for wrong done against her worth, if her waiting man, the Greek calls him ἀκόλουθος, be taken from her. And after that, the honorary *comitiva*, with its diversity of ranks, began under *Constantine*, every great man in place about the court, or substituted in provinces, if withal he were partaker of that dignity, was titled *comes*, with some other addition of his place or office; and the name succeeded in room of *praefectus, rector*, and the like. *Comes sacrarum largitionum*, for the *praefectus aerario, comes officiorum* for *magister officiorum, comes provinciae* for *rector provinciae*, and such more are frequent in the stories of the declining empire, both the codes, old inscriptions, and the authenticks; which, if the most learned *Ludovicus Vives* had remembered, he would not have made so strange of that passage in ⁿ *S. Augustine*, concerning one of his twins, thus conceived; *ille in officio comitis militat* & *a sua domo pene semper peregrinatur*. And afterward *comes* ^o *Romanus* was he that had the care committed of seeing to the statues of gold and silver dedicated to gods and princes in publick. Hence was the court named *comitatus*, and the guard *legiones comitatenses*. And those of the privy council *comites consistoriani*, ^p which were not, without special grant, of the first rank, if I understand *Cassiodore*.

Fol. 367. No. 168. Not much differing in substance from the king's friend φίλος βασιλέως, which in the ^r *Macedonian* empire was of great and special honour. And astrologers have antiently delivered, that they who had *Mercury* in

^f Europolit. περί Ο'γουκιάδ. quem tamen, absque Junii restitutione locorum, ne legas.

^g Comitibus imperatoribus. ^h Polyb. histor. 10.

ⁱ ff. de injuriis l. 1. eclog. basilic. lib. 60. tit. περί δ' ἐπ' αὐτοῦ.

^k & Lipsi. de magnit. Roman. 3. cap. 10.

^l tit. 10. & Cassiodor. 6. form. 12.

^m L. contra C. de re militari.

ⁿ De civit. Dei lib. 5. cap. 6.

^o V. Cujacium observat. 7. cap. 13. cod. lib. 12.

^p 1. Macab. cap. 10. com. 20. cap. 11. com. 27. alibi.

^q Cantacruzen. hist. 4. cap. 5.

^r Sueron. in Ner. cap. 35.

^s Cassiodor. var. lib. 7. form. 14.

^t V. Cujacium observat. 7. cap. 13. cod. lib. 12.

their afterdescendant should be *regum amici*, alluding to or aiming, I guess, at that old title: Being in a like sort given them which had antiently the attribute of *AMICI ET FRATRES ROM. IMP.* as the *Batavi*, or *Hollanders*, and the *Hedui*, now called *Burgognes*, had in old time. But later time, in the eastern empire, used the word *comes* or *κόμης* in another kind, transferring it from a dignity to an inferior military office. *Κόμης ὅλης* faith an emperor, ὁ ἑκατὸν ἀνδρῶν ἄρχων, ἦτοι ἑκατόνταρχος. i. e. comes is a centurion. But indeed their centurion was under the count or *comes*; and the count * was τῷ ἐὶς τὰ γμάτα ἡτοι βάνδα ἀρχόμενος, or, ρίας κοόρης ἄρχων, i. e. the leader of a whole band.

Fol. 370. No. 169. The *Grecians* called the counts of the first rank, *κόμητες τῷ υφ' ἡλιότατε βήματι*. But howsoever the difference of duke and count was, at the first institution of the *comitiva* under *Constantine*, or about *Justinian's* time, it is certain they became not long after *Constantine*, equal. *Honorius* and *Theodosius* in a constitution. *Qui honore comitivae regimen fuerint nacti, absolutos militia, inter eos qui duces fuerint provinciarum numerari jubemus.* And the same^a emperors. *Inter vicarios*, that is, they which were under the *praefecti praetorio*, & *duces qui administraverint*, & *eos qui comitivam primi ordinis meruerint, nihil intersit, nisi tempus quo quis administraverit, vel comitivae adeptus est insignia.*

Fol. 371. No. 170. But the title of count was usually given without any office or government, as merely honorary; not so, that of duke.

Fol. 398. No. 171. It is reported, that betwixt *Aeneas* and *Latinus*, one head of the league was, ^b that the *Trojans* should be always ready to assist him in his wars against the *Rutuli*.

Fol. eod. No. 172. Here was a kind of feudal possession, but all their old volumes of the civil law have nothing that touches feuds, either in name or substance, as they truly are. The nearest like them is their *emphyteusis*, and *jus emphyteuticarium*, agreeing almost with our fee farm, or socage tenure. Neither of both which, according to the imperials, are to be called feuds, although they, as well as military possessions, in our law, are so usually named. Some others, I know, suppose military feuds even as antient as *Roman colonies*, but they deceive their readers. The tenants of the empire, as well mediate as immediate, were all bound to be attendant in a place called *Roncaliae* upon *Po*, not far from *Piacenza*, when the emperor went to be crowned, and he that made default, forfeited his fief. An old^d author thus delivers it: *Est consuetudinis regum Francorum, quae est Teutonicorum, ut quotiescunque ad sumendam Romani imperii coronam, militem ad transalpizandum coegerint, in praedicto campo, Roncaliis, mansionem faciant. Ibi ligno in altum porrecto scutum suspenditur, universorumque equitum agmen feuda habentium, ad excubias proxima nocte prin-*

cipi faciendas, per curiae praeconem exposcitur: quod sectantes qui in ejus comitatu fuerunt, singuli singulos beneficiatos suos per praecones exposcunt. At sequenti die quicunque nocturnis vigiliis defuisse deprehensus fuerat, denovo ad praesentiam regis, aliorumque principum vel virorum illustrium evocatur, sicque omnes omnium beneficiati, qui sine bona voluntate dominorum suorum domi remanserunt, in feudis condemnantur. And not only lay, but ecclesiastical fiefs were subject to this military tenure, and forfeiture.

Fol. 399. No. 173. The common opinion supposes it in the *Longobards* or *Lombards* a northern nation. Their incursions into *Italy*, unde *jura feudorum*, faith *Bodin*, in universam *Europam* fluxerunt, and greatness there began under *Justin II.* about DLXX. of our saviour. *Milan* was their seat royal, and in it their first king *Alboin* inaugurated. And it is commonly affirmed, that they brought the more formal and frequent use of military feuds thither with their other customs: having had amongst themselves the use of them, very antient. When by the *French Charlemagne*, the *Lombardian* kingdom ended, these feuds still remained, and under him they were usually given for life, with dignities annexed. And, when in *Otho* the great, the *German* empire was, he made the dignities hereditary in feudal right. The forms of the fealty and such like of these times are extant, and inserted in *Sigonius* his story *de regno Italiae*. Of them in general terms thus the feudal customs: *Antiquissimo tempore sic erat in dominorum potestate connexum, ut quando vellent possent auferre rem in feudum a se datam. Postea vero eo ventum est, ut per annum tantum firmitatem haberent. Deinde statutum est ut usque ad vitam fidelis produceretur. Sed cum hoc jure successionis ad filios non pertineret, sic progressum est ut ad filias deveniret.* Those laws and customs belonging to them were composed as they now are, under *Frederick Barbarossa* about CIO. C. L. by *Gerard Neger* and *Obert de Orto*, two consuls of *Milan*. Which, it seems, was the rather done, because about that time, the volumes of the *Roman*, i. e. what we call the civil laws, began to be newly in request, and, as it were, awaked out of that neglect, wherein they had near DC. years slept, as of no reckoning among the *Lombards*, and were now publicly read and professed in *Bologna* by *Irenaeus*, the first publick professor of them after *Justinian's* time. It is likely that the *Lombards* thought it presently requisite to put their feudal customs into writing and form, and under titles, as well as the *Romans* had done their antient laws. What was then performed by the two *Milanois*, hath since been bettered, and for publick use enlarged by that most learned lawyer *Cujacius*, and is as a part of the civil law, for feuds. Upon that innovation of *Otho I.* in giving patrimonial and feudal honours, with prero-

^f Firmic. mathes. 8 cap. 27.

^e Antiq. inscript. & Tacitus annal. 11. ubi videndus Lipsius.

^u Constant. Porphy. in the-

mat. ^a Leo in tactic. cap. 4. § 10. Gloss. vet. juris & novellae. c. 27. ^y Novell. 43. c. 3.

^z C. de com. & trib. scilicet. l. unic.

C. tit. de com. & archiat. sacri palatii. l. unic. v. & de comit. consistor. & lib. 1. tit. 38. l. 1.

^b Dionys. Halicarnas. antiq. Rom. 4.

^c v. Mynsinger. ad instit. tit. de locat. & conduct. § adeo.

^d Otho Frisingens. de gest. Frederic. lib. 2. cap. 12.

^e A. DCCCXL.

gatives in the committed territories. *Nova nobilitatis ratio*, saith *Sigonius*, in *Italiam est inducenda, ut ii demum soli nobiles judicarentur, qui ipsi aut eorum majores his atque ejusmodi aliis honestati privilegiis essent: nam hanc consuetudinem successores ejus non omiserunt, sed etiam multis partibus adauxerunt*. He collected it perhaps out of this passage in the feudals: *Qui ab antiquis temporibus beneficium non tenent, licet noviter a capitaneis seu a vavasoribus adquisierint, plebei nihilominus sunt*. Which some interpret, as if no other nobility had been, but what had proceeded from the possessing an antient feud by gift or investiture from the emperor or some *vavasor*. But I rather follow the conceit of learned *Hotoman*, which collects thence only, that a new purchase of some noble feud, without antient investiture, or many years continuance of possession, enobleth not. And doubtless other nobility amongst them was, as gentry and knighthood. But, indeed, none feudal, except such as had its root in some of those titles bestowed. The common opinion, of the original of feuds, thus. But, under favour, they rather, to this purpose of nobility, should be derived out of *France*. For although it be true that amongst the *Lombards* they were, and antiently, yet plainly, before the *French* empire, in *France* they were, and that hereditary, if their antient laws deceive not. For, what else was their *terra Salica* but as a knights fee, or land held by knights service? It was so adjudged in the parliament at *Bourdeaux*. And those *Salick* laws are supposed much antienter than the *Lombardian* kingdom in *Italy*. Under the *Lombards* also, such dignities as they had, were by feudal right given in inheritance, as in story is affirmed of king *Autharis*, that invested his *duces* or governors of provinces, of their territories to them and their heirs males, which was not imitated by the *French Charlemagne*, or his successors, nor in use till the beginning of the *German* empire. How then is it likely that the imitation of the *Lombards* feudal laws, was cause of feuds in other places? Refer them chiefly to the *Salians* or *French*, and you shall come nearer truth. The *Salians* from *Pharamund's* time, and doubtless before, had them; in *France* they continued: *Charlemagne*, according to the custom of his own patrimonial state, brought them into *Italy*, where, although they were before him, yet that continuance they then had, is thus to be referred to *Charlemagne*, that is, the giving of them for life with those dignities before spoken of, and the gift of them in inheritance, as they were merely fees military: But the inheritance of them being annexed to honorary titles, may well be allowed to *Otho's* time, which yet could not be, if their original and continuance were to be drawn through the *Lombards*, by reason of that example of *Autharis*. How much this differs from common opinion, men that have read do know; and if they have well read, will, I conjecture, be of my mind. Out of the empire, by imitation, it seems, or by

general consent of nations, most part of *Europe* took their forms of feudal possessions; but by imitation, doubtless, those dignities of feudal right. The identity of names in the empire and other kingdoms, justifies it. Neither was the eastern empire of later times without military feuds. To this day remains a constitution of *Constantin Porphyrogennetus*, against alienation of them. They called them *σεσιωτικα* i. e. *militaria*. *Μη βέβαιαι*, are the words of the law, τοῖς στρατιώταις τὰ, ἃ δύναι σεσιωτῆαι ὑπερεῖνται, κτήματα διαπωλῆν, i. e. *that it be not lawful for soldiers, milites, to alien those possessions, by which knights service (so in our law you may interpret it) is maintained*. The tenants of feuds in the western empire, and now every where in *Europe*, are known by the name of *fideles*, *homines*, *vassi*, *vassalli*, and the like. The reason of all their names, except *vassi* & *vassalli*, is manifest. Some derive them from *bas*, which in *French* and other languages of note, expresses an inferior. But the word is so inferior to many which are denoted by *vassi* or *vassalli*, that I cannot be of their mind. Even a king, if he hold a dukedom of another king, is rightly called his vassal or *vassus*. Which (to leave frivolous conjecture) may be deduced from the old *Gaulish* word *gues*, *guas*, or *gais*, for a *valiant* or *military man*. Than by which name, what might one, that held his lands under a tenure to be so, more fitly be titled? And that those words were of such signification amongst the *Gauls*, (the antient people of *France* before the *French*, and extended far larger in name than all *France*) may be noted out of that of *Servius* upon *Virgil's*

— duo quisque Alpina coruscant
Gaesa manu —

Gaesa, saith he, *hastas viriles*. *Nam etiam fortes Galli gaesos vocant*. Now, the community of *g*, *gu*, and *v*, for *w*, in words made of *Latin* idiom out of *Dutch*, *Gaulish*, or other language, is not unknown to any. Who sees it not in the familiar use of the names, of *Walter*, *Gualtiber*, *William*, *Guilielm*, *ward*, *guardia*, *vasto*, *guasto*, and the like? So our *what* is to the *Scots gubat*, *whick* or *whilke*, *qubilke*: and how common *g* and *q* were in pronunciation, and amongst the *Latins*,^h the learned know. And the *Latins* having no such letter as *w*, in that sort as the *Gauls* used it, were compelled to express such words as they began with *w*, by *gu*, as some do now by *qu*. Yet the omission of the *u* in *gaesa* might not be amiss, when they had, in using it, pronounced *g* as in *gu*, or as *g* in *lego*. Thus might *gaesi* or *gaesi* easily be made of *guass* or *vass*, and then *vass*, and *vassi*, in our now used sense; which is well confirmed out of that which most learned *Clarencieux* hath observed upon *Servius* his word *gaesi*, in fitting to it as a synonymy the *British* *guandew*, signifying to them also a *valiant* or *stout man*, and from that (for the identity of *Gaulish* and *British* is no news

^f Harmenopol. *αποχ.* 1. tit. 15.

^g In *AENEID*. 8.

^h Lipf. de rect. pronunc. ling. Lat. cap. 13.

amongst students of antiquity) if one should derive, as little liberty in pronunciation will permit, the word *vavasor*, it were far more tolerable than infinite of etymologies too daringly stood upon. A learned * man likes well of this from *gaesi*, and goes further, supposing that in their God *Hesus* or *Esus*, remembered by *Lucan* and *Lactantius*, and in the *Ambacti*, mentioned in *Caesar* and *Festus*, the name of *gaisus* or *gaesus* lies hid. But there I more honour than follow him. To talk here of a community betwixt the *Turks bassas*, and *vassi*, as some very learned dare do, were but adventuring upon much more ridiculous derivation. But when they tell us, that *vassallus* is a diminutive of *vassus*, it may be believed, although if *Goropius* his deduction of *Salick* from *sal*, which he makes the same with *saddle*, be tolerable (as doublets in his fanatick doctrine, when the origination is indeed to be fetched from *Dutch*, his conjectures are often commendable) why might not *vassal* be as if you should say, *vir equestris*, or such like? Or if *sale* be *ball*, and *ball* the proper name of the lord's court, especially in our *English* feuds, where we call a court baron often *balimote*, why might not *vassal* be as *vir strenuus curti domini inserviens*? But without surer ground I love to abstain from assertion.

Fol. 400. No. 174. Here plainly the count was under the duke; yet had also his army. For not long after in the same laws; *comes tamen non negligat custodire exercitum suum, ut non faciat contra legem in provincia sua*. And judges in the laws of the *west Goths* are ordinarily called *comites civitatum*. So that the chief of the state-government was in the duke, but legal administration of particular justice in that inferior kind of count, which by that name was sometimes also constituted by the duke. In an antient¹ law: *Nullus causam audire praesumat nisi qui a duce per conventionem populi iudex constitutus est, ut causas judicet*. I see no difference, if it had been *comes constitutus est*. And, among the same constitutions: *siquis sigillum ducis neglexerit XII sol. sit culp. si autem sigillum comitis neglexerit vel mandatum cum VI sol. componat*.

Fol. 401. No. 175. So in *Castile*, *Ferdinand* *Consalvo*, which became in power as king, and his successors for a good time, are called *Castellae* ^k *comites* only, until the title royal was thither translated out of *Navarre*, by marriage.

Fol. 403. No. 176. Observe what the eldest of the¹ *French* historians hath. *Nicetius*, saith he, *per emissionem Eulalii a comitatu Arverno submotus, ducatum a rege expetiit, datis pro eo immensis muneribus*. *Et sic in urbe Arverna, Ruthena, atque Ucetica dux ordinatus est*. And the same writer. *Ennodius cum ducatum urbium Turonicae atque Piclavae ministraret, adhuc & vici Juliensis atque Benarnae urbium principatum accipit. Sed euntibus comitibus Turonicae atque Piclavae urbis ad regem Chil-*

debertum, obtinuerunt eum a se removeri. Where express mention is of those inferior counts subject to dukes, and also that one duke had under him two counts, as, in the other example of *Nicetius*, three. Which disproves their assertions who tell us of every duke's right antiently to have^m consisted in XII. counties under him. Indeed it is true that anⁿ old chronicle of *France* says, that king *Pipin Grifonem more ducum, XII. comitatibus donavit*; which if it be true, as *Jerom Bignon* well observes, it must be understood of some special use under king *Pipin* only; other very antient^o authors leaving out the *more ducum*, telling us that *Griphoni in partibus Neustriae XII. comitatus dedit*. Or why may we not think that *more ducum*, in that barbarous time, might be to express, that *Grifo* should enjoy the counties as a duke should? Some such thing is by an old^p monk spoken of as amongst the *Turks*. *Provincia, saith he, est quae unum habet metropolitanum, duodecim consules, & unum regem*, that is, *one admiral*, as his word is, or *one amir*. But I think he there, as others here, was deceived in his number. Others talk of other number of counties under a dukedom, but in vain and without ground. About this time of *Pipin*, in whom the *Carolin* line had its original, this dignity, with that of *count* equivalent to it, began to be feudal for life, and annexed to the territory given, for which the duke or count did his fealty or homage to the emperor or king. Observe but these few examples of that age, recorded by some then living. *Tassilo* was made duke of *Baviere* by *Pipin*. He afterward *tradidit* ^q *seipsum domino regi Carolo* (that is *Charlemagne*) *in manibus vassaticum, & reddidit ei ducatum sibi commissum a domino Pipino rege, & confessus est se omnibus peccasse & male egisse. Et denuo, renovans sacramenta, dedit XII electos obfides*. Here plainly is the fealty^r or homage expressed and made by the duke, until breach whereof, the territory remained to him. And therefore, upon complaint by the *Bavarians*, that he had broken his faith towards the emperor, and his confession of it, he forfeited the fief. But indeed in *Baviere* especially, before this time were dukes, it seems, feudal and hereditary, as *Theodore, Theodobert, Huchbert*, and *Ostilo*, who had disposition of fiefs in the territory, as in their own right, under the *French* kings; which I am persuaded to believe, by their charters, enfeoffments, and testaments, recorded in old^t story, and, made to the archbishoprick of *Salzburg* and other churches; and perhaps other like may be observed. But for the most part they were in that age for life, and the tenants are in those times filed^u *homines*, and the granting to them, *beneficiare*; which under *Lewes*, son to *Charlemagne*, was, without scruple, for life. *Villas regias*, saith an^v antient, *quae erant sui & avi & tritavi fidelibus suis tradidit, eas in possessiones sempiternas & praecepta*

* P. Pith. de les comtes de Champ. & Bré. lib. 1.

lib. 5. cap. 2. & vide Rod. Sanr. part. 1. cap. 11. & Marianam.

annal. Holland. lib. 5. & P. Pith. advers. 1. cap. 8.

P. Robert. monach. hist. Hierosolym. lib. 4.

Sigonium de regno Italiae lib. 3.

Caroli M. ^w Thegan. de gest. Ludovic. Pii.

ⁱ Leg. Aleman. cap. 41. & 27.

¹ Greg. Turonens. hist. 8. cap. 18. & lib. 9. cap. 7.

ⁿ App. Aimonii, lib. 4. cap. 61.

^o Monach. Engolism. vit. Carol. M.

^p Arnolf. de S. Emmeranno 1. cap. 5. & Arno in episc. Salzburg.

^q Formulam fidelitatis habes apud

^r Testament.

^k Roderic. Toler.

^m V. Douz.

^o Annal. incerti auctoris, edit. a Pith.

^p Formulam fidelitatis habes apud

^t Testament.

(perhaps *perpetuas*) *construxit, & annuli sui impressione cum subscriptione, manu propria roboravit.* Neither were these grants, it seems, other than of the dignities which we now speak of. Another, * that lived under him, more particularly of his father, thus : *Ordinavit per totam Aquitaniam comites, abbatesque necnon alios plurimos, quos vassos vulgo vocant, ex gente Francorum. — eisque commisit curam regni, prout utile judicavit, finium tutamen, villarumque regiarum ruralem provisionem. Et Bituricæ civitati primo Humbertum, paulo post Sturbium præfecit comitem* (where note, although they were for life, yet, upon breaking of their fealty, they were removed) *porro Pictavis Albonem, Petragoricis autem Widbodum, and divers more such.* And of *Charlemagne*, after his victories against the *Lombards*, *ampliata denique*, saith an old ^v monk, *regia potestate, necesse erat duces regno, subjugataeque provinciae præficere, qui & legum moderamina & morem Franciæ assuetum servare compellerent.*

Fol. 405. No. 177. Duke of *Baviere*, his uncle, to whom the words of the charter ^z were :

WADISLAO illustri duce *Boemiae* sententiam promulgante, & omnibus principibus approbantibus, marchiam *Austriæ* in ducatum commutavimus, & eundem ducatum, cum omni jure, præfato patruo nostro *Henrico* & prænobilissimæ uxori suæ *Theodora* in beneficium concessimus; perpetuo jure sancientes, ut ipsi & liberi eorum post eos indifferenter filii & filiae eundem ducatum *Austriæ* hæreditario jure a regno teneant & possideant.

Fol. 411. No. 178. Here you see his triple distinction of them; and others have them by *maiores* and *minores duces*, whereupon saith the learned ^a *Paschalius*, that the *maiores omnes unius ordinis esse censentur, omnes propemodum suspiciuntur ut reges, longeque antistant illis quos voco minores.* Neither can any not see much difference betwixt those of *Florence*, *Ferrara*, *Savoy*, *Lorrain*, *Saxony*, *Brunswick*, and such more, which amongst them also differently have so many imperial rights, and the *French* of late time, *English*, *Scottish*, and *Spanish* dukes, which are all *seigneurs suzerains subject lords*, and many of them possessing their denominating territory in title only, not in government. Yet *Charles L'oyseau* idly minceth his difference too small, where he makes our *English* dukes to be a degree by themselves, & *qui ne sont qu'à vie come officiers.* What dukes he means with us, I know not. But all men may know that since *Edward III.* the title hath been honorary and hereditary.

Fol. 423. No. 179. Under the name of a duke-dom *Austria* continued (except only the time wherein ^b *Frederick II.* had made it a kingdom, which endured not one duke's whole life) until he that was afterward emperor *Frederick III.* (as

Munster is author) used the title of archduke, continuing in that imperial family to this day.

Fol. 432. No. 180. Others therein like are by it, as *Prussia*, *Livonia*. What rights royal and even majestick supremacy some dukedoms have of the empire, is best learned ^c out of civilians, and such as have handled them in politick discourses. I mean those of *Lorrain*, *Savoy*, *Milan*, *Florence*, *Saxony*, and such more: whereof although some are challenged by the see of *Rome*, yet I may call them all imperial. For out of the empire their original was.

Fol. 433. No. 181. He that was a count, under a duke, or *judex fiscalis* is known by the name of *grävo* in the old laws of the *Ripuarians*, where, *cap. LV. art. 1.* the title being, *de eo qui grafationem interfecerit*, the text is, *si quis judicem fiscalem, quem comitem vocant, interfecerit.* And, as the inferior kind of counts were stiled oftentimes *comites* in antient story, as well as they of the first rank, and which were, as I may say, ducal; so in the *Dutch* or *Teutonic* idiom, they were both by community of name confounded, yet, by some addition, distinguished. As this *grävo* coming into *Latin* from *grasse* or *grave* in that language, expressed a count or governor under a duke, and also the first sort of counts differing not in rights of sovereignty from a duke. Thence are the names of *landgrave*, i. e. *comes provincialis*, *paltzgrave*, i. e. *comes palatinus*, *markgrave*, i. e. *comes limitaneus*, for *marquess*, and the like, applied to such in the *German* empire, which, only excepted their kind of acknowledgment of sovereignty, have all royalties: and ^d *grävo* thence signified a county. For the etymon of the word, *quidam*, saith ^e *Lipsius*, *a canitie vocem petunt, quia seniores in hoc munere, alii a fossis quia ad limites; ego malim, graecissante voce, quasi graphiones dictos, & quia rara tunc inter barbaros peritia scribendi, judicibus usurpata.* But I think clearly *γρᾱφειν* hath not to do with it. Nor is the element *g* any radical in the word. *Grave* or *greve* is from *ge-neve*, where *ge* originally hath no more place than in *gemore* for *more*. So that the word should be *rebe* had not custom took *ge* into it. And *rebe* or *reeb*, is *praepositus*. Their *burggraves* have hence the name and from *burgh* or *borough*, as in our language. But ^f *Crantzins* doubts much how they are in dignity to counts; whether before or under them. According to their territories and royalties, that must be judged, although they differ not generally. For *burggrave* is a count of a borough or city, as *landgrave*, of a province. In the latter eastern empire *καρδης* and *καρτς*, from the *Italian conte*, is usually for a count. But in letters sent from *Joachim* patriarch of *Alexandria* to a *German* count, he is called ^g *γρᾱφ* from *grave* or *grasse*. They had their counts. But such as in more antient times were there known by that name about the court, were lately turned into *μᾶγιστροι* and *δουμῆσκοι*;

* Adhdeemar. ap. anonym. in vita Lud. Pii, edit. a Pithoeo. Stero in annal. A. c. 10. clvii. & in Austria Cuspiniani. vit ducatum, habet Petrus de Vineis, lib. 6. epist. 26. collegit ad hanc rem.

^b Crus. Turco-graec. lib. 3.

^c Vet. formul. edit. a Bignon. cap. 7.

^d De coronis lib. 9. cap. 22.

^e V. quæ Andreas Kuichen in comm. jur. Sax. cap. 1. verb. duc. Sax.

^f Lovanij, lib. 1. cap. 10.

^g Metropolit. lib. 6. cap. 22.

the name of count chiefly comprehending those which were under the great duke, governor of the marine forces: amongst whom one was ^h *πρωτοκρίμης* i. e. the first or chief count. But they were all officary more than honorary.

Fol. 436. No. 182. Of *palatines*, some had that general name for livingⁱ in *palatia*; as *palatina officia*; and *palatini comitatenses*, for the emperor's guard, and the like. Others were more specially titled *comites palatii*, as chief judges and vicegerents in the court for administration of justice, of whom most mention is in the French story. Of those of the first kind is frequent mention in both the codes; but so that the word *palatines* comprehend also whatsoever officers were employed in the palace. *Παλατινοί* (saith an old glossary of the law) *κρινῶν νόμους, τι πάντες ἐκκληστοὶ οἱ ἐν τοῖς καὶ τὸ παλάτιον ὑποσυνδύου ὑπαρχόντες παύσεσθαι*. i. e. By a common name of palatines are called all such as were officers in the palace about the treasury; and interprets it also by *παλατινοὶ ὑπαρχέται*, court officers.

Fol. eod. No. 183. It is written on the tomb of that famous Rowland, nephew to Charlemagne, slain in the battle of Roncivalles, and buried at Blanz in Xantogne, that he was, ^k *primus comes palatinus*; which I interpret, the chiefest courier honoured with the dignity of count. But that other kind of counts palatines or *palazines*, as the old French called them, were as chief justices, and supreme under the king, for administration of right, in which office I find them not under the empire, until Charlemagne, in whom the French empire began. For neither the *comes sacri palatii*, spoken of in the code, nor the *curator palatii* come near that authority of the counts du palais of later time. I see none which hath better observed the true nature of them, than the learned *Jerom Bignon*, in his notes to *Marculph*, where he takes these words of old *Hincmar* to witness: *Apocrisarius qui vocatur apud nos capellanus, vel palatii custos de omnibus negotiis ecclesiasticis, vel ministris ecclesiae; & comes palatii de omnibus secularibus causis vel judiciis, suscipiendi curam instanter habebant: ut nec ecclesiastici nec seculares prius dominum regem absque eorum consensu inquietare necesse habeant, quousque illi viderent, si necessitas esset, ut causa ante regem merito venire deberet*. What better shews the nature of that officary dignity? And with this count du palais, or count palatine, the kings of France of the first line used also to sit in judgment, as in a precedent of that^m age, touching the abbey of *Dijon*, and thus speaking, appears: *Cum nos in Dei nomine* (the words are as in the person of king *Clothar III.* about 680) *Mosolaco in palatio nostro, una cum apostolicis viris patribus nostris episcopis, optimatibus, caeterisque palatii nostri ministris, necnon & Andobello palatii no-*

stri comite, qui de ipso ministerio ad praesens nobis deservire videbatur, ad universorum causas audiendas, iustoque judicio terminandas, resideremus, &c. The king and other great courtiers sat, it seems, sometimes, but the chief authority, delegate and judiciary, was in the count du palais; and before him as chief justice were all suits determined, crimes examined, the crown-revenue accounted, and whatsoever done, which to so great jurisdiction was competent. Neither was there, it seems, always one only in this office, but sometimes more. An oldⁿ monument, of *Pipin's* time, hath *ubique eorum justitiam invenimus sicut principes nostri, seu comites palatii nostri, vel reliqui legis doctores judicaverunt*. And a very ancient^o writer, of the middle times: *Quemadmodum sunt in palatiis praeceptores vel comites palatii qui secularium causas ventitant, ita sunt & illi quos summos capellanos Franci appellant, clericorum causis praelati*. He compares the counts du palais for secular business, to arch-chaplains constituted in those elder times in the court for ecclesiastical matters. They were called chaplains, *cappellani*, a *cappabeati Martini*, from *S. Martin's* hood, which as a most precious relic they kept, and the kings ob *adjutorium*, as *Strabo's* words are, *victoriae, in praeliis solebant secum habere: quam ferentes & custodientes, cum caeteris sanctorum reliquiis, clerici cappellani coeperunt vocari*. They much err which confound the count of the palace, with the *maire du maison*, or *major domus*. This one authority both antient^p and beyond exception disproves their conjecture. *Childebert* the first, sent into *Poitiers* *Florentianum* majorem domus regiae, & *Ranulfum* palatii sui comitem, ut *scilicet, populus, censum quem tempore patris reddiderat, facta ratione, innovata re, reddere deberet*. You see they are expressly divided, by one that lived in that age. And indeed, the *maire du maison* was of far greater power, especially after the time of *Clothar III.* and ruled all as a king, the king himself being rather in name only, than substance a king. But the count du palais his power was chiefly judiciary. Neither are they to be admitted, which suppose the *seneschal* or *grand maistre* to have succeeded into the count's place. Both those names have been in lieu of the *maire*; and an old^r author of France joins the words *majoratus* and *senescalcia*, as synonimies. The nature of which office with enough certainty, the same author describes. But by reason of the phrases of *regebant palatium*, and such like, in antient monks applied to the *maire du maison*, divers good antiquaries of that country have mistaken, and thence make a confusion of all these. Indeed some passages in their antients, especially in the monk^s *Aimoinus*, make the *major domus* and *comes palatii* as one in express terms. But I doubt their cre-

^h Curopalat, *del opph.* παλατ.

orig. palat.

ⁱ Cassiod. var. 7. form. 5. & C. l. unica tit. de com. & tribunis scholaram.

^k apud Bignon. in Marculph. lib. 1.

^l Gregor. Turonens. hist. lib. 9. cap. 30.

^m cap. 12. & 14.

ⁿ Protadio & Bertholdo.

^o Hugo de Cleeris de majorat. & senescalcia.

^p Cod. tit. de privil. eor. qui fac. palat. militat. & lib. 1. tit. 34.

^q Tabular. S. Dionysii apud eundem.

^r Post historiarum turbam, consulas Adrevald. Floriac. de miraculis S. Benedicte lib. 1.

^s cap. 12. & 14.

^t Saepius, verum maxime lib. 3. cap. 90; & 91. de

^k Tho. Leodius de

^m Ex chronic. Divionensi.

ⁿ Walafrid. Strabo de reb. ecclesiasticis, c. 314.

^o Benedicti lib. 1.

^p cap. 12. & 14.

^q Hugo de Cleeris de majorat. & senescalcia.

^r Saepius, verum maxime lib. 3. cap. 90; & 91. de

mits, and think rather they were deceived in the words. How easily might they in their cells make *major palatii*, or *maire du maison* one, both officers being of special great note in the court. And *comes* being then a word usual for general designation of any place or dignity. I know *Aimoin* wrote under the *Carolin* line, and above 800. years since. Yet those other authorities persuade me against him, and common opinion. And note also, they deliver that there were divers *maiores aulae* in *Neustria*, *Burgundy*, *Austrasia*, which favours as if there plainly they meant *counts du palais* in our distinct sense, delegate for jurisdiction, in such sort in every province, as the *comes palatii* in the court had. But the *major domus* taken properly, as I think, was never multiplied beyond one. Neither why *Gregory of Tours* should so distinguish them (he being a bishop, might know better of state than *Aimoin* or *Abdemar*, out of whom *Aimoin* had much of his story, being monks, could) except by this may be given any reason.

Fol. 437. No. 184. For the *count du palais*, in the court, bare the person of the king or emperor. *Comes palatinus*, saith a German antiquary, *vicem caesaris praesidendo senatui principali defungebatur, fidem imperatoris implorantibus aderat, jusque reddebat, fiscum augusti, praedia salica, redditus regis procurabat, caesarum censum exigebat. Nil citra ejus auctoritatem duci (Boiariae) aut decernere aut statueret licebat. Si senatusconsultum reguli displicebat, intercedebat, ad caesaremque referebat.* In this form must the name of those which then were specially called counts palatine, be derived, and from that second kind of *counts du palais*. For, if from the first and general name of *palatinus*, it would follow, that every count living about the king were a palatine, and also, that, with any regard to a province, none could be so titled. And thus, by the most learned *Peter Pithou*, is deduction of the name made.

Fol. 440. No. 185. The like in proportion must be thought of an ignorant * *English* writer of the monkish times, delivering that *prothosofastos* (he means *protosebastos*) in *Latin* is *comes palatii*. He knew it was a great dignity in the eastern empire, and therefore thought so.

Fol. 473. No. 186. The lady *Anna Comnena* names *Tancred* *μπαρεσις Τανκρε*, where the very *Italian* is.

Fol. eod. No. 187. Hence the names of *Danmarch*, and, as some have thought, our *Mercia* or *Mercland* in the *Saxon* heptarchy, and the laws of *marque* or *reprisals*.

Fol. 474. No. 188. As if it should be in *Latin* *magister equitum*, or a general over the *gensdarmie* of horsemen. It is true, that among the old *Gauls* the word * *marc* signified a *horse*, as also in old † *French*, and *British* or *Welsh*; we and the present *Dutch* retaining still for one

sex the word *mare*. Hence some will the *marcketa mulieris* in *Scotland* i. e. (from an obsolete use of *equitare*) the first night, or *maridenhead of the bride*, which by a law of *Euen* the third, king of *Scotland*, was allowed to the king and other lords at the marriage of their tenants daughters; and afterward by *Malcolm III.* at the request of his queen, turned into a sum of money, yet remaining among their laws. But also with us in a *nativo habendo* the elplees is laid, among other, in *marcbeta pro filiabus suis maritandis*; perhaps having like cause of name, although not the same ground of law. But in *Scotland* it extends to all conditions as well noble as other. And from the old use of this *marc* or *mare*, must you derive *marshal* i. e. (as most say) *mare-schalch*, which literally is as much as *equi* or *equorum praefectus*, i. e. *master of the horse*. Which, without question, is the true etymology of the great office of *marshal* joined antiently in *England* with the *constable* (i. e. *comes stabuli*) in their judicial place of the court of chivalry. But to justify also, that *marquess* is hence, one produces a piece of an old romant, thus speaking of *Paris* his company, in his embarkment for *Helen*:

Li a chivalier & li marchis
Ke Paris ot semont & pris,
Et ses freres deifibus,
Et furent bien deux mil & plus.

And thinks that the author would not absurdly by *marchis* mean such as are amongst us feudatary *marquesses*; but that he used it for horsemen, which in later time was applied to this dignity. Surely there was no necessity that he should use the name for the one or the other, but generally for a soldier, because indeed the old *marquesses* had in their provinces martial government. Or if he did use it for horsemen, as perhaps he might, what consequence is there that thence this honorary title should have its deduction. But howsoever, he knows nothing of the old monkish rhymes and romants, that knows not how usually they abused words of titles, dignities, and state of their own age, by application of them to countries and times where and when they were not. What doth *Dan Lidgat*, the monk of *Bury*, mean, when in the destruction of *Thebes* he says, that king *Adrastus*

— sette a parlement,
And hath his letters and messengers sent
Through Greece to many sundry kings,
Hem to enbath and make no lettings,
And round about, as made is mention,
Hee sent also to many a region
For princes, dukes, earles, and barons?

It must, in charity, be thought that none of his readers are so blockish as to believe that the titles of dukes, earls, and barons, were in *Greece*. Much of that nature is in *Robert of Glocester*, *Chaucer*, *Gower*, and elsewhere, in *Lidgat*.

* Idem lib. 4. cap. 6. 38, 39.

† *Μαρκια* *Paulanias* *Phocis* lib. 10.

regiam majest. lib. 4. cap. 31. & de *marcbeta* apud nos, *consulas* *Henric*, de *Bract*, lib. 4. de *assisi* n. diff. cap. 28. §. 5.

‡ *Jo. Aventin.* *annal.* *Boior.* §.

§ *March.* leg. *Boiar.* tit. de *vitio.* *animali* art. 11.

* *Roger.* de *Hoveden.* in *Hen.* II. fol. 339.

† *V. post* *Hectorum* *Boetium* lib. 3.

‡ *Benois* chez

Fol. 475. No. 189. And perhaps as faulty, in that he interprets *marquifate* by *districum unius villicationis aut ditionis*, because the territories of villages or towns; he says, the Dutch call *veftmarkts*. I doubt not but that *marck* there also is originally, as before we have delivered.

Fol. 481. No. 190. The word alone is very antient, and of pure *Latin*. In *Cicero* you read, *apud patronem & reliquos barones te in maxima gratia posui, & hercule merito tuo feci*. And in another place, *baec cum loqueris, nos barones stupemus; tu videlicet tecum ipse rides*. And two other passages in him, as *Elias Vine-tus* reads them, have *baro* in the singular number, where some of the published books have, and that most properly, *vero* the conjunction. I will confess that as yet I have not thoroughly learned what *barones* signifies to *Cicero* in his first place: yet I know, some have dared to think it there used as near to what it now interprets in the rank of dignities. They shall and may for me; I cannot. But in the second, I am somewhat confident, that, if the reading be not corrupt, it is not unfitly expressed into our word *blockhead*, or the *Latin* *bardus*. The text of *Tully* there justifies it, and a satyrift^d that lived under *Nero*, by the correction of best critics, according to best copies, hath

—*Jura. Sed Juppiter audiet eheu!*
Baro

Fol. eod. No. 191. How soon that difference might creep in, any^e novice in letters knoweth.

Fol. eod. No. 192. He plainly justifies the interpretation; and perhaps in that first place of *Cicero*, so vexed among the grammarians, some allusion is to this notion of the word. For how much he persecutes the *Epicurean* sect, is apparent in that of his *de finibus*: and what was *Patro* but an *Epicurean*? And how well might he lay that name on such as in his judgment were so far from true philosophy? *Cum Patrone Epicureo, falth^f he, mibi omnia sunt, nisi quod in philosophia vehementer ab eo dissentio*. I see not then but in both places it may be probably affirmed, that he meant by *barones* alike.

Fol. eod. No. 193. Βαρὺς, n. dicitur gravis, quod sit fortis: cui contrarius est levis & infirmus.

Fol. eod. No. 194. And well doth this agree with our *Bracton* his derivation. *Sunt, falth^f he, alii potentes sub rege, qui dicuntur barones, hoc est robur belli*.

Fol. eod. No. 195. These are testimonies of the signification of *baro*, as it was made a denizen in the *Latin* commonwealth; for it seems to be of a strange blood, and, as some will, deduced into *Rome*, or, in the middle times, into *Latin* out of *Gaulish*, old *French*, or *Dutch*. But I conjecture, although it be used by *Tully* for a *block-head*, or a *simple fellow*, and so by *Persius*, that yet the genuine signification of it was rather *servus militis*, or *calo*, or *cacula*,

which are what the *French* call *les valets des gendarmes*, i. e. *soldiers attendants*, than *fatuus* or *stultus*, as of *bardus* also may be affirmed. For, that is used for *fatuus*, yet was in *Gaulish* a poet. And the servile quality of those attendants, might well give occasion to apply the general name of their duty to the particular of their quality. As, because great, and lubberly fellows are usually noted for imperfection in understanding, and servile ability of mind, the *Latins* by the name of *magnus homo*^g meant a foolish knave, or a foolish fellow.

Nequam & magnus homo, laniorum immani^h canes ut, falth^h Lucilius, and
Magna quidem sequeris Pontice; magnus homo es,

with the like, is inⁱ *Martial*. Yet, neither did that properly interpret a *fool*, no more did *baro*. The same in proportion may be said of it as it is turned in the glossaries *fortis* or *plous*, and the like. For I take *fortis* there, not for *valiant*, but *sturdy* or *strong*, which well fits with our *baro*, as he was *militis servus* or *cacula*. But that it is derived from *βαρὺς*, I must take long day to believe.

Fol. eod. No. 196. It is likely then, that, as the *Latins* have used *puer*, and sometimes *homo*, in later ages of barbarism, nothing more common than *homo*, for a man or servant, the *French*, and those amongst whom *baro* or *baron* was for *homo* or *vir*, applied it in the same fashion, and so called their ministering servants; which also helps to justify the testimony of *Cornutus*, by whom perhaps and by the *Romans*, the knowledge of some barbarous words being chiefly learned out of the wars, this was thought only to signify the servants of the camp. That it was used by the *French* or *Dutch* for a minister, or man, or such like, we may observe in this piece of the *Salick*^k laws. *Si quis sagibaronem qui puer regius fuerit, occiderit, &c.* And then, *sagibarones in singulis mallobergiis, i. e. plebe quae ad unum mallum convenire solet* (this *mall* or *mallus* occurs often in the *Salick* laws and antient precedents, in like signification) *plus quam tres esse non debent: & si causa aliqua, ante illos, secundum legem fuerit definita, ante grati-
fionem remove non liceat*. Here in *sagibaro* the word *baro* appears, and, until I am better instructed, I shall think that *sagibaro* was one of some kind of mean justices or officers in the country, before whom sometimes causes criminal, and amendable by amercements or mulcts, were heard and determined, near like our justices of *oyer* and *terminer* for trespasses. And in this sense perhaps remains the name of *barons* to this day in the judges of the exchequer. For, *sagi*, I guess is made out of *sach* or *sake*, a word known in our antient laws, and coming from *Teutsch* or *Saxon*, used for liberty of amercia-ment, and giving amends in the court *baron* antiently due to the lord, both when the plain-

^b Epist. ad Attic. lib. 9. ep. 11.

^c De finibus lib. 2.

^d Persius satir. 5. ubi & videtis Eliam Vine-tum.

^e Uti B. &

V. saepius invicem antiquis commutantur, videre licet apud Ald. Manutium in Hirt. de bell. Hispaniensis, alios.

^f Famil. lib. 13.

epist. 1. ^g Meurs. exerc. critic. part. 1. ad Plauti milit. cap. 4.

^h Varro de lingua Lat. lib. 6.

ⁱ Lib. 7. epig. 99.

v. & lib. 9. epig. 51.

^k Salic. leg. cap. 56. & art. 4.

tiff failed in his proof, or the defendants were subject to the action, as at this day. *Sak*, faith an antient *ms.* *est placitum & emenda de transgressioibus* (I read *transgressionibus*) *hominum in curia vestra; quia sak* Anglice, encheſon *Romane*, (he meant *Francice*: whence, works in the provincial tongues of *France* and *Spain* are called *romances*.) & *inde dicitur forſouth sak, hoc est, est pur cel encheſon*. Our law *French* uſes *encheſon*, as the present *French* their *achoison*; for an *occasion* or *opportunity*, and, I think, for *accuſation*. You know the word *sake* is at this day with us for *cause*. As, for *God's sake*, and the like. And *cauſa* in *Latin* is taken antiently for a matter judicially questioned. Why then might not *sake* be as that deſcription before is, or, as our¹ common laws ſay it is, a *conſiſans of pleas*, or liberty of amerciament, which ſuppoſes a *conſiſans*, and ſo applied to ſignify, as in the genuine ſenſe, it interprets *cauſa*, for a controverſy? And that ſhould the right meaning of *sake* be, is juſtified out of an old² *eire*, where the liberty of *sake* is allowed to every lord by common right. Underſtand every lord of a mannor. For every mannor hath its court; every court its pleas; and in thoſe pleas amends and amerciaments, for certain actions and *ſelon la bas juſtice*, neceſſarily follow. Out of this may be conceived what the particle *sagi* in *sagibaro*, is; and that *sagibaro* may be not ill turned into *miniſter mulctarum*, or *judex cauſarum*, or *mulctarum*, or the like; which I the rather believe, becauſe in the antient³ laws of *Burgundy*, one, whoſe office is near what ſeems to have been as the *sagibaro's*, is called *witſſſcale*, which is verbally to be turned *miniſter ſive praeſectus ad irrogandas mulctas*, or ſo. For *wite* (a word uſed by *Chaucer* and others about his time) is a *puniſhment* or *mulct*, as in our words occurring in old monuments, *blodwite*, *ſcripſwite*, and the like. And *ſcale* is a *miniſter*, *officer*, or *ſervant*, whence alſo the name *Godſſcale* is the *ſervant of God*. So that as *ſcale* is in *witſſſcale*, I ſuppoſe *baro* in *sagibaro*. I have thought that in this name of *sagibaro*, but differently applied, might be found that obſcure word of our laws, *ſaccaboz*, *ſathaboz*, or *ſacaburthe*, for in all theſe forms it is written in ſome⁴ *Bractons*, or *ſakebere* as *Britton* hath it. I think ſo ſtill. For it was no unfit name to call him *ſakebere*, or *ſaccaboz*, thoſe come neareſt to the right orthography, for *sagibaro* or *ſakebar*, which proſecuted freſh ſuit againſt the thief, as the *ſaccaboz* did, and to that purpoſe is named; interpreting there *accuſator*, or the *man accuſing* or *proſecuting*. And from that ſenſe may be underſtood an⁵ old report, wherein one *Piers* brought his action againſt the prior of *M.* & *ſe plaint q'il luy avoit diſſtrain a ſere corporel ſerement ſains eſpecial comandement le roy encounter ſtatut &c.* And the avowry was, becauſe the prior *ad ſa court*

en N. & *view de frank plege & poet pleder ſaccabar*, plainly it is for *ſaccabar*, ou vint un *W.* le moigne, & avoit embly un ſurcote & a la ſute un tiel ſuit attache & que ſelloniſſement avoit emblee cel ſurcote, ad de bien & de mal ſe mit in bons gents de la court; & la voloit il aver fait *P.* & les auters veyſins ſere le ſerement, *P.* le counterdit per ont ſuit agarde que il ſuit diſſtrain, &c. Demurrer was, and *Metingham* chief juſtice thus pronounces his judgment: *Home vos ad demande le quel le prior ad cele franchise ou non, per la ne reſpones nient, & pur ceo nous & tenous agraunt, & vous neſtes ſoun tenant, naves pas dedit, ne que la laronn ne ſuit priſe ove meynouere & qu'il ſe miſt en la court de bon & mal, & vous ne voiles aler a ſerement; & home ne doit eſtre perdue en tel caſe* (perhaps *pendue*) *ſauns ſerement de ces de la court, pur ceo agard ceſt court que vous ne pregues ren per voſtre brieſe, eins ſees en la mercy & le priour a dieu.* This derivation of it ſeems much more probable than that from *ſikerborgh*, which ſome have; although I know in the old laws of⁶ *Scotland* our *ſakebere* is expreſſly written in the printed books *ſiker-borgh*, which ſignifies a *ſure pledge*. But the proper proſecution of *ſakebere* in this ſenſe, was, before pledges could be found; and indeed was he that followed when the guilty part was took with the *main-aver* (that is *hondhabend*, having the thing ſtolen in his hand) which we corruptly now ſtile to be taken with the⁷ *maner*. They uſed for this alſo *backbetend*, i. e. bearing it on his back, in like ſenſe and words, as *ἐπ' αὐτοῦ φέρειν*, is amongſt the *Greeks*. And it may be doubted that *ſiker-borgh* hath crept of later time, and by ſome critical miſtaking, into the *Scottiſh* laws, for this *ſakebere* or *sagibaro*, uſed antiently, it ſeems, for *plaintiff* or *appellant*. I have ſeen thoſe which otherwiſe think, but they perſwade me not. In like ſort perhaps the old *german*⁸ *Barigildi*, were ſuch as being charged with accounts upon receipt of the crown revenue of ſubſidies, had thence their name. For *geld* or *gild*, is, among other ſignifications, a payment or tax, or tribute. But this ſomewhat out of the way. After thoſe antient laws the eldeſt authority of this name uſed for *men* generally, is in a *French*⁹ ſtory. *Burgundiae barones*, the words are, *tam episcopi quam caeteri leudes timentes Brunichildem, &c.* i. e. *The men of Burgundy, as well biſhops as other of the common people.* For ſo *leudes* ſignifies. And antiently with us here, the citizens of *London* were called *barones London*. *Cum impoſſibile ſit*, faith an old monument touching the pleas of the crown held at the tower, for the city, *baronibus & univerſis concivibus London aliunde tranſire in placitis coronae quam per manus regis & juſticiariorum ſuorum, neceſſe eſt baronibus & civibus univerſis, gratiam & benevolentiam eorum captare.* And in a writ

¹ Itin. Noring. Br. quo warranto 2. itin. Ed. III. Kel. fol. 145. alibi. nec aliter ſane vet. leg. Ed. confeſſoris cap. 22. ² Itin. temp. Ed. III. fol. 150. §. 44. ³ Conſtit. Burgund. cap. 76. ⁴ Bract. de corona cap. 32. & 35. Britton. cap. 15. & 29. ⁵ Trin. 35 Ed. I. ms.

⁶ Quoniam attach. cap. 1. & 100. & videliſ Skenacum in ſaccaborch. ⁷ Meinouer in 1 Ed. III. fol. 17. b. & paſſim in itinere Cantii

⁸ Ed. III. ms. male igitur, & ridicule manſopere vocabulum illud tranſlatum quod tamen antiquius erat in uſu. P. 44. H. III. rot. 8. ⁹ Ad nunc. Caroli apud Pittas apud Bignon. in not. ad vet. form. ¹⁰ Append. Greg. Turonenſ. ſive lib. 11. cap. 41.

of a dower brought for lands in the suburbs, *veniunt majores & alii barones London, & dicunt quod hoc spectat ad communitatem civitatis, & petunt libertatem suam & habent.* So * *barones de Feverham*: and at this day, the barons of the cinque ports. And more such are in records and story, of those times. Neither did *barones* so signify otherwise than in later time *homines* of such a town, which is very frequent and every where. Now as *comes*, being indifferently in its own genuine sense to others than they of the dignity, was yet, by use of time, made a special word for him which was *comes imperatoris*; so *baro* originally signifying a man, and withal a *servant*, or *minister*, or *officer*, grew at length to denote specially the king's man *servant*, *tenant*, or *officer*, of better note, constituted with some kind of jurisdiction in some territory, which being less than either those of dukes, marquesses, counts, or viscounts, was known only by the name of a barony; which also as it expressed a feudal territory or signiory, was a common name to all those other dignities or signiories, which were immediate to the crown of *France*, or the empire. The *French* say, *baronnie est toute seigneurie premiere, apres la souveraine, du roy mouvant directement de sa couronne.* But this, as their baronies were antiently. And accordingly was the word *baron* with them extended, as in the empire also *capitaneus regis vel regni*, which comprehended alike, upon the testimony of the feudal laws. *Dux, marchio, & comes*, say they, *feudum dare possunt, qui proprie regni vel regis capitanei dicuntur*, and also *valvasores majores*, of whom more anon. But as *capitaneus* and *valvasor* was also appropriated to especial dignities beneath a count, so also *baron* hath been. These titles indeed all three being allowed, especially as the greatest for distinction, so such as having territory and jurisdiction, or *droit de police*, as the *French* call it, were notwithstanding not to be honoured with any of the superior: whereupon that of *Baldus*† is, that a baron is he which hath *merum & mixtum imperium in castro aliquo sive oppido ex concessione principis.* And such, being at first only, whose tenures were immediate from the crown, have long since ceased in *France*. And it is antiently affirmed in their *Grand Coustumier*, that of this kind there were then but three in all *France*: that is, *Bourbon, Coucy*, and *Beaujeu*, which, as the other before like them, no longer now remain with the name and substance of that former title. By the substance, I mean their being immediate tenancies of the crown, or, as we say, in *chief*. And, that we may once admonish so, a tenure of the crown is when it is of the king as he is king, and personal: but of the king only, is when it is of him by reason of some signiory escheated, or by some other means come to his hands, as by inheritance or the like. But when in the superior dignities, rights of sovereignty were, for the most part, all the true antient baronies became subject under those usurping dukes, marquesses, and counts, or else got to themselves as

great titles. And then they, and the other dukes and counts, as a point of sovereignty, also made barons under themselves; known by that name, and upon dissolution of those antient dukedoms and counties (whereof already) those inferior baronies became to be held of the king; but not as of the crown; and so at this day continue in all *France*. Whence it follows; as *L'Oyseau* observes, that barons there now are all, as baron is an especial title, *mediocres seigneurs*, because none of the antientest and first kind remain, but all are as part or tenancies of the re-united dukedoms or counties. Thus then the word *baro* signifying a man, as some will a *free-man*, and also applied to a servant or minister, became in the empire and in *France* to denote a dignity and signiory. It is used in *Picardy* at this day, as also in our common laws, for a *husband*, exactly therein agreeing perhaps with *vir*, i. e. man and *husband*. But it is noted that in the customs of *Picardy* and elsewhere often occurs, *que la femme a son mary a baron*, which *L'Oyseau* interprets, that the wife is *in manu potestatisque viri*, taking *baron* there as it signifies a dignity or superior power. But if a feminine exposition should be upon that text, it is more likely that baron should be taken for a servant or minister, so that the wife might be master or mistress. Here betwixt man and wife, I abstain from judgment. But withal remember the use of *barn* or *bern* in our north parts for a manchild, as it respects the sex: and an old metrick translation hath

Heli bærne that naught is gan
In the red of wicked man,

For *blessed is the man*, &c. and *cheopilbeorn* and *cheoplman* in old laws of this kingdom are the same; both signifying an *ignoble man*, and *meanest yeoman*.

Fol. 488. No. 197. *Sunt & alii qui ab istis feuda accipiunt, qui proprie regis vel regni valvasores dicuntur, sed hodie capitanei appellantur; qui & ipsi feuda dare possunt.* Some hence infer, that *valvasores regis aut regni*, or *majores*, were such as had their feudal honour under and from dukes, marquesses, or counts; insisting upon the words *sunt & alii qui ab istis &c.* where, under favour, *istis* is to be referred to *regni vel regis*, as if the composers of those laws had said, there are others also called *capitanei* and *valvasores* or *capitanei regis* have their best dignity. Authority of the same laws, in another passage, maintains it; where after an enumeration of the three chief feudal honours is added: *Qui vero a principe vel ab aliqua potestate de plebe aliqua, vel plebis parte, per feudum est investitus, is capitaneus appellatur.* And then, *qui proprie valvasores majores olim appellabantur.* What can be more plain than that *valvasores majores* are referred to *dux, marchio, comes, & capitaneus*? So that as all dignities above baron is included in the baronage, yet baron a distinct title; so all were called *capitanei regis, & valvasores majores*, yet *capitaneus*, the same with *valvasor* antiently, a particular and separate dignity.

† Placit. Hill. 11 Hen. III. rot. 12.

* Rot. claus. 3 Ed. I. memb. 6.

† Ad c. innotuit. tit. de electione,

Fol. eod. No. 198. And thence had the later Grecians their *καταβάντες*, and *καταβάντες*, and *καταβάντες*; and for the office or dignity *καταβάντες*. Neither in the feudal law is any name more competent to the honorary and feudal baron than *capitaneus regis*, or *valvasor major*. The feudals go on; *qui vero a capitaneis antiquitus beneficium tenent valvasores sunt*. That is, as of necessity it must be understood, *valvasores minores*, or simply *valvasores*, and thereby distinguished from the other. *Qui autem a valvasoribus feudum quod a capitaneis habebatur similiter acceperint, valvasini, id est, minores valvasores appellantur*: where the great lawyers *Hotoman* and *Cujacius*, not so much regarding the words of the text as the substance of the matter, make the division of valvasors into *valvasores minores* (i. e. of the first rank, and *capitanei*) *valvasores minores* (simply here called *valvasores*) and *valvasini*, or *valvasores minimi*, which are stiled here *minores*; as if in our language you should say, lord paramount, being at least a baron (not king) *mesue*, and *renant-perd'aille*. And all these there were accounted titles honorary in the empire, after such time as all honour defensible became feudal.

Fol. 489. No. 199. For their name; that in all places except *England*, hath its original from a horse, the most usual beast of the wars, as the *Roman equites* were titled from their *equus publicus*, being also before called *celeres* and *trosculi*. For to the *Spaniards* they are *cavalleros*, to the *Italians cavallieri*, to the *French chevaliers*, (all, in their provincial tongues, from the *Latin caballus*) and in the *British margoghs* in like signification. For, as now, so anciently *marg* or *marg* in that language, as other more, interpreted a horse. Whence every knight with his two esquires on horseback, in *Brennus* his army was stiled *trimarcisia*, which, though it be applied to the *Celts* or *Gauls*, (amongst whom also *Caesar* especially reckons, as their chief lay order, the *equites* or *margoghs*) yet, without much difficulty, it may be communicated to the *Britons*. And the *Germans* call them *repterer*, that is, *ridars*, a word in *Scotland* to this day used. As all these in this western part express a special honour implying ability of martial service with horse; so the old *Greeks* attributed not to a great man a better name than what truly was the fame with every of those, that is, *καταβάντες*; whence *Hecuba* calls *Polymestor* king of *Thrace*, *καταβάντες*; and in *Homer* *καταβάντες Nestor*. So the chief men and of best worth in *Chalcis* were known by the title of *hippobatae* i. e. *equites*.

Fol. 490. No. 200. As in *Rome*, children until fourteen years of age (for so will the time be, although some places in good authors misconceived have perswaded some otherwise) using their *toga praetexta*, the ensign of infancy, did then take *virilis toga*, or habilitment of manhood, according to the increasing hopes of their worth; so in the northern parts of *Europe*, a-

bout that age, the sons of princes, and others of noble rank, used to receive arms from a superior, as a token of what they would be, that is, martial knights in service for their country, whereto tho' all were bound, yet they especially by reason of those ennobling ornaments. Of the old *Gauls* it is in a manner affirmed by *Caesar*, speaking of *Induciomarus*, a *Gaulish* prince about the *Rhine*. *Armatum concilium*, saith he, *indicat*. *Hoc, more Gallorum, est initium belli, quo, lege communis, puberes armati convenire coguntur*. And of the *Gauls* in general: *In reliquis vitae institutis hoc fere ab reliquis differunt, quod suos liberos, nisi cum adoluerint, ut munus militiae sustinere possint, palam ad se adire non patiantur; filiumque in puerili aetate, in publico, in conspectu patris assistere turpe ducunt*. Which although he makes as proper to the *Gauls*, yet that large nation of the old *Germans*, even bred out of, and continuing in their being through war, had almost the like custom.

Fol. 491. No. 201. For that of their going always armed; it differs not from the more ancient use of the *Grecians*, who, before learning mollified them, and brought their rudeness to a civility, continually *εὐδνεσσομένοι* i. e. *went armed, or ferrum gestabant*.

Fol. 493. No. 202. To that kind *per arma*, respect must be had when you read the story of *Audoin* king of the *Longobards*, and his son *Alboin*: where after a glorious victory had by the conduct of *Alboin* against the *Gepidae*, the *Longobards* desired *Audoin* that he would be pleased that his son *Alboin, ejus convivae fieret*, i. e. might usually sit at table with him. But the king answered, that he could not permit that, lest he should infringe their national custom. Because the king's son was not to dine or sit at table with his father, until he had taken arms at the hands of some foreign prince. *Audoin respondit, saith he, story, se hoc facere minime potuisse, ne ritum gentis infringeret. Scitis enim, inquit, non esse apud nos consuetudinem, ut regis cum patre filius praeceat (not procedat, as *Pitbon*, it seems, did read) nisi prius a rege gentis exterarum arma suscipiat*. Hereupon, *Alboin* taking with him forty young gentlemen of his country, went to *Turisend* king of the *Gepidae* (whose son *Turismod* he had slain in that last victory) and shewed him the cause of his coming. *Turisend* nobly received him; placed him at table with him, where *Turismod* was wont to sit, and at length (notwithstanding the barbarous conspiracies of some of the *Gepidae*, grieved still with their yet fresh overthrow) gave him *Turismod's* arms, and sent him to *Audoin*, with whom, thenceforth he was as a table guest. *Sumensque Turisendus arma Turismodi filii sui ea Alboin tradidit, eumque cum pace incolumem ad patris regnum remisit. Reverfus ad patrem Alboin, ejusdem convivae hinc effectus est*. These testimonies compared, prove that in the martial nations of *Gauls*, *Germans*,

² Junius Gracchanus apud Plin. lib. 33. cap. 2.

³ Euripid. in *Hecuba*. ⁴ Herodot. lib. 5.

concilium venerunt. De Gallis Livius decad. 3. lib. 1.

fred. de gest. Longob. 1. cap. 23. & 24.

⁵ Pausanias in Phocicis.

⁶ De bello Gallico lib. 5. & 6.

⁷ Thucydid. lib. 2. & Aristot. polit. 6. cap. 5.

⁸ Buchanan. reb. Scot. lib. 7. in *Malcolm III.*

⁹ Armati (ita mos gentis erat) in

¹⁰ Paul. Warn-

such as were *militiae cingulo honestati*, in those antient times (more particulars of privileges and prerogatives you have in the titles *de testamento militari*, and such like in the imperial laws) that heretofore our knighting had in it the same, or one proportionate to the same, as it's chief ceremony, in which the honour by retaining, or dishonour by losing, consisted. Where observe also, that as the Romans had their *cingulum dignitatis*, and *cingulum militare*, and *otiosum cingulum*; so have some of our parts had their *gladius comitatus* and *ducatus*, and such like, and in giving of those titles, the *cinctura gladii*, which must not, as referred to that antient use of making knights *per cincturam*, be supposed to be both a knighting and a creation of the other dignities. But as in these confined usually to some province, so the old *comitiva* was to special place in court, the *jus gladii* for government was, at least partly, transferred; so in the girding with a sword for knighthood, the *usus gladii*, if I may so say, for service in war; which difference is seriously to be thought on, and conferred with those *cincturae* in the creations of dukes, earls, marquesses, and the like, before related. In the stories of about 1100. of our Saviour, mention is very frequent of such as were by princes *accincti gladio*, for knighted.

Fol. 503. No. 204. This the later Grecians have in their *σκητιζων*, which denoted him that bare the shield or arms of his knight. Thence also *armiger* and *scutigerulus* are so used by ² Plautus; and of Butes,

— hic Dardanio Anchisae

Armiger ante fuit, fidusque ad limina cussos.

saith ^a Virgil. And Tacitus, of *Cartismandua* queen of the Brigantes, a British people about now Yorkshire, *spreto Venusto (is fuit maritus) armigerum ejus Vellocatum in matrimonium regnumque accepit*. So amongst the Grecians, *ἄσπιδων*, *ἀσπίδων*, and *ἀσπίδων* are, in Euripides especially of the antients, of like signification.

Fol. 514. No. 205. But no man amongst them may be either *palatine* or *chastellan* in that province, where he possesses not in his private right some territory. As Poland, so the great dukedom of *Leitou*, or *Lithuania*, is divided into *palatinates* and *districtus*, as the Latin writers call them. *Hi vero districtus & palatinatus*, says Alex. Gaguin, *pro ducatus (ut quondam temporibus plurimorum ducum erant) computari possunt, & unusquisque palatinatus suum vexillum quo in bello utitur habet. Eundem quoque colorem & signum omnes districtus sive provinciae, qui in eodem palatinatu continentur, in vexillis suis representant, nisi quod palatinatus vexillum majus est, cum duobus cornibus, districtuale vero minus simpliciter protensum cum uno cornu*. But, I think, that in name do they more agree with our counts palatine, than nature.

Fol. 527. No. 206. Both he and his brothers are in their old stories called generally *reges*, as the children of the Saxon kings with us are ^b *clytones*, or *clytunculi*.

Fol. eod. No. 207. And another French antiquary saith, that *daulphin* was the surname of the earls of *Viennois*, *Albon*, and *Arverne*, and that they bare for their coat the dolphin, which afterward being controverted betwixt the divided house of *Viennois* and *Arverne*, it was ordered, that they should both bear the dolphin, but with differences. Therefore I can hardly think that the word *daulphin* was in that part of France, or Gaul, according to the idiom of the antient *Allobroges*, they had their seat here and in Savoy, a special name for prince, and *daulphine* for *principality*. Notwithstanding that a most ^d judicious author of the French story, speaking of the marriage betwixt one of Philip the fifth's daughters to the *daulphin* of *Viennois*, says, *ita suos principes vocitabant Allobroges*. And in a monastery of the *Jacobines* at Paris, I speak it upon the credit of ^e P. Merula, the epitaph of *Humbert* is thus conceived:

*Cy gist le pere & tres illustre
seigneur Humbert jadis
dauphin de Viennois: puis
laissant sa principaute fuit
fait frere de nostre ordre, &
prieur de ce convent de Paris, &
en fine patriarche d'Alexan-
drie & perpetuel administra-
teur de l'archevesche de Reims
& principal bien-facteur de
ce nostre convent. Il mourut
l'an du grace, mil trois cens
cinquante cinq.*

Hence some collection may be, that *daulphin* or *dauphin* is taken as significant for prince. But not every heir apparent with them is called *daulphin*. It is only the son and heir; which hath indeed its ground in the first donation. Every other heir apparent, supposing their law *Salick* which excludes females, is called the *monseigneur*; as, not many years since, *Francis* duke of *Alençon*, and brother and heir to *Henry III.* and in the memory of our fathers, *Francis* duke of *Engoulesme*, brother to *Lewis II.* and afterward king. For their law *Salick*, because few know any thing of it, though all talk of it, and it belongs to this purpose, a word or two. There are yet remaining, and in ^f print, *leges Salicae*, composed, as they say, by four counsellors about *Pharamund's* time; *Wisogast*, *Bodogast*, some call him *Lofogast*, *Salogast*, and *Windogast* or *Hufogast*. In them you shall read thus: *De terra vero Salica nulla portio haereditatis mulieri veniat, sed ad virilem sexum tota terrae haereditas perveniat*. The best interpretation of *terra Salica*, although some will have ^g it *regiam terram & dominium coronae & majestatis regiae Francorum*, is by our word

^a Uti imperium, gladio solenniter dato, fuerit translatum docebit plenius P. Faber semestrium 1. cap. 3.

^b Aeneid. 9.

^c V. Echelwerd. lib. 2. cap. 18. & recentiorum complures.

^d Jo. a Bosco Coelestin. in Viennae antiq.

^e P. Aemilius, histor. 8.

^f Cosmog. lib. 3. part. 2. cap. 40.

^g Edit. optima ap. Goldast. constit. imperial. tom. 3.

^h Apud Hadrian. Jun. in Bataviae cap. 9.

knight's fee, or land held by knight's service. Some derive it from ^h *sal*, contracted from *sadel* or *saddle*, signifying alike with us, and the old *Franks*, which were *Teutonick*, and called also *Salians*. And not long since, in an arrest in the parliament at *Bourdeaux*, upon controversy ⁱ betwixt two gentlemen for priority of their houses, a very old testament being produced, whereby the testator had devised his *Salick land*, it was resolved in point of judgment that this name interpreted *fiefs*. And, who knows not that *fiefs* originally were military gifts, and as the same with our *knights fees*? But, the crown, or any supreme dominion, cannot be called a *fief* or *fee*, whose essence consists in being held by some tenure. And good lawyers have thought that the text extends no otherwise. Whereupon, I think, one, now living ^k at *Paris*, speaking of their royal succession, by them allowed only to be males, makes it rather a perpetual custom than particular law. *Ce n'est point*, saith he, *un loye ecrite, mais nee avec nous, que nous n'avons point inventee, mais l'avons puissee de nature mesme qui le nous a ainsi appris & donne cet instinct*. But why then is it called *Salick*? and why was that law so urged against our sovereign of famous memory *Edward III*? To be long and curious upon this matter, fits not this place. But *Goropius* undertakes a conjecture of the first cause which excluded gynæocracy, or female succession and government, among them, and guesses it to have proceeded from their observation of a great misfortune in war, which their neighbours the *Bructerans*, a people antiently about the now *Over-Isel* one of the *xvii*. provinces, from near whom, he, as many others, derives the *Franks*, endured in time of *Vespasian* under the conduct and empire of one ^l *Velleda*, a lady even of divine estimation amongst them. But, howsoever the law be in truth, or interpretable, it is certain that to this day, they have a use of antient time which commits to the care of some of the greatest peers, that they when the queen is in childbirth, be present and warily observe lest the ladies should privily counterfeit the inheritable sex, by supposing some other male, when the true birth is female, or, by any such means, wrong their antient custom royal; as of this *Lewis XIII*. born on the last of *September* in *MD.C.* is, after other such, ^m remembered.

Fol. eod. No. 208. Many follow this, and deliver that it was given to continue in the elder sons and heirs apparent. But *Du Haillan* constantly denies part of it, affirming, that this *Humbert*, being without hope of lineal posterity, gave the inheritance of the *Daulphinè* to *Philip* duke of *Orleans*, second son to *Philip* of *Valois*, and for default of his issue to the sons of *John* duke of *Normandy*, eldest son to *Valois*, and afterward king of *France*, or of their successors kings of *France*, according as the same king, or duke *John*, or their successors should ordain, *a la charge que celui que serra investi*

du dict Daulphinè & ses heirs & successeurs, au dict pais, serroient tenns de se faire appeller DAULPHINS DE VIENNOIS, (the metropolitick city of that territory is *Vienna* upon *Rhosne*) & porter les armes du dict Daulphinè escartelles avec les armes de France sans pouvoir laisse le nom de daulphin, ny les dits armes, & que le dict Daulphinè ne purroit estre uni au royaume de France que l' empire ny fust pareillement uni. Whose syllables I the rather cite, because, against the credit of many other their authors, and the common received opinion, he justifies himself out of the instrument of that donation, which, by his assertion, he had made use of. So that neither *John* duke of *Normandy*, nor his son *Charles*, afterwards *Charles V.* of *France*, was either of them constituted *daulphin*, as some have delivered, but this *Philip* duke of *Orleans*, and second son to *Valois*, since whom, that state, upon good reason, hath so ordained, that it, being a neighbour territory to *Savoy* and *Italy*, should never be further from the crown's possession than in the son and heir apparent. Although it seem true that *Charles V.* son and successor to king *John* was the first of their kings which was *daulphin*.

Fol. 543. Fo. 209. For the first, that is, the *Merovingian* line, *Gregory* of *Tours* hath examples enough to justify their opinion. But, for the *Carolins*;

Fol. 544. No. 210. And the antient hereditary counts of *Bretagne* far exceed any of these.

Fol. 554. No. 211. But whereas he, upon a passage in *Villebardouin*, thinks that the crowns of the first kind of dukes were not very antient, I rather guess them to be at least as antient as near some c. years from the beginning of the third line. For, about that time, in the *Constantinopolitan* empire, under *Alexius Comnenus*, when the new titles of *sebastocrator*, and the like were invented, he honoured both the *sebastocrator*, who was then at first, apparent successor, with a crown, as also the *caesar*, being the next title to the *sebastocrator*. Στέμμασι, saith ⁿ his daughter, ἐν ταῖς πανηγύρεσιν ἡμέτεραις αὐτὸς σφραγίζων προσέτατε. τὸν τε Σεβαστοκράτορα καὶ τὸν Καίσαρα κατὰ πολὺ διαφερόντη τῇ πολυτελείᾳ τῶ διαδήματι & ᾧ αὐτὸ ἐσφραγίζοντο. i.e. In a publick session he commanded that they should be crowned, both the *sebastocrator* and the *caesar*, with crowns differing much in worth from that which he himself was crowned withal. The *sebastocrator* perhaps was then, as the *despote's* afterward. And the *caesar's* as the *sebastocrator's* in later time. Observe but the succession of one of these titles into another's place, whereof already, and you may agree to the conjecture. The *sebastocrator's* appears in the emperor ^o *Cantacuzen's* investing his wife's brothers *Manuel* and *John* with that dignity, and giving them crowns ἑκατάς, as my author says, ἕκατον αὐτῶν ἑμπεριεῖν ἀνά μιαν καὶ μόνην καμάραν i. e. having before only one arch. And it will not be absurd to think that in

^h Goropius Francic. lib. 2. ⁱ Bodin. de repub. lib. 6. cap. 5. ^k Hierom. Rignon, de l'excellence des rois. liure 3. ^l v. Tacit. histor. 4. ^m Rodolph. Boter. comment. 8. ⁿ Anna Comnen. Alex^{ad}. 3. ^o Europala. περι ὀφθικ.

imitation of those eastern princes, the custom of bearing crowns, by such as were invested in so great honours, came into these western parts. What community then was betwixt the eastern and western states, every man knows that hath read the holy wars of that age. Some of the French derive their word *appénage* from ^ππαράγειος, *sacred*, expressing in the eastern empire, the sacred habitude betwixt the *sovereign* and *suzeraine*. Why might not imitation of their habits be, as well as of their language? It is more antiently noted of *Charles* the ¹ bald, king of *France*, that he too much imitated the *Constantinopolitan* emperor, and how that age, about *Alexius* his time, generally affected hellenism, and such words of Greek as they could get them, is apparent in the monkish stories then written, in antient charters and other examples infinite. And afterward, in the charter of the black prince his creation into duke of *Cornwall*, under our *Edward III.* a mere Greek word is inserted by the characters of *intimos*, misprinted in the prince's case, *vointimos*, which is plainly ἐντιμος i. e. *honorifice* or such like, and could not but ridiculously be used now for *Latin*. Neither can their crowns antiently be so much imputed to their then possessed sovereignty. For then, why did our ¹ earls, before any dukes made in *England*, wear any such crowns, and merely such as are now ducal? They were not sovereigns, more than their posterity at this day. Or why had both our dukes, marquesses, and earls, afterward crowns to their creation, and as ornaments fitting their heads, not imaginary only or formal upon their armories?

Fol. 557. No. 212. And in cto. xcv. letters from the holy wars, ¹ to the pope, were intitled with *domino sancto ac venerabili papae Urbano, Buamundus & Raymundus sancti Egidii comes, Godefridus dux Lothariensis, & Robertus comes Normanniae*, which shew the indistinct use of *dux* and *comes*; and every man now calls *Robert*, duke of *Normandy*. And when our *Norman* conqueror had for haste, his coat of mail offered to be put on the wrong end upward, he jested at it with *vertetur*, as the *Latin* speaks it, *fortitudo ducatus mei in regnum*, and so *Malmsbury*, that calls him *comes*, hath it; others, *vertetur robur comitatus in regnum*, that call ¹ him also duke; and *comes Normanniae* is obvious in the epistles of *Ivo* bishop of *Chartres*, who yet names our first *William dux Normanniae*, in his chronicle. Infinite like examples are. And these kind of counts had the same office and dignity with dukes, as it seems, and their government might as well have the name of ^u *regnum*, as a duke's; which in antient laws of *Germany* is applied to them.

Fol. eod. No. 213. This *John's* predecessors being before usually known by the indistinct name of *dux* and *comes Britanniae*; yet so that the title was distinctly affected by them before this time.

Witness their monuments delivered in *Bertrand d' Argentre*, and especially the title of our old earls of *Richmond*, being also dukes there. For in a charter, which I have, of *Geoffry Plantagenest*, son to *Henry II.* being possessed of both those territories, made to one *Richard* the son of *Reiner* and his heirs, of *tronagium & pesagium de nundinis sancti Botulphi, & quicquid ad tronagium & pesagium pertinet*, the beginning is, *G. regis, H. filius, dux Britanniae, & comes Richmundiae*, where it appears, he used *dux* as different and better than *comes*.

Fol. 561. No. 214. Which agrees with that of *Witbur*, count of *Bretagne*, constituted by *Childebert*, in his speech to *Paul*, afterward bishop of *Leon*. *Prædictum*, saith ^x he, *regem ubi adieris, literas annulo ipsius, quem mihi a se discedenti donavit, signatas quasi tecum portabis, ei mox praebebis*.

Fol. 570. No. 215. But it is not likely that they were instituted until the dignities of duke and earl grew hereditary, which was not till after *Charlemagne*.

Fol. 571. No. 216. Some, and those of no small note, have thought that the French name of *pairs*, came out of *patrices* or *patricii*, which indeed were of like dignity in the declining empire, and first ^{*} instituted, far different from those occurring in the elder *Roman* story, by *Constantine* the great. And however in a constitution of *Theodosius* and ^y *Valentinian*, any that was twice *consul* had precedence of a *patricius*, yet *sublimis patriciatus honor*, by the emperor ^z *Zeno*, *caeteris omnibus antepositur*, and in the gift of it to ^a *Importunus* by *Theodorick*, it is called *munus plenarium dignitatum*. The deduction of it is from *pater*, and as if they were called the kings or emperors fathers. Οὗς ἡμεῖς ἐν τοῖς πατέρων ἀγομεν ἡμετέρων, saith ^b *Justinian* of them, which, in a manner, is interpreted in that of his also, ^c *qui a nobis locopatris honorantur*. Whence a *patricius* is called, πατήρ τοῦ κοινοῦ, i. e. *father of the state*, and ^d *Βασίλειος πατήρ*, and, by composition of the word, ^e *βασιλεοπατὴρ*, wherewith the emperor *Leo*, about *ccccxc.* honoured *Zantzas* father to his delicate concubine *Zoe*, τὸ ἀξίωμα καὶ ἀρχὴς μὴ πρότερον ἔν, i. e. *having newly invented this dignity, which was not before*, as *Cedren's* words are. Neither was it new then, as to some other nations, but only in composition. For *Haman* in the letters of *Artaxerxes* is said to have been so much ^f honoured, ὡς τε ἀρχομένους ἡμῶν πατέρα, i. e. *that he was called our father*: and that *abrech* proclaimed before *Joseph*, is by ^g *Chaldea* of *Onkelos* and *Jonathan*, and the *Hierosolymitan targum* taken for *father of the tender king*, or *tender father of the king*, although some interpret it, *kneel down*. The title of *patricius* was of such honour, that *Charlemagne* before he was crowned emperor, had it as an additament of greatness. That

^p Du Haillan liure 3.

^q Annal. incert. aut. sub A. 876. edit. a Pithœo.

^r Corona cinctus I. de Elham comes Cor-

nubiae f. Edw. II. Westminsterij sepulch.

^s Fulcher. Carnotensis gest. peregr. Franc. cap. 15.

^t Malmsbury. lib. 2.

de reg. Ranulph. Higden. polychron. lib. 6. cap. ult.

^u Leg. Bavar. cap. 10. & Aleman. cap. 35.

^v Vita Paul. Leonensis

biblioth. Floracens.

^x Zosim. hist. 2.

^y Novell. tit. 46. edit. a Pith.

^z C. de coff. l. 3. & v. c. de decur. l. 66.

^a Cassiodor.

var. 3. epist. 5. vide subscript. privilegio Tertulli coenobio Catinensi.

^b Authent. 81. in praefat.

^c C. de coff. l. S. fancimus.

V. Cassiodor. var. 6. form. 2.

^d Antholog. li. 4.

^e Luitprand. lib. 1. cap. 7. & 9.

^f Elth. cap. 16. comu. 8.

& de hac re consulas Plutarchum in Lucullo.

^g Genes. 41. com. 43.

it was as the same with μάγιστρος, or *magister* anciently, as a learned^h man would: I have not yet periwaded my self.

Fol. eod. No. 217. And it is reported,ⁱ that at the coronation of *Charles VI. Philip* the first of that name, duke of *Burgundy*, had place of his elder brother *Lewes* duke of *Anjou*, upon this reason. But^k at the coronation of *Francis II.* the queen dowager *Catharine* disliking that any of the later instituted peers, those antient being now extinct, should have pre-eminence of the kings children, so ordered that her other sons all clothed in the habit of peers, should go immediately after the king.

Fol. 573. No. 218. But the ring is now turned into a crown or coronet, which they call *meslee*, *mixt*, that is, part *fleuree*, and part *perlee*, because the marquess is as it were, participating of both, betwixt duke and count. Yet they have by a distinction given precedence to some antient counts before some antient marquesses; as to counts of whole provinces, before marquesses of only frontier towns, and, to those marquesses, before other counts or governors of towns; nay, and some have disputed and delivered that the title of count there generally is before marquess, and indeed the marquess of *Juliers*^l was, as for an addition of honour, made count by the emperor *Lewes of Baviere*. Yet a late author, *Charles L'oyseau* is confident, that, in regard all the antient dutchies and counties, which were entire provinces, are reunited to the crown, and that those of later time are but of such parts as it hath pleased the king to give, and under such limitations, the name of marquess there is generally before count. But for this and the like, remember that of the famous and learned *Alciat*: *Cum in Boiis*, saith he, & *Liguribus* plerique sint marchionis sive baronis titulum sibi arrogantes, vitæ genere moribusque ab agrestibus parum differentes, hos pro ignobilibus habendos existimaverim, sed omnino hac in re multum consuetudini tribuendum, quæ plerunque non eadem ubique est. Quapropter, in Gallia, marchionibus præferuntur comites. Plurimum vero principalis ipsa concessio pollet. Siquidem omnes dignitates ex supremi ipsius principis arbitrio pendent, qui, si velit, ea dignitate ornare baronem potest, ut comitibus anteponat, nihilque eam vulgarem sententiam facere, quæ tradiderunt aliqui, comitem esse qui decem marchionibus, marchionem qui decem baronibus, baronem qui decem capitaneis præsit.

Fol. 575. No. 219. What is before of counts, must be remembered here for the understanding of *VISCOUNTS*. Both the names were first officary, and thence grew honorary. And such as the counts ordained under them as vicegerents, or the supreme prince constituted to supply the room of counts, that is, as the emperor^m *Gordian* says, *qui vice præsidis provinciam administrabant*, became at length, as others having delegate jurisdiction, to be, some of them,

of their own right, and transmitted their names and towns or territories to their posterity. Understand this chiefly of the empire and of *France*. Hence came that honoured name of viscounts in *Milan*.

Fol. 578. No. 220. Which both last kinds he puts in the rank *des mediocres seigneuries*, that is of such as are *arier fiefs*, and hold of the crown but by a mesnalty, as our lawyers call it. So then in *France*, as superior and inferior kinds of counts antiently were, so you may say of viscounts; the regard of which difference instructs to the understanding of the titular honor. For, the inferior counts had their *vicarii* or *viguers*, *qui per pagos statuti sunt*, and their *missi*, which were as *viscounts*. Of them, saith *Walafridⁿ Strabo*: *Comites quidam missos suos præponunt popularibus qui minores causas determinent, ipsis majora reservent*. The name of *viguers* remains yet in *Languedoc*, and is the same with *vicarii*, both but varying the word *vice-comes*, or *comitis vicem gerens*. But *Strabo* makes the *viguers* governors of small territories, had not like the *missi*, whom he compares in church-state to suffragans, and the *viguers* to parish-priests. But, as in the *Roman* empire, was the dignity and office of^o *vicarius* as great as *comes*, but yet some difference betwixt them, and was also applied to an inferior sort of slaves, which you see in that — *jam nolo vicarius esse*; so in the *French* and *German* empire I doubt not but *vicarius* and *viguier* was not only for judges of mean note subdelegate by inferior counts, but also sometimes for such as the supreme prince constituted in *vicem comitis*, or the superior and first rank of counts made their lieutenants. As also *missi* were not only a name for them which were under counts, but also sometimes for the like in proportion under the king. *Ante illustres*, saith an old^p precedent, *viros magnificos illos & illos missos domini & gloriosissimi illius regis*. And a charter of *Pipin, maire du maison* to the^q abbey of *S. Denis*. *Omnibus episcopis, abbatibus, ducibus, comitibus, domesticis, grafonibus, vegariis, (that is viguiers,) centenariis, vel omnibus missis nostris discurrentibus, seu quacunque judiciaria potestate præditis*. But the confusion of these names, having regard to superiors as well as inferiors, in old laws and story, allows not sufficient means of distinction to know which always by them is certainly meant: yet withal makes us in general truly know whence this title of *viscount* with them had its original.

Fol. 579. No. 221. Neither is there in *France* any *vidame* which holds not of some bishoprick, unless that of *Beauvais*, so *L'oyseau* tells me, which is united to the bishoprick of *Beauvais*, and now called *le vidame de Gerberoy*.

Fol. eod. No. 222. That is, jurisdiction of some causes only, and them of the meaner sort; as we may say of our officary *vice-comites* or sheriffs, which have divers actions *viscontiel*, and inquiry of criminal causes.

^h Meurs. gloss. Græco-barb. in *Magistros*.

ⁱ Du Haillan. liure 3. du Tillet, plusieurs.

^k Cl. Fauchet de dig. lib. 2.

^l Froissart. volum. 1. feuil. 24.

^m C. de offic. ejus qui vicem alicujus, l. 1.

ⁿ De reb. ecclesiast. cap. 31.

^o v. C.

lib. 1. tit. 39. & alibi.

^p Vet. form. ad finem Marculph. 7.

^q Bignon. in not. ad vet. form.

Fol. eod. No. 223. Understand this of their more common sort of viscounts reckoned among their *mediocres seigneurs*, of which notwithstanding, now divers by usurpation have gained *le haut justice* to their dignities.

Fol. eod. No. 224. And therefore had their lay delegates; which is the reason why in our old parliaments, when in them, appeals and judgments of death were, the lords spiritual used to make a procurator for that turn.

Fol. 586. No. 225. The name of *bannier* and *banneret* have both some kindred with the old βαυδοι, whence βαυδορίον for a standard bearer, in the Grecians of middle times. *Vexillum quod bandum appellant*, saith *Paul Warulfred*. And *Suidas*: βαυδον καλεσθαι Ῥωμαῖοι τὸ σημεῖον τὸ ἐν πολέμῳ, i. e. the Romans call their ensign in war bandum. It is derived out of the *Carian* language, wherein βαυδα signified victory (vben) into *Latin*, by some affirming that in *Latin* it was used for victory, or vixit. The good luck, included in the interpretation, might allow it, but I rather think, the name of νικητήριον applied to their *labarum* (their standard) bearing a symbol of our Saviour, was the cause that made any man think that bandum signified victory, which is comprehended in νικητήριον. With this right of having a banner, remember that which is already spoken of touching the ancient giving of provinces to dukes, counts, and marquesses, to which you may add, that anon delivered of the *Turkish sanzabeglar*. Although those dignities are different, yet may they be here well thought on.

Fol. 592. No. 226. It was adjudged anciently, that where the lord of a villain (I use the word as in our law) had knighted his villain being a gentleman, he became free, and had the honour lawfully; but if another had knighted him, nothing had been wrought by it; for none could manumit him but his lord. And till manumission, or unless knighthood had had civil freedom for it's ground, he was not capable of it.

Fol. 593. No. 227. A name corrupted out of *batalarii*, from the *French* *batailer*, perhaps that so they might be opposed against the *vexillarii*, or *bannerets*, because the bachelors displayed not a banner, but only had good place of one in the army, and so exercised themselves in battle, whence the same name was, it may be, transferred to such as took the first degree in the *militia togata*, of the university. The diligent and learned president of the parliament at *Rheims*, * *Bertrand d'Argentre* fetches the name of bachelor from βυκελλάριοι, so called in the eastern empire, δια τὸ ἐπακολουθεῖν τοῖς στρατοῖς ἢ τοῖς τετραῖς αὐτῶν ἐπιτρέχειν, i. e. because they followed the army, and carried the vidual. For βυκελλος, is, saith y my author, κεμελοειδὲς ψῶμιον, i. e. a kind of cake, or such like, of a circular form, named in the z code *buccellatum*, and in some Grecians, βυκέλλατον,

which *Gothofred* interprets by *biscuit*. But I have not yet persuaded myself to consent with this learned *Bertrand*, nor yet to believe that I know the true etymon of bachelor. Other conjectures are of it, but none that I dare rely on. The name is occurring in old story, as *chevaliers jeunes bachelers*, and *banniers* and *bacheliers*, for *bannerets* and *bachelors* in *Froissart*; and some passages in *Adam Myrilmouth*, and others. In no ancient nation almost hath been wanting some honour proportionable to this of knighthood. Of the *Romans* and *Grecians* something already. The *Carthaginians* used for every military voyage, to give him that had gone, a b ring. Every man amongst the *Macedonians*, until he had slain an enemy, went girded with a c halter. And no *Scythian* d might drink of a specially honoured cup amongst them, until he had embued himself in an enemies blood.

Fol. 597. No. 228. At the marriage of *Elizabeth* daughter to *John* king of *Portugal*, in c10.cd.xxx, to *Philip*, surnamed the good, duke of *Burgundy*, celebrated at *Bruges*, the same duke instituted that of the golden fleece. The collar given is made as of flints and steels to strike fire, and to it is the of fleece pendant. The number was at first xxv. with the duke. He afterward made it xxxi. and *Charles* the fifth, in c10.cd.xvi at *Brussels*, increased it to LI. What was truly alluded to in the collar, I understand not, nor can see that any else sufficiently doth. They talk of *Gideon's* fleece, and *Jason's*, and some of the philosopher's stone forsooth, as concealed in the golden fleece. But all satisfies not enough.

Fol. 598. No. 229. There was also in 1464, the order of the crescent ordained by *Renee* duke of *Anjou* and king of *Sicily*. To the collar was pendant a crescent; the word inscribed, *les en croissant*, familiar afterward to *Charles* the eighth. This with the house of *Anjou* ended, but is in some sort renewed by the marquess of *Tyras* amongst the *Sicilians*, as a fraternity against the *Turk*. And in the *Aremorick Bretagne*, *Francis* duke there, in c10.cd.l. began the order of the corn-ear, and gave collars composed of corn-ears, gold, tied together with true lovers knots. Hereto hanged an ermine. The symbol *a ma vie*, which was the word of his grandfather duke *John*, surnamed the conqueror. This order ceased when the dukedom was united to the crown of *France* by *Lewis* XII. his marriage with *Anne* daughter and heir to duke *Francis*. The order of the e porcupine, in imitation, perhaps, of the golden fleece, was about the same time begun by *Charles* duke of *Orleans*, and king of *France*, the sixth of that name; the word was *comminus eminus*, and the porcupine hence became a symbol of some *French* kings. And then also *Lewis* duke of *Bourbon*, made the order of the thistle of our lady, with a collar of *fleurs de lis*, and

* 10 Ed. IV. fol. 6. & saepius in archiv. parliament.

lib. 1. vide *Ranulph* de *Glanvilla*, lib. 5. cap. 5.

art. 88. y Constantin. themat. 6.

ceffor, καὶ χροῖων, in καὶ β. ημερ. 5. e.

ubi & exempla caetera.

z C. tit. de erogat. milit. annonae. l. 1. & de excoftione. l. 2.

b Keix.

c Vide *Paradin*, symb. heroetis.

f Steph. καὶ βλ. in ἀλλεγνδ.

g Ludovic. Vives de caus. corrupt. art. lib. 2.

h Herodot. hist. 3. & Aristot. politic. 2. cap. 3.

i Belmanorian. apud *Tillium*.

j In conf. Britan.

k Eustath. Antec.

leaves of thistles, inscribed with *esperance*. But these with that of the *Montmorencys* dog, and the cock, now are not. But the arms of the *Lusignans* are often in a collar made of capital SS, with a sword pendant with the point upward, crossed over with a winding scroll, inscribed with *pour loyauté maintenir*. This was the note of the knighthood of *Cyprus* begun by that family, but when it is uncertain.

In *Castile*, by *Alonso XI.* or, as others reckon, *XII.* the order *de la banda* was instituted in the city *Victoria*, in the year *1100.ccc.xxxii.* The *banda* was as it were a girdle, red, some four fingers breadth, worn from over the right shoulder under the left arm. None was admitted to it, but such as served ten years at least in the wars or at court. It was long in great honour amongst them, but *consequentium regum ignavia*, saith *Mariana*, *rerumque humanarum inconstantia in desuetudinem abiit, ut ne vestigium quidem extet.*

The order of *S. Andrew* in *Scotland*, hath a supposed original very antient. Some refer it to the victory had by *Hungus* king of the *Picts*, against our *Atthelstan*, after an apparition of the apostle and his cross to *Hungus*, who, with his soldiers, went barefoot, after the battle, to *St. Andrews*, and there all vowed, *se suamque*, saith *Hector*, *posteritatem signo crucis divi Andree, quoties ad praelium fuerit proficiscendum, ut tam insignis victoria parta divinitus grata recordatione semper haberetur, pro insigni deinceps usuros.* *Mansit Pictis & post eos deletos Scotis exinde hoc institutum perpetuum.* The collar of it expresses thistles, with *S. Andrew* pendant to it. Certainty enough of its beginning as an order of knighthood I have not yet learned. That apostle hath been their saint ever since *Regulus Albatus*, a monk, (about *ccc.lxx.viii.* of Christ) brought his relics thither out of *Constantinople*, whence they were translated from *Patrae*, now called *Patra*, where he suffered martyrdom. *Andrew* was born also at a collar or garland of rue, as *Francis Mennens* especially remembers. The word applied to the thistles, *nemo me impune lacessit.*

The arms of *Denmark*, in *Henninges*, and elsewhere, are inscribed in a collar made of elephants, charged with castles; thereto hanging our Lady in a radiant circle, and to that a little round with three nails. This is the collar of their order of the elephant, begun very lately by one of their kings. By whom certainly I know not. Some say by *Frederick*, father to the present *Christiern IV.* in some of his monies the elephant is a note royal.

Mennens describes also the collar of the order of the sword in *Sweden*, made in form of four swords tied one at the end of another, and so lets it about arms proper to the order. He tells no time of it, nor I know none. Another there he remembers, and puts the collar about the king's arms, of seraphims and cherubims and patriarchal crosses.

In what state to place that, the *Burgundian* cross, given by *Charles V.* to divers that had well performed with him against *Hariaden* for *Muleasses* in the *African* wars, I know not. On *S. Magdalen's* day in *1100.d.xxxv.* the tenth planetary hour he gave it to be worn hanging to a collar. On the one side of the plate, because the tenth hour was *Mercury's*, he was pictured; on the other the *Burgundian*, like *S. Andrew's*, cross, with a steel to strike fire, referred perhaps to the *toison d'or*, and circumscribed *Barbaria*. But it was not any certain order, but merely personal to them who were first honoured with it.

Of late in *Italy* was erected the order of the blood of the Redeemer. *Vincent Gonzaga* duke of *Mantua*, when the marriage was betwixt his son *Francis*, now duke, and the lady *Margaret*, daughter to *Charles Emanuel* duke of *Savoy*, in the year *1100.dc.viii.* instituted it in a number of twenty, with the consent of pope *Paul V.* Understand, that in *S. Andrews* at *Mantua*, according to other tales of that part, are kept as a most precious relic certain drops of our Saviour's blood, with part of the sponge. The collar hath in it threads of gold laid on fire, and betwixt those plates, as it were, interwoven these words, *Domine probasti.* The *Lx* psalm is aimed at. To the collar is annexed two angels supporting three drops of the blood, and circumscribed with *nihil isto triste recepto.* The duke himself is chief of it, and divers other princes were then joined with him.

Neither, because also *Aubert Miree* puts them amongst his honorary orders, will we omit here that of *S. Stephen*, in *Florence*. In the year *1100.d.lxi.* *Cosmo di Medici*, duke of *Florence*, with confirmation of pope *Pius IV.* instituted this of *S. Stephen*, as under *Stephen*, pope, martyr, and patron of that state. But it was under the rule of *S. Bennet*; only they have liberty to marry. They were purposed against the *Turks*. Their note, a red cross edged with gold. The supreme, or master, the great duke of *Tuscany* or *Florence*. And so are as partly honorary, partly religious.

About *1100.ccc.xxx.* the order of *S. Mark* began in *Venice*, and was renewed in *1100.d.lxii.* and honoured with privileges. None but gentlemen of especial worth, in note and descent, were to be admitted of it. The collar hath *S. Mark's* image, with *pax tibi Marce. Mennens* is my author.

It is not amiss to reckon the *Petermen* of *Louvain*, or *homines de familia S. Petri*, amongst these orders. Their original is from the war betwixt *Henry I.* duke of *Lorraine* and count of *Louvain*, in *1100.cc.xiii.* against *Hugh* bishop of *Liege*, and some neighbour princes, wherein the duke was, through the valour of those of *Louvain*, their ensign being *S. Peter's* banner, rescued from most imminent peril, not without the loss of two thousand *Louvainians*. In reward whereof he honoured them all with large privileges, and called them *Petermen*. *Homines b. Petri Lovaniensis*, saith an old testimony, *liberi &*

¹ Quod habent martyrologia de *S. Longino* mart. 15. si placet, vide & *Aimoin*. de gest. Franc. 4. cap. 92.

¹b. 2. cap. 4.

² Apud *Lips.* *Lovan.*

privilegiati esse debent, & sunt prae aliis hominibus. And Lipsius says, he saw a charter of the patrices, or senate there, dated 1333, wherein one was exempted out of common jurisdiction, that pleaded *se esse hominem S. Petri, & ad familiam liberam domini ducis pertinere*. But now the name remains, the rights of liberty extinct, or as out of use, although in the oath of the heirs and successors of the earls of *Lowain*, their privileges be yet contained.

Here may be thought of those *teuylles* in some parts of *America*; which there are a kind of knights made with solemnity by the chief priest, and bearing them through the nostrils with a tyger's bone, and the bill of an eagle. Nor are, I think, any other of note, and not religious, extant, or worth remembrance. More particulars of the habits of some of them, and of their statutes, you have in *Sansovino*, our *Segar Garter his Honour military*. Of *Calatrava*, *Alcantara*, *S. James*, and many such like more, I cannot think they are any way so fitly put amongst titles honorary. For what they are, is for what they do in a certain place, as for a stipend; and the name of their knighthood adds not any degree to them, like those orders of the collar, or of the spur, which are meer honorary notes of valour and worth. Why then should we not as well make a distinct order and honorary, of those which in the holy wars did *suscipere crucem*, antiently, and were buried cross-legged? They had their ordinances and statutes also. But that was only for one kind of service, as the religious orders all are, and not truly honorary. And how could the *Templars* be accounted amongst knights, such as fit this place, being not allowed by their statutes¹ so much as at all to kiss any woman? Honorary knighthood and the favours of ladies, even by antient institution run together sometimes as virtue and reward.

Fol. 600. No. 230. There were antiently *valvafors* also in France. *Jeffrey of Vendosme*, in an^k epistle: *Praeter ista & multa alia damna dominus Joannes filius comitis Vindocinensis, & cum eo quidam valvasores milites de castro Vindocini, quidam optimam obedientiam nostram depredati sunt.* Where *Sirmond*, the jesuit, notes this inscription amongst *Sugerius* his epistles: *Sugerio abbati domino suo G. major & valvasores, & tota sancti Richarii communia.* And adds of his own, that *valvasors* are the same which they now call *nobiles atque incolae oppidi alicujus*, whereto, without reference to a tenure, I assent not. And a great¹ lawyer allows of this definition, or rather description, of their *valvafor*: *Valvafor dicitur nobilis, qui summae coercionis, non etiam mundinarum & mercatus jus habet.* Un gentleman qui a feigneurie de haute justice. *Estque, ffaith Hotoman, barone inferior atque ab eo feudum suum obtinet.* In the old customs^m of

Normandy, the tenancy of a *valvafor*, understood chiefly of the meanest, is titled *vavassourie, Liberritage*, the words are, *est appellé partable en quoy le seigneur ne puit reclaimer nulle garde, sicome sont vavassouries, & tout auter tènement villain.* Where the French gloss says, that you must take it spoken of *vavassouries non noblement tenues*, affirming that other *vavassouries* there are *noblement tenues*. These ignoble *vavassouries* are elsewhere in the same *Customier* remembered, and thus described: *Les vavassouries sont tenues par sommage & par service de cheval.* Which the gloss interprets: *Par ce mot (& par service de cheval) sont entendus villains services qui se font a sac & a somme lesquels on appelle communement sommages*; so to distinguish this *service de cheval* from military service known by the name of chivalry. For, that *somme* and *sommage* is questionless from the Greek *σῆμα*, i. e. *that which is laid on a sumpter-horse*, either as his burden, or as the pack-saddle for easier carriage. Whence they call such horses or other beasts so employed, ⁿ *σῆμαρα, & ἵππες σῆμαραρες*, because they bear ⁿ *τὰ σῆματα*, i. e. *burdens*. Hence had the *Latins* their ^b *sagmarii equi, caballus sagmarius*, and *mula sagmaria*; and those of the later and more barbarous times turned it into *summarus* and *sagmarus*; from which *sommage* and ^p *summagium* easily grew; used also in our law.

Fol. 601. No. 231. Some of their^a stories ignorantly stile him *dux Alencastriae* and *Glocestriae*; aiming, questionless, at *Lancastriae* and *Leicestriae*; for he was earl of *Leicester*.

Fol. 603. No. 232. In antient time there, as well as in other places, this dignity was only for life. And to this day, my author is^r *Mariana*, the steps of that estate are in the *Spanish* nobility. For none of them, duke, marquis, or count, use their titles after death of their ancestors, but *rege denuo annuente*, unless some such few families only, as by the king's especial grant may do otherwise.

Fol. 615. No. 233. Amongst old laws^f of *Spain*, *quilibet infancio* (every gentleman, or *hijdalgo*) *potest esse miles in Aragonia, alii vero non.* Et si forte non infancio promovetur per ricum hominem ad militiam, perdit honorem, quem tenebat, ricus homo, one of their *ricos bombres*, *vel si non tenebat, nunquam tenere debet.* Et illi promotus semper remanet villanus, sublato sibi equo & armis. Now, to the dishonour of merit and nobles, how many, most undeserving either for quality or parentage, bear this most honourable title?

Fol. 630. No. 234. After the conquest, no special title more than *primogenitus filius regis* was for the prince, until the name of prince of *Wales* came to him. Yet *Polydore*, speaking of *Henry* the first his making his son *William* duke of *Normandy*, adds, *hinc mos serpsit,*

^b Quae habes apud G. Novoburgens. lib. 3. cap. 22.

^c Statut. Templar. cap. 72.

^k Goffrid. Vindocinens. lib. 2.

epist. 32.

^d Ex Butlerii sum. rurali Hotomannus in verbis feudalibus.

^e & Leo tactic. cap. 5. §. 7. & cap. 6. §. 29.

cap. 16.

^f Chart. de forest. artic. 14. videlicet Bracton. lib. 2. cap. 16. §. 6. de uno equo & sacco cum brochia.

Sant. part. 4. cap. 22. & duque de Alencastre in Stephan. de Garibay.

Hilf. Fr. Mennenius.

^g Lamprid. in Heliogabal. ubi & vide If. Calaubon. quin & Ifidor. origin. 20.

^h De reb. Hispan. lib. 8. cap. 2.

ⁱ Ex legib.

ut reges deinceps filium majorem natuquem sibi successorem optassent, Normanniae principatu donarent. But the time which interceded Henry the first and king John, under whom Normandy was lost, will not justify any such thing as an honorary duty to the English heirs.

Fol. 631. dele No. 235.

Fol. 632. dele No. 236.

Fol. 636. No. 236. By which they interpreted their Saxon word eðeling etheling, i. e. noble. One speaking of the German Saxons under Charlemagne, hath: *Gens omnis in tribus ordinibus divisa consistit. Sunt n. inter illos qui edhilingi, (that is ethelingi) sunt qui frilingi, sunt qui lazzi illorum lingua dicuntur. Latina vero lingua sunt nobiles, ingenuiles, atque serviles.* And, that Edgar son to Edward son of Edmund Ironside, the last heir to the crown of the Saxon line, not mixt with the Norman, is in Hoveden, Marian, Florence, and others called *chyto*, *Edgarus chyto*; whom Henry of Huntingdon, Matthew Paris, and such more stile *Edgarus etheling*, ^u or *adeling*; where, by the way, note Polydore's ignorance, titling him *Edgarus cognomento ethelingius*; his surname being no more *etheling*, than the now England's darling Charles his is *prince*; or, indeed than Polydore's was *ignorant*.

Fol. 638. No. 237. From ear or at, i. e. honour, and atlic or eotlic, i. e. honourable.

Fol. eod. No. 238. The administration of Siward comitis Northumbriae, is called *ducatus*, in an old and ^{*} judicious monk. And Roger of Hoveden speaking of Leofric earl of Chester, calls him *Leofricus comes*, *Leofwini ducis filius*, and says that *ducatus ejus*, Henry of Huntingdon hath *consulatum*, *filius suus Algarus suscepit*. So *comitatus Est-Saxoniae*, *comitatus West-Saxoniae*, *comitatus Eboracae* and the like, remembered by *Ingulph*, and *comes Merciorum* *comes Magefetensum*, that is, of those about Radnor, and *comes Mediterraneorum*, in Hoveden and Florence of Worcester, might have been as properly stiled, and perhaps more properly, *ducatus* and *duces*, being referred to Godwin, Leofric, Edgar, and those which were eopler: And how familiar it is in those times to meet with *comes Normanniae* for *dux Normanniae*, every man knows that hath tasted our stories; and of it, before. But, for those their *eorles*, whose name, remaining in our counts, is fitly to be here again spoken of; they were both officary and honorary, having the government of provinces; and their title, in some parts, hereditary, as in Leicester and Northumberland; and from them, their wives were stiled countesses, as with us, in the subscription to a charter of Thorold of Bukenhale, to the abbey of Crowland, is, *ego Leofricus comes concessi*.

† Ego Godiva comitissa, she was his wife, diu

istud desideravi †. These were the *ethelings*, whereof, one in an old Latin translation of king ² Knout's laws; *Qui fregerit plegium archiepiscopi aut reguli, quem Angli vocant etheling, III. libris emendet*. Neither were there with them any other created titles, after the prince or *etheling*, honorary, it seems, but this of *eorle*, and their *thanes*, of whom in due place. For where the hepegeater, i. e. the heriots of that age are set at a ^a certainty, there are no other numbered. The heriot was, what the *eorle* or *thane* paid his lord or king in nature of a relief, and thence remains the name with us, in a different sense, it being then only such things as were for martial furniture, as horses, spears, shields, money, and the like. And, in a ^b charter of the confessor, for the possessions of Paul's: *Eðpæs cýning gret mine byrceop 7 mine eopler 7 ealle mine þegner on þan rýpen pþep. mine pþeoster in Paulus minreþ habbaþ lant. Eorles and thanes* are here only mentioned, as if none else, with honorary titles, had any thing to do with territories: Neither in that catalogue of *archbishops*, *eorles*, *bishops*, *ealdormen*, *holdes*, *hebgerefas*, *mesetþegnes*, and *werldþegnes*, and *ceorles*, in the laws of *Aethelstan*, is any honorary, but merely as he is officary, except the *eorle* and the *þegne* or *thane*. For the *ceorle*, or *churle*, was ignoble, or the yeoman. Yet it is most certain, that for *ealsopman*, sometimes *comes* is used. An old law; *Gif hra leosbyrceops oþþe ealsopmannes bopþ aþþece, g eþete þ mis eþam punðum*, it is antiently interpreted, *qui fregerit plegium episcopi aut comitis II. libris emendet*. It is part of that before cited touching *ethelings*; and where amongst Knout's collections, one is, that twice in the year the *scypegemor*, i. e. the *shiremote*, that which is now called the *sheriff's torn*, should be held, and that in it should sit the bishop of the diocese, and the *ealdorman*; the old Latin hath in *illo comitatu sit episcopus* & comes, *qui ostendant populo iustitias dei & rectitudinem seculi*. For the bishop did, in the same court, under the Saxons, exercise ecclesiastical jurisdiction; until William the first altered that course. Propterea mando, saith a patent of king William, & regia autoritate praecipio, ut nullus episcopus vel archidiaconus de legibus episcopalibus amplius in hundredo placita teneat; nec causam, quae ad regimen animarum pertinet, ad iudicium secularium hominum adducat; sed quicumque secundum episcopales leges de quacunque causa vel culpa interpellatus fuerit, ad locum, quem ad hoc opus elegerit & nominaverit, veniat ibique de causa sua respondeat, & non secundum hundredum, sed secundum canones & episcopales leges rectum Deo & episcopo suo faciat. Neither let it move against this, that in the laws of ^c Hen. I. you read, *sicut antiqua fuerit institutione formatum salutare regis*

* Nith. Angilbert. hist. lib. 4. atqui ver. Saxonum gens in nobiles, liberos, libertos, & servos dispersita est ab Einhardo apud Adam. Bremens. hist. eccles. cap. 5. & Abbat. Urspergensiem.
† Epelinger pro vv. nobilissimis, & ut videtur, ducibus sive Eopler, fumiur. Canut. leg. cap. 55.
‡ Malmshur. lib. 2. de gest. reg. cap. 13.
§ V. Rog. de Hoveden, par. 1. fol. 243.
¶ Cap. 55. in edit. Lambard. & v. infra ubi de Weregildo.
‡ Canut. leg. cap. 69.
§ Part. 18 Hen. VI. memb. 9. ch.
¶ Insperimus part. 2.
‡ Quod & probari potest ex illo de dignitatibus monumento Sixonice edito a G. Lambardo in itinerar. Cantii.
§ Edgar. leg. cap. 6.
‡ Inspec. 2 Rich. 4. pro decano & cap. eccles. Lincol. plenius habetur in Jano nostro, li. 2. §. 14.
¶ Cap. 7. In rub. lib. scaecarii.

imperio, vera nuper est recordatione firmatum, generalia comitatum placita certis locis & vicibus, & definito tempore, per singulas provincias Angliæ, convenire debere, nec ullis ultra fatigationibus fatigari. Inter sint autem episcopi, comites, vicarii, centenarii, aldermanni, præfecti, præpositi, barones, vavafores, & cunegrevii & caeteri terrarum dominicarum intendentes, ne malorum impunitas aut graviorum pravitas aut iudicium subversio solita miseros laceratione conficiat. Agantur itaque primo debita veræ christianitatis jura, secundo regis placita, postremo causæ singulorum dignis satisfactionibus expleantur. I say, let not this move against that of the conqueror. For those of *Hen. I.* were restored, at least for fashion, as by the name of the *confessor's*, or of the old *Saxon* laws, and so was there in them mention of the *bishop* and *ealdorman*, and the rest together. And in the xxxi. chapter of these, are the very words almost translated, of that which we have before cited out of *Edgar's* to this purpose. Yet indeed they were more, and rather desired, than truly restored. But this makes apparent that the ealsopmen were merely officiary, and as our *sheriffs* at this day. For what is the name *sheriff* or *thrive*, but their *scypegeve* or *shyregrave*? And what was *thyregreve* but *alderman* or *ealdorman*? Among the laws titled with name of the *confessor*, thus you read: *sicut modo vocantur greves qui super alios prefecturas habent, ita apud Anglos antiquitus vocabantur ealsopmen, quasi seniores, non propter senectutem cum quidam adolescentes essent, sed propter sapientiam.* Yet remember also that, by a testimony which I am not confident in, *ealdorman* was applied to some of much meaner rank; but as a general name, and with a more particular regard, perhaps, given to *ealdormen* of provinces or shires. So that those which were ordained civil judges in provinces, as the inferior sort of counts before treated of, had there this name of *ealdormen*, remaining to this day in divers corporations in a sense somewhat of the same nature, and were wont to be assistant to the kings of that time in their *wittenagemots* or *mikel synods*, they were as our parliaments, with the clergy. In the frontispiece of *Ina's* laws, he saith he made them with the assent and help of his bishops, 7 mis eallum minum ealsopmannum 7 þam ylðertan pītan minye þeobe, i. e. and with all my ealdormen, and the eldest wise men of my people. Where the more honorary titles of his subjects are omitted, and thence is it, that in ancient monks their parliaments are called *procerum synodus*, and *synodus senatorum*; the word *senator* well enough translating *ealdorman*.

Fol. 639. No. 239. But, that you may understand the transcribed *Saxon* law; *weregild* among them was, as the civilians *æstimatio capitis*, or a man's worth, which in that age was

paid as the price of death or other faults, and had its original from ancient manners of those people, whence the *English* came, the *Germans*, among whom, (as *Tacitus* of them, then) *littur etiam homicidium certo armentorum ac pecorum numero, recipitque satisfactionem universa domus.* Neither doth the expressing of so many *thrymsas* (a *thrymsa*^h was a third part of their shilling; not three shillings, as some much mistake) differ from *Tacitus* his relation of a certain number of beasts. Read this old law of theⁱ *Saxons*. *Solidus est duplex. Unus habet duos tremisses, i. e. thrymses, qui est bos annicus XII mensium, vel ovis cum agno. Alter solidus tres semisses, id est tres tremisses, i. e. bos XVI mensium. Majori solido aliae compositiones, minori homicidia componuntur.* This *weregild* or *weregild* is often met with in the *Salick* laws, those of *Childebert* and *Clothar* of the *Ripuarians*, and such more. And in^k laws published under *David I.* of *Scotland*; *de unoquoque fure per totam Scotiam est wergelt xxx vaccae & una juvenca, siue fuerit liber homo siue servus.* And, that the ancient punishments, in the *Roman* state also consisted chiefly in^l mulcts of oxen and sheep, cannot be unknown to any observer of their antiquities. But it is here plain, that an earl of those times was near of double estimation to their alderman. Of the alderman, more anon. Neither is it more to be doubted, but that no name properly can fit the *Latin dux* in their charters and stories as eople.

Fol. 641. No. 240. For one example, out of infinite: in a charter of *Beored*, king of *Mercland*, made in *DCCCLX.* to the abbey of *Crowland*, the subscription is, after bishops and abbots: *Ego Ethelredus rex West-saxonie assensum præbui ✠. Ego Alfredus frater regis West-saxonie consensi ✠. Ego Edmundus rex Estanglie procuravi ✠. Ego Edeleredus dux favi ✠. Ego Osbirtus annui ✠. Ego Algarus comes istud devote fieri deprecans a domino meo rege gratiose impetravi ✠. Ego Walkelinus comes adjuxi ✠. Ego Adelwphus comes concessi ✠. Ego Turgotus comes consensi ✠. Ego Alcmundus comes consideravi ✠. Ego Diga comes interfui ✠. Ego Lefwinus comes aspexi ✠. Ego Burkardus comes conscripsi ✠. Ego Afcerus comes affui ✠. Ego Thurstanus comes stabilivi ✠. Ego Reinardus comes consului ✠. Ego Tilbrandus comes conscripsi ✠.* And sometimes they have the addition of their counties, as in a charter, more ancient, of *Ethelbald*.

Fol. 643. No. 241. Neither do I think this *Alwine* to be any other than he which subscribes a charter of *Edgar's* in *Ingalph*, with *Ego Alwine dux consensi*.

Fol. 644. No. 242. And is thus remembered, in an old^m author of *France*. *Inter eundem spatium regem adiit Anglorum ac ejus ducem*

^g Regis gravii, or kings reeves or greeves.

leg. Ripuariorum c. 37. art. 12.

^h Leg. Aleman. cap. 6.

ⁱ Lex Saxonum cap. 64. & ad hanc rem consultus leg. Ripuariorum c. 37. art. 12.

^k Regiam majest. li. 4. ca. 19. & privilegium Macduffi familie a Malcolm III. indultum v. apud Buchanan. de reb. Scotic. lib. 7. & de cro Scotorum videlicet reg. majest. 4. cap. 24. & 36. & 40.

^l Sext. Pompeius lib. v. ovis. Agell. not. Attic. lib. 11. cap. 1. alii.

^m Aymon. vit. Abbonis Floriac. cap. 5. & v. Malmesb. lib. 4. de gest. pontif. in episc. Lincoln.

Hebelguinum; how easily *Hebelguin* is made of *Aikwin*, every one sees. Out of these differences betwixt *eorles* and *ealdormen* (the one having supreme government next after the king over the province, in such sort as the earls after the conquest; the other being but judges, *judices fiscales*, sheriffs, and like those *comites minores*, inferior to dukes) may be easily collected, that in those subscriptions of the *Saxon* times, *comes* is not always to be took for one equal to *dux*, but also sometimes for *ealdormen*, as perhaps in most of those charters, where divers precede by name of *dux*; although that precedence always make not the difference enough sure. To derive into the *Saxons*, their counts from that of ⁿ *Tacitus*, *magna comitum emulatio, quibus primus apud principem suum locus: & principum, cui plurimi & acerrimi comites*, were, although some do it, but to fetch the substance of this special title from that which *Tacitus* could by no other word well express. He delivers it indeed of a people whereof our *Saxons* were a fragment. But, under favour, those *comites* can signify nothing there but mere followers, neither did *Tacitus* ever dream of it as an honorary title or office, by that especial name. Neither in *Tacitus* his time, was the name at all honorary or officary. He explains himself in the same place: *Haec dignitas, fidei he, hae vires, magno semper electorum juvenum globo circumdari, in pace decus, in bello praesidium, & turpe principi virtute vinci, turpe comitatu virtutem principis non adaequare*. Where both *comes* and *comitatus*, the one proceeding from the other, occur, but not any way to give an origination to the present inquiry.

Fol. 645. No. 243. A subscription to king *Edred's* charter, dated DCCC.XLVIII, to the abbey of *Crowland* justifies it. There after the abbots, dukes, and counts, the dukes and counts perhaps being of equal dignity, follows:

✠ *Ego Bingulph vicedominus consului.*

✠ *Ego Alfer vicescomes audiui.*

And in a charter of *Thorold* of *Bukenhale* to the same abbey, the last witness is thus expressed: ✠ *Ego Livingus clericus istud chirographum manu mea scripsi & domino meo Thoroldo vicecomiti tradidi*: and in that before of king *Edred* to the abbey of *Crowland*, certain lands are discharged, *auxiliis vicedomitum*, by that name; and in one of king *Bertulph* to *Siward*, abbot of *Crowland*, you may read: *Praecepti Radboto vicedomino Lincolniae, caeterisque ministris meis in illa parte constitutis*, to make a perambulation of the isle of *Crowland*. So at the conquest ° it was found, that in the hundred of *Ofwaldshaw* in *Worcestershire*, nullus *vicescomes ullam habere possit querelam, nec in aliquo placito, nec in alia qualibet causa*. But yet the name of *vicescomes* was not applied to the *ealdorman*, as if he had been under the *eorle*, as in *France* or the empire; but in such sort as if he were placed in the province by the

king in *vicem comitis*, that is, as a judge, to administer justice, and look to the king's revenue; and out of his court, as at this day, *faux judgment* lay in the king's bench, neither was there any mediate place for remedy. Therefore in one of their ^p laws you read, that if the peace be broken, he that is wronged should be helped by the townsmen, or tything; if they would not help him, that then the *ealdorman* should (that is, the sheriff) and if the *ealdorman* would not, then the king should, and if the king would not, that then the shire should not be bound to keep the king's peace; For so I interpret liege *ealdormen* on *vynpise*: where the vicount or sheriffdom is called also an *ealdormen*, as the superior and martial government of their *eorle* was titled an *eorledome*, the word *dome* signifying in that sense a place subject to a superior, not only in civil jurisdiction, but also martial. Either then in imitation of other nations, was that name of *vicescomes* applied to our *Saxon* *ealdormen* and sheriffs, because their offices were somewhat like; or else being constituted, *qui vicem judicum sive comitum gererent*, by the king, were properly as the antient and best sort of them in *France*, so called, or as the *vicarii* in the declining empire, having no superiors which constituted them but the king. Howsoever the reason of the name given by *Gervase* of *Tilbury* is much deficient, unless in it, by a nice construction, you make him use *comes* in several notions. He is called *vicescomes*, faith he, *quod vicem comitis suppleat in placitis illis de quibus comes ex suae dignitatis ratione participat*. The errors of *Polydore*, and such that begin our sheriffs at the *Norman* conquest, are not here worth speaking of, or of those which say the word *vicescomes* was not here in the *Saxon* times. But of it as it is with us officary, thus much; which I insert, because of comparing our office of that name to the like in *France*, where the honour proceeded originally from the office. For with us the honour and office have no community.

Fol. 646. No. 244. In the subscription to king *Edred's*, to the abbot of *Crowland*, after the lords spiritual, the *eorles* and *ealdormen* (by the title of *duces* or *comites*, and *vicecomites*) follow

✠ *Ego Harceus minister interfui.*

✠ *Ego Athelwardus minister aspxi.*

and in one of king *Cnut*, dated CIO.XXXII.

✠ *Ego Turkillus minister regis audiui.*

✠ *Ego Algerus minister regis aspxi.*

and divers like are in others, the word *rego*, being truly interpreted by *minister*, or *serviens*, whence in the princes word *ic dien* is, for *ic rego*, i. e. *ego servio*.

Fol. 657. No. 245. (And with them our monks usually concur in their stories) the same with a *carve*, that is a plough-land. What the certainty is, I could not yet satisfy my self. But

ⁿ De moribus Germanorum.

^p Act. public. apud Camden, in Cornaviis.

^p Ethelred, leg. cap. 6. Be ppißþrec.

it is plain, that the ancient taxes and subsidies extraordinarily paid to the crown, were chiefly levied by hydes, and are called *hydagia* or *hydagium*, a word used in king *Edred's* charter to the abbey of *Crowland* dated *cccc. xlviii* where the print of *Ingulphus* hath falsly *hydagro* for *hydagio*. By hydes chiefly the land of the kingdom was reckoned in *domesday*, and the aids taken in the infancy of the *Norman* state here, was *hydage*. Every one knows so that knows the stories of that time. *Sunt, faih^a Bracton, quaedam communes praestationes, quae servitia non dicuntur, nec de consuetudine veniunt nisi cum necessitas intervenerit, vel cum rex venerit, sicut sunt hydagia, coraagia, (so is the print, I would willingly read foragia, serving well for the kings provision, as in the empire antiently fodrum.) & caruagia, & alia plura de necessitate & ex consensu communi totius regni introducta.* Here he makes a difference of *hydagia* and *caruagia*, whence it should follow that *hyde* and *carve* are different. And so will it appear plainly that they are, if you but observe that trancript of part of *domesday*, inserted by *Ingulph* in his story of *Crowland*. That *caruagium* is also *carucagium*. *Eodem tempore, faih Matthew Paris, speaking of Hen. III. cepit rex carucagium, scilicet duas marcas de caruca ad maritagium sororis suae Isabellae.* She was to be married to *Frederick II.* who had for her portion *xxx cto. marks*.

Fol. eod. No. 246. Willelmus le Heire tenet dimidiam virgatum de antiquo feoffamento — dat hydagium cum eaverit, nihil aliud facit. Ricardus de la Burne tenet unam virgatum — dat hydagium quantum pertinet ad virgatum, cum eaverit; and thus of divers; where less parcels than a hyde, pay, according to their quantity, hydage. Then follows: terrae quae sunt extra hydam, & quae non dant hydagium, with a catalogue of divers tenants names, lands, and tenures, and subcription of non dat hydagium, nec facit forinsecum; and it seems that all of them were such as had discharge of hydage by claiming under the feisin of the abbots, after the immunity granted.

Fol. 660. No. 247. In domesday, of Aviceston, in the Isle of Wight, is, ibi manet quidam vavalorius habens ii. vaccas. And terra vavalorum, is somewhere a title in that monument.

Fol. 661. No. 248. It is likely that he gave him this title, as the best, and above what he had before commended him for. Neither would he have put it as an addition of worth to a sheriff and a countour, unless it had been of special note and honour. For a countour was, if I am not deceived, a serjeant at law, known also then by both names. Countours sont serjeants, faih the mirror¹ of justices, sachans la ley del roialm; And the customier of Normandy: Il est appellé conteur que ascun establist a parler & conter pour soy en court. The word is interpreted by narrator. Often in the plea rolls of Henry III. you have per narratorem suum. In the old

Scotish laws, there are *subvafores*, which were as the *vavasini* in the empire. *Illi qui tenent de militibus qui vocantur subvafores leges tenebunt, &c.* and the *vavafores minores* of the empire, were as the *milites* or immediate servants to barons in *Scotland*.

Fol. 669. No. 249. But it appears that their dignity under the Normans was like that of the dukes and greatest princes under the Saxon kings, otherwise why should they have retained the name of eorle?

Fol. 672. No. 250. Quibus regum munificentia obsequii praestiti vel eximiae probitatis intuitu comitem sibi creat, & ratione dignitatis illius haec conferenda discernit: quibusdam haereditario, quibusdam personaliter.

*Fol. 674. No. 251. In a charter of the same Hugh's foundation of the monastery of S. Werburg, he says, Ego comes Hugo & mei barones confirmavimus. And, in liberties antiently given by one of the *Ranulphs*, count *palatine* there to his barons, he grants quod unusquisque eorum curiam suam habeat, &c.*

*Fol. 675. No. 252. Where, understand those Nivicolini for North wales men, denominated by him from that *Snowdon* hill in *Caernarvanshire*, which, in another² place, he calls *nivium collis*, as the *Welsh* in like signification *crags* ettyr.*

Fol. eod. No. 253. Et regem, si oberret, habeat de jure, potestatem cohibendi, suo sibi scilicet Cestrensi constabulario ministrante & virga populum, cum se inordinate ingereret, subrahente.

*Fol. 676. No. 254. But the chief privileges of Durham have been antiently derived from the holy respect had to S. Cuthbert bishop of Lindisfarn, that is now called Holy Island, whose body was thence, in the Saxon times, translated into Durham. Therefore the monks stile it Cuthberti terra, and call the³ country men *Halswark* folks, which is meant in one of our⁴ year-books where Durham is remembered with the name of *franchise de Werck*. For, so you must read, not *franchise de Werck*, as the published books have. The case is, in them, misreported and very imperfect. See the⁵ abridgment of it, which questionless was from a better copy, and you will confess it. Neither, without that, can you find reason, why the writ of right of advowson should lie at Westminster for an inheritance in Durham.*

Fol. 677. No. 255. In the north parts, antiently, Hexamshire was reckoned for a county palatine. It is the same which in the printed monks occurs by name of Hangulstad, or Hangulstadeim, and the like names corrupted. But my ms. of⁶ William of Malmesbury, it is that which belonged to S. Augustin's in Canterbury, of a very antient hand, hath Hengstadeheim and Hengstadeam, for that which in the printed is Haugustaldehem, and Haugustaldem. And from Hensaldehemshire came, it seems, Hexamshire. In it was a feat of a bishop under

¹ De acq. rer. dom. lib. 2. cap. 16. §. 8.

² Chez le seigneur Coke en l' epist. du 9. livre.

³ Malcolm. Mackbeneth. leg. cap. 1. §. 8.

⁴ Dict. l. c. 6.

⁵ Hist. Dunel. apud Camd.

⁶ 5 Ed. III. fol. 58. pl. 88.

⁷ Tit. jurisdiction. 30.

⁸ De gest.

pontific. lib. 3. videfis Bedam ecclef. hist. lib. 4. cap. 13. & 28.

the Saxons. *Fisco regio famulabatur*, saith *Malmsbury*, *quando eum*, locum, *beatæ memoriæ Wilfridus a beatissima Etbeldritha reginapro aliis possessionibus commutavit*. Afterward, before the Normans it was the archbishop's of York.

Fol. 681. No. 256. How much the having a surname was then respected, is hence to be observed, which in those days and long after, was either from some personal note, or possessed territory. Although also the earls of ancient families and names used them both, and not only the christian name, as now. So is *Simon of Mountford* earle on *Leichestre*, for *Leicester*, witness to an old English charter of ^a *Henry III.* and other like.

Fol. 684. No. 257. This *Hugh* and his posterity during the reigns of this *Henry*, *Richard I.* *Henry III.* and till xxx of *Edward I.* enjoyed the yearly revenue of 34 l. 6 s. 8 d. *Ut pro tertio denarium comitatus Norfolciensis, ut pro nomine comitis ejusdem comitatus*, as the words of the record are. But *Roger le Bigod*, earl of *Norfolk*, under the first *Edward*, surrendered his earldom to the king. A president in matter of honor not obvious, therefore you wish perhaps to hear it. *Sciatis nos reddidisse, remississe, & omnino quietum clamasse pro nobis & haeredibus nostris magnifico principi & domino nostro karissimo domino Edwardo dei gratia regi Angliæ illustri, quicquid juris, honoris, & domini habemus nomine comitis in comitatu Norfolciæ & marefcalcia Angliæ, Habendum & Tenendum eidem domino regi & haeredibus suis cum omnibus & singulis ad ea qualitercunque spectantibus quocunque nomine censentur, quietæ de nobis & haeredibus nostris in perpetuum. Ita quod nos vel haeredes nostri seu aliquis nomine nostri nihil juris vel clamm in eisdem aut suis pertinentiis quibuscunque de caetero vendicare poterimus vel habere.* In cujus rei testimonium, sigillum nostrum huic scripto duximus apponendum. His testibus domino Johanne de Langron archiepiscopo Cantuariensi & cancellario Angliæ, Rogero de Brabazon justiciario domini regis, Johanne de Dokensford, &c. But withal, observe what the most learned *Clarendieux*, hath out of the history of *Canterbury*, touching this surrender.

Fol. 687. No. 258. At this day, excepted the counties palatine and some few other, in the denominating county the earl hath but only his name, understand as he is earl, and what, in later creations, is, as an annual sum and competent, in lieu of that ancient third part, granted him out of the king's farm or custom of some great town, or other places within the county; as also a duke in later times, hath within the thire of his dukedom, and a marquis in his marquissate. But not only of thires and counties, but of cities and towns, have been and are as well creations as the denominations of them. *Salisbury*, *Chichester*, *Bridgewater*, *Arundel*, and the like shew it. Although as antiently in *France*,

I doubt not but with us heretofore chief cities of a county have denominated the earls which were of the whole county. But that of *Arundel* hath been, by antient resolution, singled out, as it were, for a special kind of earldom: the honour proceeding more from feisin of the castle of *Arundel*, than later creations or institutions. For although it had a beginning, for the title, from *Maud* the empress to *William de Albineto*, to whom her son *Henry II.* gave the Rape of *Arundel*, *tenendum de eo per servitium LXXXIV. militum & dimid.* and that *Richard I.* granted to *William* son to the first *William*, the castle of *Arundel*, which yet was, it seems, his inheritance before, descended from his mother *Adeliza* daughter to *Godfrey* duke of *Lorrain* and *Brabant*, *cum toto honore de Arundel & tertium denarium de placitis de Suffex unde comes est*: yet in parliament, in time of the *Fitz-Alans*, to which noble family it was transferred by marriage with a female heir of *de Albineto*, upon a petition exhibited by *John Fitz-Alan*, then earl, it was, after deliberation, adjudged that he should have place as possessor of the castle, without other respect: *Considerato qualiter Ricardus filius Alani consanguineus, ancestor to John, & unus haeredum Hugonis de Albineto*, the same with *de Albineto*, *adum comitis Arundel fuit seiscus de dicto castro, honore, & dominio de Arundel in dominico suo ut de feodo, & ratione possessionis suæ eorundem castri, honoris, & domini, absque aliqua alia ratione vel creatione in comitem, fuit comes Arundel & nomen & statum & honorem comitis Arundel necnon locum & sedem comitis Arundel in parlamento & concilio regis quandiu vixerat, pacifice habuit & possedit absque aliqua calumnia, reclamazione, vel impedimento.* The petition was in this form: *Pleasé au roi nostre souverain seigneur d'accepter vostre humble leige John count d'Arundel ore present en vostre service deins vostre roialme de France à son lieu pur seier en vostre parlement come en vostre conseil come count d'Arundel, considerant que ses ancestors counts d'Arundel seigneurs del castel, honneur, & seigneurie d'Arundel ont ewe leur lieu a seier en les parlements & conseilx de vos tresnobles progenitors du temps d'ont mémoire ne court per reason de la castel, honneur, & seigneurie avant dits as quex le dit nom de count ad este unie & annexe de temps suisdit; des queux castel, honneur, & seigneurie, le dit suppliant est a present seise.* This was in xi *Henry VI.* and afterward in xxvii. of the same king a great controversy grew in parliament, about precedence betwixt *William* earl of *Arundel*, brother of this *John*, and *Thomas* earl of *Devonshire*. The matter, after that act of xi. and other proofs were produced on both sides, was referred to the judges of the common laws. But they as the record speaks, *saïen & declaren after their conceits, that it is a matter of parlement longking to the king's highnesse and to his lords spirituall and temporall in parlement by*

^a Pat. 43 Hen. III. memb. 15.
controverfia de locorum prærogativa.
parl. 27 Hen. VI. art. 18.

^b Rot. parl. 3 Hen. VI. art. 1.

ubi magna illa, inter comites marefcallum & Warwicensem.

^c Camden. in Regalis.

^d Rot. parl. 11 Hen. VI. art. 32, 33. & seqq.

^e Rot.

by them to be decided and determined. How-
 bee it that the said attencion but only that the
 said John, late earle of Arundel, brother of the
 said William, whos heire he is, shuld have his
 sete, place, and pre-eminence in the kings pre-
 sence, as well in his parlements and counsell, as
 elsewhere as erle of Arundel, as in the same att
 more openly hit appereth, in which att beth
 not expressed in writing the heirs of the same
 late erle, notwithstanding that he was seised
 and inherited to the castel, honour, and lordship
 of Arundel, whereto the said name, estate, and
 dignity of erle of Arundel, is, and of time that
 no mind is hath bin unyed and annexed, and by
 that reason he beene and had that name, and not
 by way of creation, as the same judges under-
 stonde by reason of the same acte. Hereupon the
 king and the lords determined, that he should
 have his place in parliament, and the king's
 council, as earl, by reason of the castell, lord-
 ship, and honour of Arundel, as worshipfully
 (so says the roll) as ever did any of his ancestors
 erles of Arundel afore this time, for him and
 for his heirs for ever more, above the said erle
 of Devonshire and his heirs. For Arundel, thus
 much.

Fol. 708. No. 259. This form hath antient
 original. In one of * Cassiodor's precedents for
 the dignity of the *comitiva provinciae*, you
 read: *Tua dignitas a terroribus ornatur quae
 gladio bellico, rebus etiam pacatis, accingitur.*
 And how the girding or delivery of a sword was
 in delegation of *imperium* or power of govern-
 ment, you may see in the Roman † *praefectus
 praetoriorum*, and some other of that state.

Fol. 717. No. 260. And an old ‡ romant of
 the French :

*De courtoise & de bernage
 Ot il assez en son courage.*

Where *bernage* (for *baronage*) is taken, saith
Fauchet, for noblesse; perhaps rather for hu-
 manity. But sometimes *rex & baronagium su-
 um*, is for the king and all his subjects, or the
 whole parliament representing them. And so it
 comes from *baron*, as it interprets a man or
 tenant; as if you should say, *rex & homines
 sui*.

Fol. eod. No. 261. And the king had *baro-
 nes suos*, so distinguished. An old ^h record:
*Dominus rex mandavit Petro de Rivallis, quod
 mitteret ei Willielmum filium & beredem Jo-
 hannis de Breuse, eo quod debuit esse baro suus,
 & homo suus ad nutriendum in domo sua.*

Fol. 727. No. 262. Those kind of military
 fiefs or fees as we now have, were not till the
Normans; with whom the custom of wardships
 in chivalry (they began not under Henry III. as
 most ignorantly *Ranulph Higden*, the monk of
Chester, and *Polydore* tells you) came into En-
 gland. But before that, wards were in Scotland,
 if their stories and laws of *Malcolm II.* deceive
 not. When he distributed the kingdom into te-
 nancies, then *omnes barones*, say his laws, con-

*cesserunt sibi wardam & relevium, de haerede
 cujuscunque baronis defuncti, ad sustentationem
 domini regis*; although *Buchanan* rather gue-
 ses that Scotland had this custom by imitation
 of the English or Normans. But in this *Mal-
 colm's* time, wardships were not at all in En-
 gland. With the *roturier*, or base tenants, this
 place hath not to do; only a word or two of the
 names of *feudum* and *alodium*. The derivations
 of both are divers. For *feudum*; I am some-
 what confident that its root is in *fides*; howe-
 ver by different writing thence varied; and from
 it is our word *feild*, which was antiently *feud*
 and *feuld*, as in the names of *Rotherfeuld* and
Losfeuld, for *Rotherfeild* and *Losfeild*, occur-
 ring with divers like in old rolls, is apparent.
 The vassals are stiled *fideles* in Latin, and
drudi, i. e. true, from the same word in *Tento-
 nick*. From what others herein multiply, but
 roving far from the mark, I purposely abstain,
 and from the conjecture of some, because they
 are too ridiculous. *Alodes* or *alodium* signi-
 fied antiently what in the more strict sense in-
 heritance doth in our law, that is, lands descen-
 ded from the ancestor; and *alodes* and *com-
 paratum* are opposed often, as *purchase* and in-
 heritance. Now every feud or fief paid a re-
 lief or heriot upon the death of the tenant, and
 the heir or successor came in always, as at this
 day, in some fashion of a new purchase. But
 where no tenure was, there the inheritance de-
 scended freely to the heir, who claimed it al-
 ways merely from his ancestor. Out of this
 difference, I imagine, the names of *feudum* and
alodium were translated to make that distinction
 which is usually betwixt them; whence *alodium*
 now abusively denotes, chiefly lands possessed
 without service or subjection, except only ac-
 knowledge of superiority in the giver. This
 may hold better than that from *leudes*, or any
 which I have seen. An example of *alodes* or
alodium, the great lawyer *Hotoman* especially
 takes out of an old charter made to one *Paulan*,
 by our king *Athelstan*, which is * remembered
 to have been found amongst the spoils of war
 in *Westmorland*, by the *Scots*, under their
Robert II. As the words were, I insert it:

I king Athelstan
 Gites to Paulan,
 Oddan and Roddan
 Als gnyde and as faire
 Als euer thai mine wair;
 And tharto witnessse Maulde my wife.

The simplicity of that age is even pictured in
 it. An age when misnomers, misrecitals, be-
 ing deceived, and such like did not make
 void the king's patent. Nor doth it in sub-
 stance differ from the conqueror's gift of the
 palatinate of *Chester*. And both in this of
Athelstan, that of the † hundred of *Dauncing*
 and *Chelmer*, by the Confessor to *Randolph Pe-
 perking*, and others extant of about the con-
 quest, shew the affectation that age had to rhy-

* Varian. form. 1. lib. 7.
 livre 2. chap. 5.

† Xiphil. in Trajano, & de hac re, affatim Pet. Faber. semest. 1. cap. 2.
 Placit. apud Theokesb. coram W. de Ralegh, ante Pentecost. 18 Hen. III. rot. 1. in dorf. Suffex.

adonavit H. Bignon. ad Marculph. formul. lib. 1. cap. 12.

‡ Hector. Boeth. lib. 16.

§ Chez Claude Fauchet d'orig.
 Apud Camden. in Essexia.

ming in charters. Whereas now prose without difficulty makes not one sufficient. But also the word *alodium* and *alodiaris* was not unusual antiently here in *England*. Under the county of *Chent* (*Kent*) in *Domesday*; *Si quis prostraverit arborem in via, ramum, vel fossatum fecerit, quibus strictior sit via, centum solidis emendabat regi*. De grithige (I think grithgæche, i. e. breach of the peace) *emendabat regi* VIII^{li}, &c. *Has forisfacturas habet rex super omnes alodiarios totius comitatus Chent & super homines ipsorum. Et quando moritur alodiarius rex inde habet relevationem terrae, excepta terra sanctae Trinitatis, &c. Super istos habet forisfacturam de capitibus eorum tantummodo*. And there also; in *Benidene* *manfit Godricus, & tenet xx acras in alodio suo*. So in *Sudsex* (*Sussex*) in *Cetelengeley* (I guess *Che-dingley*) *Alman tenuit de rege E. sicut alodium, and divers more like*. What properly the *alodiaris* and *alodium* were with them, I confess I know not. For it seems clearly, *alodium* was not land only whereof no tenure was, as it is proved thence out of that under *Sussex* in *Lanswice*, *Godwines tenet de eo, & de eo VII. aloarii for alodiaris*. Perhaps it was in regard of such tenures as were free from performance of any chargeable service. This of feuds belongs more especially to the dignities already spoken of, but also hath its use in the understanding of the nature of our antient knights, in regard of the tenure of their fees.

Fol. 748. No. 263. We usually stile them *lords*, as the *Dutch* their *hæren*, or *fræhæren*. But that name with us is but of curtesy. For, it includes not, of necessity, *baron*, nor is any distinct dignity, as appears by a case where the writ was ⁱⁿ *præcipe Johanni Lovell militi*, and the exception to it was, that *John Lovell* knight was a lord, (*seignieur*) not named so, but disallowed. Whereas the law had gone plainly otherwise, if it had been, that *he was a baron of parliament not named so*, and the party had withal shewed to the court a writ signifying the same. Yet *seignieur* is only used for a baron in our ^a statutes, and the word *dominus* is that which the law uses in expressing a baron when he is either plaintiff or defendant, as *Henricus Barkeley miles dominus Barkeley*, and *versus Georgium Zouch, dominum Zouch, Saintmaure, & Cantelupe*, which occur in *Plowden*. So that the name of honour given to a baron in legal proceedings, is always but *dominus* with addition of the denominating place. But when the privilege of being a baron is challenged, or exception for not naming the party so, testimony of record must be produced, that he is *baro regni*, and that he hath *vocem & locum in parlamento*, as the ^o books are. Which difference for the name of lord is observable; and to be understood chiefly of temporal barons. But also both that of lord and baron is at this day by usual application of language, attributed with us to some which are neither by law: as, espe-

cially since the use of making every earl, first a baron of some place (which began, as most worthy *Clarencieux* teaches, about *Henry* the eighth) it hath been a custom to stile their heirs apparent, lords and barons, with the title of their fathers barony; so of viscounts their heirs apparent. But this is only a piece of courtship and meer fashion, yet allowed in heraldry; wherein *Tiptoft's* rule (he was earl of *Worcester*, and high constable of *England* under *Henry* the sixth) is, that *the eldest son of every one of a created degree is as of the next degree under him*, which may be applied to dukes, marquises, and the rest. But in legal proceedings they enjoy no such matter, nor have by their being heirs apparent, any prerogative of the greater nobility. The same is to be affirmed of a duke's son and heir, whom custom titles by his father's earldom, as the example was in ^p *Henry* called earl of *Surrey*, and son to the duke of *Norfolk*, under *Henry* the eighth, being attainted of treason by a common jury, and not by peers or barons, because he was in law as one of the meaner or less nobility.

Fol. 774. No. 264. T. rege apud Wodestock 10 Octobris. The law hath been since taken, that baron or not baron (as duke or not duke; and so of the other created titles by record) is triable only by record, and not by the country. Whereas antiently, when their revenue and possessions gave the name, or made them barons, it might be triable by the country.

Fol. 779. No. 265. The *sertum* was nothing but the ducal crown, as at this day, I think, *fleuronnée*. For that of the ring; it is familiar in most antient story, that the delivery of a ring was a sign of principality given; as in *Pharaoh's* giving a ring to *Joseph*; in that of *Abaswerush* or *Xerxes*, reported in *Esther*, to *Haman*; in *Alexander's* doing the like to *Perdiccas*, which made some ^a think him the truly designed successor. And when the two *Mabumedans*, *Alem*, or *Ali*, and *Mubavias*, upon controversy for the dominion of *Syria*, were contented to submit themselves to the judgment of the old men; that so the arbitrators might have a sufficient power judicial, they delivered to them their rings, *ὅτις ἐστίν*, saith my ^r author, *σημείον τῆς ἀρχῆς; ἢ Ἀρχιεπισκόπου*, i. e. *which is a sign of principality among the Hagarens*. And *Lewis*, surnamed the *groß*, of *France*, *filium suum Ludovicum annulo investivit*, in part of of his kingdom, as one ^t that writes his life remembers. How a ring, in the coronations of king, is used, the divers and published orders of them shew. *Fac nobis reddi coronam, annulum, & purpuram, caeteraque ad investituram imperialem pertinentia*, are the ^u words of those bishops which came to the emperor *Henry V.* to depose him. Of the ring we shall have more occasion to speak anon in another ^u place. Both

^a Ita n. a. jurisperitiff. intelligitur casus ille 8 Hen. VI. fol. 10. v. cas. comitiff. Rutland. relat. part. 6. d'appareille.

^o 48 Adiff. pl. ult. 48 Ed. III. fol. 30. b. 35 Hen. VI. fol. 46. a.

^q Curt. lib. 10. Plutarch. in Alex. alii. & consulas i Maccab. cap. 6. com. 15. de Antiocho.

ad. Rom. imp. cap. 21.

^r Suger. abb. vit. Lud. Crassi.

^t Helmold. chron. Slavor. 1. cap. 32.

ⁿ 22 Ed. IV. cap. 1.

^p 38 Hen. VIII. tit. *Treason* 2.

^r Theophanes ap. Porphyrog. de

^u Ubi de jure annulorum aur.

rod and ring were used antiently in imperial and royal investitures of bishopricks, which were proportionate to counties or dukedoms, and therefore may be opportunely here remembered. The great controversies about it, betwixt that Henry V. and pope Paschal II. and at length the same emperor's remitting his right to Calixtus II. are easily known out of the stories of those times. The custom of the * *Constantinopolitan* empire was, as for the staff, alike. And in this isle, *a multis annis retroactis*, saith Ingulph abbot of Crowland, (he lived at the Norman conquest) *nulla electio praelatorum erat mere libera & canonica, sed omnes dignitates tam episcoporum quam abbatum per anulum & baculum, regis curia pro sua complacencia conferebat.* The rod, or *pastoralis baculus*, as they called it, was usually kept in the bishoprick or monastery, and at every new investiture delivered by the king, or other patron, as the case was, to the new elect. For, the y election was in the clergy, but the confirmation by this means, with staff, or rod, or ring. And therefore, when king Edgar most liberally gave new privileges to Glasenbury, yet *sibi suisque haeredibus tribuendi fratri electo pastorem baculum potestatem retinuit.* Afterward Henry the first, about that same time when pope Paschal so much opposed it in the empire, (*Anselm*, archbishop of Canterbury being a special agent herein for the see of Rome) *investituram annuli & baculi indulgit in perpetuum; retento tamen,* so says the monk of Malmesbury, *electionis & regali privilegio.* And *cessit papa, ut rex homagia de electis acciperet, sed nullum per baculum & anulum investiret.* In report whereof all our stories consent. Which makes me suspect this relation in *Matthew Paris*, A. D. CIO.C.XIII. *Rex Henricus dedit archiepiscopatum Cantuariensem Rodulpho Londoniensi episcopo, & illum per anulum & pastorem baculum investivit.* This Rodulph or Ralph was successor to *Anselm*, but was not bishop of London, but of Rochester. Neither do the more antient stories of Florence, Hoveden, Huntingdon, Malmesbury, and the like, speak of this kind of investiture to him. *Matthew of Westminster* follows the words of *Paris*; only he hath in him misprinted *Richardo* for *Rodulpho*. But, after that remission by the king, it is not likely he would so soon use the ceremony about which so much difference and controversy had been. Neither would the see of Rome have been so silent upon such a ^a fact, as, at that time especially, it so much impugned. But long after, when England discharged itself of that *Romish* yoke, this liberty of collation and investiture, but not with these ceremonies, was refused to the crown by act of parliament, ^b consti-

tuting that without any *conge d'eslier* the king might bestow archbishopricks and bishopricks by his letters patents, which should be to all intents and purposes, as though *conge d'eslier* had been given, the election duly made and the same confirmed. This was under *Edward* the sixth, and repealed by queen *Mary*, whose act of repeal stands now also repealed. But this out of the way. How those ceremonies belong to bishops now, especially of the Roman church, you may best learn from ^c writers whose direct purpose is of things of that matter.

Fol. 782. No. 266. *Sed quodammodo* (saith the red book of the exchequer) *frivolum reputabatur.* Afterward, *Roger of Mortimer*, being of great possessions and reckoning in this tract, was, upon the same reason of name, created earl of *March* by *Edward* the third, with which others since have been enobled. But in these was only the name, not the dignity, of *marchio*. Neither were they in *English* stiled marquesses, but marchers, as the most worthy *Camden Clarendieux* hath observed.

Fol. 789. No. 267. And it was taken also for the younger sort, *tyrones*, or such like. For where the *Latin* of venerable *Bede* hath of king *Sigebert*; *instituit scholam in qua pueri literis erudirentur*; the ^d *English-Saxon* hath he *ȝeoole ȝeſette ȝ on ȝaene cnihtar, ȝ geonge men ȝeſette ȝ ȝeȝyde ȝ laeƿe.* i. e. *he instituted a school, and placed in it cnihtes* (knights) *and young men both furnished and learned.* At this day a *diener*, *servant*, or *valet*, is both in *Alemanick* and *Belgick* called *ein knecht*. And to this sense in *cnihtas*, in the translation of *Bede*, perhaps hath *tyro* and *tyrocinium* allusion, in those monks which thereby express sometimes a knight and knighthood. But, as it goes for the titulary name of this honour, I suppose it rather for a minister or servant, denoting that one which had undertaken the order was a martial minister or servant, known and, as it were, in perpetual service retained for the state. And that as *comes* and *baro* from their more general significations became to be what they are; so this of *cniht* or *knight*. For plainly it is applied to the office, to which their honour bound them, not to their age. As appears in our old word *rodknights* (that is, *riding knights*, ^e or *knight riders*) which were such as held their lands by the service to ride up and down with their lords *de manerio in manerio*, which under *Henry* the third, before *William of Raleigh* was adjudged ^f to be cause of ward and marriage, *Stephen of Segrave* being then, as he might have good reason, of a contrary opinion. They were called also *radknights*;

* Georgius Phranz. lib. 3. cap. 19.

lib. 2. de gest. reg. cap. 8. ex archiv. Glascon.

^a Haereticis de investitura, eo aevo nonnullis dicta.

Carnot. epist. 257.

caput Mariae refixit parliam. i Jacob. sess. 1. cap. 25.

& apud Caium de antiq. Cantabrig. lib. 1.

cap. 16. & 35.

^y Ita Malmesb. de gest. pontific. lib. 3. in episcop. Lindisfarnensibus &

lib. 2. de gest. pontific. lib. 1. de hac re & turba monachorum.

² De gest. pontific. lib. 1. de hac re & turba monachorum.

Goffrid. abbas Vindocinens. opuscul. tract. 2. vide Anselm. epist. 12. & Ivoem

Stat. 1 Ed. VI. cap. 2. quod rescidit parlamentum 1 Mar. sess. 2. cap. 2. quod etiam

^c Durant. de ritib. eccles. 2. cap. 9. alii.

^d V. Verstegan. pag. 319.

^e Bracton. lib. 2. de acq. rer. dom.

and in one that translated divers of the Saxon laws, they are thus remembered: *Si hoc fit*, he means if fighting were, *in domo hominis quem Angli vocant tachenht, alii vero ferhendman*. The ferhendman was the Saxon *fishhñmon*, i. e. one whose worth was valued at six hundred shillings. In our law they are stiled *miles* and never *equites*. Yet so that *miles* is taken for the self same with *chivaler*. For in the writs of parliament being in Latin, to the barons, *chivaler* is always as an addition so expressed in French; because it seems every baron fit for that court is at least supposed to be a knight, and most commonly so. And where in a writ of ^s mesne the lord paramount was named *Johannes Tournour miles*, and in the *disfringas ad acquietandum*, *Johanne T. chivaler*, it was held in court that no error was by the variance. But in the common laws also *miles* is as well taken for others as for knights. Sometimes it goes for *miles gladio cinctus*, for one indeed knighted, as before, in the *magna assisa eligenda*, and elsewhere. Other times and very often it is only for a freeholder of lands by knights service. And against *miles* and *tenant by knights service*, were *liber sokemannus*, *burgensis*, *villanus*, *tenant in aucien demesne*, and *serviens* opposed. *Sokemans* were but tenants in socage, which held by service of the plough, or such like. *Burgenses*, *burgesses*, men of towns and corporations, of personal only not feudal worth. *Villain* near the like, although applied afterward to bondslaves. Tenants in *aucien demesne*, although they had their large liberty of discharge and quiet, as now, yet were reckoned so far from the worth of old tenants by knights service, that they had not rank amongst the *liberi homines*. Therefore in the writ of right close, the tenure must not be laid *per liberum servitium*, because, saith the register, *no freeman may bring that writ*, and whereas by the statute of Merton, *quilibet liber homo*, may make an attorney, it was ^h adjudged, that tenants in *aucien demesne* were not in those words comprehended. And in an action of *disceit* against ⁱ William Mamman, and others, by the abbot of Beaulieu, touching the mannor of Farendon, which the abbot claimed as *antient demesne* by the gift of king John, the issue being *whether part of it were antient demesne or no*; the defendant, *petit quod inquiratur per milites*, & *praeceptum est vicecomiti quod venire faceret coram H. le Bigod in proximo adventu suo ad partes illas omnes milites praedicti comitatus ad recognoscendum*, &c. Where note, both *aucien demesne* triable by the country, and also that *milites*, used for *libere tenentes*, as it were excluded the abbot's tenants, being, by reason of their tenure, not *inter liberos & legales homines*, or fit to be in a jury. These distinctions, even still hold. By *servientes*

(^k *serjeants*) were those understood which, either by perpetual covenant, or temporary pay, were bound to the wars, not by tenure, as the *milites*, or tenants by knights service. *Nec miles nec serviens litem audeat movere*, saith one of ^l *Barbarossa's* military laws, and upon the writ of sending four *milites* to see the sick in an essoign *de malo lecti*, it is not sufficient, saith *Bracton*, *si vicecomes mittat servientes, milites enim esse debent propter verba brevis*. And these, by reason of their pay, which by covenants was most commonly for life, or divers continual years, were also called *solidarii*, (whence our word *soldiers*, the Spanish *soldado*, the French *soldat*, and such like) because of the *soldata*, or *solidata*, the proper name of their salary, which they received. *Soldata vero*, say the *Feudals*, *dicitur, quia plerumque in solidorum donatione consistit: quandoque autem in vino & annona consistit*. I will not derive here the ^m *soldarii*, or the *αλωδῆροι*, which are mentioned for such as lived as *devoti*, *ambatti*, or near followers about great men, among the old Gauls. I dare not, whatever others. Yet the name of *miles* notwithstanding hath, as well its fit application to a common hired foldier, as to him that serves by reason of his tenure, and so comprehends both them two, and the personally honoured knight. But them two, by reason of their service to which their continual rewards binds them; the knight, because that after out of his own worth, or hopeful forwardness, he is adjudged by some supreme judge of chivalry, worthy that dignity, the character of his quality in his creation perpetually remains.

Fol. 803. No. 268. This oath was, it seems, somewhat proportionate with that *militiae sacramentum* taken solemnly by the Roman armies; without which, and at every new going a warfare, a renewing of it, none might (*jure n pugnare cum hostibus*) lawfully fight with the enemy.

Fol. 804. No. 269. The knight's *fief* or *fee*, is as commonly known by name as knight. But what it was, or is, is not to all known. An old ^o testimony makes it 680 acres, consisting of 4 hydes. Other certainties are proposed for a knight's fee antiently, but ^p in vain. It is nearest truth to set no number of acres, nor quantity of territory, but only of revenue out of land, which being 20 *l.* yearly, was the value of a knight's fee. Remember what is already delivered of an entire barony, and the possessions of other dignities. In them the relief always expresses the fourth part of the annual revenue by virtue of the grand charter, which, in this point, was made in imitation of what was common law in the relief of a knight's fee, being, as appears by *Glanvil* and *Gervase* of *Tilbury*, just one hundred shillings. What then more plainly could prove that the knight's fee,

^b 30 Ed. III. fol. 18. a.

ⁱ Placit. coram rege de temp. H. Bigod pasc. 44 Hen. III. rot. 17. Berk.

^k de gest. Frederic. I. lib. 1. cap. 26.

^l lib. 5.

^m Polybium lib. 6. alios.

ⁿ Temp. Ed. I. tit. attorney. 102.

^o 21 Ed. I. ms. plus plein & la est adjudge.

^p 22 Ed. III. fol. 18.

^q Caesar de bell. Gallic. 3. Nicol. Damascen. ap. Athenaeum dipnos.

^r Catonis filio. Videfis Veget. lib. 2. cap. 5.

^s Servitium ad Aeneidos 8.

^t V. 4 Ed. II. tit. avouery 200.

that is, the possession fit for the maintenance of a knight in those days, was exactly land of twenty pounds yearly? And they which had such an estate, might be compelled to take, and, it seems, of right demand a knighthood. Yet under *Henry* the third, and *Edward* the first, some of less revenue were called to this dignity. *Anno sub eodem, 1256, exiit edictum regium, falth Matthew Paris, praeceptumque est & acclamatum per totum regnum Angliae, ut quilibet qui haberet xv. libratas terrae & supra armis redimitus tyrocinio donaretur, ut Angliae, sicut Italiae, militia roboraretur. Et qui nollent, vel qui non possent honorem status militaris sustinere, pecunia se redimerent.* Here fifteen pounds revenue was the same, and afterward all the ^a sheriffs of *England* were amerced, every one at five marks in the exchequer, for not distraining the tenants in their county according to that precept. And other like examples are, in themselves unlike for value. But by the statute of *Westminster* 1. of *reasonable aid*, twenty pounds fodge land, and a knight's fee, are compared for like possessions; and in the first of *Edward* the second, an act of parliament was, that if any were distrained to be made knight, having neither in fee, nor for life, twenty pounds revenue, and the same were proved, upon his complaint, by inquest, he should be discharged. Nor that any man should be compelled to be a knight before his full age of twenty one years. Yet after that the writs have been for such as had forty pounds yearly, ^r both in *Edward* the second, and third, their times, and of divers succeeding. And under *Henry* the sixth, the chief justice ^s of the common pleas says, that the king might compel every man of forty pound, yearly worth in lands, to receive knighthood, by writ out of the exchequer; and if they appeared not at the first day, but come after to take this order, by rigour of law, they are not to be received, but amerced for default. Where he remembers, that, when writs in that kind went out, at the second day, a great burgess of *Southwark*, able to dispend one hundred marks yearly, appeared, on whom they were unwilling that the honour should be bestowed; and after deliberation, resolved, that, because he came not the first day, he should not be knighted. This *census* or military value, hath some proportion to that of the *ordo equestris* in *Rome*. Their *ordo equestris*, or *secundus ordo*, as they called it, in respect of the *senators* being *ordo primus*, had it's known worth in possessions. That worth was four hundred thousand of their *sestertii*, in present estate; of our sterling, three thousand one hundred twenty five pounds, every thousand *sestertii*, or one *sestertium*, which are all one, reckoned at seven pounds sixteen shillings three pence. Yet, in those more ancient times of *England*, when the relief of a knight's fee, and so a knight's fee were

truly known, as now also, too frequently, this honour was given to such as had not any land. Betwixt them, and other, a difference is made in ^r *Richard* the first, his edict of torneaments. *Rex statuit torniamenta fieri in Anglia & charta sua confirmavit, ita quod quicumque torniare vellet daret ei pecuniam secundum formam subscriptam: videlicet, comes daret pro licentia torniandi xx. marcas argenti, & barones decem marcas argenti, & miles terram habens iv. marcas argenti, & miles non habens terram 11. marcas argenti.* Out of this military revenue, and the right of compulsion in the king to make the possessors knights, you may easily understand what *pro respectu militiae* is in the exchequer rolls antiently; and why in inquests of eires, the presentations were of such as had a whole knight's fee, and were not knighted, being of full age. In an eire at *Chichester* under ^u *Henry* the third, to give one example like infinite others, the jurors of the hundred of *Palings*, it is that now we call *Poling*, in the rape of *Arundel*, to the article de *valettis*, *valetti* was used for young heirs or young gentlemen, or attendants, *dicunt quod Nigellus de Broke, & Simon de Fering, tenent integra feoda militum, & sunt plenae aetatis & nondum sunt milites ideo inde loquendum.* And divers such more are in the same roll, and others concluding sometimes *ideo in misericordia*. That *Nigellus de Brok*, had good possessions then in *Eclesdon* and *Selkeden*, the hamlet which now is *Selden*, by *Eclesdon*, both of the revenue of the abbey of *Fischamp*.

Fol. 8c7. No. 270. Where, by the way, it appears also that the *exceptis bobis & affris carucae* in an *elegit*, was antient common law before the statute of *Westminster* the second. And it seems that the equipage and armour competent to his person, was by the antient law as inheritance defendible to the heir, and not, as other moveables, cast upon the executors. An old testimony inserted amongst that which is filed the confessor's laws; *non debent illa invadiare*, understand such as were bound generally for defence of the kingdom to have armour, *nec extra regnum vendere, sed haeredibus suis in extremis legare, ad servitium tenementorum suorum dominis suis explendum cum opus adfuerit.* And although the words import as if they should bequeath them; yet doubtless the meaning is, that they should leave them to descend; as what follows, perswades. *Quod si qui, are the ensuing words, eorum haeredes vel parentes non habuerint, dominus suus illa recipiet. Et si dominum non haberent, felagus suus, i. e. fide cum eo ligatus, si haberet, illa recipiet, si vero nihil istorum haberet, tunc regni, sub cuius protectione & pace degunt universi, rex illa resumet.* And when under *Henry* the second, divers ^x constitutions were for keeping of armour, according to the quantity of mens estates, one was, *si quis arma haec habens obierit, re-*

^a Mart. Paris pag. 1249. edit. Lond. ubi legendum, pro *decem*, *quindecim*. tit. averment 37. & claus. 7 Ed. III. part. 1. dorf. memb. 7. & 22. keford.

^r Roger. de Hoveden part. 2. pag. 424. & lib. rub. scaccarii.

^s Ram R. de Littlebury & focis suis 47 Hen. III. rot. 44.

^u 19 Ed. II. claus. memb. 16. dorf. 7. Ed. III. Babington 7 Hen. VI. fol. 15. c. fir Richard Hau-

^x Alissa de armis 2. Hen. II. apud Rogerum de Hoveden.

maneat haeredi suo, & si haeres de tali statu non sit quod armis uti possit, si opus fuerit, ille qui eum habuerit in custodia, habeat similiter custodiam armorum, & inveniat hominem qui armis uti possit in servitio d. regis, si opus fuerit, donec haeres de tali statu sit quod portare possit, & tunc ea habeat.

Fol. eod. No. 271. As if one under the dignity of knight, might not in those days use a seal; which, were it true, is somewhat proportionate to the *jus aureorum annulorum* in Rome, challenged and given to their *equites*. For, as with us, so there, antiently, was the chief use of rings for ^v sealing. *Veteres, saith ^a Capito, non ornatus sed signandi causa annulum secum circumferebant.* Yet by the way, because touching this Roman right of gold rings, some controversy is, and few well understand it, you must not think that only those which by the *censor* were made *equites*, and truly in *ordine equestri*, had this right, but also others, and upon other several reasons. Neither was it more than a soldier's brag in *Mago*, when after the overthrow *ad Cannas*, he shewed at Carthage ^a three bushels and a half of gold rings, some say but one bushel, taken from the slain and captive Romans, and sent to Hannibal, he affirms, so to lay the greater name on the victory, ^b *neminem nisi equitem, atque eorum ipsorum primores, id gerere insigne.* For *Pliny* doubts not but that then the use of them was promiscuous, and affirms, that afterward they became amongst the distinctions of the *ordo equestris*. *Annuli distinxere, saith he, alterum ordinem* (that is, the *equestris*) *a plebe, ut semel coeperant esse celebres.* And *annuli plane medium ordinem tertiumque plebi & patribus inferuere, ac quod antea militares equi nomen dederant, hoc nunc pecuniae indices* (so *Lipsum* conjectures it should be, not *judices*) *tribuunt.* Afterward under *Tiberius*, then being consuls *C. Asinius Pollio* and *C. Antistius Vetus*, it was constituted, that none should enjoy this right of gold rings, *nisi cui ingenuo ipsi, patri, avoque paterno sefertia cccc. census fuisset, & lege Julia theatri in xiv. ordinibus sedenti*, that is, unless a perfect free Roman, who both himself, his father, and grandfather of his father's side had been worth *cd. cto. sestertii*, in our money *cto. cto. cto. cxxv.* pounds, and had place in the *xiv* ranks at the theatre, which were first appointed for those which were truly *equites*, as a distinction for their dignity in that place, by their *lex ^c Roscia*, and allowed afterward, but not without some alteration, by their ^d *lex Julia*, under *Augustus*. Neither do these words any more than describe a Roman *equestri* dignity, and of two descents, for the *cd. cto. sestertii, cccc. sestertia*, all one, were the *census equestris*. Yet every one that had this *census*, was not *equus* properly. None was fo

but such as were chosen by the *censor*, and *donati equo publico*, and *equo publico merebantur*. Yet such as had the *census* were, if at least ingenui, freemen, dignity *equestri*, and in the rank of the *equites*; as those of the *equites* as had the ^e worth of a senator, they called *equites illustres*, and reputed them in the rank of senators. As also the *tribuni militum*, as it were, field marshals, were in the rank of the *equites*, at the theatre. Now as the *census* alone made not the right *equus*, no more did the gold rings, given either by their general in war before their empire, or by their emperors afterward. For the time before, I refer you but to *Cicero* his third oration against *Verres*. For time under the empire, the example of *Volteius Mena*, *Pompey* his *libertus* or manumitted villain, to use our language, whom *Augustus ^f δαριδολις πειροσος ἐκόμισσε, & ἐς τὸ πῖπτεον τέλ. ἐπέγραφε.* i. e. honoured with gold rings, and made him of the *ordo equestris*, all which was but a making him a perfect freeman, and an ingenuus, which was as a degree before a *libertus*, as appears expressly by *Sueton* delivering the self same only in these words, that he was *assertus in ingenuitatem*. Which made him indeed, being of fit worth, of the *ordo equestris*, or rather ready to be received into it, because, in that, no *libertus* might be until acquired ingenuity, and in some fort *equus*; as in that of this *Mena*, ^g in *Horace*, you see;

*Sedilibusque magnus in primis eques
Othone contempto sedet.*

By *Othone contempto*, he means the *lex Roscia theatralis*, from *Roscius Otho*, constituted for the honour of the right *equites*, whom the *censor* had made, and the honour of *equus publicus* did denominate; but it was committed against by *Mena*, that, out of his greatness in favour and worth of estate, durst sit in the chiefest of the *xiv* ranks at the theatre. He had the right of gold rings, but was not therefore truly *equus*, yet in a more general notion bearing the name. Divers other examples like are, and nothing more usual than the breach of that constitution under *Tiberius*. And by a later ^h imperial law, every one manumitted hath this right of gold rings, and ingenuity. But the promiscuous use of them, in the more antient Roman state, is constantly to be affirmed, I mean so promiscuous, that it especially distinguished not their *equites*. And, that after their empire, when the *jus aureorum annulorum* was given by the emperors, to *liberti*, ⁱ only ingenuity was thereby given, although by a rescript of *Dioclesian* and *Maximian*, ingenuity pass not by it. *Tertullian* of a servant (*servus*) manumitted: ^k *Et vestis albae nitore, & aurei annuli honore, & patroni nomine ac tribu, mensaque*

^v V. tit. de ord. test. digest. cod. & instit.

^a Modii.

^b Liv. dec. 3. lib. 3. idem, defenatoribus & equitibus tantummodo, adfirmat Dio histor. 48. verum haud satis firma fide. vide Plin. hist. nat. 33. cap. 1. & 2.

^c Tacit. annal. §. 15. & de amphitheatro c. 14.

^d Tacit. observat. 7. cap. 14.

^e C. tit. de jure aur. annul. l. 2. verum vide Ulpianum & Paulum ff. eodem tit. l. 4. & 5. & C. ad legem Vitelliam.

^f Apud Macrobius Saturnal. 7. cap. 13. videlicet Lipsum ad Tacit. annal. 2. §. 4.

^g Dio Cass. l. 36.

^h Sueton. in August. cap. 40.

ⁱ Dio. hist. 48.

^j Epodon 4.

^k Διδταξ. Νεαρ. οη. & vide Cuijaci observat. 7. cap. 14.

bonoratur. Nor are the words of *equestris ordo*, *dignitas* or *eques*, applied to such as were so honoured, otherwise to be understood than that so they were made fit, and as it were immediately capable of the true dignity of *eques*, if also their estates endured it. But were no more indeed *equites* than such as had given them *insignia consularia*, *senatoria*, or *quaestoria*, were therefore consuls, questors, or senators; or than abbots, to whom the pope granted *insignia pontificalia*, were therefore bishops. The chief ensigns, besides of the right *equestris ordo*, consisting most of all in their apparel, the *trabea*, (a military robe interwoven of gold and purple) and the *angustus clavus*, or narrow gird, in distinction of the *latus clavus* or broad gird of the senators.

—¹ *Sanguine cretus*

Turmalis, trabeaque Remi, & paupere clavo

is a description of one descended from their true *eques*. And it is observable, that as their giving of ingenuity was by an ensign and note of their *equestris ordo*, so with us antiently the enfranchising of a *villain* was by giving him arms. In the laws of the conqueror, at least under that name published: *Si quis velit servum suum liberum facere, tradat eum vicecomiti per manum dextram in pleno comitatu, & quietum illum clamare debet a jugo servitutis suae per manumissionem, & ostendat ei liberam portas & vias, & tradat illi libera arma scilicet, lanceam & gladium, deinde liber homo efficitur*.

Fol. 808. No. 272. Nor doth any one reason more move me to believe the antient and promiscuous use of them here, than because for the most part all nations had them, and in their writings and deeds in one sort or another used them. And however ^m *Pliny* affirms, that *Egypt* and the east were only contented with letters, omitting seals; yet it is certain that the *Jews* had them, and in antient time often, when they made a contract, two deeds were written, one containing the contract at full, with all covenants and conditions, which was folded up and sealed ⁿ with the buyer's seal; the other, containing a general recital of what thing only the contract was; and this last was shewed open to witnesses, who inscribed their names on the backside of both. That so the witnesses, or standers by might not know the sum, time of redemption, or such like: yet be able to justify the truth of the instrument comprehending them by the inscription of their names. The seal they called *חתום*, and the deed or instrument written *שטר* *sephor*, which is a book also, but the ^o rabbins express their deeds, releases, obligations, and the like, by the name of *שטר* *shetar* or *setar*, whence the word *starrum* or *starr* for acquittances or written testimonies of contracts is used. So must you understand it in that roll, in the tower, of *Placita apud scaccarium Ju-*

deorum de termino Paschae anno regni Edwardi nono, (of *Edward* the first) *Salomon de Stanford Judeus recognoscit per starrum suum*, occurs there; and an acquittance or release by the name of *starrum* is there ^p pleaded to have been tried before the sheriff at *Norwich*, by a jury of *sex probos & legales homines, & sex legales Judeos de civitate Norwici*, and found to have been the deed of one *Genta*, a woman *Jew* of *Glocester*, whereupon one *Alice*, the widow of *Clement* of *Porington* was quit against the king then claiming, upon special occasions, all duties which were owing to the *Jews* in *England*. The like kind of trials are there, in the case of one *Eustace* of *Pecham* in *Kent*; of *Salomon Bensalomon* in *Hampshire*, and divers others. Where, by the way observe, it seems the *Jews* (of the jury) were charged by oath taken upon the ^q *בפר תורה*, i. e. *the books of Moses*, held in their arms, and by the name of the *God of Israel, which is merciful*; with formal additions of words which they used, as christians upon the evangelists. For a rabbin, that ^r lived in time of *Henry III.* says, that so was an oath to be taken by his countrymen, although in a judicial precedent, yet remaining, of *Constantine Porphyrogenetus* (he lived about 300 years before) divers other and strange ceremonies were to be used. If you desire them, search them where they ^s are published. The *Romans* had their *annuli signatorii*, and *sigillarii*, as *Vopiscus* calls them, destinate as well to sealing of writings, as use in the house instead of locks. ^t *Juvenal*:

*Vana supervacui dicunt chirographa ligni,
Arguit ipsorum quos litera, gemmaque princeps
Sardoniches, loculis quae custoditur eburnis.*

What is *gemma sardoniches* but the seal cut in that stone? Of the ^u *Grecians*, as plain testimony is. And of all, enough more. The seal being a special ensign of credit, and therefore so fitly used. *Nec plus habere quam unum licebat* (saith *Aetius* ^x *Capito* of seal rings and the antient *Roman* times) *nec unquam nisi libero; quos solos fides decerneret, quae signaculo continetur*. And it is affirmed amongst the *Grecians*, that before the invention of seals cut in fit matter, the use was to seal with pieces of wood, eaten and gnawen by ^y worms, *ξύλοις* *καὶ θελκῶν βελουμένοις*, which could not but give impression; and that, *Hercules* first used that kind of seal, whence *Lycophron* hath *σέρπεντος* *σφραγίς*, i. e. *a worm-eaten seal*. I persuade you not to be prodigal of your faith to such *Grecian* conjectures. Think of them as they deserve.

Fol. 817. No. 273. Some talk of *S. George*, borne by king *Arthur* in one of his banners. But what is delivered of that prince is so uncertain, that even the truth of his honoured deeds is, by

¹ *Papinius sylv.* ad *Crispinum*, uti emendavit *Lipsius*.

² *elench. Trihaeresis*, cap. 11. & *λαβὼν βίβλιον ἐν ᾧ ἐστὶν ὁ νόμος*, *ἡ ἐπιστολή*. *Tobit*, cap. 7.

³ *Ed. I. Judaeorum* rot. 4. *Pasch. Norff.* & rot. 5. in dorf. & rot. 6. *Suthc. & fere* passim in *schedis illis*.

⁴ *Rabbi Moses Mikotzi* in *עשר מצות* precept. 123.

⁵ *hilt. 6.*

⁶ *Macrobi. sat. 7. cap. 13.*

⁷ *Philostephan*, apud *Hefychium* in *σέρπεντος*, & *16. Tzerz.* ad *Lycophronem*.

^m *Hist. nat. 33. cap. 1.*

ⁿ *V. Jerem. cap. 32. & Jos. Scalig.*

^o *Elias* in *Thisbite*.

^p *Liber legis*.

^q *Satyr. 13.*

^r *Polyb.*

incredible

incredible reports of him, obscured. Yet by the way, his order of the *round table* must not here be forgotten. Some make his first celebration of it at *Caerleon* in *Monmouth*, others at *Winchester*, (where the table is supposed yet to be, but that seems of later date) and *Camelot* in *Somerſet* is famous² by it. Of *Winchester*, and the marriage of *Igerne* to *Uter Pendragon*, father to *Arthur*, *Harding* speaks as if *Uter* had begun it for knights, and *Joſeph* of *Arimathea* for religious perſons.

And at the day he wedded here and croud
And ſhe ſerforth with child was then begonne,
To comfort her, he ſet the table round
At *Wincheſter* of worthieſt knights alone,
Approued beſt, in knighthood, of their ſoone,
Which table round *Joſeph* of *Arimathie*,
For brother made of the Saint² *Grail* only.

In which he made the ſige perilous
Where none ſhould ſit, without great miſchief,
But one that ſhould be moſt religious
Of knights all : and of the round table chief
The Saint *Grail* that ſhould recoder and acheue
By adventure of his fortunite.

It is like enough ſome ſuch thing as *Arthur's* order of this kind might be. For out of *Heger* earl of *Mansfeld* his being of it, the antiquity of³ that earldom in *Saxony* is derived ; and in *Denbighſhire*, as *Stow* tells us, in the pariſh of *Lanſannan*, on the ſide of a ſtony hill, is a circular plain, cut out of a main rock, with ſome twenty four ſeats unequal, which they call *Arthur's round table*. But many particulars of it, as the names of the knights, their certain number, their coat armour, and ſuch more, whereof too largely are teſtimonies, ſuch as they be, extant, I believe as much as⁴ him that ſays *Sir Lancelot du Lac* fleas horſes in hell, and that all theſe *Arthurian* knights are poor watermen upon *Styx*, *Acheron*, and other rivers there, to ferry ſpirits and devils up and down, and that their fare is a fillip on the noſe, and at night a piece of mouldy bread. But, for the *round table* ; it ſeems it was in uſe for knights to ſit at amongſt the old *Gauls*, as *Posidonius*⁵ remembers, and that to avoid controverſy about precedence. A form much commended by a late⁶ writer, for the like diſtance of all from the ſalt, being center, fiſt, and laſt of the table-furniture.

Fol. 851. No. 274. In holy writ it is expreſſed by⁷ נִשָּׂא אֶרְמָא i. e. *ferens arma*. The *Longobards* and their neighbours called him *ſchildpoſ*, i. e. a ſhield bearer. *Paul Warnfred*, of *Rosemond* wife to *Alboin* one of their kings : *Conſiliumque mox cum Helmichi, qui regis ſchildpoſ, hoc eſt, armiger, & collataneus erat, ut regem interficeret, iniit*. In like ſenſe was the *German*⁸ *ſchild-knapa*, or *ſhield-knave*, or

knave, uſed. So *Johannes de temporibus* is remembered to have been *ſhield-knave* to *Charlemagne* ; *Latin* ſtory calls him *armiger*. For howloever time hath brought the word *knave* to a denotation of ill quality, it was the ſame with the *French garçon* or *valet*, or our *English boy* or *ſervant*, and perhaps alone ſometimes uſed for *eſcuyer*, as the word literally imports, in ſuch ſort as *genus* is for *ſpecies*.

For none ſo proud that dare me deny
Knight, nor knave, chanon, prieſt, ne nonne,
To tell a tale plainly as they conne.

ſaith *Dan¹ Lidgat*. And old¹ *Jeffrey* :

As for to ſpare in houſhold thy diſpence,
A true ſervant doth more diligence
Thy good to keep than doth thin owne wiſe :
For he will claime halfe part all her life.
And if that thou be ſick to God me ſaue
Thy very owne friends, or a true knave,
Will keep thee better than he that waiteth aye
After thy good and hath done many a day.

Where *ſervant* and *knave* are as ſynonymies. And *knapa* antiently, *knach* and *knave*, are but different in pronounciation or orthography. The name of the *French grand eſcuyer* (he is maſter of the horſe) had, by original, like reaſon, however ſome will otherwiſe. *Lupanus* calls him *magnus ſcutarius*, and ſays, that *ejus ſunt partes regi equum aſcenſuro vel ex eo deſcenſuro, auxiliatricem præbere manum, eique enſem & balneum liliatos præferre, ut olim ſcutum, quod nominis nomenclatura oſtendit*. He conjectures they ſo called him by imitation of the eaſtern empire, where the σκιστάριος or σκιστάριος uſed ſolemnly, in all places and times, except eſpecial feaſt days, (when it was the office of the *tzaggæ*, that is, thoſe which provided the imperial ſhoes called *tzaggia*) to bear before² the emperor the δειλίον, i. e. *divum velum*, or ſtandard, (as the *French oriflambe*) and the τὸ βασιλέως σκιστάριον, i. e. the emperor's ſhield in a caſe. But, why in diſquiſition hereof, one need fly to imitation, I ſee not, when the thing itſelf, of bearing the ſhield, was ſo common, and in like form, to moſt nations. The reaſon of the name in theſe appears ; and how it was fiſt as others, officary, but became thence to be merely honorary.

Fol. 854. No. 275. Theſe are all the general titles ſuperior to gentry. Of the particular orders of knighthood, by themſelves, and thoſe of barons with the reſt upward, we call the greater nobility, the others beneath them the leſs nobility. And as dukes, marquifſes, earls, viſcounts, and barons are *peers*, and by that name ſpecially known ; in like ſort knights, eſquires, gentlemen and yeomen, being freemen and denizens, of all ſorts in our law, are as of the ſame rank for the title of *parity*. There-

² V. Leland. aſſert. Arturii. alios.

³ Spangh. apud Ortelium in *Mansfeld*.

logograph. lib. 3. cap. 9.

⁴ Sang real, i. e. ſangue royal, or, *Chriſt's blood*. See, if you will, the ſtory of *Arthur*.

⁵ Rablais livre 2. chap. 30.

⁶ Athenæus diſpoſ. 1.

⁷ Gemof. ha-

⁸ Sam. cap. 14. & 16.

⁹ Verſtegan.

¹ *Merchant's Tale*.

² J. Curopalat. δὲ δοφικ. πιατ.

fore in the grand charter, where no freeman is to be imprisoned, disseised, outlawed, banished, or otherwise made subject to any judgment, *nisi per legale iudicium parium suorum, vel per legem terrae*, i. e. but by the lawful judgment of his peers, or by wager of law. For so is *lex terrae*, under favour, there to be interpreted: and *amittere legem terrae*, that is, to lose the liberty of swearing in any court, is used by old authors of our law, for the punishment of the champion overcome, or yielding in battle, upon a writ of right, and of jurors found guilty in a writ of attainr. And *vadiare legem*, and *facere legem*, are usual in every days records of this age. Neither in those elder times was any trial more frequent both in real and personal actions, than *ley gager*, howsoever since it is restrained to some two or three personal actions, as *det*, *detinue*, *acompt*. That *parium suorum* hath been in cases, where trials of criminal matter in fact have been, so always interpreted, that, what lay baron soever be arraigned by indictment of treason, felony, or what is capital, he shall be tried by barons, and under that name I include all above barons, and not by any of less nobility, the rest not being his peers. But any inferior man in like criminal causes, hath his trial indifferently by knights, esquires, gentlemen, or yeomen, which in law are taken for *pares*. The like interpretation upon exception, was made in the^m arraignment of Sir Nicholas Throckmorton under queen Mary, of the words *soit attaint per gentes de leur condition*, i. e. be attainted by men of their condition, in the statute de proditoribus of xxv Ed. III. and gentlemen, esquires, and yeomen were indifferently held as men of his condition, although he had the honour of knighthood. Nor is the common practice at this day otherwise. Upon that privilege of the grand charter, Richard earl of Cornwall, son to king John, grounded his answer, when upon his opposition in claiming his own interest, against a grant made by his brother Hen. III. to one Waleram a Dutchman, of a manor indeed belonging to his earldom, he was, by letters required by the king, to permit Waleram quiet possession, but with a seeming answer, he shewed his own right, maintained it, and offered ⁿ *curiae regiae subire iudicium & magnatum regni*. Rex vero ^o *& iusticiarius* (the words are in Matthew Paris: and this justice was Hubert de Burgo chief justice of England, and then newly created earl of Kent) *audientes nominare magnates, maxima sunt indignatione succensi*. Hereon the king very hastily and much moved, enjoins his brother either to render quiet possession to Waleram, or depart the English soil. But the earl, constantly, *quod nec Waleramo jus suum redderet, nec sine iudicio parium suorum a regno exiret*. Which was spoken with more judgment than what he answered to the baronage

upon his return out of Germany, where, by one faction, he was chosen emperor. The baronage required his oath, for a peaceful aid and unity with them in ordering the state, and the matters touching his stay in England, but he utterly refused it, and with looks of intermination, adds, *non habeo parem in Anglia: filius n. regis praeteritum & frater praesentis, comesque Cornubiae*. For plainly, in the noble baronage of England, all are peers, precedence of birth, or title notwithstanding; that is among themselves, not to the king. Which Bracton thus affirms: *Pareem non habet, rex, in regno suo, quia sic amitteret praeceptum, cum par in parem non habeat imperium*; and thereto one of our^o year-books expressly accords, making yet as if, I know not upon what ground, that till Edward I. his time, who, they say, ordained, he would be sued by petition, the king might have been commanded by a *praecipe*, as any other subject, which includes some more parity than royal majesty can admit. But, as a most understanding^p judge hath observed, it is not likely that ever the law could be so; and by Bracton it is manifest, that under Henry III. it was not so. In whose name should the writ be directed? I know some question hath been antiently touching the^a high constable of England for this point. I must not here dispute that. But these peers have, by interpretation of the grand charter and use of the common law, place only in criminal causes now, and capital, not in trial of common pleas. And in capital so only that then barons are tried by barons, when upon indictment they are arraigned. For if an appeal of murder, robbery, or the like, be brought against a baron, he is, it being the suit of the party, to be tried by a common jury. That difference hath time produced; as likewise another part of the grand charter touching the amerciamment of earls and barons, *per pares suos & secundum modum delicti*, is, by use in the^r common law, grown very divers from what the words are. And the amerciamment, for the *in misericordia* of an earl, baron, and bishop, is five pounds in certain, and the books give the reason where that amerciamment occurs, because they are *peers of the realm*. And since dukes have been here, their's is accounted^t ten pounds. But for the parity of those which should amerce them, it seems that even when the grand charter was granted, the barons of the exchequer and the kings justices were held for their sufficient *pares*. Out of Bracton, is my testimony. *Comites vero vel barones*, faith he, *non sunt amerciandi nisi per pares suos & secundum modum delicti, & hoc per barones scaccarii, vel coram ipso rege*. Therefore in a writ of right, brought against Henry earl of Northumberland, under Henry VI. where, upon battle joined and default, judgment final was to be given against the earl, with the *in misericordia*, the addition, in the

¹ Glanvil. lib. 2. cap. 3. & 19.
25 Ed. III. fol. 55. b.
& tit. praerog. 31. & Matth. Par. fol. 563. de comite Cestriae.
Ed. IV. fol. 9. v. 38 Ed. III. fol. 31. a. 21 Ed. IV. fol. 77. Br. tit. amerciamment 47.

^m Holinshed.

^p Stanford in praerog. reg. cap. 15.

ⁿ 28 Hen. III. in Matth. Paris.

^a V. Kelway fol. 171. in 6 Hen. VIII. & Br. tit. petition 12.

^r Videfis casum Grielley, comment. 8. d. Coke fol. 40.

^t 1 Hen. VI. fol. 7. a.

expressing of it on the bench, says, *mes in tant que le counte est un peer de realm il sera amercie par ses peers, solonque le statute & pur ceo nous mittons amerciamient en certain.* Indeed all judges were held antiently as barons, which appears in an old law of this state of *Hen. I. regis judices sint barones comitatus qui liberati in eis terras habent per quas debent causae singulorum alterna prosecutione tractari.* Villani were cotlesi, *vel ferdingi vel qui sunt viles & inopes personae non sunt inter judices numerandi.* Whence both the reason of this kind of amerciamient, as also why the judges of the exchequer are called *barons*, appears. And although in this point of amerciamient, a bishop be in the same degree with a lay baron; yet for trial^u by his peers in capital crimes he is otherwise, because that is personal; and his being a baron is *ratione officii & tenurae*, not of personal nobility. Yet also in cases touching his estate, as in real actions, or personal, which may touch his realty, he hath the prerogative of a lay baron, as not to have the jury returned upon a^x *venire facias* without a knight in it, which, for both lay and spiritual barons, is allowed for a good challenge to the array, as a privilege of nobility. The reason of that double parity in *England*, that is, that all barons and dignities above them are peers of the realm, and all other under them are peers also amongst themselves, I imagined to proceed from the feudal customs of *pares curtis, domus, or palatii.* For as all tenants, either knights, esquires, or yeomen, free-men, to the king or subject, are in regard of their lords court, and their own like tenancies, *peers*, known by that name of *pares curtis* in the feudals; so barons, earls, dukes, and the like, being with us in *England* tenants in regard of their baronies, earldoms and dukedomes, only, except those antient possessors of thirteen knights fees and a third part, which were so *pares baronum* also, to the king, or rather to the crown, had among themselves a special and distinct parity, by reason of their lords sole majesty; and might not amis be stiled *pares regii, or coronae*, because the very names of their dignities supposed their tenures of greater note, and of the crown necessarily and immediately. Whereas the other inferior dignities as they had to do with tenures or express offices, were far more common as they had regard to subjects. Although in this difference, a sufficient exactness of reason be not, yet I suspect that a better is hardly found.

Fol. 860. No. 276. Yet *Henry* lord *Darnley*, had it also before his marriage with queen *Mary.* And as *Rothsay* to the eldest, so the earldom of *Ross* is in *Scotland* to the second son. Thus speaks the^y act of parliament under *James III.* *Our souveraigne lord with consent of his three estates of the realme, annexis till his crowne the earldome of Ross, with the pertinents, to remaine thereat for ever. Swa than it fall*

not be leiffull to his hienesse or his aires, nor his successeours to make alienation of the said earldome, or ony part thereof, fra his crowne in ony wise: saisand that it salbe leiffull to him and them to give the said earldome at their pleasance till any of his or their secunde sonnes lauchfully to be begotten twixt him and the queene. So in a manner are the appenages in *France*, and the dutchy of *York* with us, and the like.

Fol. 862. No. 277. So he, speaking of *Walter* nephew to *Banquho* by his son *Fleanch*, created *abthan* or great steward of *Scotland* by *Malcolm III.* from whom that royal name of *Steward* or *Stuart* had its origination; and began first to be honoured with a crown in their *Robert II.* the honour of the office being part always of his birthright, who is prince of *Scotland.* They have also, agreeable with the identity of thane and steward, certain stewarties at this day.

Fol. 863. No. 278. In their laws a thane was reckoned equal with the son of an earl, after they had earls. The^z *cto* and the *ketchyn* of them were both alike, as the *merchet* of a thane's daughter, and an *ochern's*; an *Irish* or *Scottish* name of^a dignity, expressed by the word *ogetharius* also. Yet it seems that the baron and thane were often and most usually confounded, because where earls, earls sons, thanes, ochierns, and the like are distinguished by their *troes*, the name of baron occurs not.

Fol. 864. No. 279. The act of this alteration thus speaks at large. *Item, the king with consent of the baill counsell generallie bes statute and ordained, that the small baronnes and free tenentes neid not to cum to parliaments nor generall counceils, swa that of ilk shirefdome their be send, chosen at the head court of the shirifdome, twa or maa wise men, after the largeness of the shirefdome, out tane the shirefdomes of Clakmannan and Kinross, of the quibilkes ane be send of ilk ane of them, the quiblk sal be called commissares of the schire: And be thir commissaires of all the schires salbe chosen ane wise man and expert called the common speaker of the parliament, the quiblk sal propone all and sundrie needis and causes pertaining to the commounes in the parliament or generall counsell; The quibilkis commissaires sal have full and baill power of all the laif of the shirefdome under the witnessing of the scherriffis seale, with the seales of diverse barrones of the schire, to heare, treat, and finally to determine all causes to be proponed in counsell or parliament: The quibilkes commissaires and speakers sal have costage of them of ilk schire, that awt compeirance in counsell or parliament, and of their rents ilk pound sal be utheris fallow to the contribution of the said costes. All bishoppes, abbots, priors, dukes, erles, lordes of parliament, and barrents the quibilkes the king will be received and summoned to counsell and*

^u Tem. Hen. VIII. tit. trial 142. de episcopo Rossenfil.
vide Plowd. com. i. c. Newdigat. & 14. & 15 Elizab. Dy. fol. 318. a.
lib. 4. cap. 36. & 38.

^x Stat. Alexand. II. cap. 15. & Reg. majestat. lib. 4. cap. 31.

^z 13 Ed. III. challenge 115. & enquest. 43. & 8 Eliz. Dy. fol. 246.

^y Parl. 9 Jacob. III. cap. 71.

^a Reg. majestat.

parliament, be his speciall precept. So that it seems that before this act every lesser *baron* and *freeholder* was bound to come and assist with his presence at their parliaments; which is confirmed also by other^b acts; one thus speaking. *Item the lords thinkis speedfull that na freeholder, that baldis of the king under the some of twentie pounds, bee constrained to cum to the parliament or generall counsell as for presence, bot gif he be ane baronne, or els be specially of the kings commandement warned, outhir be officiar or be writ.* But under *James IV.* ^c it was enacted that *na baronne, freeholder, nor vassal quiblk are within ane hundredh markes of this extent, that now is, be compelled to cum personally to the parliament, bot gif it be that our souveraine lords write specially for them. And sal not to be unlaued for their presence, and they send their procuratours to answere for them, with the baronnes of the schire, or the maist famous persons. And all that are above the extent of ane hundredh markes to cum to the parliament, under the paine of the auld unlaue.* Which acts I have the rather transcribed, because out of them fully appears the difference of their *lords* or parliamentary *barons*, and their *lairds* or only barons by name. For those freeholders not parliamentary, are no longer honorary, or barons in the best degree, but merely as possessors of a small territory, and are, being *lairds*, beneath knights; and with them reckoned as our commons, which consist in freeholders. But those other, which are part of the lords temporal, are in proportion with our's of England.

Fol. 892. No. 280. That *circulus aureus* is a coronet *meslee* betwixt our dukes and earls; as, of the French form, is before spoken.

Fol. 894. No. 281. And the *Constantinopolitan* empress *Irene*, wife to *Alexius Comnenus*, is, in their story, called simply *δεσποινια*. And *John* bishop of *Euchaita* hath an epigram *οὐκ ἔστι δεσποινιας*; the like occurring often in later writers of those parts.

Fol. eod. No. 282. There being another article, *de valetis & puellis qui sunt & esse debent in custodia domini regis*, which was touching women within the age of *xxi* years. For the law seems, that their wardships so long then continued; and that was their *plenaria aetas*. But those *dominae* were chiefly such, as were out of ward for their lands, yet in the king's bestowing. For the antient law here was, that although after *xxi* years, the lord had not to do with the marriage of his male ward; yet, for female heirs the lords were to provide marriages at any age, and as often as they were to marry; and, although the ancestors were yet living, yet must their consents have been had; the reason being given, in respect that the services must be done by the husband, *ne de inimico suo vel alio modo minus idonea persona hominagium de feodo suo cogatur dominus recipere*.

But this law was altered into what it now is, for common persons, by the statute of *3 Ed. I.* and for the king, by *39 Hen. VI.* And in our old *English* poets, dames, i. e. *dominae*, is often for women in general, as a special honour for that sex; being not out of use with us at this day, nor with the French; as also among the *Italians*, *donna* for them, is familiar.

Fol. 907. No. 283. And he applies this to that question of the duel, *utrum major ab inferiore jure provocatur?* affirming in his opinion, that equality enough is amongst all of every of those degrees. As, that the duel should proceed upon challenge betwixt two of the *superillustres*, or any two of the *illustres*, so of the *spectabiles*, but that a *spectabilis* may not challenge an *illustris*; nor the like be in the other ranks. *Ei vero*, saith he, *qui abusque abavis sit nobilis & in armis aetatem egerit, satis putarem permittendum ut cum clarissimis congredi posset.* *Cum enim illorum ultimus sit gradus, cum & modica sit inaequalitas, haec exceptio non omnino locum sibi vendicat.* But *Paris de Puteo* thinks, that a gentleman of four descents may challenge a duke, or any beneath him, upon personal wrong; which, nor the like, we dispute not here, but refer you to those authors, *Justino Mutiopolitano*, and others.

Fol. 926. No. 284. Hitherto of such dignities as are in this more western world of like name, and sometimes nature. We shall conclude all, after delivery of those titles used in *Mabumedism*, and some other the more civil eastern states, which so differ from them already spoken of, that, but by unfit intermixture, no place, except this, could be assigned them. The chief amongst the *Turks* are *amir* or *emir*, *bassar*, *vezir*, *beg*, *beglarbeg*, *sanzacbeg* or *sangiacbeg*, *teggurs*, *timariots*, (for those I think fitly are to be reckoned as a kind of honorary title) and the names *apendis* and *zelebis*. Of these in order. For their other titles meerly officiary, as *cadees*, *cadilefckeris*, or *casaskers*, *agilar*, and such like I purposely omit, which the rather I admonish, because those first reckoned are also officiary, and none so merely honorary as our's of duke, count, or such of this day, but very like the antient dukes and counts set to govern provinces, of whom before. Of *amir* something already is spoken, and, for understanding of the word, enough. It was and is both given the *grand signior*, and some of his great ones, as *dominus* or *praefectus*. *Amir echur* is *dominus* or *praefectus* or comes *stabuli* with them; there being two of them amongst the *Turks*, *buinc amir achur*, and *cudzuc amir achur*, as if you should say, the great and lesser master of the stable or horse. And *amir quibir* was the greatest dignity in the court of the *Egyptian* sultans. The governors of provinces under the *grand signior*, had this to them communicated. And those provinces in that regard were titled *ἀμνεστιάς*, whereof *xiii* are reckoned

^b *Parl. 6. Jacobi II. cap. 76.*

rer. dom. 2. cap. 37. §. 3.

^c *Dominus potens.*

^c *Parl. 6. Jacobi IV. cap. 78.*

^d *Glanvil. lib. 7. cap. 12.*

^e *Theophan. apud Constant. Porphyrogen.*

^d *Anna Comnen. Alexiados 3.*

^e *Westm. 1. cap. 22. vide, si de his velis, Joan. Briton. lib. 3. cap. 67.*

^f *de administ. Rom. imp. cap. 25.*

^e *Braet. lib. de acq.*

long since under the caliph of Bagdat. *Theophanes* calls them ἀμνεσθίας μεγάλαις ἢτοι στρατηγίαις, i. e. *ameradias magnas, five provincias praesidiales*, as I interpret. Hence had the eastern empire ἀμνεσθίας, or *amiralus*, for a governor at sea, composed of half *Arabick* and half *Greek*, of *amir* and ἄλς, as if you should say *amir ἄλς*, i. e. *praefectus maris*. And thence had *Spain, France, Italy, England*, and these western parts their *almirante, amirall, amiraglio, admiral*, for the chief governor of the sea, which made some of our ignorant monks call the great *amir*, and his subject or delegate *amirs, admiralli, admiraldi, amiravisi*, and *admirabiles*, oftentimes in their blockish phrase. But remember that *amiralus* in the *Constantinopolitan* empire was not as our high admirals having supreme jurisdiction next under the king. He was under the ^k great duke, and the great *drungar* of the navy, but above the *protomes*, the other *drungars* and *counts*, as *Europalata* teaches. But, what made the old monk ¹ *Sigebert* distinguish betwixt *amiras* and *amireus*, as he doth, is to me unknown. Speaking of *Mahumed*, he writes, *hic in regno Saracenorum quatuor praetores statuit qui amiri vocabantur, ipse vero amiras dicebatur, vel protosymbolus*; and of *Mabias* or *Muhavias* successor to *Otman* or *Othmen*. *Hotmen* (he means *Otman* or *Otoman*) *amira Saracenorum perempto Muhavias ex amireo amiras factus*; and the like distinction he usually keeps. As if *amireus* and *amiras* were two distinct, like emperor and lieutenant. I confess (and I think I may do it with safe confidence, that it can be no disparagement to my understanding) that I see no difference possibly to be found betwixt *amiras* and *amireus*, as they respect their original in *Arabick*, or any eastern tongue. For so it admits no such forms of termination. But for the *Greek*, how often *amiras* is for a great lieutenant as well as for the *grand signior*, to whom μέγας is commonly added, every one knows which hath but acquaintance with *Cedren, Zonaras, Nicetas, Acropolites, Phranza*, the *lady Anne*, or others such. Indeed *Alem* and *Muhavias* pretending to the caliphate, being lieutenant *amirs*, are expressly stiled ἀμνεσθίας, which is as that *amirei* in *Sigebert*, by *Theophanes*; but that ever a special distinction was betwixt *amiras* and *amireus*, I no where find. It is true that ἀμνεσθίας is taken for *imperate* proper to the great sultan, in that of the same author; Ἀπεθίω δὲ ὁ Μαβίας ὁ τῷ Σαρακηνῶν ἀρχηγῷ, γεροντὶς στρατηγὸς ἔην καὶ ἀμνεσθίας τῷ ἔτη κλ. i. e. *Mabias, (Muhavias) prince of the Saracens, died after he had been a general (that is, lieutenant in his province) xxvi years, and after he had been amir (that is, in this place, great sultan) xxiv years*. And *Cedren* in like sense uses ἀμνεσθίας. But the use of *amiras* and *amir*, to subjects delegate with lieutenantships, is so common both in late and antient writers,

that what difference is betwixt *amiras* and *amireus*, came by imagination or accident amongst our *Europeans*, not from any reason in the *Mahumedan* empire. Their *bassalar*, the plural of *bassa*, is no more distinct by that name, than the *amirs*. For both are as it were general titles. *Bassa* signifies a *head*; and as the latter *Greeks* had their κεφαλᾶς and κεφαλῶτα, in like sense and signification as the *Latins* their *capitanei*, so the *Turks* their *bassalar*; all from the like root. But although κεφαλᾶς and *capitani*, as our word *captain*, were made proper to shew a commander of the war, whence κεφαλαιεύειν is to *head a company* in the barbarous *Greek*; yet under the name of *bassalar* are comprehended both the *vezirs*, as also *beglarbeks*. And the captain of the *tzauses* or *chauses* (that is, noble courtiers ready for performance of such state business as the sultan and the *vezirs* shall commit to them) is known by the name of *tzaus-bassa*. And other are with like addition. The *Greeks* from *bassa* have made their μπασίας and πασίας. The *vezirs* are counsellors of state. Their chief or president is called *vezir azem*, i. e. *consiliarius supremus*, which indeed is the interpretation of that *protosymbolus* spoken of before. Neither is it much marvel, that the *Greeks*, and some others, have thought it to signify the *grand signior*, or *princeps Arabum*, it being indeed princeps consiliariorum. This *vezir azem* is by *Zonaras* called ἀρχαυτεστάς. The *vezirs* in barbarous *Greek* are βεσθέραις. *Mahumed II.* ^m ἔργ, saith one, βεσθέραις φρονιματικῶς τῷ Χαλικματῶν, ἢ Πρεμιπασίαν, i. e. *had very wise privy counsellors*, *Chalil bassa* and *Brei bassa*; for so you must interpret it. The abstract of the dignity is *vezirluc*. *Beg* and *beglarbeg* are both explained in one. For *beg* is *lord*, *beglar-beg* is *lord of lords*, that is, one which hath under his government divers *beks* of lesser provinces. And *begluc* is the dignity of the one. *Beglarbegluc* of the other. *Begi nomen*, saith ⁿ *Leunclaw*, *dari solet omnibus officium vel munus aliquod a rege vel sultano consecutis*. In *Asia, Africk*, and *Europe*, are many *beglerbeglucs*, reckoned by those which have ^o published *Turkish* affairs. The *Greeks* have turned it into ἀρχὸν ἀρχόντων, i. e. *prince of princes*, and στρατοπεδάρχης, i. e. *a general of the field*. But they express the *Turkish* name by ^p *πελαρπάς* sometimes, and *μπεγλερμπέας*. Under every *beglarbeg* are divers *sanziac-beks*, and under them troops of *timariots*. The *sanziacbeg* answers to our word *banneret*, or *vexillarius*; *sanziac* being *vexillum*. And in the stories of barbarous *Grecians* I remember it is παντὶ ζόκτῳ. They are constituted by solemn delivery of a military ensign, being a spear ^q bearing a gilt globe on the top of it, and horse-hair and whole horse-tails hanging down, and sometimes on the globes are crescents, which are their most general en-

^k ὁ μέγας δέξ.
 Musulmanic, lib. 4.
 graec. lib. 1.

¹ Sub A. dccc. Christ.

^o Pandect. Turcic. cap. 254.

^q Pandect. Turcic. cap. 20.

^m Constantinopolit. hist. politic. ab A. 1391. ad 1587.

ⁿ Hist.
 ^p Georg. Logotheta chron. Constant. & hist. politic. in Turc.

sign. They are in lieu of our banners. Three of this kind, saith the most learned Leunclaw, stand by the *mezari*, or sepulchral monument, of *Amurath* the first in the suburbs of *Prusa* in *Bythinia*. Of them, he thus: *Has Osmanei suis in expeditionibus ad honorem memoriamque trium barbarum*, (so you must read his there misprinted index *Libitinaris*) *quasi fuerint barbae trium Mahumetis sociorum successorum & interpretum Ebubekiris, Osmanis, & Omeris, secum ferre gestareque solent*. Some think it derived from *Alexander's* military ensigns, that they use horse-tails; his coins discovering, that his were like. But it is certain that in another kind, horse-tails were very antiently used and commonly. That is in crests.

Κρατὶ δ' ἐπ' ἰσθμῷ κυκλῶν ἐντυκτόν ἔθηκεν
ἰ' πᾶσιν—

saith ^r *Homer* of *Paris*; and the like of *Achilles* his helm. And upon ^t that

—*oriturque miserrima caedes*
Armorum facie, & Grajarum errore jubarum.

Servius notes, *jubarum*, *pro cristarum, quae de caudis fiebant ut est-cristaque hirsutus equina*. But also the *Turkish* *calendarlar*, a kind of monkish order, wear in their caps long horsehairs hanging. And as the delivering of one banner or more was used in bestowing of *European* dignities antiently; so in this *Mahumedan* state. *Osmán vicissim Michaeli*, (saith the *Musulmanick* story, speaking of the first *Osmán* or *Otoman*, and *Michael Cosses*) *vexillum manu sua tradidit, qua ceremonia clientes sultani Turcici suis in ditionibus confirmari solent, ac magni pretii vestem injecit*. With the banner, for so, for ought I know, this their kind may be called, sometimes, it seems when the province was given as a kingdom or principality and partly hereditary, a sword also was delivered, which agrees further with *European* custom. After the death of *Mahumed Beg*, prince of *Caramania*, the great sultan *Amurath II.* sent to *Abraham Beg*, *Ibrahim* he is named also, a banner, *quod ei suo nomine in manum*, says the story, *traderetur, & gladium quo cingeretur, ut hac investiturae, quam vocant, ceremonia, ceu legitimus autoritate sua princeps, in regni possessionem missus agnosceretur*. And, if *Jovius* his relation be true, *Bajazet II.* in resigning, as it were, his empire to his treacherous son *Selim I.* used that girding him with a sword. But not only the *sanziac-begs*, but the *beglar-begs* are by this ceremony created, and the great officer *emir* or *amir halem* delivers the banners. *Emir halem*, so *Leunclaw*, significat

dominum vexillorum, & flammeolorum qui scilicet supremus est sultani vexillifer, & omnibus beglerbegis ac sanziacbegis, quum creantur, vexilla sua porrigit. Magnus flammeolaris, magnus flammularis apud Graecos. You may soon meet with the *Greek* *φλάμυλον* (whence those words, and the *French* *ori-flambe*) in *Leo's tactica*, *Codin*, *Porphyrogenes*, and such more. By the way, as touching their banners with globes on the top, their antient use was so; which you see in that of the holy war between *σιό.xcv* and *σιό.ccc* where *Robert* duke of *Normandy* slew one of their great *amirs*, whose standard had ^u *in summitate argenteae hastae pomum aureum*, which the duke offered at the sepulchre, having bought it of one that took it by right of war, for twenty marks. And their superstition will allow no pictures of ^x arms or such like; yet it is reported, that a great foldier and knight under the *Egyptian* caliph, (being afterward caliph or sultan there himself; my author calls ^y him *Secedun*, and it was towards the end of that caliph) did bear in his banner the arms of the *German* emperor, from whom he had received knighthood, and of the two sultans of *Aleppo* and *Babylon*, that is, of *Egypt*. The words of the old author are; *Il portoit in ses banieres les armes de l'empereur qui l'avoit fait chevalier, & estoit sa baniere bandee, d'ont en lun des bandes il portoit pareillement les armes du souldan de Hallappe: & en l'autre bande l'ung coste estoient les armes du souldan de Babylonie*: which shews that notwithstanding their *Mahumedan* precepts they have borne painted arms. Under the *sanziacbegs* are *timariots*, but both under the *beglarbegs*, and ready for service at their command. The *timariots* are such as have lands (those especially which are acquired by the wars, almost as the *milites limitanei* in the old state of *Rome*) assigned to them to hold as it were by knights service, and by reason of the tenure are bound to the wars. Of them, are reckoned under that empire about *dccxix.cio.* able fighting men; in *Asia* and *Africk* some *cdlxii.cio.* in *Europe* some *ccclvii.cio.* and in them and the *atzamoglas*, that is, children of christians taken up to make janizaries, the chief strength of that state consists. The name, as many others, came out of *Greek* into *Turkish*. *τιμάρων* ^z hath been used as *τιμὴ* for a *stipend*, *price*, or *honorary reward*, and from *τιμὴ* questionless had its beginning. And *timar* in *Turkish* is now as much as *vestigal* ^a or the like; whence these *timariots* are by some *Greeks* called ^b *τιμαροτοι*. But methinks *Meursius* doth not well interpret that by *honorati*, unless he had added *stipendio militari*, or such like. For to that hath all the honour respect, which the *timariots*

^f *Iliad*, γ. & τ.

^g *Aeneid*, 2. meminit & Synesius in encom. Calvitii. memineris & quod habent grammatici de *ἀόρη*, i. e. *crista*, verum ista docent poetae passim. adeas, si placet, etymologic. mag. in *τεχνικῶς*.

^h *Raimundus d'Agiles*

ⁱ *Hierofolymit. Baldricus* lib. 4. alii.

^j *Septemcastrensis*, cap. 10.

^k *Damascen. Studites* apud *Leuncl.* pandect. *Turc.* cap. 186.

^l *Chalcondyl.* hist. lib. 8.

^m *Meffier*, diction.

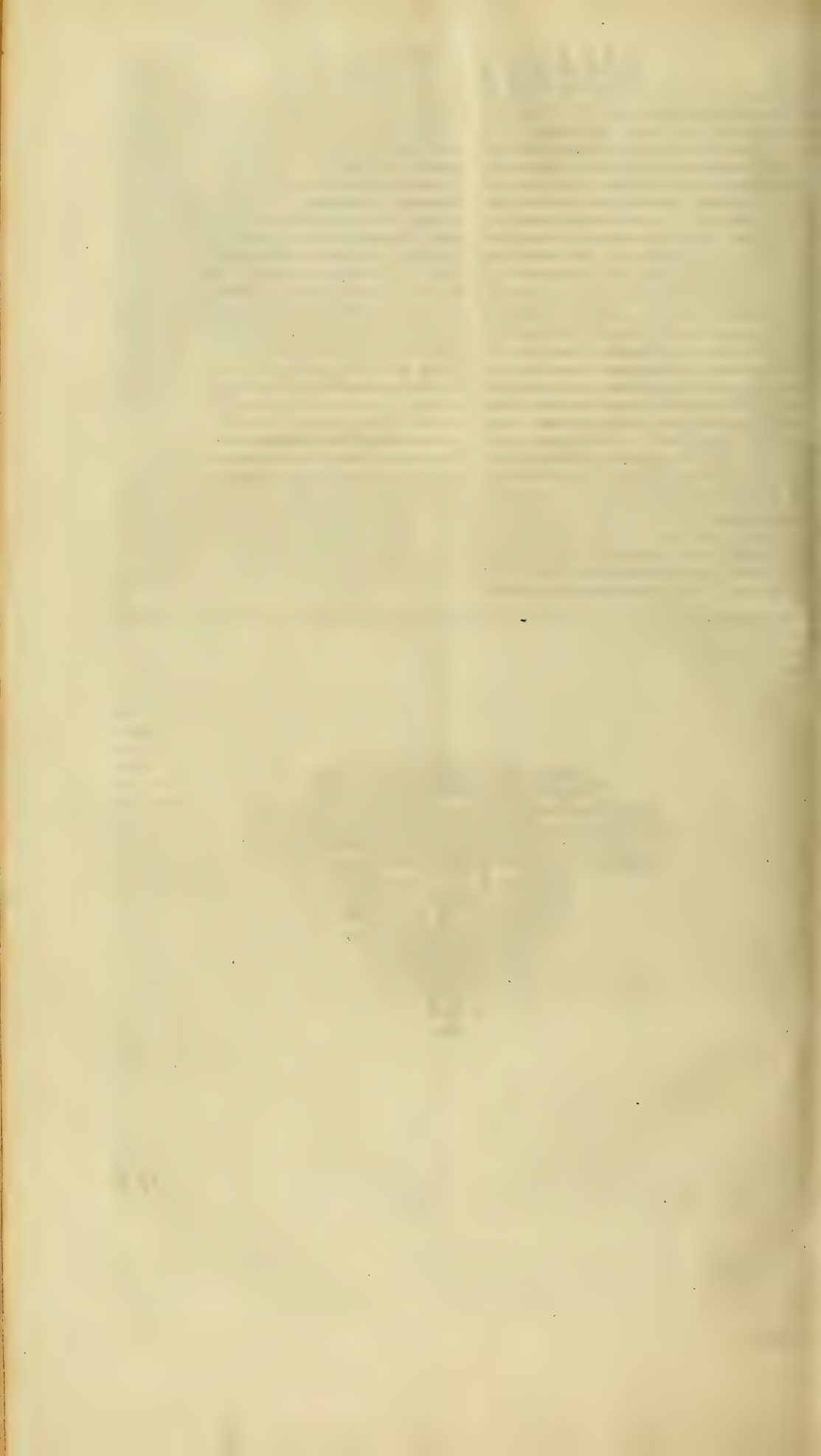
riots enjoy. Of these you shall see *Osman* or *Othman* I. his constitution, as the *Musulmanick* story hath it in *Latin*. *Quicumque timaria vel in villarum vel aliorum praediorum constituta proventibus liberalitate nostra consequntus fuerit, eis sic uti frui debebit, ut illi absque iusta causa, neminis ulla sive fraude sive vi adimantur. Quod si morte decesserit, eadem ipsius filio cedere volumus, etiamsi minor adhuc, sive pupillus sit, illa tamen lege, ut belli tempore pupilli loco, mittantur alii, donec ipse pupillus adoleverit, & armis gerendis idoneus evaserit.* And he annexeth a terrible execration on those of his successors, that shall any way derogate from this law. The *timaria* are hereby made hereditary, but at this day, as I think, they are but for life. Some, which have the government of a town, or small province, they call *teggiurlar* or *teggiurs*, i. e. *presidents*. *Chalcondylas* expresses it by ἀρχὴς, a name in like sense used in the *Lacedemonian* state. Their *apbendis* written also by the later Greeks ἀρβένδης, is corrupted from ἀνδρῆς, i. e. *lord*. And by *zelebi*, in the plural *zelibilar*, is our word *noble* or *gentle* understood. Those more special dignities, *vezir*, *beglerbeg*, and *sanziacbeg*, I confess are not less officary than divers others

here omitted, as *cadilesebeir* or *cassi-asker*, *agalar*, *drungar*, and others, but I have therefore the rather shewed them, because they are most honorary, and that as well by their names, as places in state. The like may be said of the *Hungarian bans*, which are ^c *presidents* or *governors* of some kingdoms belonging to that kingdom, as *Dalmatia*, *Croatia*, *Sclavonia*, *Servia*, and others. And, as *sanziacbegs*, or *bannerets*, have perhaps their name from *band* or *banner*. Whether any community betwixt them and the old ζεπανοι or ^d *suppani* of the *Sclavonians*, *Servians* and other by, I know not. For *Constantine Porphyrogenetes* speaking of the *Croatians*, *Servians*, and their neighbours, ἀρχοντας ὃς εἰς ρασσι, saith he, πάντα τὰ ἐν τῇ μητρὶ πλὴν ζουπάνων, γέγοντες καὶ οὗτοι αἱ λοιπὴν Σκλαβόνιαν ἔχουσιν, i. e. *these nations have no princes, but only old zupans, as the other of the Sclavonian nation*. But the same author seems then to make βάν and ζούπαν equivalent, which causes me to think they are both near kin to *ban*. *Nomina dignitatum apud Tartaros* (saith *Sigismund*) *haec fere sunt. Chan rex est. Sultan filius regis. Bij dux. Marfa filius ducis. Olbond nobilis vel consiliarius. Olboadulu alicujus nobilis filius.*

^c Pandect. Turcic. cap. 174. & 71.

^d Guil. Tyr. de bello sacro lib. 20. cap. 4. vide vero & Meurs. glossar. Graeco-barb. in ζῦπα.





THE
WORKS
OF
JOHN SELDEN, Esq;

VOL. III. PART II.

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THE
HISTORY
OF
TYTHES.

VOL. III.

6X

THE OXFORD

UNIVERSITY PRESS

To the most HONoured

Sir ROBERT COTTON,

O F

C O N N I N G T O N,

K N I G H T and B A R O N E T.

Noble Sir,

JUstice, no less than observance, urges me to inscribe this *History of Tythes* to your name. So great a part of it, was lent me by your most ready courtesy and able direction, that I restore it rather than give it you. And it cannot but receive an increase of estimation from your interest thus seen in it. For to have borrowed your help, or used that your inestimable library, which lives in you, assures a curious diligence in search after the inmost, least known and most useful parts of historical truth, both of past and present ages. For such is that truth which your humanity liberally dispenses; and such is that which by conference is learned from you. Such indeed, as if it were, by your example, more sought after, so much headlong error, so many ridiculous impostures would not be thrust on the too credulous, by those which stumble on in the road, but never with any care look on each side, or behind them; that is, those which keep their understandings always in a weak minority that ever wants the authority and admonition of a tutor. For, as on the one side, it cannot be doubted but that the too studious affectation of bare and sterile antiquity, which is nothing else but to be exceeding busy about nothing, may soon descend to a dotage; so on the other, the neglect or only vulgar regard of the fruitful and precious part of it, which gives necessary light to the present, in matter of state, law, history, and the understanding of good authors, is but preferring that kind of ignorant infancy, which our short life alone allows us, before the many ages of former experience and observation, which may so accumulate years to us, as if we had lived even from the beginning of time.

But

D E D I C A T I O N.

But you best know this ; in whom that useful part is so fully eminent, that the most learned through *Europe*, willingly acknowledge it ; and so open hath your courtesy ever made the plenteous store of it to me, that I could not but thus offer you whatsoever is in this of mine own also, as a symbol of some thankfulness. It was at first destined to you. And however through the hasty fortune that, I know not why, it suffered at the press, some pieces of it have been dispersed without the honour that your name might add to them ; I shall be yet ever so ambitious of that honour, that the whole shall never, for so much as I can prevent, be communicated without this prefixed testimony of duty to you. Receive it favourably, noble Sir, and continue to me that happiness which I enjoy, in that you neither repute me unworthy of your love, nor permit me in ignorance when I come to learn of you.

From the *Inner-Temple*, April IV.

CIO.DC.XVIII.



THE

T H E

P R E F A C E.

IT hath even so happened with not a few of the malicious, what through lazy ignorance; what through peevish jealousy, at their first sight or hearing of the name of this *History of Tythes*, as it was wont with those raw novices, that, upon their first admission to the sacred mysteries of the *Gentiles*, troubled and frighted themselves with a world^a of false apparitions, while they thought of what they should see in the inmost sanctuary at the unknown presence of their deity. And doubtless, the priest had not a little work to persuade them; that what they should there meet with, was not an unlucky *Empusa*, not a formidable *Mormo*, not a wanton *Cobalus*, not a mischievous *Fury*, not indeed any thing that their idle brains, being such mere strangers to the abstrusest parts of truth, had fashioned out. The many fancies that malice, ignorance, and jealousy have framed to themselves touching this of mine, have been no less ridiculous; and some equally fearful, but equally false. And I must here first play the priest also, and so clear, if it were possible, those fancies, by protesting that it is not written to prove that tythes are not due by the law of God; not written to prove that the laity may detain them; not to prove that lay hands may still enjoy appropriations; in sum, not at all against the maintenance of the clergy. Neither is it any thing else but it self, that is, a mere narrative, and the *History of Tythes*. Nor is the law of God, whence tythes are commonly derived, more disputed of in it, than the divine law, whence all creatures have their continuing subsistence, is inquired after in *Aristotle's* history of living creatures, in *Pliny's* natural history, or in *Theophrastus* his history of plants; or than the justice of the old courts of *Rome*, is examined in *Brodaeus* his history of them, or the convenience of the civil and canon laws in that of *Rivallius*. Nor was any thing, that belonged to the title, purposely omitted. Nor was any piece of it stolen from any other man's notes. That, as the rest, also hath been most maliciously imputed by some, that so impudently dare conjecture, though they be far enough from being either--*arte aut scientia divini*, and as judiciously censure it or me, as those in *Lucian*, could *Euripides*, that were weekly stark mad in rhyme till winter, by reason of what they had heard of his tragedies in summer, and could neither judge at all of what they said, nor yet possibly hold their peace. But they know, there are never wanting long ears ready stretched out to base detraction; and that animates them. I know not how otherwise to confirm these protestations than by sending him, that believes me not here, to the view of the whole. He may be there further satisfied, and shall then see also that it is not of the pitch of the doctrine of the *breviary*, or within the compass of pocket-learning. Nor will it, I think, look like what were patched up out of *posills*, *polyantheas*, common place books, or any of the rest of such excellent instruments for the advancement of ignorance and laziness. Nor is any end in it, to teach any innovation by an imperfect pattern had from the musty reliicks of former time. Neither is antiquity related in it to shew barely what hath been, for the sterile part of antiquity which shews that only, and to no further purpose, I value even as slightly as dull ignorance doth the most precious and useful part of it, but to give other light to the practice and doubts of the present. Light, that is clear and necessary. Nor could such as have searched in the subject see at all often, for want of such light. But *illos non peto, piscem peto*. Neither hath it at all wanted the most approving censures of such as are of choicest learning, ablest judgment, and truly *decumantissimi* as well in worth, as title. Nor is it at all material what any one shall cast on it through his secure confidence only, in any of those old^b ensigns of dissembled ignorance or gravity, the beard, the habit, and title. It is for such to learn by, not at all to censure. And none of the ingenuous and learned, that read it, will be backward, I think, to allow it for truth, as he did that first licensed it for the press with *ita est*, and subscription of his name.

But we leave this preposterous admonition in negatives, yet by reason of the headlong importunity of such as have in great number already misconceived it, they were necessary and could not elsewhere have had so fit place, and shortly thus delineate what it is, by the end and purpose of writing it; by the argument of it; by the course of composing it; and by the sum of performance in it in behalf of the clergy.

For the first; We find that in the frequent disputations about tythes, not only arguments out of holy writ for proof of a divine right to them, but matter also of fact, that is, practice and story, is very often used; As the kinds of payment of them among the *Hebrews*, among the

^a Proclus in Platonic, theolog. lib. 1. cap. 3. & lib. 3. cap. 18.^b Isidor. Pclusiota lib. 1. epist. 92.

Gentiles, the maintenance of the church in the primitive times, the arbitrary consecrations, appropriations and infeodations of them in the middle times, the payment of them at this day in the several states of *Christendom*, together with the various opinions and positive laws touching them. For, opinions and laws, as they are related only, and fall under the question of what and whence they were, are merely of fact. And proofs are hence often drawn to confirm sundry occurrences in inquiry for the truth on either side. That of the divine right of them is so wholly a point of divinity, and handled so fully by divers schoolmen, so imperiously by most of the canonists, and so confidently by some of our late divines, that whatever could be said touching that only, by inference out of the holy text, which must be the sole trial of it, would but seem taken from some of them which have so purposely disputed it. Neither were that so fit to be meddled with by any, as by a profest divine. But for that other part which falls under history, there is not one of them all which having boldness enough to adventure on it, while he disputes withal of the divine right, shews not also too much either ignorance or negligence in talking of it, being usually deceived, and deceiving in it those most of readers that give their historical faith captive to bare names and common reputation. And as in that old picture of *Homer*, the rest of the following poets greedily swallowed whatever he had vomited forth; so among these, one so rashly receives herein error from another, and so increases it, that there was never found a better example of the old proverb *Sardi venales*, or *worse and worse*, than in most of their multiplied pamphlets of it. Which of them relates towards what is fit to be known touching the payment among the *Hebrews*? Among the *Gentiles*? Among *Christians* of former times? Nay, which of them seem to know, or to have heard of the chief human positive laws made for tythes? Yet would they gladly use them if they had them. Where is among them an ingenuous discovery of the various opinions of past ages that belong hither? Who of them once touches the right antient course of settling tythes at first in monasteries, colleges, or other such corporations, by appropriations and consecrations of them? Who of them tells us other than mere fables, while he talks of the original of infeodations? And with what patience can you read those which, as great doctors, talk of exemptions, and pretending themselves to the world for such as can discover the most secret curiosities, or *cornicum oculos configere*, tell us of four orders exempted, and make the *Hospitalers* and those of *S. John's* of *Jerusalem* to be two of them, with other such most gross and ridiculous absurdities? And it is a common, but most deceiving argument among them, affirmatively to conclude fact or practice of tything from what they see ordained for tythes in any old canon of the church; as if every thing so ordained, necessarily had also a following use. It being indeed frequent enough to find canons directly contrary to following practice; and that even in the proceedings of the canon law, which, as the body of it is, was never received wholly into practice in any state, but hath been ever made subject in whatsoever touches the temporalities or maintenance of the church, which come from laymen, to the variety of the secular laws of every state, or to national customs that cross it. Is it enough to prove that parish churches, in *England*, were regularly ever to be repaired by the parsons, because the general ^d canon law is so? Or that a clergyman might not have bequeathed any chattels wherein he had right in respect of his church, because also by that ^e law he might not? In *England*, general customs of the contrary in both cases are still ^f held, and in many other, as you see in *Linwood*, who knew both the general practice here and the canons, and often also teaches their differences in other cases. Very many like may be found in other states, by comparing their immemorial customs, and old ordinances that are against the canons, and that both in the eastern and western churches. And for the eastern canon law, passages are found to this purpose in *Zonaras* ^g and *Balsamon*, the two chief and antient canonists of that part. The laity at pleasure commonly limited the canon law, especially where it touched their dignities or possessions, and that as well before *Luther* so derogated from the authority of it by burning it at ^h *Wittenberg* in a publick assembly, in despite of the pope, as after, which might be manifested by a world of examples, but it is most clear to all that know history. To argue therefore from affirmative canons only to practice, is equal in not a few things, and especially in this of tything, to the proving of the practice of a custom from some consonant law of *Plato's* common-wealth, of *Lucian's* men in the moon, or of *Aristophanes* his city of cuckoes in the clouds. To supply therefore the want of a full and faithful collection of the historical part, was the end and purpose why this was composed, which might remain as a furnished armory for such as inquire about this ecclesiastick revenue, and preferring truth before what dulling custom hath too deeply rooted in them, are not unwilling to change their old acorns for better meat.

As touching the argument of it; the whole being xiv. chapters, the first vii. are thus filled. The first hath what is, in best authority of the antients, belonging to those tythes paid before the *Levitical* law. The second the several kinds paid by the *Jews* under the law, and this from *Hebrew* lawyers. The third shews the practice of the *Romans*, *Grecians*, and some other *Gentiles*, in paying or vowing them. Then the whole time of *Christianity* being quadripartitely divided, with allowance of about xx years more or less to every part, takes up the next four chapters, in which the practice of payment of tythes, arbitrary consecrations, appropriations, infeodations

^c Aelian. *ποικιλ.* lib. 13. cap. 22.

ordinarii c. 4. cum vos.

^f Lindwood c. nullus tit. de consuetudine & tit. de officio archidiaconi. c. archidiaconi. verb. reparatio, & de testamentis c. ut clericali, verb. legitima.

^g Videtis utroque in can. conc. Chalced. 12. & 6; in Trullo 38. & 55. & Balsam. in Chalced. can. 25. & 28. praeter id quod de Agapio & Gabadio episcopatum Bostrensem petentibus, subiungitur concilio Carthaginiensi.

^h Sleidan. commentar. lib. 2.

^d Extr. tit. de eccles. aedific. c. 4. de his,

^e Extr. tit. de offic. judicis

dations and exemptions of them, establishment of parochial right in them, as also the laws both secular and ecclesiastick, with the opinions of divines and canonists touching them, are in their several times manifested. But so only, that whatsoever is proper to this kingdom of *England*, either in laws or practice, either of payment or of arbitrary consecrations, appropriations, or infeodations, or establishment of parochial right, together with a corollary of the antient jurisdiction whereto they have been here subject, is reserved all by itself to the next seven chapters. But every of the xiv. have their arguments prefixed, which may discharge me of further declaration in this place. By this time, I trust, you conceive what the name of *History* in the title pretends. And the *Tythes* spoken of purposely in it, for perhaps it is needful to admonish that also, are only such as either have been paid, vowed, or dedicated to holy uses, or else give light to the consideration of the performance or omission of such payment. Neither the *decimæ Saladinæ*, nor the *decimæ papales*, which were wont to be imposed, nor the *decima litium* in the imperials, nor the old *ratio decimarum* upon the *lex Pappia*, have had place here, nor the like, which are no more to this subject, than the tythes paid to the crown by our clergy, or by those of the boroughs by grant in parliament, or the terrages in tenths reserved by lessors often in *France* and *Spain*, or the tenths antiently paid in some places, as impost upon merchandise, or that old custom of *England*, in paying the *aurum reginæ*, that is, a tenth part of as much money to her as was given at any time to the king, or other such. Nor had the tythes of houses in *London*, place here,^k otherwise than as they occur in those acts of parliament and the decree under *Henry VIII.* that mentions the ministers maintenance by the name of tythes. For before that decree, however the *LII.* farthings, paid on *Sundays* only, were near the just tythe of every 10 s. rent, that is, about 3th, and were perhaps thought on by that name, as may be collected out of *Linwood*; yet these joined with the other offerings of great festival days, made up indeed only a certain competency of maintenance, but could not properly be reputed among tythes, neither in regard of their value, nor, as compared with the antient institution of tythes among the *Jews*, in respect of their nature. For their value came to much more than a tythe, as also that doth which hath the name of tythe at this day in *London*. Neither is there reason enough why the *LII.* farthings that were offered on *Sundays*, should be severally, and as divided from the other offerings, thought on to this purpose. And for their nature before these acts and the decree, I here offer only what I find in a short discourse, titled, *A devise how the curats of London may be provided of sufficient livings*, written under *Henry VIII.* and remaining yet among the records of the exchequer. The author of it first shews, that all ministers of God's word should give freely their labours in the church, and be maintained of the tythe of the free gifts of the earth; as of cattle, corn and fruit; which he supposes is as freely given them by the Almighty, through the labour of the people, as the preaching of the word and administration of sacraments is to the people, through the labour of the ministers. But he permits not that any money or other profit, being not *living gifts*, as he calls them, is by the law of God tytheable: so that where no such *living gifts* and increase are, there no tythes, as tythes, are payable to them, as he concludes. Nor indeed is any mention of other tythes in the *Levitical* law, than of the increase of the earth in fruit and cattle that is, of the gain only out of those more natural trades, which ¹ *Aristotle* elegantly styles βίᾱ ἀνθρώπων ἐκ τῆς γῆς ἐκτείναντες, of tilling the earth and breeding of cattle. And that which holy writ calls תְּבוּאָה *theboah*, that is, *increase* or *revenue*, where the law of predial tything is iterated, is understood by the *Jewish* doctors of the fruits and increase, given us out of the soil; and is well paraphrased by the *septuagint*, when they turn it τὸ γνημῶνα τῆς γῆς, that is, *the increase of the earth*; and in the vulgar it is expressed by *fruges*. But then, *It is to se by what law curats of churches in London can have* (so are the very syllables of that discourse) *any living of the people otherwise but like as the people by their own consents will give them for ther office doing. In very dedde they must have levynys to kepe them out of necessity. And thereby it is to se how in London they cannot receyve ther levynys of Godd by no lively gifts of grace, like as in the country. But in London they must receive their levynys of mens gifts; that is money which is every man's own, for ther office doing. The pope by his law, nor by his bulls, cannot compell no man to gisse his own gode to theym for theyr office doynge more then people will consent to giff theym. For Christ saith that their levynge is freely given them of Godd, if they do ther office to see all peple worke. Therefore that if the peple haue not labors and levynys, they ought to have none, nor can make no law whereby to axe no mans goode. Therefore that levynge which they have had in London hath been by the consents of the peple which hath long time given them 14d. of every noble rated by the rents of houses, which hath been riche levynys: wherewith they not content but over that hath procured of the peple meny so many weys by casualties of beryalls, crystnings, weddings, obits, and offerings, ybe and secretly rifelyth mens consciences taking pryvy tythes of whatsoever they can get, be it out of evil gotten goodes. Howsoever they can get it, they call it ther dewtie.* And thence he says, some benefices were worth c^{li.} some lxxx^{li.} some c. marks, others l^{li.} and then he shortly advises, how the ministers maintenance should be otherwise there limited and levied. But who sees not enough now that what is called *tythes of houses in London*, is rather called so only than is at all so? Yet because the name of *tithes*, in those acts of parliament, is given to the ministers maintenance there, it had been perhaps reputed negligence to have omitted the remembrance of them.

¹ De ea re consulas, si plura velis, Joscelinum de Brake-land, cap. 24. ms. in bibl. Cottoniana & codicem illum Gervasij Tilbarienfis dictum in scacca rij archivis.

^k Chap. 8. §. 39.

^l Polit. a. cap. 6.

In the course of composing it, the testimonials were chosen by weight, not by number, taken only thence whither the margin directs, never at second hand. Neither affected I to muster up many petty and late names for proof of what is had wholly by all from ancient fountains. The fountains only, and what best cleared them, satisfied me; and I supposed every judicious reader would be so best satisfied also. For in mere matter of elder story, what credit can *Naclerus*, *Cario*, *Cuspinian*, or the numerous rest of later time, add to the testimonials of those antients yet extant, from whom they borrowed whatever they have now dressed of preceding ages? *Petrus Comestor*, or *Ludolphus de Saxonia*, may as well increase the credit of holy writ, as those other may the truth of such histories as instructed them in common with the rest of posterity. Neither at all with I, that this of mine should gain any strength of truth from my name alone, but from those authorities which I have designed and brought, both for elder, late and present times, out of such both printed and manuscript annals, histories, councils, chartularies, laws, lawyers, and records only as were to be used in the most accurate way of search that might furnish for the subject. Yet also I have not neglected the able judgments of such of the learned of later time, as give light to former ages; but I so preferred the choicest and most able, that I have wholly abstained from any mention or use here of those many ignorants that, while they write, rather instruct us in their own wants of ability, than direct to any thing that may satisfy. If through ignorance I have omitted any thing in the History or the Review, that deserved place in them; whoever shall admonish me of it shall have a most willing acknowledgment of his learning and courtesy. But all the bad titles that are ever due to abuse of the holiest obtestation, be always my companions, if I have purposely omitted any good authority of ancient or late time, that I saw necessary, or could think might give further or other light to any position or part of it. For I sought only truth; and was never so far engaged in this or ought else, as to torture my brains or venture my credit to make or create premises for a chosen conclusion, that I rather would than could prove. My premises made what conclusions or conjectures I have, and were not bred by them. And although both of them here not a little sometimes vary from what is vulgarly received; yet that happened not at all from any desire to differ from common opinion, but from another course of disquisition than is commonly used; that is, by examination of the truth of those suppositions, which patient idleness too easily takes for clear and granted. For the old scepticks that never would profess that they had found a truth, shewed yet the best way to search for any, when they doubted as well of what those of the dogmatical sects too credulously received for infallible principles, as they did of the newest conclusions. They were indeed questionless too nice, and deceived themselves with the nimbleness of their own sophisms that permitted no kind of established truth. But plainly, he that avoids their disputing levity, yet, being able, takes to himself their liberty of inquiry, is in the only way that in all kinds of studies leads and lies open even to the sanctuary of truth, while others, that are servile to common opinion and vulgar suppositions, can rarely hope to be admitted nearer than into the base court of her temple, which too speciously often counterfeits her inmost sanctuary. And to this purpose also is that of *Quintilian*, most worthy of memory, *optimus est in discendo, patronus incredulus*.

For the sum of the performance in behalf of the clergy; I dare confidently affirm, that never before was there towards so much human law positive for the payment of whole tythes, observed to publick view, as is here discovered; and that especially in the viii. chapter for the clergy of *England*. And plainly he that talks of tythes, without reference to such positive law, makes the object of his discourse rather what he would have should be, than any thing that indeed is at all. For what state is in all Christendom wherein tythes are paid *de facto*, otherwise than according to human law positive? that is, as subject to some customs, to statutes, to all civil disposition. If they be in truth due *jure divino*, which divines must determine of, they remain equally so, as well after as before human laws made touching them. But that is a question daily controverted, and among the clergy. Now, whoever disputes it, and relies only on *jus divinum*, or the holy scripture, for the right of tythes, doth but make way for him whom he cannot persuade that they are due by the law of God, to think that they are no way due. Which questionless was the original cause of the opinions of such as falsely taught them not at all payable, but arbitrarily as alms, even since parochial right in them established. I mean the *Dominican* and *Franciscan* fryers, and those other of a far different stamp, *Wickliff*, *Erasmus*, and the like. Had they sufficiently thought of the constitutions and practice of christian states, whereby tythes had been variously dedicated for the maintenance of the evangelical priesthood, and settled for other holy uses either by continuance of time, by the owners conveyance, or by any such other civil title, the strength whereof is immediately founded in human law, what colour could they have had to think that they had been only alms? For whatever is lawfully established by a civil title, is clearly *debitum justitiae*, not *charitatis*. What brain then, except one bewitched, can think that human positive law, and common practice, which usually either declares or makes also a positive law, are not most carefully to be sought after in inquiries touching this sacred revenue, which is no otherwise enjoyed in any state than as that law hath ordained and permits. And let human laws, practice, and opinions, be as their authors will; yet whatsoever argument may be found in the law of God for the right of tythes, remains still as untouched and equally of his former power, as the heat and light of heaven ever did, notwithstanding the use of fire had upon earth. And the

truth is, that divers of them that writ, with more will than judgment, for tythes, fall often from their *jus divinum*, before they are aware, and talk of them as supposed due also by human positive law of practice. But they are far enough from shewing what or where that law or practice is. What do they else when they confound tythes and consecrated lands together, and apply that to tythes which is equally to be spoken of lands given to the church? I trust they mean not that the church had an original title also *jure divino*, to lands arbitrarily consecrated to it. Let not then either the purpose or convenience of this history be valued, from what distempered malice, ignorance, or jealousy have cried it down with, in corners. The learned friar *Bacon's* most noble studies being out of the road of the lazy clergy of his time, were vehemently at first suspected for such as might prejudice the church. *Reuchlin* and *Bude*, the one for his *Hebrew*, the other for his *Greek*, were exceedingly hated, because they learned and taught what the friars and monks were mere strangers to. Others about their time had like fortune. Neither was any one thing in the beginning of the reformation so unwillingly received, or more opposed by such as laboured that ignorance might still continue in her triumph, than that singular light to the clearing of error, the *Greek* text of the new testament, first published in print by *Erasmus*. And it was ordained, as he says, under great penalty, in I know not what college of *Cambridge*, that no fellow of the house should be so impious as to bring it within the gates. For the world hath never wanted store of such blocks laid in the way of learning, as willingly endure not any part of curious diligence that seeks or teaches whatsoever is beyond their commonly received *nihil ultra*. But there are others that both can judge and do wish for all light to truth. Such they were that even while ignorance yet held her declining empire, defended those worthies, *Bacon*, *Bude*, *Reuchlin*, *Erasmus*, and the rest that so suffered. And to doubt whether this of mine shall find such also, were but to question whether every man were yet a malicious rebel to truth, and wholly without ingenuity that performs even as much in fostering her, as time doth in breeding her.

But neither is the work alone taxed by mistaking of the subject, but also in regard of the author. What hath a common lawyer to do, so they murmur, with writing of tythes? For by that name it pleases them to stile me, and I must confess, I have long laboured to make myself worthy of it. But I would their discretions also would design out to whom it belongs more to write the *History of Tythes*, than to a common lawyer? I expect not such a sottishness, as that they should so much as dream it to be more proper to any of the other single professions of this kingdom, except to a divine, or a civilian; under which name, because those which practise the canon laws here, according as the common laws permit, take their degrees, in the civil law, I comprehend also the canonist; and use hath here made the name of civil law, to denote both civil and canon. For the divine; what is there in the course of his study restrained to his profession, that can near enough instruct him in the laws and practice, especially of the christian time? Nor is the practice or laws of tythes among the *Jews*, as they are delivered and interpreted by their doctors, more indeed restrained to the course of divinity, than of law and history. But should a civilian rather have dealt with it? If he, then either, according to what we understand by that name in *England*, as a civilian, or as a canonist. If as a civilian; he should then have made that proper to himself, touching which, in the whole body of his law, though he take in also *Theodosius* his code, the *basilica*, and the *novels* of the later eastern emperors, not the least mention is found of tythes belonging to the church. Indeed, a case is put by *Ulpian* of ° vowing of tythes, which some old ignorant and barbarous doctors understand of tythes among christians; but they were long since laughed at for it by him, that first happily laboured in the restoring to that profession, the lost neatness and elegance of the text. That was clearly spoken of the *Roman* use only, and of vowing to *Hercules*, or the like. But should the civilian as a canonist have done it? What in all his decrees, decretals, and extravagants, though he join many armies of his doctors, directs him to the practice of the *Jews*, *Gentiles*, or *Christians*? Where shall the canonist or the civilian, or the divine, in the courses of their proper study, find the many secular laws made in behalf of the clergy for tythes? Where the antient practice of payment? If it be clear then, as I hope none hath the impudence to deny it, that neither the divine, nor civilian, nor canonist, by the course of their own appropriated studies, can come to what is necessary in the knowledge of the *History of Tythes*, it will be as clear that none of them could challenge the meddling with it as a right especially belonging to any of their professions. But neither indeed is it proper to any one alone of those that are commonly made professions. The truth is, both it and not a few other inquiries of subjects too much unknown, fall only under a far more general study; that is, of true *Philology*, the only fit wife that could be found for the most learned of the Gods. She being well attended in her ἐγκύκλις διανοήματα or daily services of inquiry, by her two handmaids curious diligence, and watchful industry, discovers to us often from her raised tower of judgment, many hidden truths, that, on the level of any one restrained profession, can never be discerned. And every profession takes from her to itself, as was long since^a observed, some necessary part not elsewhere to be sought for; not much otherwise than as the subaltern sciences do from their superiors, or as they all do from that universality or first philosophy, which is but the more real part of true philology, and establishes principles to every faculty that could not of itself alone know how to

^a Alberic. Gentilis de potestate regis absoluta, seu disput. 1. in l. quicunque ff. de infort. actione.

° L. 2. Si quis ff. de pollicitat.

^p Budaeus ibid. &

quot veris consulas Quintilian. instit. orator. lib. 12. cap. ult.

^a Apud Mart. Capellam lib. 2. de nuptiis Philologiae & Mercurii, & de philologis ab-

get them. But is not the company of this great lady of learning with her attendants, as fit for a student of the common laws of *England*, as for any other pretending what faculty soever? I never heard that she was engaged alone to any beside *Mercury*. Nor find I any conditions in the marriage betwixt her and *Mercury*, that she should favour any one particular profession more than another. I know there have been, and are many common lawyers of other states (for every state in Christendom is governed by its own common laws and customs, and hath truly its common lawyers, as is further shewed towards the end of the *Review*) so far from being strangers to her, that they are all to be reputed of her chiefest darlings; and some of them are hardly equalled among any other professors. Witness in *France* those ever honoured names, *Bude*, *Cujacius*, *Brissou*, *Tiraquell*, *Pithou*, *Pasquier*, *le Thou*, *Aerault*, *Berterie*, *Savaron*, and others; in the empire, *Gruter*, *Freber*, *Ritterbusch*; in the *United Provinces*, *Groot*, *Heuter*, and the like elsewhere. For these all were or are practisers of the various common or secular laws of their own nations, although they studied the imperials and canons in the university. And who of the learned knows not what light these have given out of their studies of philology, both to their own and other professions? And that in rectifying of story, in explication of good authors, in vindicating from the injury of time both what belongs as well to sacred as prophane studies? Why then may not equally a common lawyer of *England* use this philology? And by consequent be a fit author of this *History of Tythes*, as of a proper issue of philology? It being indeed much more proper also to philology in a common lawyer, than in one of any other profession. For the two chief parts of it, that is, practice of payment, and the laws of tything, that either are in force or ever were received touching them in any state, were always, and are part of the proper object of his studies; and whatever divines or canonists conclude of them; it is the secular or common laws only, that according to customs, and various ordinances permit or restrain the canons in legal exaction of them, and that in other states as well as in *England*. For howsoever it be affirmed by some, which enough accurately think not of it, that the clergy every where in the western church, being scarce a hundredth part of the people, are enriched with whole tythes of fruits of the earth and of cattle; yet it is certain, that in no state of that church, whole tythes are universally paid. But frequently customs, not only of a *modus*, but *de non decimando*, are by force of secular law practised. Witness for the empire, is, in that dyet of *Norimberg* under *Charles* the fifth, where the lay princes of the empire complain against the church for offering to put their canons for tythes in practice, *et si laici per multa annorum curricula de certis eorum praediis, neque majores neque exiguas, ut vocant, praestiterint decimas, &c.* As much for *Spain* is in *Covarruvias*; for *Italy*, in *Ugolin*, *Cajetan*, others; for *France*, in *Papon* on the customs of *Bourbon*, *Boerius* on those of *Berry*, *de Grassalio*, beside the many arrests of parliament that are adjudged against the canons. But these things are more particularly shewed in the seventh chapter, wherein, as in the rest, we have affected rather what is authority enough, than what is various. Who now can shew colour why this was not a work proper enough for a common lawyer? But this whole premonition, I think, is as well more than is necessary to the truly judicious, as it may perhaps seem less than what satisfies to the numerous pretenders, that neither know any way that lies out of their beaten road, nor value books but as stationers do, nor admit willingly of any other kind of studies, than such as are more like sordid occupations than liberal professions. But I stay you too long here, reader. Try now how I have performed my promise; spare not to try with your most censorious examination;

— sed magis acriter

Judicio perpende; Et si tibi vera videtur,

Dede manus; aut, si falsa est, accingere contra.

* Bodin. de repub. lib. 5. cap. 2.
& practic. quaest. 35.

† Comit. Norimberg. 1522. Gravamine 45.
‡ De officio & potestate episcopi, part. 1. cap. 9.

§ Variar. resol. lib. 1. cap. 17.
¶ Ad. 22. D. Th. q. 87.



THE HISTORY OF TYTHES.

Of them before the LAW.

CHAP. I.

- I. Melchisedech *had tythes only of the spoils of war given him by Abraham.* *Ανεθίνα denotes spoils of war, and perhaps also profits taken from the ground, or ruta caesa.*
- II. Jacob's *vow and payment of tythes.* *Both Abraham and Jacob were priests when they paid tythes. In whom the priesthood was before the law?*
- III. *Whether any certain quantity were observed in the offerings of Cain and Abel?*
- IV. *A cabalistical operation in numbers, by which tythes and the first fruits, offered by Abel, might have a mystical identity. Such operations were amongst old christians also, but merely vain.*

I. **A**BRAM, in his return from redeeming his nephew Lot with his substance, and *all the substance of Sodom and Gomorrah*, was blessed by Melchisedech king of Salem, and priest of the most high God; and gave him tythe of all. So is the holy writ. But what that *all* was, is not clearly agreed upon. It is taken to be *מכל אשר לו miccol aghsheer lo*, that is, *of all that he had*, as the ordinary gloss of Salomon Jarchi there interprets; and expressly so are the Syriack and Arabick translations of the new ^a testament, where this is spoken of. But it is hard to conceive it of any other *all that he had*, than *all the substance*, or *all the spoils* that he had by that expedition. The holy context so

points it out. So did the old Jews understand it. Otherwise never had so great and worthy an author, ^b Flavius Josephus, a Jew, confidently written the tythe there given to be *δεκάτω τῆς λείας, the tythe of what was gotten by the war.* He knew a received opinion in his nation, to be so, or else had not been so forward to deliver it. The same is confirmed by the targum, attributed to Jonathan Ben Uziel. There of *all*, is interpreted by *מכל דאחבה miccal mah datheib*, that is, *of all that he brought back.* And, to free it from doubt, the holy author of the epistle to the Hebrews, first using the text of Genesis in those words, *δεκάτω δὲ πάντων, the tythe of all*, after a few words interposed, explains it by

^a Epist. ad Heb. 7. 2.

^b Archaeolog. 2, cap. 14.

δεξιῶν ἐκ τῆ ἀρεθίνων, *the tythe of the spoils*; as if he had said δεξιῶν ἐκ τῆ παλίων ἀρεθίνων, *the tythe of all the spoils*. In that place, the Syriack hath tythe ^c and first fruits, and the Arabick, tythe ^d and alms. Indeed ἀρεθίνα signifieth also *first fruits*, or the *chiefest parts*, sacred to the gods among the *Gentiles*; and ἐκ τῆ ἀρεθίνων hath, in that sense, been turned there, by *de præcipuis*, in the vulgar. But those eastern translations suppose, it seems, as if the Greek should be δεξιῶν καὶ ἀρεθίνα. But we must not take the old text to have been so different from what we now read. And for that, *de præcipuis*, in the vulgar; can it be thought that he gave tythe of the *best parts* only? How stands that with giving tythe of *all*? It must therefore be interpreted *of the spoils*. So St. Chrysostom ^e understands the text. Αρεθίνα, says he, πᾶ λάρεα λέγεται, that is, *the spoils are called ἀρεθίνα*, whereof, as he notes also, Abraham made Melchisedech a partaker, by so giving him the first fruits of his martial performance. Accordingly doth Sulpitius ^f Severus, in his story of Abraham, call his tenth *decimam prædae*, which is also expressly justified by S. Jerom, often stiling it *decimas spoliolum, prædae & victoriæ*; who well withal confesses, that, were it not for the holy exposition in that epistle to the Hebrews, the relation in Genesis might as well be understood, that, on the other side, Melchisedech, as a bounteous ancestor, had given to Abraham the tenth part of his estate; the text indeed being both in the Hebrew and Septuagints so, that, no name immediately preceding the mention of the gift, it sufficiently thence appears not, who was the giver. Utrunque, says ^g S. Jerom, intelligi potest & juxta Ebraicum & juxta septuaginta interpretes, quod & ipse acceperit decimas spoliolum, & Abraham dederit decimas substantiæ suæ; quanquam apostolus in epistola sua ad Hebræos apertissime definit, non Abraham suscepisse a Melchisedek decimas divitiarum ejus, sed de spoliis hostium partem accepisse pontificem. Neither is this interpretation of ἀρεθίνα dissonant from ancient use among the Greeks. Indeed it elsewhere rarely occurs in this sense; but clearly in that old proverb, ἀρεθίνα Πυγμαλίου Κολοσσῶ ἐπαρµύζειν, *to put an armour, taken from a pygmy, on a Colossus his back*, it denotes nothing else but σπόλα, ^h or λάρεα, that is, *spoils taken from dead or living*, according whereto both Hesychius and Suidas have expounded it. From which sense, I guess, it hath also been brought to signify those kind of profits, taken, as spoils, from the land, which the civilians call *ruta caesa*, that is, ⁱ trees cut down, coles, sand, or chalk dug up, or the like, which we stile things severed from the free-hold, and turned into chattels, according as the Greek lawyers ^k named them τὰ ἀπὸ γῆς λαμβανόμενα, *things that were taken from the ground, or free-hold*, for so it agrees

with our phrase. That, which first bred in me this conjecture, was a corrupted place in an old ^l glossary, where ἀρεθίνα is interpreted by *ruticilia*. What can *ruticilia* there signify? I conceived it to be depraved for *ruta caesa*, which is often read as one word. And no man can deny but that *ruta caesa* may easily be stiled *spolia* or *exuviae villae*, and by an easy metaphor be expressed in a word that signifies spoils of war. Many corruptions much further off from the true originals, are obvious in the same glossary.

II. The next passage of tythes is in Jacob's vow. *This stone*, saith ^m he, *which I have set up as a pillar, shall be God's house; and all that thou shalt give me, I will tythe and give the tenth to thee*. Which, Josephus says, upon his return, being after twenty years, he ⁿ performed, offering the tythe of all his substance, or δεξιῶν περιουσιῶν, *the tythe of all he had gotten*. Into whose hands he gave his tythes, appears not. But the chiefest priest of that time was his father Isaac. For before Aaron, the Jews say, the priesthood was wholly annexed to the first born of families. Which ^o agrees well with the sanctifying of the first born, commanded in Egypt. Hence it comes, that Melchisedech is commonly reputed to be Sem, the eldest son of Noah, for so in this declaration he may be clearly admitted; although no small controversy be whether he or Japhet were the eldest; and Noah, Abraham, and Job and the like are accounted, ^p by this right, priests of that time. And as Abraham, being in a right line ten degrees from Sem, gave tythes to him being the eldest ancestor of the house, or first born, and so a priest in Salem; so it may be thought, that Jacob paid his vow into the hands of Isaac the chief of the family then living, as a first born and a priest also. But remember withal, that Jacob, although the younger son, is reputed also to have had this priesthood by the sale made to him of his elder brother Esau's birth-right, to which a priesthood was incident. So was the antient opinion of the Jews, as St. Jerom ^q relates it. Simul & hoc tradunt, says he, quod usque ad sacerdotium Aaron omnes primogeniti, ex stirpe Noe, fuerint sacerdotes, & haec esse primogenita quae Esau fratri suo vendiderit Jacob. And express mention is of his exercising this holy function in ^r sacrifices, during his father's life. For, having gotten the right of primogeniture, and being long severed from his father's house, and having a distinct family and posterity in his own power, notwithstanding his father were then living, yet had he that kind of priesthood in him. For if this holy right came not to any till he had been the eldest of the family, as well as the first born, how could Abraham be accounted for a priest? As expressly

יְעִיָּהוּ

lingulari Guil. Bedwellius linguarum imprimis orientalium callentissimus. Vide Azoar, 22, 34 & 92.

λογ. 16.

† Histor. 1.

¶ In epist. ad Evagrium, tom. 4.

‡ Ulpian. ff. de actionib. empt. & vendit. l. 17, §. 6.

§ Vett. Glossæ verb.

¶ Gen. c. 31, v. 2.

† Eleemosyna n. 17.

‡ Saepius denotat in Alcorano, quod monuit vitam humanitate quam doctrina

† In epist. ad Ebraeos,

¶ Philosophat. in vit. sophist. in Niceto. Unde emendes oportet depravatos Suidæ codices in ἀρεθίνα

† Glossar. vet. Graecolat. edit. ab H. Stephano.

¶ Genes. 28, 22.

¶ Gen. c. 31, v. 54.

¶ In epist. ad Evagrium.

¶ Jos. archaeolog. a. c. 18.

¶ Origen. lib. 1. in Job.

¶ Origen.

Origen and others reckon him; which the form of his offering his son *Isaac* also justifies. He was never both first born and eldest of his family. For *Sem* lived after him about forty years, and kept that title from him: But a first born he was, and divided also from his father's household at the time of his tythes given. Whence observe by the way, that both *Abraham* and *Jacob*, according to this right of that time, must be priests also, when they paid these tythes. No other express mention is of tythes before *Moses* his time; unless, with the *Jews*, you dream, that the *Levitical* law was written before the creation.

III. Yet the antients seem to have observed a respect had to the quantity of what was, as a part of the yearly increase, consecrated in those times to the Lord; and that even in the first memory of sacrifice. *Cain's* offering was not regarded, they ¹ say, because *quod offerebat non recte dividebat*, he did not well divide what he offered; which seems to design out a defect in the quantity; as if specially some *quota pars* were at that time required. But this reason was from no other cause than the mis-translation of the text in the story of *Cain*. For, where the ² original is thus, *Why is thy countenance cast down? If thou do well, is there not remission? If thou do ill, sin lieth at the door;* they read it far otherwise, and thus; *quoniam, nonne, si recte quidem offeras, non recte autem divides, peccasti? quiesce*: which is all one with the *septuagint's* text, that in the primitive times was chiefly in use; *ἐὰν ἐρῶς, λέγει ὁ θεός, ὅτι οὐκ ἔστιν ἀγαθόν, ἀλλὰ κακόν, ἡμαρτία ἐστὶν ἐν τῇ θύρᾳ.* If thou offer well, but dividest not well, hast thou not sinned? Be quiet. And this passage of *well dividing*, did *Julian*, that witty *apostata*, take for a special question to oppose a bishop in his time. But most agreeable to that translation, and not dissonant from the original, is, that he gave with a grudging mind, and ³ not of the best and first of his fruit, as he ought to have done, and as the heathen ever did, or by their pontifical laws ought to have done in their *præmefsum*, that is, the first fruits of their corn, or their *calpar* or *vinum inferium*, which was the richest of their wine. And it is expressly said, that *Abel* brought of his first fruits, but *Cain* only of his fruit of the ground; the one giving the Lord a portion of the best, the other not regarding of what time, what worth it were, so it were of his fruit. So, here is not any *quota pars*, or certain quantity noted, but ⁴ τὸ πρῶτον ἄριστος γινώμεν, or the mind only of him that offered, and the quality of the oblation.

IV. Yet too, if some cabalistical and doting curiosities were of value, there might be some identity, or at least some affinity between the first fruits of *Abel*, and the tenth part. The first

fruits are in the text called *בְּרִית becoroth*, the tythe *מַעֲשֵׂר maighsher*. Now the *Jews* make great and hidden correspondencies betwixt things denoted by any two words, whose several numbers made out of their letters, are equal; their letters, as the *Greek*, being all numeral. And two kinds of this arithmetick they have: the one in greater numbers, which is frequent with them; the other in less. Their practice ⁵ in the second kind is thus. Out of every centenary and decad of the letters of a word they take an unity, and add these to the rest, that is, the less numbers; by which operation, if two words agree in sum, they think forsooth some great mystery, of mutual relation, betwixt the things signified, is discovered. Those two of the first fruits, and tythes, by this way, are equal. For example. Dispose the letters and their numbers thus,

ב כ ר ו ת
400.6.200.20.2.

ט ש ע מ
200.300.70.40.

In the first, out of 400. 200. and 20. take 4. 2. and 2. that is an unity out of every centenary and decad; and the sum is 8. which, added to the less numbers, make 16. Likewise in the second, out of 200. 300. 70. and 40. take 2. 3. 7. and 4. there being no less numbers, and you have the same sum as in the other, that is 16. But take this only as a taste of such impious liberty as these kind of vanities give amongst the *Jews*, to make any thing have mystical reference to every thing. Yet neither were christians without the very like in the primitive times. Witness the *Marcofan* and *Colabanfan* heresies in their α. and ω. made the same with ωεϰεϰεϰα, and divers other like by agreement in number. They indeed went so far in this ridiculous kind, that they determined ⁶ *totam plenitudinem & perfectionem veritatis in istis literis (numeralibus) esse dispositam*. Witness the *Basilidians* God, *Abraxas*. Nay, some fathers of those times so much regarded this arithmetical way of search, that in this very story of *Abraham's* success with his company of 318. and of his recovering the goods, the women and people, they deliver that the mystery ⁷ of our Lord crucified, was denoted. That number 318. is in *Greek* thus, τμ. For they reckoned out of *Greek*, as the *Jews* out of *Hebrew*. In the 300. figured by τ. they supposed the cross foretold; as otherwise it is usually observed upon that of *Ezekiel*, cap. ix. 4. And m. they took for the two first letters of our Saviour's name *Ιησους* or *Jesus*. Whereupon *Prudentius* ⁸ relating the victory, says, we should be very rich, as *Abraham* in his spoils,

¹ Tertull. lib. advers. Judaeos, alii item sapientius. ² Gen. iv. 7. ³ Cyrill. advers. Julian. lib. 10. ⁴ Ita D. Chrysost. in Genes. ⁵ Archangel. in dogmat. cabalistic. c. 19. ⁶ Tertull. lib. de haeres. id genus plurima habes apud Epiphanium, tom. 3. lib. 1. cap. 1. & Irenaeum, lib. 1. cap. 10. ⁷ Clem. Alex. Stromat. 9. ⁸ In praefat. ad *Λυχαρχίαν*.

*Si quid trecenti, bis novenis additis,
Possint, figura noverimus mystica.*

where for *bis*, some copies, without sense, have *bis*. But who sees not the vanity of such mysteries? Although too, the unlimited liberty of our times, in so confidently daring to tell us the mystery of the number of the ^c *beast*, would make a man give the more regard to these collections out of numbers. Every great clerk, that deals with it, hath, for the most part, his several word to make up 666. Some for us; some against us. And no doubt is (that one old one may be added) but he, which, long before *Luther*, made Sir *John Oldcastle's* name to fulfil that prophecy, thought he had been as near truth as the best of them. Out of *JOHN OLD-CASTEL* in numerals ^d he makes 701. and thence subtracts the year of his age, wherein he so charitably and stoutly took part with the *Lollards*, and was condemned for heresy, that is, 35. and the rest being 666. notes him out, says he, with the character of the *beast*. *Risum teneatis?* This in most miserable verse he expresses. Nor hath this dream of his, place here otherwise than as an old pattern of trifling boldness, used in the later arithmetick of many on that passage in *S. John*, in whom are ^e *tot sacramenta, quot verba*; and of whom the answer given by that doctor, *Calvin*, was as judicious as modest. He, being demanded his opinion, what he thought of the *revelation*, ^f answered ingenuously, *he knew not at all what so obscure a writer meant*. He might best have spoken it on this particular of the number; to which, found by arbitrary collection, whoever gives much credit, might unhappily perchance be induced to believe some mutual respect betwixt *Abel's* offering, and *Abraham's* tythes.

How, among the *Jews*, tythes were paid, or thought due.

CHAPTER II.

- I. First fruits, and heave offerings, that is, sixtieth parts at least, first were paid out of the fruits of the earth.
- II. The first tythe was paid to the Levites, who out of that paid a tythe to the priests, and then the second tythe.
- III. The error of them that make a third tythe. The second tythe of every third year spent on the poor. What they take the year of tything to signify in Deuteronomy.
- IV. Above a sixth part was yearly paid by the husbandman; but no tythe by him to the priests.

V. How their cattle were tythed.

VI. A discontinuance of payment among them. *Honester* overseers chosen for the true payment. *Demai*, that is, things doubtful, whether tythes were paid of them or no. Passages in Epiphanius and S. Chrysostom, of their tything.

VII. Their tything of every herb. What their canonists hold tytheable.

VIII. Their law of tything, after the destruction of their second temple, ceased, by the doctrine of their canonists; which teaches also that they are not to pay elsewhere than in the land of Israel, and some adjacent countries. Presbyteratus Judaeorum totius Angliae antiently granted by the English kings.

THE yearly increase being either fruits of the ground or cattle; in the law, of fruits of the ground, first, the first of the forwardest ^g were offered to the priest in ears of wheat and barley, figs, grapes, olives, pomgranates, and dates. And, of these seven only, the first fruits ^h were paid in what quantity the owner would. Next, the *therumah* or *heave offering*, or first fruits of corn, wine, oil, fleece, and the like, were also ⁱ given to the priests. But it being not determined by *Moses* of what quantity this heave offering should be; the *Jews* antiently assessed it to be enough at the ^j fiftieth part; but so, that no necessity was that every one should pay so much; he that paid a sixtieth part was discharged; and many of the better devotion offered a fortieth. The fiftieth part they call תרומה בנתינת, that is, an *indifferent* or *competent therumah*, or *heave offering*, which they named also תרומה גרולה, that is, the *great heave offering*; the fortieth they stile תרומה עין יפה, that is, a *therumah of a fair eye*, or liberally given; and the sixtieth תרומה עין רעה, that is, a *therumah of an ill eye*, or a niggard's gift. But you may observe too, that this, which they called a niggard's gift, was not beneath the quantity of the *therumah* appointed in ^k *Ezekiel*, where the words are; *This is the therumah that ye shall offer; the sixth part of an ephah of an homer of wheat; and ye shall give the sixth part of an ephah of an homer of barley*. It is the same as if he had said, *ye shall offer a therumah of the sixtieth part of every homer*. For an *ephah*, being the same measure with a *bath*; that is, near our common bulhel, was the tenth part of an *homer*; therefore the sixth part of an *ephah*, the sixtieth of an *homer*. After the *therumabs* offered to the priests, every kind being given in season, out of the rest were taken the tythes; which are best divided into the first and second tythe.

^c Apoc. cap. xiii. 18. epist. ad Paulinam.

^d Thomas Elmham Prior Lenton. in chron. Hen. V. in bibliotheca Bodleiana.

^e Hieron. ^h In Exod. xxiii. 19. Levit. xxiii. 10. Num. xv. 20.

^f Bodin. method. hist. cap. 7. ^g Talmud in Seder Zeraim, Massecheth Bicurim. atque inde recentiores eorum jusserunt. ⁱ Salomon Iarchi ad dict. locum. caeteri jurisp. & D. Hieronymus ad Ezek. cap. xlv. & Cassianus collat. 21. cap. 3.

^j Ezek. cap. xlv. 13. & 11.

^k Hanc loquendi formulam habes apud D. Matthaeum, cap. 15.

II. THE first tythe was ^m paid, out of the remainder, to the *Levites* at *Jerusalem*. By that name it is every where ⁿ titled. And, out of this tenth received by the *Levites*, another tenth they ^o paid to the priests, as a heave-offering out of their tenth, which they called also the *tythe of the tythe*. For the priests received no tythes of the husbandmen; only the *Levites* received tenths from them, and paid their tenth to the priests; being, as ^p S. Jerom says, *tanto illis minores, quanto ipsi majores populo*. So clergymen, by that example, have paid tythes to the pope; and so by a late ^q law they do in this kingdom to the crown. Neither might the *Levites* spend, to their own use, any part of their's, till this *tenth of the tenth* were paid. Afterwards it might be employed for their maintenance generally wheresoever. This first tenth paid; the nine parts remaining, were ^r accounted *חולין*, that is, *prophane*, or for common use; yet not to be spent by the possessor, till he had taken out of those nine ^t another *tythe*, which he was, the first two years to carry to *Jerusalem* in kind, or if the way were too far, to turn it into money, adding a fifth ^u part of the value: (for to this tythe do the *Jews* apply that of *Levit.* xxvii. 30, and 31.) and spend it there at the temple in feasts, which were near like to the old christians *agapae* or *love-days*. And every third year the same he was to spend upon the poor and *Levites* within his own gates. After those tenths thus disposed of, the remnant of that year's increase they called *חולין מותרין*, that is, as if you should say, *every way prepared or fit for common use, or absolutely lay chattels*; the first nine parts being so only respectively. This other tythe they stiled their second tythe, or tythe for feasts, that is, ^v *דשית חגבים ודשית חגבים*.

III. Some make a third tithe; as ^x *Tobit*; expressly using the name of *דשית תרית*, a *third tythe*; and *Και ἡ τριτὴ*, says he, *ἡδίδωμι οἷς καθήκει*. And the third tythe I have given to whom it was meet. But he means only the tythe of the third year, that is, the tythe which every third year, after the first tythe paid, was to be laid up by the husbandman in his own gates for the *Levite that is within his gates, the stranger, the fatherless, and the widow*. Which ^y *Josephus* also names *τρίτην τὴν ἐν τῷ τρίτῳ*, a *third tythe to be bestowed every third year*; and this the rabbins call *מקשר עני*, that is, the *poor man's tythe*. And it is also titled a third; but falls better under the second of our division, and need not to be made a third, nor is it. Nor, by the great ^z *Scaliger's* leave, can it be accounted the first, nor doth it at all answer to that. For the first tythe was paid every year, saving the sabbatical. Otherwise, whence should the *Levites* and priests have their livelihood of that year? And so expressly affirm the great ^a doctors of the *Jews*; and that according

to their *talmud* or canon law; that the first year, first they paid the first tythe, then the second, so in the second year; and that, in the third year, after the first tythe paid, they paid the *מקשר עני*, that is, the *poor man's tythe*, and that year *מקשר עני יבטל*, that is, the *second ceased*, or *was not paid*. ^a *Ben-Maimon's* words are, that *in the third and sixth years the poor man's tythe was מן מקשר עני*, that is, *instead of the second tythe*. Neither can that in *Tobit*, touching the payment of the second tythe every year (wherein both the *Greek* and *Hebrew* of him agree, although in other things they much differ) be otherwise well understood, than for every of the two years, unless that text be wholly contrary to the known practice of the *Jews* canons. So then every third year, the *Levites* at the temple missed their second tythe for their feasts and love-days; the same being charitably, and by divine ordinance, spent at home in the gates of the husbandman. Neither doth the second, and this *poor man's tythe*, differ in substance, but only in circumstance. The division of both, is exactly the same; and the persons appointed for the eating, are upon the matter so too. For as the *Levites*, ministering in their course at the temple, were to have part in the feasts made of the second; so were the *Levites* and the poor in the country entertained with this of the third year. The place, where the bestowing was, makes their difference; substantially they are the same, and fitly go under one name; which is fully to me confirmed by the *septuagint's* translation of that place in *Deuteronomy*, which we ^b read according to the *Hebrew* thus: *When thou hast made an end of tything, all the tythe of thine increase in the third year (which is the year of tything) thou shalt give to the Levites, strangers, fatherless, and the widow, that they may eat within thy gates, and be filled*. They there translate it.

*Εαν ὅ συντελέσης ἀποδεξιῶσαι πᾶν τὸ ἐπιδέχον τῆς γνηνιότητος ἡ γῆς οὗ ἐν τῷ τρίτῳ τῷ δέσποτι ἐπιδέχον δώσεις τῷ Ἀδύτῃ καὶ τῷ ὀρφανῷ καὶ τῇ χήρᾳ; and that is, *When thou hast ended the tything of all the fruits of thy ground, in the third year; the second tythe thou shalt give to the Levite and the stranger, &c.* as in the common text. Where plainly, you see, the poor man's tythe is expressly called the *second tythe*, which justifies our division. Doubtless, they there instead of *מקשר עני* *shenath hamaigsher*, that is, *the year of tything*, as the text is, found in their *Hebrew* copies, *שנת חמשה* *shenith hamaigsher*, which they took for the *second tythe*, knowing that in truth that place meant no other. Divers passages in their translations are upon such differences; and they often-times give thence a kind of commentary as well as a translation. Neither is it ill context, that *shenith* of the feminine gender should be joined to *maigsher* of the masculine; it is not without frequent example in holy writ. That their*

^m Num. xviii. 27.

ⁿ Judaei passim, & Joseph. arch. lib. 4. cap. 7. Tobit. cap. 1. comm. 7.

^o Num. xviii. 28.

^p Epist. ad Fabiolam, de veste sacerdotali.

^q Stat. 26 Hen. VIII. cap. 3.

^r Ben-Maimon in Iad Chazeka, part. 3.

^s Maltec. de decimis, cap. 8.

^t Deut. xiv. 23.

^u Iarchi ad eund. locum.

^v Josephus lib. 4. arch. cap. 7.

^x Tobit. 1. 7.

^y Archæol. 4. c. 7.

^z Diatrib. de decimis Judæorum.

^a Mos. Mikotzi in mitzuoth,

^b 135. Ben Katzun. praec. 473, alii,

^c In Misnah Torah part. 3. de decima secunda, cap. 1.

^d Deut. xxvii. 12.

word *מנדעקט*, not very usual for tythe, was most proper, and hath no worse original than *Athens* itself, where by that name, the tenth of mulcts and goods confiscate, was sacred to *Minerva*. But this place of the year of tything, is interpreted by the common gloss ^a of the *Jews*, by the year of one tythe, as if the text had been שנת המעשר אחר, that is, the year of one tythe, or of paying only one tythe. Which in substance exactly agrees also with the meaning of the *septuagint*. For in the third year, says *Iarchi*, there was only one tythe paid of the two commonly spoken of, that is, of the first and second. The first was only paid to the *Levites*. The second, by that name, was not: but the poor man's tythe instead of it: And he so expounds it, that he takes the mention of the *Levites* there, to design out the first tythe of that third year paid at *Jerusalem*, which plainly also confirms what is here before declared. The second then, and the tythe of the third year are the same in substance. The payment of all appears in this example.

IV. After the first fruits paid in ears, admit the increase 6000 *ephabs*; the heave-offering at least must be 100.

The remainder 5900. The first tythe, 590. and out of this 59 to the priests.

The remainder 5310. Out of this, the second tythe, 531. which every two years the *Levites* had at *Jerusalem*, and every third year was spent in the gates of the husbandmen.

The rest being 4779, was kept for the husbandman.

So that of 6000 *ephabs*, the *Levites* and poor had in all 1063 whole to themselves, the priests 159, and the husbandman only 4779. He yearly thus paid more than a sixth part of his increase, beside first fruits; almost a fifth. Many of no small name, grossly slip in reckoning and dividing these kinds of their tythes. But this here delivered, is from the holy text and the *Jewish* lawyers.

V. Of their cattle; the first born were ^c the Lord's, paid to the priest of clean beasts in kind; of unclean in money, with a fifth part added. Of the increase of them, one tythe only was paid, and that to the *Levites*. Every tythe of bullock and of sheep of all that goeth under the rod, the tenth shall be holy to the Lord, says holy ^e writ. Thence at the tything they used to shut the lambs, for example, in a sheepcote, where the straitness of the door might permit but one at once to come out. Then, opening the door, either gently to hunt them out, or by placing the ewes bleating near them without, so to cause them to run forth one by one, while a servant standing at the door with a rod coloured with oker, solemnly told to the tenth; which with his rod he marked. So they ^g understand

going under the rod; that so marked, whatever it were, male or female, worst or best, was the tythe, and might not be changed.

VI. How the payment of these tenths was either observed or discontinued, partly appears in holy ^h writ, partly in their institution of more trusty over-seers, whom they called נאמני, for the true payment of them. For after the new dedication of the temple by *Judas Machabaeus*, until his fourth successor ⁱ *Joannes Hyrcanus*, being near thirty years, all duly paid their first fruits and *therumabs*, but the first or second tythe few or none justly; and that through the corruption of those overseers. Whereupon their great *Sanhedrim*, or court of seventy elders (that is, the בורן דון הגדול, that is, the greatest court, that determined also, as a parliament, of matters of state) enacted, that the overseers should be chosen of honest men; and withal, that of such things, whereof, by such corruption, or otherwise, it was indifferently doubtful, whether tythe were justly paid or no, of which kind, almost all increase, at the time of this act made, was, a heave-offering, or *therumah* of the tenth of all, that is, a hundredth part, should be given to the priests, and then the second tythe at the temple should be paid; but no first tythe or poor man's tythe was paid of any such things. These kind of goods they called דמאי, *demai*, whereof a special *massebeth* or treatise, is in the *talmud*, in the *feder zeraim*. From that act of the *Sanhedrim*, to the last destruction of the temple, it seems, the just payment of tythes continued; and thereof testimony is, for the time near the destruction, in ^k holy writ. But in tything and offering *therumabs*, the *Pharisees* were most curious and devout. They gave perhaps tythe after both the legal tythes paid, beside fiftieth parts, and sometimes thirtieths for their *therumabs*. So may be understood that of them, ^l ὁποδεδέχτην ὃ τι καὶ δεχέτωσαν, τοῖς ἀπαρχαῖς εἶδεν, τριακοντάδας τε καὶ πεντηκοντάδας, which you may interpret, they tythed what was already tythed, they gave first fruits, thirtieth parts and fiftieth parts. But I dare not justify the translation. Neither do I believe, that *Epiphanius* there sufficiently understood what they did in their tything, nor is his meaning easily, I doubt, apprehended. The like may be, with modesty enough too, said of *S. Chrysostom*, speaking of the *Jewish* legal liberality to the *Levites*. Ἐννόησον, says he, ὅτι Ἰουδαῖοι εἰδίδουσι, δεχέταις, ἀπαρχαῖς, πάλιν δεχέταις, καὶ πάλιν ἄλλας δεχέταις καὶ πάλιν τοῖς ἐτέροις τρισκαίδεκάταις καὶ τὸ σίκλον, καὶ εἰς αὐτὸν ἐπὶ πέντε ἰσθίουσιν. Observe but how much the Jews gave (to their *Levites* and priests) as tenths, first fruits, then tenths again, then other tenths, and again other thirtieths, and the ⁿ sicle, and yet no man said they eat (or had) too much. So are his words, in two places of his works exactly the same; saving only that in one, the variety of

^c Xenoph. hist. Graec. 2.

^d Salomon Iarchi ad dict. loc. Deut.

^e Exod. 13. 2.

^f Levit. 27. 26. & 32.

^g Iarchi ad Levit. cap. 27. & Ramban in Massech. de primogenitis, c. 7.

^h 2 Paralip. 31. Malach. 3. & Nehem. cap. 13.

ⁱ Ramban de decimis, cap. 9.

^k Ep. ad Hebr. cap. 7. 9.

^l Epiphani. lib. 1. haeretic. 16. Vide, si placet, Casaubon. ad-

vers. Baron. pag. 63. & 64.

^m In ferm. 103. τῶν δ' ἀρχαίων, tom. 6, pag. 897. & λογ. θ. in epit. ad Philippienses, tom. 4. pag. 54.

editione Savilliana.

ⁿ Exod. 30. 12.

reading hath *triskaidekades* for *thirteenth*s. I confels I equally am ignorant of both. Neither is his enumeration consonant with what the monuments of the *Jews*, or the holy text will warrant. Conjectures upon it, I leave to others. Some probable enough might here be brought, but I willingly abstain.

VII. That tything of *ἑκάστη βοτάνη*, every herb which is spoken of in the gospel, and observed by the *Scribes* and *Pharisees*, was never commanded in scripture, nor by their canon law requisite, according to the opinion of their doctors, who restrain the payment of tythes to that *רביא*, that is, *thy increase*, spoken of by *Moses*; and comprehend not herbs under that name. They deliver indeed that by tradition from their fathers, all things growing out of the earth, and fit for man's meat, are tytheable, which their *ἱερογ* lawyers thus regularly express, *כל איכל אדם חנושר שגדלו מן הארץ חייב בתרומה* and *וכן במעשרות* that is, *every thing that is kept as mans meat, and hath his growth from the earth, must pay the beave-offering, and likewise tythe*; whence they make such herbs as are man's meat, tytheable, but all such as are not man's meat, they discharge of tythes; and out of that rule also they except whatsoever was gleaned *ἢ* either out of ears of corn, or grapes, or had out of the corners of the field left in harvest. But, it seems, that for this payment of herbs, the *Pharisees* were of the truer side. Our Saviour likes well their payment, and expressly says, *they ought not omit it*, which admonition of his was to them while yet the *Mosaical* laws were not all expired by the consummation est.

VIII. After the second temple destroyed, and dispersion of the *Jews*, their law of first fruits, *therumabs* and tythes, with them ceased. For their doctors determine, that regularly no inhabitants, but of the land of *Israel*, were to pay any; although also among them be a wise exception for the lands of *Senaar*, *Moab*, *Ammon*, and *Egypt*, because the first is near their land of *Israel*, and many *Israelites* went thither and dwelt there, and the other three are round adjoining to their land of *Israel*. But they deliver that whoso of them took the profits of land amongst the *Cutheans* or *Samaritans*, their old enemies, or elsewhere in *Aram*, and so, it seems, by consequent in any other land, saving which they except, was not to pay any; touching which point many special cases are put by *Rabbi Ben Maimon*. At this day, by their law they pay none. Those that live in their land of *Israel*, for want of their priesthood and temple. Those that live dispersed in other countries, both for that reason, as also for the other which restrains the payment of them to *Canaan*; and herein they all agree. But the great *Joseph Scaliger* says, he asked some of them, whether, if they might again build their temple, as after the captivity they did, their laws

of sacrifices, first fruits, and tythes, would be then revived? And their answer was, that to build it again, were to no purpose, because they had no lawful priesthood, there being not one of them that can prove himself a *Levite*, though many pretend to be so, and some bear also the office of a kind of priesthood amongst them. And, for example herein amongst our own ancestors, when the *Jews* lived here, they had, it seems, one general or high priest over them, usually confirmed at least, if not constituted, by the king, for life; as appears by record, proving that both *Richard* the first and king *John* did by their patents grant the same. The copy of it being a most rare example, and not from this purpose, take here transcribed. *Rex omnibus fidelibus suis, & omnibus & Judaeis, & Anglis salutem. Sciatis nos concessisse, & praesenti charta nostra confirmasse Jacobo Judaeo de Londoniis presbytero Judaeorum, presbyteratum omnium Judaeorum totius Angliae, habendum & tenendum quamdiu vixerit, libere, & quiete, & honorifice, & integre, ita quod nemo ei super hoc molestiam aliquam, aut gravamen inferre praesumat. Quare volumus & firmiter praecipimus quod eidem Jacobo quoad vixerit presbyteratum Judaeorum per totam Angliam, garantetis, manuteneatis & pacifice defendatis; & si quis ei super eo forisfacere praesumpserit, id ei sine dilatione, salva nobis emenda nostra, de forisfactura nostra emendari faciat, tanquam dominico Judaeo nostro quem specialiter in servitio nostro retinuimus. Prohibemus etiam ne de aliquo ad se pertinente ponatur in placitum, nisi coram nobis aut coram capitali justitia nostra, sicut carta regis Richardi fratris nostri testatur. Teste S. Bathoniensi episcopo &c. Dat. per manus H. Cantuariensis archiepiscopi cancellarii nostri apud Rothomagum xxxi. die Julii anno regni nostri primo.* It is true, that *presbyteratus* might denote as well some lay eldership. But as unlikely it is that in that age the clergymen that were officers of the chancery, and most commonly drew the patents, at least judged of the language, would transfer their name of *presbyteratus* to any such signification. So also I suppose that any such lay or civil officer among them, could not have escaped often mention in the records of *Judaism*, yet remaining. Many of them I have perused, but never met with the name elsewhere than in this roll. But to this priest *Jacob* or other like him among them, no tythes, first fruits or *therumabs*, were, or are by their canons payable. And agreeing to them expressly herein is *Eusebius*, who, amongst other of their *Mosaical* laws, puts their paying of tythes for one specially that was confined to the land of *Israel* and *Jerusalem*. For, first reciting that about eating the tythes in the place, ** which the Lord shall chuse to cause his name to dwell there*, which indeed is only spoken of the second tythe of the first and second years, and joining it with the general commandment

^o Luc. 11. 42. Matth. 23. 23. ^p Deut. 26. 12. ^q Ramb. part. 3. tract. de therumoth. cap. 2. & Mikotzi in praecept. 145.
^r Levit. 19. 9. & 10. ^s In Iad Chazeka tract. de therumah, c. 1. & Mikotzi in praecept. 133. ^t Rot. cart. 1 reg. Joh.
part. 1. memb. 28. cart. 171. ^u *Αποδίδει*, *ἑκάστη* lib. α. cap. α. ^v Deut. xiv. 23. & cap. 16. ^w of

of tything, and with the precepts of the passover, of the feast of weeks, and of tabernacles, in which a certain *place* by such an indefinite designation is also mentioned; he adds at length with reference to them all; *Διὰ τούτων οὐκ τὸν τόπον ἐπιστομαινόμεθα ποιηταῖς τε ἐπὶ αὐτὸν ἀπαντῶν παρὲν ἃ παροικεῖ, πῶς αὖ ἡρμοξε τοῖς τῆς Ἰουδαίας ἃ, ὅτι μῆτρον διεσῶσι, μή τι γὰρ τοῖς καθ' ἑλὸς τῆς διακρίσεως ἔδωσι; Seeing in so many things he designs out a particular place, so often commanding them to meet there, every tribe, every household, how can it fit them, or belong to them, that dwell but a little out of Judaea? Much less to the nations of the whole world. But those feasts he speaks of, the Jews, at this day, observe, although not accurately according to Moses his laws.*

Tythes how paid, or due among the Gentiles.

CHAP. III.

- I. Some Romans paid to some Deities, and sometimes only a tenth of spoils; of proceed of merchandize; of their estates; but usually also by vow, which bound the heir or executor.
- II. Festus is falsely cited for a general custom of payment of tythes among the antients.
- III. Examples of tythes paid among the Grecians.
- IV. How the assertions of a general use of giving tythe to the gods among the Grecians, are to be understood; and why *δευκαῖναι*, that is, to tythe, signifies also to consecrate.
- V. A tythe paid to Hercules of Tyre, and Sabis an Arabian deity, the same with Jupiter Sabazius.

THE custom of the Gentiles, usually talked of in offering a tenth, is chiefly to be considered in the Romans and Grecians. The Romans had a kind of devotion of giving tythes, but neither yearly, nor by compulsory law, as some falsely, but confidently, through ignorance in human literature, deliver. The wealthier of them, divers times used to tythe their estates to Hercules, by spending the tenth in sacrifices, gifts to his temples, feasts in his honour, and the like. It appears so, and to be no otherwise, by *Plutarch's* words, in his questioning the reason of it. *Διὰ τῆς*, says he, *τῇ* Ἑρακλεῖ πολλοὶ τῶν πλουσίων ἐδεκάτερον τὰς ἐστίας; *Why do many of the rich*

men tythe their substance to Hercules? And elsewhere ^a he, as other antients, notes it as a special devotion of some of the sons of fortune. Neither is old ^b *Cassius* otherwise to be understood, where he derives *Hercules* his tenth from an innovation made by *Recaranus* in *Evander's* time. This *Recaranus*, he says, first taught them to give the tenths of their fruits to *Hercules*, to whom he consecrated an altar under the name of *INVENTORI PATRI*, after he had regained his herds that *Cacus* had stolen, rather than to the king, as before the use was; and then he adds, *inde videlicet tractum ut Herculi decimam profanari mos esset*; that is, thence came it to be a custom, that divers did pay him a tythe. But, neither by their law civil or pontifical, was this payment. Often it was as a thanksgiving after some increase of fortune, and often by vow beforehand, and for the most part, of increase of estate by money gotten upon sales, and of spoils of war. For such things that made accessions to their estates, they were sometimes so thankful. Whereat *Cicero* jesting, says, that never any man vowed *Hercules* a tenth, in hope of increase of his wit. *Neque c Herculi quisquam decimam vovit unquam si sapiens factus fuisset*. Of money gotten upon sale, an example is in the *parasite*, that, after reckoning up his good merchandize, says, he must sell it as dear as he can, that he may spend the tenth upon *Hercules*.

^d *Haec vaenisse jam opus est quantum potest, Ut decumam partem Herculi polluceam.*

Whence the same author uses the name of *c pars Hercutana*: and ^e *Tertullian*, speaking of the prodigality of the Gentiles in their feasts: *Herculanarum decimarum & polluctorum sumptus tabularii supputabunt*. For spoils of war, witness is in that dedication of *Lucius* ^f *Mummius*, which got *Corinth*, and settled it to the Romans, thus inscribed, and yet remaining at *Riete*.

^h *SANCO SEMIPATRI.*

De decuma victor tibi Lucii Mummii donum, Moribus antequis hoc pro usura dare sese, Visum animo so perfecit sa pace rogans te, Cogendo, dissolvendo ut foelicia faxis, Perficias decumam ut faciat verae rationis. Propter hoc, atque alieis donis, des cuncta ro-
(*ganti.*)

Their *Sancus* was *Hercules*; whom they usually titled *Semo Sancus Deus Fidius*, and the title of this transcribed by some, is, *Sanco Fidio Semo patri*, which I rather think they mistake for *S. F. Semoni patri*. That *de decuma donum* was some special gift made with the cost of the tythe of the spoils; and *decuma verae rationis* is there for the best of discretion and policy;

^a In quaest. Romanis.

^c De natura deorum lib. 3.

^{ab} U. C. 607.

^b J. Gruter. in inscript. p. 96. & Jof. Scalig. in catalect. vet. lib. tit. 14. plura de hoc epigrammate, quae adjici possent, haec adnectere intempestivum esset.

^a In Lucullo, alibi & Diodor. Sicul. bibliothec. 5.

^d Plautus in Stichos.

^e In Truculentos.

^f Apud Aurel. Vict. in orig. gent. Rom.

^g In Apologetici. cap. 39.

^h Anno

as ⁱ *edecumata* amongst the antients were the best and choicest parts, and ^k *decumanum* the greatest and fairest; as *fluctus decumanus*, *scuta decumana*, *decima unda*, and the like. The great value that *Hercules* was by those vows honoured with, is understood in that of *Phaniscus* ^l of *Tranio*,

—*unus isthic servus est sacerrimus*

Tranio; *is vel Herculi conterere quaesum possiet.*

But neither did the *Romans* and their next neighbours thus tythe only to *Hercules*; but these their arbitrary vows and thanksgivings were sometimes also to other deities. The old *Pelasgi* ^m that transplanted themselves into *Italy*, gave their tenth of gain out of sea-merchandise, to *Apollo* at *Delphi*, according to the oracle's direction, which at *Dodona* before had told them, that being mixed with the *Aborigines*, *δενγίτω ἐν πύλαις Φοίβῳ*, they should send their tythe to *Phoebus*. That example of *Camillus*, is to every one known; he vowed the tenth ⁿ of the spoils to *Apollo*, and most carefully took order, by advice from their most learned priests, to perform it. And *Posthumius*, dictator, ^o long before upon his happy victory against the *Latins*, tythed the spoils, spent forty talents upon sacrifices and prayers, in honour of the Gods, and erected a temple, with what remained, to *Ceres*, *Bacchus*, and *Proserpina*. At other times also, on the general worship of the Gods, such a tythe was spent. And other deities, besides any of these, had sometimes tenths of gain; as *Fortune*, *Mercury*, being the Gods of travellers and tradesmen; and the deities of the way, or *dii semitales*; as *Vias*, and others. So noble *Scaliger* understands that which *Taurinus* speaks of his father *Caesius* a merchant, in an inscription ^p to *Fortune*.

*Omnibus hic annis, votorum more suorum,
Centenas adicit, numero crescente, coronas,
Fortunae simulacra colens, & Apollinis aras,
Arcanumque Vii ———*

Thus in *Italy* the custom was arbitrarily to pay and vow tythes to their deities, and continued in use till the later times of the empire, as appears also in that law received from *Ulpian* by ^q *Justinian*. *Si decimam quis. bonorum vovit, decima non prius esse in bonis definit, quam fuerit separata, & si forte, qui decimam vovit, decesserit ante sepositionem, haeres ipsius, haereditario nomine, decimae obstrictus est: voti enim obligationem ad haereditatem transire constat.* By this it is manifest, that though the vow, or payment without vow, were arbitrary; yet, upon death, after vow made, the heir or executor of him that vowed was bound to pay; according as also in like

vows ^r of houses, land, or chattels, to the honour of a martyr, prophet, or angel, the law was among old christians.

II. THE view of these examples plainly disproves that assertion used by many out of *Festus*: *Decima quaeque veteres Diis suis offerebant.* No such matter; some did, and only sometimes, and of some things, and most usually to some Gods only. *Festus* himself was too learned to have left such a monument of ignorance. No doubt is, but that which *Festus* had there in some larger note observed, according to a truth agreeing with what is before opened, was too boldly contracted into that piece of untruth, by his epitomator *Paulus Diaconus*; as in him, so in many other, most observable things have perished, both by the ignorance as well as negligence of insufficient epitomators; and *Paulus* is well taxed for it by the divine *Scaliger*. *Vide*, says he, *quantum juris barbarus ille sibi sumpserit in hoc loco mutilando!* Indeed, most of that, which we call and receive as *Sextus Pompeius Festus*, is *Paulus* his, only abridged out of *Festus*; and those of the middle ^t ages cited it under the name of *Paulus* his gloss. But when *Scaliger* there adds, *uni enim tantum Herculi hoc fiebat*; he mends it not enough. For if it had been *decima quaeque Herculi veteres offerebant*, it had been false, if understood as of tythes used to be given by all or of all things. They consisted plainly in vows and special thanksgiving, which were wholly arbitrary, as tenths or fifteenths given by the subject in parliament. And had the offering of them been usual of yearly increase, *Cato*, that in his *de re rustica* hath so fully the ceremonies of sacrifices to be used by the husbandman in his harvest, had never omitted it.

III. THE *Grecians*, under which name, comprehend the *Asians* that were of *Greek* manners, often consecrated their tythes to *Apollo*. Witness an inscription at *Delphi*, sacred to him, ^u having this verse,

Ὅρα θεῶν δένγίτω ἀεθρία πρὸς ἐμὰς.

That we may hang up tythes and first fruits to the honour of Phoebus. And, that famous *Rhodopis* ^v sent to *Delphi* as many spits, for use in sacrifice, as the tythe of that gain which she had made of her body came to. The *Crotonians*, before their war against the *Locrians*, vowed a tenth ^x to him; and the *Locrians*, to exceed them that way, a ninth; the oracle having given it out, that rather by excess in vows than arms, the victory should be gained. To the same deity the inhabitants of *Siphnus* gave ^y yearly the tythe of their mines which they found in the isle. And after a victory against the *Thessalians* ^z had by the *Phocians*, they made two statues of the tythe of the spoils for

ⁱ Saepius apud Symmachum in epistolis.

^k Dionys. Halicarnass. lib. 1. & Steph. *δὲν γὰρ* in *Agæcy*.

^l Dionys. Halicarnass. lib. 6. & 4.

^m Catalept. vett. lib. 1. tit. 14.

ⁿ Hincmar. Rhemenf. opu. c. a. vers. episcop. Lau. unenf. c. 10.

^o Herodot. lib. 2.

^p Trogus histor. 20.

^q Herodot. lib. 2.

^r Videfis Angel. Polit. miscell. cap. 86.

^s Plutarch. in Camill. Liv. lib. 5.

^t ff. tit. de pollicit. l. 2. quis s. 2.

^u Clem. Alex.

^v Idem in Urania.

^w Idem in Urania.

^x Idem in Urania.

^y Idem in Urania.

^z Idem in Urania.

him. Of *Agis* and *Agesilaus* the like devotion is ^a remembered. Other like examples are. Hence was *Apollo* called δεκτιφόρος, as if you should say, *crowned with tythes*. And in regard the offerings to him were either the tenth, or given as in lieu of so much, they were stiled δεκτιφόροι ἀπαρχαί, as if you should say, *first fruits in tenths*.

Ἄλλα τοὶ ἀμριεταῖς δεκτιφόροι εἶεν ἀπαρχαί
Πέμπον.—

says an antient ^b to *Delos*, where *Apollo* was born and worshipped; that is, *yearly first fruits in tenths are sent thee*. So I understand it. But also to others sometimes joined with him, the like offerings were. After *Pausanias* his victory against *Mardonius*, the money of the ^c tenth of the spoils was by consecration divided, between *Jupiter Olympius*, *Neptunus Isthmicus*, and *Apollo*; elsewhere ^d *Diana* of *Ephesus* participates with him. To other deities without him, sometimes was this honour given; as to ^e *Jupiter*: to whom also *Cypselus* ^f of *Corinth*, when he vowed all the goods of the citizens, if he could get the city, had especial regard to the tenth part, as competent to a deity; when to perform his vow, he gave yearly, for ten years together, the tythe of all their estates, and left them the nine for their maintenance and merchandize. And *Cyrus* admonished by *Croesus*, would not have the goods of the *Lydians* ^g ransacked by his soldiers, *ὡς σφία ἀναγκίως εἶχει δεκτιφόροι τῷ Διὶ*, *because necessarily they were to be tythed to Jupiter*. Sometimes *Juno* hath this part; as in ^h *Samos*, the tythe of certain merchants goods was consecrated to her in a cup. *Pallas* sometimes hath it. Divers of the *Boeotians* and *Chalcidians* being taken prisoners by the *Athenians* and ransomed, the ⁱ *Athenians*, with the tythe of the ransom, consecrated a chariot to her. She also had among them the tythe of all goods ^k confiscate, and that they called ἐπιδέκτων. And a tradition was among them of *Priapus* a genius of war, that at *Juno's* request taught *Mars* first to dance, and then made him a perfect soldier; that ^l *Juno* gave him for a perpetual salary, all the tythe of the spoils that *Mars* should gain in his victories.

IV. These examples among the *Grecians* are, for some kind of tythes vowed, or otherwise arbitrarily, or by some local custom paid to especial deities. But testimonies are not wanting among them, as general almost as that of *Festus* is for the *Romans*. Τα ἐκ τῆ (saith *Harpocration*, and, out of him, *Suidas*) πολεμίων ληρδένται ἐδεκατέων τοῖς θεοῖς. *They used to tythe their spoils of war to the Gods*. And *Didymus* ^m an old grammarian, tells us that εἰς θεοὺς ἢ ἐν ἑλλησποδὶ τοῖς δεκάτας τῆς πλεονομιῶν τοῖς θεοῖς κατεργάζοντο, *it was a Greek custom to consecrate the tythes*

of their abundance to the Gods. From whence both he and *Suidas* fetch the reason why δεκατεῦσαι, *to tythe*, signifies also to consecrate, but therein they are deceived. Neither doth the Greek phrase *to tythe*, signify generally to consecrate; but in this notion it denotes only a special consecration of young *Athenian* maids, made to *Diana* in her feast *Brauronia*. None by their law was to ⁿ have a husband, but such as were then initiated to her; and none was to be initiated, but between five and ten years of age; from which utmost year, because for the most part till then they staid from these rites, the virgins to be initiated, were called δεκτιδίδες, as if you should say, *ten yearlings*; and thence came ^o the word δεκατεῦσαι to signify, to this purpose only, to consecrate or initiate, which otherwise was expressed by ἀρκτεῦσαι. But if those grammarians meant that all men paid their tythes in *Greece*, and that of every kind of their spoils or abundance, they deceive much and are deceived. You must understand them as speaking of what was sometimes, and by vow or special thanksgiving, done. Their saying it was a custom to tythe, or that they tythed, is but like that of *Cassius*: *mos erat Herculi decimam profanari* among the *Romans*. It was a custom sometimes, and of some things to do it, as it was a custom to consecrate statues, hair, vessels, and other more such like to deities; yet were those customs no more general or binding all or done by all, than the custom, in some cities among us, to offer at wedding-days. It was a custom or use to do so; that is, many men did so. The examples before taken out of story make that plain. And in that sense only are these authors to be credited, touching the consecrating of tythes to the Gods in general. For sometimes they were generally given to the Gods, without any particular designed. *Suidas* ^p relates an example thereof, among the *Lydians*. And when the *Athenians* had divided *Lesbos* into 3000 parts, they ^q consecrated 300, that is the tenth, generally to the Gods. And *Pisistratus*, writing to *Solon* touching the tribute of a tenth, says, that he took tythes of every one of the people, not so much for his own use, as ^r εἰς δημοτέλεις, *for publick sacrifice, or the use of the Gods in general*. And the tenth of what the cooks in ^s *Athens* killed for meat, was so due for a publick use in honour of the Gods, if my author deceive not.

V. Here may be added to the *Grecians* use, the example of the ^t *Carthaginians*, that sent the tythe of their *Sicilian* spoils to *Hercules* at *Tyre*. And you may remember that *Arabian* law, wherein every merchant was bound to carry his frankincense to *Sabota*, (which the learned take to be *Saubatha* in *Ptolemy*, the chief city of *Arabia foelix*) and there offer to their god *Sabis* the ^u tenth of it, which his

^a Xenophon. Graec. hist. γ. & in vita Agesilai.

^b Xenoph. ἀναβας. Κύρου. ^c Pausan. Eliac. α. & in Phocicis.

^d Attic. lect. 5. c. 13. ^e Idem in Melpom.

^f Idem in Terpsichor. ^g Lucian. πρὸς δεκάτας.

^h Hefych. in ἀρξέλειον & Harpocration. in δεκατεῦσαι. ⁱ Apud Harpocrationem in δεκατεῦσαι.

^j In Μέγῳ. ^k Laert. de vit. philosoph. lib. α.

^l Justin. lib. 18. ^m Plin. hist. 12. cap. 14.

ⁿ Callimach. in hymn. ad Delum.

^o Aristot. in oeconomic. c.

^p Xenoph. histon. Graec. lib. 1. & videlicet Mearsum.

^q Suidas in ἀρκτεῦσαι. ^r Thucydides lib. γ. τοῖς θεοῖς ἵερὸς ἐξεί-

^s Scholiast. in

^t Herodot. lib. θ.

^u Herodot.

priests received. Neither might any sale be made of it till that was paid. *Sabis* doubtless was their *Bacchus*, *Uranus*, *Jupiter*, or *Sabazius*; which are one. For the deities of the *Arabians* were always accounted but ^x two; the God *Uranus*, known also by those other names, and the Goddess *Urania* or *Venus*: It is nearest truth therefore, that their *Sabis* is the same with *Sabazius*, which was first corrupted from *Zabaoth*, commonly occurring in holy writ as an attribute to the only and true GOD. And as this name, so the payment of the tenth very likely came to them from the use of it among the *Jews*, their neighbours, as also to the *Carthaginians* from their ancestors the *Phoenicians*, that spake the same language with the *Jews*, and converted most with them. Neither is it unlikely but that the antient and most known examples of *Abraham*, gave the first ground, both to them and to the *Europeans*, so sometimes to dispose the tenth of their spoils of war to holy uses. For it is no news to have the eldest of *Jewish* customs usurped, though according to time and place diversly varied, amongst the *Gentiles*. What of later time is found among *Mahumedans* for the tenth paid, must be referred to the *Mosaical* law, which they receive as authentick, but keep it according to *Mahumed's* fancy, and the doctrine of his canonists. You may remember here *Eudemus* his relation of some kind of beasts in *Africa* that always divided their prey into eleven parts, but would eat only the ten, leaving the eleventh as *ἀπαρχὴν τῶν καὶ δεκάτου*, a kind of first fruit or tythe. So says my author, and take his word alone; I am not his surety.

In the first four hundred years after Christ.

C H A P. IV.

- I. No use of tythes occurs till about the end of this four hundred years. Offerings and monthly pay for maintenance of the church in the primitive times. *Divisiones mensuranae. Sportulae.*
- II. Payment of tythes of mines and quarries to christian emperors. The wealth of the church envied.
- III. The opinion of Origen touching tythes.
- IV. Constitutions of those times, that mention them, are of no credit.

SINCE our Saviour, the time being about MDC. years, it will fall aptly enough so to divide that number quadripartitely, that we may discover the known use, opinion, and constitutions of every four hundred years, touching the

duty or payment of tenths, the difference or latitude of xx years, or some such number, either of increase or want, as occasion shall serve, being allowed, and the *English* law and use, because therein we shall be most particular, being referred to the last seven chapters. Till towards the end of the first four hundred, no payment of them can be proved to have been in use. Some opinion is of their being due, and constitutions also; but such, as are of no credit. For the first; 'tis best declared by shewing the course of the church-maintenance in that time. So liberal, in the beginning of christianity, was the devotion of the believers, that their bounty, to the evangelical priesthood, far exceeded what the tenth could have been. For if you look to the first of the apostles times; then the unity ² of heart among them, about *Jerusalem*, was such, that all was in common and none wanted, and as many as were possessors of lands or houses, sold them and brought the price of the things that were sold, and laid it down at the apostles feet, and it was distributed unto every man according as he had need. And the whole church, both lay and clergy, then lived in common, as the monks did afterward about the end of the first four hundred years, as ³ S. Chrysostom notes; *ἔτις, λέγει, οἱ ἐν τοῖς μοναστηρίοις ζῶσι νῦν ὡς πρὶν οἱ πατέρες, that is, so they live now in monasteries, as then the believers lived.* But this kind of having all things in common, scarce at all continued. For we see, not long after in the church of *Antioch*, where christianity was first of all, by that name, professed, every one of the disciples ^b had a special ability or estate of his own. So in *Galatia* and in *Corinth*, where S. Paul ordained ^c that weekly offerings for the saints, should be given by every man as he had thriven in his estate. By example of these, the course of monthly offerings succeeded in the next ages. Those monthly offerings given by devout and able christians, the bishops or officers appointed ^d in the church, received; and carefully and charitably disposed them on christian worship, the maintenance of the clergy, feeding, clothing, and burying their poor brethren, widows, orphans, persons tyrannically condemned to the mines, to prison, or banished by deportation into isles. They were called *stipes*, which is a word borrowed from the use of the heathens in their collections made for their temples and deities; neither were they exacted by canon or otherwise, but arbitrarily given; as by testimony of the most learned ^e Tertullian, that lived about cc years after Christ, is apparent. *Neque pretio*, are his words, *ulla res Dei constat. Etiam si quod arcae genus est, non de oneraria summa quasi redemptae religionis congregatur. Modicam unusquisque stipem menstrua die vel cum velit, & si modo velit, & si modo possit, apponit. Nam nemo compellitur, sed sponte confert. Haec quasi deposita pietatis sunt.* And then he shews the employment of them in those charitable uses. Some

² Celsus ap. Origenem lib. 2. Arrian. de gest. Alex. 3. Strabo lib. 15. Herodot. lib. 7.
³ Aët. cap. iv. 34. ⁴ Homil. 11. in acta. ^b Aët. Apostol. cap. xi. 29.
vide Ockam, in oper. 90. dierum, cap. 107. ^d Vide synod. Gangr. can. 66.
⁵ Apud Aelianum *ἑστ. ζωον.* lib. 4. cap. 53.
^c Epist. 1. ad Corinth. cap. xvi. 2.
^e Apologetic. cap. 39. & videlicet cap. 41.

authority^f is, that about this time lands began also to be given to the church. If they were so, out of the profits of them and this kind of offerings, was made a treasure; and out of that, which was increased so monthly, was a monthly pay given to the priests and ministers of the gospel, as a salary for their service; and that either by the hand or care of the bishop, or of some elders appointed as *oeconomi* or wardens. Those monthly pays they called *mensurnae divisiones*, as you may see in ^g S. Cyprian, who wrote, being bishop of *Carthage*, about the year ccl. and, speaking familiarly of this use, calls the brethren that cast in their monthly offerings, *fratres sportulantes*; understanding the offerings under the word *sportulae*, which at first in *Rome* denoted a kind of running banquets, distributed at great mens houses, to such as visited for salutation; which being oft-times also given in money, as you may remember out of *Martial*, the word came at length to signify both those salaries, wages, or fees, which either^h judges or ministers of courts of justice, received as due to their places; as also to denote the oblations given to make a treasure, for the salaries and maintenance of the ministers of the church in this primitive age; and to this purpose was it also used in laterⁱ times. But because that passage of S. Cyprian, where he uses this phrase, well shews also the course of the maintenance of the church in his time, take it here transcribed: But first know the drift of his epistle to be a reprehension of *Geminus Faustinus*, a priest, his being troubled with the care of a wardship, whereas such as take that dignity upon them, should, he says, be free from all secular troubles like the *Levites*, who were provided for in tythes. *Ut qui* (as he^k writes) *operationibus divinis insisterent, in nulla re avocarentur, nec cogitare aut agere secularia cogerentur*. And then he adds, *Quae nunc ratio & forma in clero tenetur, ut qui in ecclesia Domini ad ordinationem clericalem promoventur nullo modo ad administrationem divina avocentur, sed in honore sportulantium fratrum, tanquam decimas ex fructibus accipientes, ab altari & sacrificiis non recedant, & die ac nocte coelestibus rebus & spiritualibus serviant*. Which plainly agrees with that course of monthly pay, made out of the oblations brought into the treasury; which kind of means he compares to that of the *Levites*, as being proportionable. But hence also it is manifest, that no payment of tythes was in S. Cyprian's time in use; although some, too rashly, from this very place would infer so much. Those words, *tanquam decimas accipientes*, which continues the comparing of ministers of the gospel with the *Levites*, plainly exclude them. And elsewhere also the same father finding fault with a coldness of devotion that then possessed

many, in regard of what was in use in the apostles times, and seeing that the oblations given were less than usually before,^l expresses their neglect to the church, with, *at nunc de patrimonio nec decimas damus*. Whence, as you may gather that no usual payment was of them; so withal observe in his expression, that the liberality formerly used had been such, that, in respect thereof, tenths were a small part. Understand it as if he had said, *but now we give not so much as any part worth speaking of*. Neither for ought appears in old monuments of credit, till near the end of this first four hundred years, was any payment to the church of any tenth part, as a tenth, at all in use.

II. BUT some laws of this time yet remain, which shew that tenths out of mines and of quarries were paid, both to the emperor and to the lord of the soil; As in the ancient state of *Rome* the tenants of the empire paid for rent^m the tenth of their corn, whence the publicans that hired it, as the customers do here the king's custom, were called *decumani*. Those laws for the tenths of mines and quarries, were madeⁿ by *Gratian, Valentinian, and Theodosius*, christian emperors, about ccc.lxxx. and shew withal, that they thought not then of any tenth of such things, to be given otherwise; when indeed, however *Cyprian* might before have cause to complain in *Africk*, christian bounty in oblations, especially at *Rome*, and with proportion like enough in other churches, so enriched the clergy, that their wealthy happiness thence was much wondered at, and not a little, from thence, envied. For the then bishop of *Rome* his wealth from oblations chiefly, you may see^o *Marcellinus*. For other of the clergy, a whole sermon is in^p S. *Chrysostom*, that lived at the end of this first cccc years, against such as envied the wealth of the church, that grew only out of such christian devotion to the priesthood.

III. AS touching opinion in that time; *Origen* a great and most learned father, living about the year c.c. hath a whole homily^q upon the text of first fruits in the law; wherein while he teaches that some things are literally to be observed, he well admonisheth, that it is the part of a wise interpreter to find out which are so, and which not. And then first he delivers his judgment, that this of first fruits is one to be observed still according to the letter, and gives this reason; *Decet enim*, (as the *Latin* is; the *Greek* I neither have, nor could ever learn that it hath been published) *& utile est etiam sacerdotibus evangelii offerri primitias. Ita enim & Dominus disposuit, ut qui evangelium annuntiant de evangelio vivant, & qui altari deservunt de altari participant*; And a little after adds also for tythes: *Et adhuc ut amplius haec ob-*

^f Urban. I. in epist. c. 12. q. 1. c. 16. Sed & vide Euseb. eccl. hist. lib. 9. cap. 9. edit. Maximini, & lib. 10. cap. 5. edit. Constant. & in lib. 2. de vita Constantini cap. 39.

^g Cyprian. epist. 27. & 34. & vide epist. 36. editione Pammelian. ^h Papinian. ff. de decurion. l. 6. §. 1. & c. tit. de sportulis. & vide glossas Graec. iuris in *σπορταλα*.

ⁱ Concil. Chalced. A. D. 451. in libell. ^k Epist. 66. edit. Pammel. ^l De Samuelis & al. contra Iban. & vide fist. tom. 3. concil. fol. 231. cap. 31. edit. Bini penultima.

^m Appian. lib. 1. & c. ⁿ C. tit. de metallariis l. 3. cuncti. & in c. Theodof. lib. 10. tit. 19. l. 10. unitate ecclesiae, §. 23.

^o Amm. Marcellin. lib. 27. ^p Tom. 6. edit. Saviliana, pag. 897. *ὅτι ἡ ἐκκλησία τὰς ἐσθλὰς, &c.*

^q Homil. in numer. cap. 18.

*servanda etiam secundum literam ipsius Dei vocibus doceamur, addemus ad hæc ; Vae vobis Scribae & Pharisei, hypocritae, qui decimatis mentam, hoc est, decimam datis mentae & cymini & anethi & practeritis quae majora sunt legis. Hypocritae, hæc oportet fieri & illa non omitti. Vide ergo diligentius quomodo sermo Domini vult fieri quidem omnimode quae majora sunt legis, non tamen omitti & hæc, quae secundum literam designantur. Quod si dicas, quod hæc ad Phariseos dicebat non ad discipulos ; audi iterum ipsum dicentem ad discipulos. Nisi abundaverit justitia vestra plusquam Phariseorum & Scribarum, non intrabitis in regnum coelorum. Quod ergo vult fieri a Phariseis, multo magis & majore cum abundantia vult a discipulis impleri. And a little after, Quomodo ergo abundat justitia nostra plusquam Scribarum & Phariseorum, si illi de fructibus terrae suae gustare non audent, priusquam primitias sacerdotibus offerant & Levitis decimae separentur ; & ego nihil horum faciens fructibus terrae ita abutar, ut sacerdos nesciat, Levites ignoret, divinum altare non sentiat ? And in this form and upon these reasons, he brings in that of tenths in the gospel, to prove his purpose of first fruits. But in his conclusion upon it, he leaves out tenths, and speaks only of first fruits, thus. *Hæc diximus, asserentes mandatum de primitiis frugum vel pecorum debere etiam secundum literam stare.* What we have transcribed shews both his opinion fully, and the ground of it ; without which specially observed, error soon follows oft times in collection from authority. For opinion of this time, thus much. More, I confess, might be added out of some other great fathers, as S. Ambrose, and S. Augustine. But because they fall so near the end of our first age, and continue into the second, they are omitted here, and referred to the beginning of the next four hundred years.*

IV. For constitutions of the church ; if you could believe those supposed to be made by the apostles, and to be collected by pope Clement I. you might be sure both of payment in the apostles times, as also of an express opinion as antient for the right of tenths. There you read : *Quae secundum Dei mandatum tribuuntur, decimas dico & primitias, infumat episcopus ut bono Dei.* And the right is there largely grounded upon the Levitical commandment. But no man that willingly and most grossly deceives not himself, can believe that this constitution or divers others there, are of any time near the age of the apostles, but many hundred years after. The little worth, and less truth, of the whole volume is enough discovered by divers of the learned ; and it was long since branded for a counterfeit in an oecumenical council, when, doubtless, it was not yet neither so stuffed with canons of later birth, as since it hath been. Neither are there greater arguments against it as now it is, than some passages of fact that obviously occur

in it, among which this may clearly go for one. Had it been the apostles ordinance or the use of the church in the primitive times, *Origen* & *Tertullian* and *Cyprian*, having such occasion to mention it, could not have been so silent of it. And is it likely that all the old councils, from thence till near 1000 years after *Christ*, which being authentick beyond exception, have special canons for the lands and goods possessed by the church, the offerings, revenues, and such more could have omitted the name of tenths, if either such use or apostolical law had preceded ? They talk of ἐκκλησιαστικὰ φρούματα, the goods of the church, κερτοφορεῖα ἐκκλησιαστικὰ or offerings of fruits ; but have not a word any where of the tenth part. And in those counterfeit canons which some too credulously, and those also that wholly reject the eight books of *Clementines*, received as made by the apostles, one is indeed of first fruits (although, touching them by that name, certainly no law was made under the apostles) but no word of tenths. Of a like credit, it is to be feared, is that which is attributed to a fourth council at *Rome*, held about the year 440. by pope *Damasus*. Indeed, upon cardinal *Baronius* his credit, in the *Vatican* the legend of this pope, which was used to be read in the church, is extant ; and, with some miracles, are mixed in it certain decrees supposed his, and made in he knows not what council at *Rome*, of which one is ; *ut decimae atque primitiae a fidelibus darentur, & qui detrectarent anathemate ferirentur*, as he relates it. But those decrees, being taken out of the legend of him, neither ever were received as canonical in the church, nor hath the eldest code of the church of *Rome*, or *Fulgentius*, *Cresconius*, *Isidore*, *Burchard*, *Ivo*, or *Gratian*, mention of any of them. Not because what was taken to be truly his, was altogether wanting ; for the canons of one council of *Rome* under him, his epistles, and some decrees are, and have been from antient time, publick and dispersed in some of those compilers ; and one * especially they have of his time, which being made only for the disposition of such things as were given to the church, speaks only of oblations : but this of tythes or any of the rest joined with it touching usurers, witches, and other more, which *Baronius* only and first published to the world, out of the ms. none of them once remember. Neither before *Binius* his edition had any volume of the councils received into them a memory of any such decrees under this *Damasus*, or any council of his of that number. Those kind of acts and legends of popes and others, are indeed usually stuffed with such falsehoods, as being bred in the middle ages among idle monks, not only grow antient now, but are received amongst us with such reverence, that the antiquity which the copies have gained out of later time, is mistook for a character of truth in them for the times to which they were first, by fiction or bold interpolation, referred. In sum, no example for the synods of succeeding

* Clement. in constit. apostol. lib. 2. cap. 25.

† Synod. 6. in Trullo, circa a. d. 690. can. 2.

‡ Canon. apost. cap. 3. & 4.

§ Baron. annal. tom. 4. ann. 382. pag. 399. & a. 384. pag. 427. edit Plantiniana.

¶ C. 10. q. 1. c. 15. hanc consuetudinem.

ages, no antiquity for the compilers of the canons, had been of equal reverence to this of a pope, and done at *Rome*; neither had they omitted every of those decrees, had they been truly his. Confidently conclude, they are supposititious, yet remember too, that some colour is for the truth of such a constitution, in regard that about that time, the first memory is of tythes by that name paid in the primitive church; as in the next part of this division shall be declared. And were that ^y epistle not counterfeited, which is attributed to *S. Ierom*, as written to this pope upon that question: *Utrum usus decimarum & oblationum secularibus pervenire possit?* it might be good cause to maintain the truth of this decree of his for tythes. But plainly that epistle is alike feigned, neither tastes it of him or of any time near that age; nor hath it been ever received among that most learned fathers works.

From about the year cccc. till DCCC.

C H A P. V.

- I. Tythes were now paid in divers places, to abbots, to the poor, to the clergy.
- II. Some consecrations were then made in perpetual right, at the pleasure of the owner.
- III. That story of Charles Martell his taking away tythes, and making them feodal, cannot be justified.
- IV. The opinions of *S. Ambrose*, *S. Augustine*, *S. Jerom*, and *S. Chrysostom*. The first two teach, the tenth due by God's law; the other two persuade only that a less part should not be offered.
- V. Of canons, for the payment of tythes, that are attributed to this age.
- VI. No canon or other law was yet generally received to compel any payment of tythes, although among the offerings of devout christians, gifts of that quantity, were received as due, by the doctrine then in use, in some places only.

ABOUT the beginning of the next, or rather some years before the end of the first part of this division, and afterward, tenths were paid, or, for holy uses, offered, as the phrase was; in divers places, in offerings of that quantity; and some testimony is of churches also endowed with the perpetual right of them in the later half of this four hundred years. Great opinion was now of their being due. And some canons and provincial constitutions, attributed to this time, ordain a payment of them.

But not above one of these, and that is only provincial, is of any credit.

I. THAT they were offered under the name of tenths in part of *Italy*, may be collected out of *S. Ambrose* who was bishop of *Milan* before, and after the year ccc.xc. And the like for the diocese of *Hippo* may be supposed out of *S. Augustine's* vehement sermon for the payment of them. The words of both these fathers (which in relating their opinions are anon transcribed) may enough prove, that some did in those times offer them. And it may be, ² *S. Jerom* pointed at the receiving of tythes then so offered, in those words of his, spoken in the person of a clergyman. *Si ego pars Domini sum & funiculus haereditatis ejus, nec accipio partem inter caeteras tribus, sed quasi Levita & sacerdos vivo de decimis, & altari serviens altaris oblatione sustentor, habens ^a vittum & vestitum; his contentus ero & nudam crucem nudus sequar.* But it is no necessity to understand him so; it may well be, that *de decimis* there is but a continuance of the comparison made by *quasi Levita*; as if he had said, *but live like a Levite that lived of the tythes, and, serving at the altar, am maintained by the offerings at the altar, &c.* What in *Gratian* is falsely attributed to him, is before remembered. In *Egypt* also, some holy abbots had tythes of all fruits offered them about the beginning of this age. *Certatim decimas vel primitias frugum suarum memorato seni* (to abbot *John*) *de suis substantiis offerebant,* ^b says *Cassian*, the hermit that lived about the year cccc.xxx. and the abbot receives the offering with this kind acknowledgment; *Devotionem hujus oblationis (cujus dispensatio mihi credita est) gratanter amplector, quia fideliter primitias vestras ac decimas indigentium vobis futuras, velut sacrificium Domino bonae suavitatis offertis.* Where it appears the abbot received them as a treasurer for the poor. And about the year cccc.lxx christians also in *Pannonia*, by example of *S. Severin* his bounty, gave the tenth of their fruits to the poor. ^c *Devotissime*, (says ^c my author that then lived also) *frugum suarum decimas pauperibus impendebant; quod mandatum, licet cunctis ex lege notissimum sit, tamen quasi ex ore angeli praesentis grata devotione servabant.* And a little after, he relates that the inhabitants of *Lauriacum*, which some take for *Lorch* in *Austria*, being often admonished by *S. Severin*, to pay the tenths of their fruits to the poor, had notwithstanding omitted it; whereupon, their corn being blasted, they humbly come unto him *poenas suae contumaciae confitentes*, acknowledging their loss as a reward of their fault. And the saint answers them; *Si decimas obtulissetis pauperibus, non solum aeterna mercede frueremini, verum etiam commodis possetis abundare praesentibus.* Whence is seen both the received use of offering them in that place, as also the opinion of *Severin*. And in a provincial

^y C. 16. q. 1. c. 68. quoniam. ut genuinae D. Hieronymi meminit apostolica.
² In epist. ad Nepotianum de vita clericorum.
^c Eugippius in vita S. Severini, cap. 17. & 18.

etiam Innocent. 3. in extr. de his quae fiunt a praelatis, c. 7. cum

^a 1 ad Tim. cap. 6. 8.

^b Collat. abbat. Theonae. 21. cap.

council at ^d *Mafcon*, held in the year D.LXXXVI. that is, the XXIII. of king *Guntheram*, by all the bishops subject to his government in *France*, the payment of tythes into the hands of the ministers of the church, is spoken of, as of good antiquity at that time, and grounded upon the *Mosaical* laws, which they call there *divinas*, and add; *quas leges christianorum congeries longis temporibus custodivit intemeratas*. That long time they speak of, might have had perhaps beginning from the doctrine of those two great fathers, *S. Ambrose*, and *S. Augustine*, about the year cccc. whereof, more presently. But observe also that *Leo* the great (he was pope from cccc.xl. to cccc.lx.) hath divers sermons, yet remaining, *de jejuniis decimis mensis & eleemosynis*, wherein he is very earnest and large, in stirring up every man's devotion, to offer to his parish church part of his received fruits, but speaks not a word of any certain quantity. The like may be noted in some homilies of ^e *S. Chrysostom*, touching the churches maintenance, in which you might wonder how tythes were omitted, if either devotion or doctrine had near the beginning of these cccc years made payment of them, especially in the more eastern parts, of any common use. For the later part of those years, see towards the end of this chapter.

II. BUT beside the offering of tenths yearly (as was done, by the devouter sort, sometimes to the ministers of the sacraments, sometimes to abbots, and the like) a perpetual right also of them was consecrated to some churches, by grant or assignment, out of such or such land, at the owner's pleasure; and that long before the end of this four hundred years. These especial endowments may be collected from a canon of a council of ^f *Arles*, held in the year DCCC.XIII. which thus speaks: *Ut ecclesiae antiquitus constitutae, nec decimis, nec ulla possessione priverentur*. And other provincials of that time, and laws of *Charlemagne* agree with it; as that of his thus speaking: *Ecclesiae antiquitus constitutae, nec decimis, nec aliis possessionibus priverentur, ita ut novis oratoriis tribuantur*. These cannot well be understood, unless you interpret them to mean churches antiently endowed with tythes. And what was then about the year DCCC. said to be antiently endowed, must be referred back into some part of the time we now speak of. Neither are the monuments of that time without example of such endowments. It is reported that *Pipin*, about the year DCC.L, granted the tythes of all that lay between *Ourt* and *Lesche*, two rivers of *Ardoinne*, to a church consecrated to the honour of *S. Monon*. So I take that in ^h *S. Monon's* life. *Beato viro ob titulum christianitatis martirato Pipinus rex regaliter decimas obrulit, quas habet inter Le-*

tiam & Urtam. So about the year ⁱ DCLXXX. *decimacula in Rodulphi curte*, that is, the right of a tythe of small value, in a place called *Rodulph's* court, was consecrated to the church of *Arras*. And in a confirmation by king *Pipin* of the foundation ^k of the abbey of *Fulda*, which was made in DCC.XLII. consecrations of tythes to the same abbey, either already made or thereafter to be made, are especially confirmed, whatsoever it had or thereafter should have in *donis, oblationibus, decimisque fidelium, absque ullius personae contradictione firmitate perpetua fruatur*, are the words. But these kinds of grants it seems were not yet in much use, and what was of them, I guess, might have beginning not long before DCC years from our Saviour. For if they had been known much before, the precedent of them could hardly have been omitted by *Marculphus*, who lived under king *Clovis* II. about the year DCLX, and collected carefully the *formulae* or precedents of all kinds of deeds, conveyances, and grants, that were practised in his time; amongst which he hath many by the name of *cessiones* and *donationes*, wherein lands and other profits were given to this or that church, but never mentions any one for the gift of tenths.

III. IF the common tale of *Charles Martell* his taking away the tythes, that churches were endowed with, and giving them to the laity, about the year DCC.XI, were true, it were authority, both for general payment, and special endowment in those times, of great antiquity and fair proof. But although that of him he received as a story by divers of late time, yet clearly it can never be justified. He was indeed a robber of the church; but he is not mentioned by any old author of credit, to have meddled with tythes. He was *monasteriorum multorum everfor*, and *ecclesiasticarum pecuniarum in usus proprios commutator*, as ^l *Boniface* archbishop of *Mentz*, that lived in his time, complains of him, that is, he took monasteries, bishopricks, church-rents, and possessions from the clergy, and profaned them to lay-hands, as a reward of their military service then done for christianity against the *Saracens*, who from *Spain* invaded the country. Whereupon also, another fiction is too patiently received; ^m that *Eucherius* bishop of *Orleans*, in a vision saw him damned for it; and that by a search (according as an angel admonished) in his tomb, it was also confirmed for truth; there being found in it no relick of him, but only a dreadful serpent. The first author of this hobgoblin story seems of like credit with him, who ever he was, that first published that the taking of tythes was *Martell's* chief sacrilege. Tythes in his time were not so universally as yet annexed to churches, as that they could be the main object of such a sacrilege, nor

^d Mafcon. concil. 2. cap. 5.

inviderunt, tom. 6. edit. Saviliana.

tular. lib. 2. c. 36. & vide lib. 2. cap. 154.

treb. lib. 1. c. 15.

^k Bonifac. Mogunt. epist. 151.

Ulraiectensis, quod servatur in bibliotheca Cottoniana. & vide proximum caput de hac re.

apud G. Malmesb. lib. 1. cap. 4. quod tamen de Carolo isthoc ibi dicitur, in editis Bonifacii epistolis deest.

apud Surium, tom. 1. 10. Febr. & vide Gratian. c. 16. q. 1. post canonem 59. edit. Gregorian.

^e Vide eum in epist. ad Philippenf. & sermonem 103. in eos qui clericorum opulentiam

^f Arelat. 4. c. 9. & videlicet c. 16. q. 1. c. 42. 43. & 44.

^h Apud Molanum in S. S. Belgii in 18 Octob.

ⁱ Ansegisus capi-

^j Chronicon, Camerac. & A-

^k In epist. ad Ethelbald. reg. Merc.

^m Legend. Eucherii

are they ever reckoned so among those antients, that largely speak of lay-mens oppression by defacing whole monasteries and bishopricks in the times that next succeeded. Neither is it clear that in *Eucherius* his life, *Martell* was dead; for it is observed and taught by that great and most learned cardinal ^a *Baronius*, that he lived at least ten years after *Eucherius*. How then could *Eucherius* cause his tomb to be searched, and there find a serpent? That's enough, and truth too, that *Boniface* brands him withal for his tyrannical spoiling the church of her other possessions; *longa torsione & verenda morte consumtus est*; the rest is only out of the legend of *Eucherius* his life, which, as other things for the most part of that kind, is too full of falsehoods to gain to itself any credit. And some late canonists that out of his tyranny against the church, interpret their *decimae inf feudatae*, or *feudal tythes*, are alike in no small error, as in the next age shall be manifested. For neither was the course then used in taking the church revenues for military maintenance, to give them in fee to any layman; but leases for life were made by churchmen, to such as the prince appointed, of great part of their possessions, whereupon certain small rents, according to a proportion ordained by the state, were reserved. Those leases were sometimes upon the princes request, renewed, but upon death of the lessee, the estate and possession reverted to the church. All which appears plainly in a ^o council held in the year DCC.XLII. under prince *Caroloman* son to *Martell*; where that, which was so leased, is called according to the phrase of the time, *ecclesiastical pecunia*, out of every *casata*, whereof a shilling was to be reserved to the church or monastery, whence it was granted. That *casata* was a quantity of land known certainly from the custom only of every country, as a yard land, or a hide of land with us. The same word, but varied in gender, often occurs in old charters of our *Saxon* times, especially in the lieger books of *Worcester*, and *Abingdon*. And in that of *Abingdon*, a charter is of king *Eadwy* made ^p to one *Brithric* of *quinque cassati terrae*, the title or rubrick being *carta quinque hydarum*; and another there is with the same rubrick, the words of the charter itself being *quinque mansae*; whereupon by a marginal note in an antient hand, one observes those two to denote but the same. *Nota*, says he, *quod hidae, cassati, & mansae idem sunt*. But this by the way. Of no less falsehood or upon other ground, than this fiction of *Martell*, is their ^q relation which attribute to that synod under *Caroloman*, these words, *decimas occupatas a prophanis restitimus*. Neither course nor any story of the time can justify it.

IV. For the opinions of fathers in the beginning of this age; first, ^r *S. Ambrose* thus, in a

sermon of repentance, teacheth them due by God's law. *Non nobis sufficit*, says he, *quod nomen christianorum praefereamus, si opera christiana non facimus. Decimas nostras annis singulis de cunctis frugibus, pecoribus, &c. praecipit erogandas Dominus*. Then he cites the text of that precept, out of *Moses*, and goes on with *novem partes vobis tributae sunt, sed qui decimas dare nolueritis ad solam decimam revertetis*. Next he reprehends other offences, and adds, *quicumque recognoscit in se quod fideliter non dederit decimas suas, modo emendet, quod minus fecit. Quid est, fideliter decimas dare, nisi ut nec pejus, nec minus aliquando Deo offeras, aut de grano tuo, aut de vino, aut de fructibus arborum, aut de pecoribus, aut de borto, aut de negotiis, aut de venatione sua? De omni substantia quam Deus homini donat, decimam partem sibi reservavit, & ideo non licet homini retinere illud quod Deus sibi reservavit*. Agreeing with him, is *S. Augustine* in a whole homily ^t for the right of them; about harvest he made it (if it be his; for it hath been doubted whether it be his or no) on the XII Sunday after *Trinity*. *Proptio Christo*, saith he, *fratres charissimi, jam prope sunt dies in quibus messes colligere debemus, & ideo gratias agentes Deo qui dedit, de offerendis, imo reddendis decimis cogitemus. Deus enim qui dignatus est totum dare, decimam a nobis dignatur repetere, non sibi, sed nobis sine dubio profuturam*: and grounds himself upon that of ^u *Malachi*, the text of honour the Lord thy God with all thy substance, and the like. Then exhorts them. *Decimae tributa sunt egentium animarum, redde ergo tributa pauperibus; offer libamina sacerdotibus; and admonishes, that if they have no fruits of the earth, they should pay the tythe of whatsoever they live by; Quodcumque te pascit ^v ingenium, Dei est; & inde decimas expetit unde vivis; de militia, de negotio, & de artificio redde decimas, aliud enim pro terra dependimus, aliud pro usura vitae pensamus*. And then urging more texts out of the old testament, touching tythes and first fruits, and telling them, that the neglect of payment is the cause of sterility and blasting: *Haec est*, he saith, *Domini iustissima consuetudo, ut si tu illi decimam non dederis, tu ad decimam revoceris*. And afterward, with much earnestness, *Decimae ex debito requiruntur, & qui eas dare noluerit, res alienas invasit, & quanti pauperes in locis ubi ipse habitat, illo decimas non dante, fame mortui fuerint, tantorum homicidiorum reus ante tribunal aeterni judicis apparebit, quia a Domino pauperibus delegatum suis usibus reservavit. Qui ergo sibi aut praemium comparare, aut peccatorum desiderat indulgentiam promereri, reddat decimam*. These two great bishops agree; and from the law given to the *Israelites*, take their whole doctrine. *S. Jerom* is by some used for his author to the same purpose, and that from his

^a Tom. 9. pag. 111, & 158. edit. Plantiniana. Sed vero in hac re alii aliter. & qui curiosus hic esse velis, praeter ea quae satis obvia sunt adeas Adrevaldi auctoris vestustiss. lib. 1. de miraculis S. Benedicti c. 14.

^p A. D. 956.

^q Cent. Magdeburg. 8. &c. Veteris hujusce aevi sermonis ignari hallucinati sunt, in ipsa n. synodo ita legerant fundatas pecunias ecclesiarum ecclesiae restitimus. Et ita codex vestustiss. ms. in thesauro illo Cortoniano. pecunias autem decimas significasse opinabantur, sed perperam & ridicule. Pecuniae n. ibi praedia sunt.

^r Tom. 5. serm. ser. 2. post. dom. 1. quadragesimae, & vide serm. in ascen. domini.

^t 219. edit. Antwerp. atque ipsissima hujus vocabula habentur in tractatu illo supposito B. Augustino falso tributo, & de rectitudine catho-

^u licae conversationis, inscripto.

^v Cap. 3. 10.

^v Inter epist. S. Bonifacii post. 78. vide, si placet, epist.

^w In serm. de temp. in tom. 10. est vero

^x i. c. vivendi genus.

commentary* to the text of *Malachi*, which (after hath opened the words of the prophet, being only about the neglect of payment of tythes and first fruits; about the neglect of payment only, not the right of them) are these; *Quod de decimis primitiisque diximus, quae olim dabantur a populo sacerdotibus ac Levitis, in ecclesiae quoque populis intelligite, quibus praeceptum est non solum decimas dare & primitias, sed & vendere omnia quae habent, & dare pauperibus, & sequi Dominum salvatorem; quod si facere nolumus, saltem Judaeorum imitemur exempla, ut pauperibus partem demus ex toto, & sacerdotibus & Levitis honorem debitum deferamus.* Who hence thinks, that his opinion agrees with the other two, may as well infer, that he meant also, that all men were still bound to sell all they had, as in the apostles times. He speaks only, as admonishing christians to give their alms to the poor, and double^y honour to the labourer in the Lord's service, not binding them at all to offer this or that part, but leaving plainly a christian liberty; wherein yet, true devotion indeed, as he means, should not be more backward than the *Jews* were, when they duly paid. He that indifferently reads him, will think no otherwise. Neither is *S. Chrysostom* at all different from him. He perswading^z even labourers and artificers to give bountifully their offerings to the church for holy uses, according to the apostolical ordinance in the churches of *Corinth* and *Galatia*, brings the *Jewish* liberality in their payments of tenths for an example, beneath which, he would not have christians determine their charity, and says withal, that he speaks these things *not as commanding or forbidding that they should give more, yet as thinking it fit that they should not give less than the tenth part*, ἀλλὰ ἀξίον μὴ ἑλαττω τῆς δεκάτης μοίρας ὑπαρθεῖναι, as his words are, of all profits gained either from the earth, or by merchandize, or whatsoever just employment either of person or estate, but not of usury and war, which (at least as it was used in those primitive ages) was held by most doctors^a of the time, as unjust as usury. And indeed, where it was just, there no part of the gain or spoils was to be given to the priests, by the doctrine of some^b rabbins, that affirm it as expressly taught^c within a text of *Moses*. But his exception of usury agrees with the canonists of late times, that will not have tythe paid of unjust gain, no more than^d the hire of a whore, or the price of a dog, was to be brought into the temple. What is there called the price of a dog, is, by^e *Josephus*, taken for money given for the loan of a dog to breed withal. You may add to the opinions of this time, that of^f *S. Gregory*, where he admonishes the hallowing of *Lent*, consisting of six weeks, out of which, the sundays being taken, xxxvi days remain for the tenth part of the year, fractions of days omitted; this tenth of time he would have us give to God, *ut in le-*

ge jubemur, as his words are, *Domino deciman rerum dare.*

V. SOME canons, both pontifical and synodal, made for the right and payment of tythes, are attributed to the ages that fall about the middle of this time. But I have not observed above one, that is of any credit, as referred hither; neither was that ever received into the body or any old code of the canons. That one is provincial, and made in the year D.LXXXVI. in the council of^g *Macon*, a bishoprick in the diocese of *Lyons*, where all the bishops of king *Guntheram's* kingdom being present, speak of reforming ecclesiastical customs according to an antient example, and then begin with, *leges divinae, consulentes sacerdotibus ac ministris ecclesiarum, pro haereditaria portione omni populo praeceperunt decimas fructuum suorum locis sacris praestare, ut nullo labore impediti per res illegitimas, spiritualibus possint vacare ministeriis; quas leges christianorum congeries longis temporibus custodivit intemeratas. Unde statuimus ut decimas ecclesiasticas omnis populus inferat, quibus sacerdotes aut in pauperum usum aut in captivorum redemptionem erogatis, suis orationibus pacem populo ac salutem impetrent.* Here is no small testimony as well of antient practice in paying of them, as of great opinion for their being due. But although the whole council hath to this day remained with the subscriptions of the bishops to it, yet, whatever the cause was, not so much as any canon of it is found mentioned, as of received authority in any of the more antient compilers of synodal decrees, notwithstanding, that the fullest of them, I mean *Isidore*, lived long after this council held, and hath some other synods of the continent of *France*, as of *Orleans*, of *Arles*, of *Agatha*. But this he mentions not. The first that published it, was friar^h *Crab*, in his edition of the councils under *Charles V.* Yet also in some that collected the canons since *Isidore*, decrees of elder time than that is, are to this purpose spoken of; as you may see in *Ivo*ⁱ at the end of the decretal of *Gelasius*, that was pope in the year cccc.xciii; where these words are annexed, *decimas justo ordine non tantum nobis, sed majoribus nostris visum est, plebibus tantum ubi sacrosancta dantur baptismata deberi.* This stands continued with the rest of *Gelasius*, in the print. But in an old and very fair copy, near as antient as *Ivo*, remaining in the library at *Paul's*, these words begin with a coloured capital, as a several paragraph; and indeed are not *Gelasius* his, but pope *Leo's* the fourth, who lived above ccc.l years after; that appears plainly out of the epistle^k of *Gelasius*, whereto they are annexed, which *Gratian* hath in all, saving this, according to *Ivo*, yet cites this passage in another place^l by itself, out of that *Leo*, from whom also it is likewise taken by *Anselm* and *Gregorius presbyter*, who have in their collections

* Ad cap. 3. Malachiae.

^y 1 Tim. v. 17.

^z Hom. 43. ad epist. 1. ad Corinth. in cap. 16.

^a Videtis

Lactantium lib. de vero cultu cap. 18. & Tertull. de corona militis.

^b Abrah. Ben-kattan. praecept. 501.

^c Deut. cap.

xviii. 1. ^d Ibid. cap. xxiii. 18.

^e Origin. Judaic. lib. 4. cap. 7.

^f Homil. 16. in evang. & dist. 5. de

consecrat. c. 16.

^g Maiticon. 2. can. 5.

^h Tom. 2. concilior. fol. 90.

ⁱ Decret. part. 3. cap. 115.

^k C. 12. q. 2. & 25. &c.

^l C. 16. q. 1. c. 45.

the rest of *Gelasius* his epistle according to *Ivo*, as it is noted to the text published by command of *Gregory* the thirteenth. And in those decrees ^m of *Gelasius* that are extant touching the church-treasury, or revenue, no mention is of other than of *redditus ecclesiae* & *oblaciones fidelium*. A like falshood is committed by them ⁿ that attribute a provincial constitution touching the distribution of tythes amongst the bishops and inferior ministers to the first council of *Orleans*, held in the year D.VII. and that by finding some words to this purpose added to a canon, which in the printed *Ivo* ^o hath a marginal reference to some council of *Orleans*. It is most certain, that the first council of *Orleans* ^p hath no word of tythes in it, but speaks of the distribution only of such things as in *altario oblatione fidelium conferuntur*, and possessions of other like kind of church-lands, and according to that, *Burchard* and *Gratian* ^q cite it; who have also those words that *Ivo* there hath, excepting only that of tythes. And some other provincials of the ^r same place and age, to the same purpose, speak afterward of *oblaciones* & *facultates*, but not a word of tythes. All which shews plainly that no such matter was ever in the first council of *Orleans*. The truth is also that *Ivo* himself cites it not out of any council of *Orleans*, but from I know not what council of *Toledo*, as his ms. copy is, and as it is truly published in the printed book; all that directs to the council of *Orleans* there, being only the marginal note of *du Moulin*, a canonist of *Louvain* that set it forth. But neither any of *Orleans* or *Toledo* hath it all as he relates it. The truth is; that canon of his is made up out of two councils indeed, the first ^t of *Orleans*, and the ninth of ^u *Toledo*, and agrees well with both, saving for so much as is expressly spoken of tythes. That which in those two had been ordained for offerings and other revenues of the church, he not unfitly applies to tythes, being a more known part of that revenue in his time; and thither draws also an old council of ^v *Rome*, as if it had spoken expressly of them, and writes all in no other syllables than ^x *Burchard* had before delivered with a like title of *ex concilio Toletano*. But this excuses not those which make the words of such a collection, out of two or three old councils, applied to a later time, to go for a canon of any one of them. Many such are occurring in *Burchard* and *Ivo* especially, and some in *Gratian*; which are noted upon their credits, and, in some editions, placed in the times to which they attribute them, *licet forsitan falso sint tali pontifici, vel certe tali concilio per scriptorum incuriam adscripti*, as friar ^y *Crab* well admonishes. A like falshood is in attributing, out of the same ^z *Ivo*, an express canon for the payment of first fruits and tenths, to the provincial synod of *Sevil*, held in the year D.CX, in these words. *Omnes primitias* & *de-*

cimas tam de pecoribus quam de frugibus, dives simul & *pauper ecclesis suis recte offerant*: and a little after, *omnis rusticus* & *artifex quisque de negotio justam decimationem faciat*; and then, *si quis autem haec omnia non decimaverit, praedo Dei est, & fur, & latro; & maledicta quae intulit Dominus* & *Cain non recte dividendi congeruntur*. There is little reason to doubt, but that the reference of that canon in him, to that council of *Sevil* is false. The council of that year and place is extant whole, in divers editions, as it was certified by eight bishops which were at it; and in that no taste is of any such matter. The old ms. copy of *Ivo*, of or very near his time, in the library of *Paul's*, hath it *ex concilio Spanensi*, the printed book being *ex concilio Hispalensi*. What *Spanensi* is, I know not; if it were *Spalensi*, it were the same with *Hispalensi*, for which *Spalensi* is always in *Isidore's* councils, as *Spania* is sometimes ^a antiently for *Hispania*. Whatever he meant by it, clearly the whole canon is of much later time; the first words of it also being nothing but the syllables of one of *Charlemagne's* ^b laws, that was not made till DCC.LXXX years from Christ: that is, *unicuique ecclesiae mansus integer absque ullo servitio attribuitur*; where *mansus* is for a farm or dwelling place, in the same sense as at this day *manse* is used in the laws of *Scotland*. Some others like these occurring are mistaken, and you may observe that *Gratian* more warily abstained from using such canons mis-titled; among which also, from these. But the less falshood is to be imputed to *Ivo*, in regard that *Burchard* before him had almost all his syllables; from whom he transcribed; yet that excuses not his negligence committed in not carefully examining his author; which often causes gross impostures, sometimes proceeding from malice sometimes from ignorance, to be received as perfect truth; especially by those that cite, without more regard, provincial synods absolutely there mentioned for the first of that name, when indeed they are often of far later time. Slothful readers are soon so deceived. But among the known and certain monuments of truth, till about the end of this cccc years, no law pontifical, or synodal (saving that of *Mascon*) determines, or commands any thing concerning tenths; although very many are which speaking purposely and largely of church revenues, oblations, and such like, could not have been silent of them, if that quantity had been then established for a certain duty. You may see ^c enough in those to which the margin refers you; all made in this part of our division; none using other words, to this purpose, than *facultates*, *praedia*, *deglugra*, *rap-ropeia*, *oblaciones*, *vota fidelium*, *res ecclesiae delegatae*, or *collatae*, and the like, as the phrases are in the other first cccc years; some of which kind yet the canonists and others, in

^m Decret. Gelasii, cap. 29.

^p Concil. Aurel. 1. cap. 9, 10, & 11.

^q Arelat. 1. cap. 11.

^r cap. 136.

^s In prolegom. ad tom. 1. concil.

^t Palladius hist. Lausiaca in Melana & in concilio Sardicensi subscribit.

^u capitular. lib. 1. cap. 91. quod ipsum etiam habet Ivo part. 16. cap. 262.

^v sub Symmacho pp. c. 4. & 6. edit. Leonis & Anthemii c. de sacros. eccles. l. 1. jubemus, &c. c. 10. q. 2. c. 2. novell. 120. & 131. cont.

^w Paris. 1. cap. 1. Turonens. 2. cap. 26. Bracaren. 2. cap. 2. leg. Wisigothorum, lib. 5, &c.

ⁿ Ex Binio in tom. 2. concil. alii, qui de hac re agunt.

^o C. 10. q. 1. c. 7. de his.

^p Synod. Rom. sub Sylvestro papa, cap. 4.

^q Part. 3. c. 174. Garbias apud Binium in tom. 2. concil. ex eo alii.

^r Ofius ab Spania & Costus ab Spaniis.

^s Synod. Agath. c. 4. & 7. & 48. synod. Rom. 4.

^t Antegisus

^u 120. & 131. cont.

^x Decret. lib. 3. cap. 202.

^y Concil. Aurel. 5. cap. 15.

^z Decret. lib. 3.

provincial synods, have in the later ages, compiling their decrees, made to serve as if they had expressly named tythes, as you may see in that example remembered before out of *Ivo*, and *Burchard*; in that of the council of *Gangra* in c. 16. g. 1. c. 57. in *canonibus*; in that of the 29th chapter of *Gelasius* his decree in the council of *Tribur* held DCCC. xc. cap. 13; in that of the first oecumenical council of *Chalcedon* cap. 17. in c. 14. of the same synod of *Tribur*; and in that of the ninth council of *Toledo*^d in an old council of *Cologne*. He that reads those old canons only, as they are so applied, in late authority, to tythes, might perhaps soon think that at first they were made specially and by name for them. The matter is plainly otherwise. What was ordained in them about oblations, is out of them in later times, tythes and oblations being then supposed of equal right, expressly extended also to tythes; the word oblations, as you see in those times, being usual for tythes also when they were given; and *offerre decimas* was the common phrase, for to give tythes. About the end of these years in a provincial synod held at *Friuli* in D.CC.XCI. under *Paulinus* patriarch of *Aquilegia*, the words are, *De decimis vero vel primitiis, salvis scilicet allegoricarum rerum mysticis sacramentis, nihil melius puto dicere quam quod scriptum est in Malachia propheta, dicente Domino; inferte omnem decimam in horreum meum, &c.* and upon that place, the supposition of the duty being grounded, a commination is added; *Quis non timeat vel contremisecat illam maledictionem quam minatur nolentibus offerre?* The opinion of the synod is here plainly seen; and it is rather a declaration by doctrine, than a constitution by precept.

VI. But however either this of *Friuli*, or that before cited of *Mascon*, had their provincial authority, no canon as yet was received in the church generally, as a binding law, for payment of any certain quantity; Which not only appears in that we find none such now remaining, but also is confirmed by the testimony of a great and learned *French* bishop, in whose province also *Mascon* was, that could not be ignorant of the received law of his time. He lived and wrote very near the end of this four hundred years, I think, in the very beginning of the next. And, in a treatise about the dispensation of church revenues, expressly denies, that before his time, any synod or general doctrine of the church had determined or ordained any thing touching the quantity that should be given, either for maintenance or building of churches. Because his words are special authority also against those counterfeit titles of canons before spoken of, they shall have place here. *Jam vero, falth^e he, de donandis rebus & ordinandis ecclesiis nihil unquam in synodis constitutum est, nihil a sanctis patribus publice praedicatum. Nulla enim compulit necessitas,*

fervente ubique religiosa devotione & amore illustrandi ecclesias uliro aestuante, &c. This author is *Agobard* bishop of *Lions*, very learned and of great judgment, and had not so confidently denied what you see he doth, if any decree, canon, or council generally received, had before his time commanded the payment or offering of any certain part. How the authority of that council of *Mascon* stands with his meaning, I well conceive not. But clearly, he speaks truth, in regard of what was generally received. For neither in the *codex ecclesiae universalis*, or the *codex ecclesiae Romanae*, or *Africanae*, *Fulgentius Ferrandus*, *Cresconius*, or *Isidore's* collection (all which, in those elder ages, were as parts of the body of the canon law) is once any mention of the name of tenths. And indeed, that council of *Mascon*, with all other church laws in *France*, lay a long while neglected before *Agobard's* time, as in the age of our fathers that of *Mascon* likewise did. Yet withal, no doubt can be made, but that in most churches in this time, amongst the offerings of those of the devouter sort, tenths, or greater parts of their annual increase were given, according to the doctrine of those fathers before-mentioned, and those other testimonies. Whereto you may add that complaint of *Boniface*^g archbishop of *Mentz*, about D.CCL. against the clergy. *Lac & lanas*, says he, *ovium Christi oblationibus quotidianis ac decimis fidelium suscipiunt, & curam gregis Domini depouunt.* And in an exhortation^h written near D.CCCC. years since: *Ille bonus christianus est qui ad ecclesiam frequentius venit, & de fructibus suis non gustat nisi prius ex ipsis Domino aliquid offerat; qui decimas annis singulis pauperibus reddit; qui sacerdotibus honorem, &c.* These also shew a use of payment among the firmer and devouter christians in those times. But they were then disposed of diversly; now you see to the priests, now to abbots, now to the poor, and when they were offered to baptismal or episcopal churches, they were received as indefinite offerings, the quantity whereof was wholly arbitrary, in respect of any constitution or general law in use. The quantity of the offerings was arbitrary, but some kind of offering was necessary. He that offered not at all, of his fruits, was compellable, it seems, by excommunication (as in theⁱ eastern church; where that compulsion also was taken from the churches authority in the patriarchat of *Constantinople*) but not as yet, he that offered a less quantity. And that it was a special bounty to offer the tenth, you may see in the old *Ethiopian*^k mass, where a distinct prayer is for those, *qui obtulerunt munera sanctae unice, quae est super omnes, ecclesiae, sacrificium scilicet^l primarum decimarum, gratiarum actionis signum & monumentum.* And it seems the disposition of the offerings were so in the patron's power, by the practice of some places, that he might

^d Burchard. lib. 3. cap. 135. & Ivo part. 3. cap. 201.

^e 176. edit. Massoniana. Parisiis.

^f nific. cap. 9. & 10.

^g in biblioth. Cotton.

^h Epist. 105. ad Cuthbertum arch. Cantuariensem.

ⁱ Phot. Nomocan. ut. 5. & c. de episcopis & clericis. l. 39.

^k legendum primitiarum & decimarum.

^l Agobardus Lugdunensis de dispensatione &c. contra sacrilegos, pag.

^m Boniface. arch. Mogunt. epist. 132. Zacharias PP. ibid. epist. 143. & Willibaldus in vita Bo-

ⁿ nific. cap. 9. & 10. Attorami item epistolam ibi videtis num. 107.

^o in biblioth. Cotton.

^p Phot. Nomocan. ut. 5. & c. de episcopis & clericis. l. 39.

^q in biblioth. patrum, tom. 4.

^r Forte

assign a^m certainty of them to the minister of his church, and employ the rest at his pleasure; which agrees enough with the right challenged, in the succeeding ages, touching investiture and arbitrary consecrations; whereof, more in the next cccc. years, although in this age also some canonsⁿ of the clergy subjected all new built churches to the bishop's government; but were little obeyed. For meer church laws, hitherto. Some secular constitutions are, that about the year D.CC.LXXX. were made for the payment of tythes, by *Charles* king of *France, Italy, and Lombardy*, and afterward emperor. But because they fall so near the end of this part of our division, and are rather to be accounted amongst the laws of his empire (which began not till near xx. years after; that is, about D.CCC) than only of his kingdom, and were afterward received into the imperial capitularies, whence we have chiefest notice of them; they are purposely referred into the next cccc. years, as the first latitude, required in our division, permits. Neither before them, did any general law, that yet remains in publick, and is of credit, ordain any payment of tenths in the western church. For, in the eastern, never any law, that I have observed, mentions them.

Between about the year D.CCC.
and near M.CC.

CHAP. VI.

- I. *Payment of tythes, how performed.*
- II. *Arbitrary consecrations of them alone, like grants of rent-charges, at the lay owner's choice, to any church or monastery, were frequent; and sometimes lay-men sold them to the church. Redimere decimas.*
- III. *Appropriations of them with churches; wherein they passed as by themselves, from the patron severally and directly in point of interest. The beginning of parish churches. Disposition of the offerings received there. Lay foundations of parish churches. The interest that patrons claimed. Right of advowson. The ceremony of putting a cloth or robe upon the patron, at the consecration of the church. The use of investitures, by which (as by livery of seisin) lay patrons gave their churches. Commendatio ecclesiae. Benefice. None antiently received the character of orders, but when also the ordination was for the title of some church. Thence came the later use of episcopal institution. Whence some patrons came to have most part of the tythes. Canonica portio. The clergy and councils against*

investitures. Their continuance till towards M.CC. when institution, as it is at this day, upon presentation grew common. How appropriations were in those times made. The antient episcopal right to tythes, especially in Germany, and the northern parts. How monks justified their possession of tythes and parish churches. The right of tythes generally denied in Turingia, to the archbishop of Mentz.

- IV. *Of Infeodations of tythes into lay hands, both from the clergy and laity; and of their original.*
- V. *Of exemptions granted by the pope. Temples and Hospitalers accounted no part of the clergy.*
- VI. *The general opinion was, that they are due jure divino. But this, indifferently thought on, seems to have denoted rather ecclesiastick or positive law, by the doctrine and practice of the clergy, than divine moral law.*
- VII. *Laws imperial, and canons synodal and pontifical, for the payment of tenths. The gross error of some that mistake nona and decima in the capitularies. The first general council that mentions tythes.*

THE practice found in the time betwixt about D.CCC. and M.CC. from *Christ*, consists in some ordinary payments of tythes, as in the former ages; in more frequent consecrations of a perpetual right of them alone to any church, or monastery, at the owner's choice; in appropriations of them with the churches in which they were by custom or consecration established; in infeodations of them into lay hands; and in exemptions for discharge of payment. By the more general opinion of the church, they are expressed to be due *jure divino*; but that is warily to be interpreted out of the general practice clearly allowed by the clergy. From the beginning of this time canons are very frequent for the right of them. But the first law that may at all be stiled general for it, was ordained by *Charles* the great, and received, but little practised, through the empire. Of all these in their order.

I NOT only from devotion, but through ecclesiastick censure also, aided with secular power, about the very beginning of this cccc. years, many churches in the western empire, had the tenth paid as a duty. This may be collected out of an epistle written by *Alcuin* to *Charles* the great, touching the exaction of tythes, (which he calls *jugum decimarum* and *plena per singulas domus exactio*) of the *Huns* and *Saxons*; who being then lately, by *Charles*, conquered, had newly received the

^m Concil. 2. Bracarenf. cap. 6. & vide Toletanum. 9. cap. 1.

ⁿ Concil. Aurelianenf. 1. cap. 13.

christian faith. *Alcuin* there advifes, that it were better for the christian caufe, to omit it amongst them, till they were grown firmer, and fpeaks of it as a thing of known ufe among other fettled christians. His words are: *Vestra sanctissima pietas sapienti consilio praevideat, si melius sit rudibus populis in principio fidei jugum imponere decimarum, ut plena fiat per singulas domus exactio illarum, an apostoli quoque ab ipso Deo Christo edocti & ad praedicandum mundo missi, exactiones decimarum exigissent, vel alicui demandassent dari, considerandum est. Scimus quia decimatio substantiae nostrae valde bona est. Sed melius est illam amittere quam fidem perdere. Nos vero in fide catholica nati, nutriti, & edocti, vix consentimus substantiam nostram pleniter decimari? Quanto magis tenera fides, & infantilis animus, & avara mens illarum largitati non consentit?* This epistle was written about DCC.XCVII, as the historical part of it perswades; and the general laws, by which that exaction might have been made, are among those which about DCC.LXXX. the same *Charles* had ordained in an assembly of estates, of which more in the last paragraph of this chapter. But the execution of those laws soon afterward, as anon shall be declared, failing; this practice of payment also became to be of rare use; and although divers synods soon followed which commanded a tenth, as what was due of itself to the church (whence also in some places a parochial payment doubtless continued, and by prescription and custom established a civil right in some churches) yet ° the laity (not much subjecting themselves to any church-laws of the time, that touched their possessions) frequently exercised their arbitrary dispositions, especially of such of them as were not already consecrated, or by custom or prescription settled, and therein pretended them due only but as their own choice, either by consecration to any church or monastery whatsoever, or by infestation into lay-hands, should determine. And those also which were established by former consecration, custom, or prescription, were very often arbitrarily disposed of also by lay-patrons in their appropriations.

II. FOR arbitrary consecrations; the ^p laws ordained in the first of these cccc years, that speak of *decimationum proventus priori ecclesiae legitime assignatus, and locus ubi decimae fuerant antiquitus consecratae, and decimae quae singulis dantur ecclesiis*, and such more, point at the use of them. And although, out of any continuance alone of voluntary payment, a kind of parochial right (which also by the laws ^q of the time every rector should have enjoyed in the territory where he dispensed the sacraments) were created; yet consecrations of tythes, not yet established by a civil title, made to the church of another parish at the lay-owner's choice, were practised and continued in force;

as may plainly be collected out of an old law about the beginning of these years made (but not put in execution) for punishment of such consecrations by compulsion of the party to restore to the church the quantity of the tythe so alienated. *Quicumque*, are the ^t words of it, *decimam abstrahit de ecclesia ad quam per justitiam dari debet, & eam praesumptuose, vel propter munera aut amicitiam vel aliam quamlibet occasionem, ad aliam ecclesiam dederit; a comite vel a misso nostro distringatur, vel ejusdem decimae quantitatem cum sua lege restituat.* So another was made against parsons, under pain of deprivation, that they ^t should not perswade parishioners to come to their churches, & *suas decimas sibi dare.* With it agrees the complaint made about the same time in the council of ^t *Pavia*, against such as used to give away their tythes *aliis ecclesiis pro libitu.* And many express examples are of such grants made, not otherwise than as of rent-charges arbitrarily created, some shall be here added. But, because since the last chapter printed, the chartulary of the church of *Utrecht* among many other select monuments to the purpose of this discourse (through the favour of that right worthy and learned *Sir Robert Cotton*, my most honoured friend) came to my hands, wherein an observable consecration of tythes in the former cccc years, is preserved; it shall here, not much out of its place, be first remembered. There, in confirmations to that bishoprick made by *Pipin*, *Charles* the great, and other of the succeeding emperors, is expressed that some near ancestors of that *Charles*, as the elder *Pipin*, *Charles Martell*, *Caroloman*, had given great endowments to it, and among them, *omnem decimam de mancipiis, terris, & teloniis, vel de negotio, vel de omni re, undecunque ad partem regiam fiscus teloneum exigere aut accipere videbatur.* It seems it must be restrained to what the granters possessed in the territory about *Utrecht*, although no such thing appears in the divers charters there remaining of it. For the following times; in the same chartulary, is a commemoration of the possessions of the bishoprick, wherein divers particular tenths possessed by special grant are reckoned; as tenths of wreck, of treasure trove, of fishing, and a relation is of promise made to the bishop by one *Gutha* to endow a church, which he gave to *Utrecht*, with the tythes of divers manors. In *Bevorhem*, the words are, *tradidit Gutha ecclesiam necdum consecratam in jus & dominium sancti Martini* (to that saint was the church of *Utrecht* consecrated) *ea videlicet ratione, ut, post consecrationem ejusdem ecclesiae, decimae darentur ad supranominatam ecclesiam de villis hiis nominibus vocatis*, *Bevorhem*, *Gisleshem*, *Hegginghem*, *Schupildhem*. And in the year DCCC.LII *Raginer* duke of *Lorrain*, for the health of his soul, and the souls of his wife, children, and parents, gives to the abbey of

° *Aliter ecclesiastici, quod vide prox. §.*

²⁴⁶ *Benedictus Levita lib. 5. c. 46.*

^q *Leo IV. in c. 16. q. 1. de monachis c. 45. & c. 56. & saepe in capitularibus.*

¹ *Longobard. lib. 3. tit. 3. cap. 7. Hlotharis imp. & in addit. 4. ad capitular. cap. 73.*

² *Synod. Ticinens. c. 16. q. 1. c. in sacris canonibus, 56.*

³ *in quo, quae superiores concesserant, recensentur.*

^p *Concil. Mog. 16. q. 1. c. 42. Metens. circa ann. 890. cap. 2. Mog. circa ann.*

^t *Leg.*

¹ *Benedict. Levita, lib. 7. c. 141.*

² *Videbis, ante alia, diploma ibid. dat. 2 Lodovici I. Imperatoris*

Vito in Verdun, a whole town called Longuon, with the appurtenances, and all the tythes of the land that he had within the bounds and precinct of the same town. *Villam nostram*, as the charter * speaks, *quae dicitur Longuon, cum omnibus appendiciis suis ac decimis quas in banno dictae villae habebamus*. And one of his successors, Rigimir, by charter dated pcccc.xlvi. for like consideration, gave to another monastery, seated upon Moselle, all the tythes within the liberty of the town where it stood, in these words, *imperpetuum omnes decimas quas habeo in banno praefati oppidi tam in blado, quam in vino, ac aliis rebus*; Where *bannus* or *bannum* is used for the continent within the utmost precinct of the town; in which sense *banleuca*, as also *leuca circumjacens*, occurs in the monuments of this kingdom; as *banleuca de Arundel*, for all comprehended within the limits or land adjoining, and so belonging to the castle or town, which are both as one to this purpose. So the monks of Clugny in Burgundy, founded by William count of Auvergne in the year pccccx had tythes of divers possessions given them; which the phrase of the time stiled *decimas indominicatas*, in a charter to them made by Lewis the fourth of France, in the year 939. And those tythes were often confirmed to them by pontifical authority; as by *Agapetus* the second, *Lucius* the second, and afterward by *Urban* * the third, in the year m.c.lxxxv. In whose bull, a recital and confirmation also is of an instrument of *Adhemar* bishop of Xantoigne made to this monastery, that hath these words in it: *Damus & concedimus vobis decimas quas a laicis acquisistis vel acquirere poteritis*, with a command that laymen in the precinct of their abbey, should not convey their tythes to any other churches. And when the abbey of Vendosme was founded about the year m.l. by *Godfrey Martell* earl of Anjou, the tythes of the salt-pits in some part of Poitou, were consecrated to it. The like had the same monastery in some salt-pits possessed by the bishop of Xantoigne; which although it had enjoyed for threecore years, yet the bishop began to deny any more payment; and for his own gain, would have maintained this opinion, *that no church-lands were to pay tythes to any church*. But *Godfrey* abbot of Vendosme about the year m.c.xx. sharply corrects him in an epistle, and shews that the opinion of all France and Italy, then was, that although lands charged to any church with the payment of tythes, were possessed by another church or monastery; yet the tythes were still payable parochially from the one church to the other. That abbot's words are observable, because also they shew a general practice of payment parochially by churches to churches. *Nobis dictum est*, saith ^d he, *quia dicitis, quod ecclesia non debet decimam dare*. Hoc

verum est, ubi ecclesia nihil habet in parocchia alterius ecclesiae, ubi vero ecclesia, in alterius ecclesiae parocchia, possessionem aliquam habet, vel quippiam quod decimari debeat, ibi ecclesia ecclesiae decimam reddere debet, si illud juste possidere desiderat. Hoc tenet Italia, hoc tenet Gallia; ibi enim novimus ecclesias ecclesiis decimas reddere, & majores minoribus, & minores majoribus, ubi altera earum possessionem obtinet in jure alterius, hoc facimus ecclesiis, hoc ecclesiae fecerunt nobis. And according to this had he a decree for the monastery from pope Calixtus the second. This, by the way here, for payment among the clergy. But for more arbitrary consecrations by laymen; In the year m.c.xxiv. *Ansellus de Garlanda*, in his foundation of the abbey of S. Mary of Gornay in France, among other possessions gives it *decimam de Berchorellis*, and *duas partes decimae de Bercheriis*, and *totam decimam de Ponteuze*, and *apud Teriacum medietatem decimae*. Many like examples might be added, but one more only shall suffice, in which the frequency of the practice may be easily guessed at, that is found in a bull, of confirmation, made by pope Innocent the third, of the possessions of the abbey of the Holy Cross, and S. Leufrid, in the diocese of Roan; among which ^b divers appropriated churches are with their tythes (and so expressed; *ecclesia N. cum decimis*) but besides them also many tythes severally granted by divers barons and gentlemen to the abbey, out of such or such lands, without any churches, are confirmed, as *Decimam de feudo Hugonis de Sensei apud Neufoillam*. *Decimam Willielmi de Maudit apud Ludervillam, de feudo Willielmi Pelet apud Americort*. *Decimam de feudo Matthaei de Gamichiis apud Manevillam*. *Duas partes decimarum de feudo Pagani de S. Luciano, & de feudo Orselii, & de feudo Floothi, and decimam de Hendervilla, & de Sessvilla in feudo Autulii*. *Decimam de Beolio in feudo Roberti filii Willielmi*. *Decimam de Mesvilla in feudo Hugonis de Lace*; & *decimam de Buison in feudo Hugonis Bigot, &c.* If one abbey had so many arbitrary consecrations, who can doubt of the most common use of them? But if you desire more examples, look in the ^h places noted in the margin, but especially where anon we have the practice of our own ⁱ nation by itself declared. Out of them all (being but few in regard of what questionless might be had in the records of churches and monasteries; yet remaining in other states) you may find a ^a use of that arbitrary disposition till about the year m.cc, when the distribution of tenths also to the poor, according to the owner's free will, (which I take to be consecrations, or grants to monasteries; for the monks were usually called *pauperes*, and were so indeed by their vow) was expressly complained against, as a great fault of the time by

* Diplom. 27. & 35. in stemmate Lotharingiae apud Francisc. de Rosieres.

47 Hen. III. rot. 44.

pag. 1447.

lib. 3. epist. 41.

Quercetan. in notis ad Petrum Abeldardum, pag. 1174.

^a Vide, si placet, chartam Galfredi vicecomitis, monasterio S. Dionisii datam apud And. Quercetan. in notis ad bibl. Cluniac. pag. 14.

chartam W. comitis Nivern. apud eundem pag. 174. Adelardi Castrigunterii dom. apud Jac. Sirmundum in notis ad Goffr. Vindoc. pag. 95. Gotfredi Bullonii apud Aubert. Miraum in lib. de canonicis collegiis c. 91. Innoc. III. epist. decretal. lib. 1. pag. 160.

^b In placit. de jurat. & assis. apud Cicestr. A. D. 1144.

^c Ex tabular. monasterii apud Jacob. Sirmundum in G. Vindocinens. pag. 66.

^d Ita etiam Petrus Cluniac. lib. 1. epist. 35. & 36.

^e Innocent. III. epist. decretal. lib. 2. pag. 435. edit. Coloniensi.

^f In diplom. Ludovici Grassi apud Andream Goffrid. Vindocinens.

^g Cap. 11.

pope Innocent the third: For he then preaching of ^k *Zachee's* charity, that consisted as well in making restitution of what was due to others, as in erogation of alms to the poor, observes that he gave of his own, and paid what was o-ther mens. *Dedit proprium & reddidit alienum.* Graviter ergo peccant, says he, qui decimas & primitias non reddunt sacerdotibus, sed eas pro voluntate sua distribuunt indigentibus. But as great a fault as it was, it was a common one; and being committed by the laity was usually allowed in fact by the pope and the ordinaries; whatever they thought of it in right. And of such authority was this use, that an opinion was bred from it among very great men of the clergy, that, as arbitrary consecration was a cause of the right of tythes in a church whereto they were conveyed, so continual payment of many years (which being by divers, of the more devout, faithfully performed, those clergymen took as equivalent to a personal consecration of the tenths of their increase, where-ever it were received) had so settled the perpetual right of the tythes of any family, that whither soever it transplanted it self, it must still send its tenths to the place where before it paid them; as if this continual payment had for ever so bound it, that it might not pay them otherwise. This was the opinion of divers bishops in the patriarchat of Grado, as you may see by the same pope Innocent his ^l reprehension of them, and ^m of others elsewhere also. Neither were these grants always free consecrations, but oft-times were made for valuable consideration given by the church, which is expressed in the phrase ⁿ *redimere decimas*, used in the synodal and imperial laws, of this time, made *de decimis quas populus dare non vult nisi quolibet modo, or munere ab eo redimantur.* For, howsoever Hincmar bishop of Rheims, in reprehending ^o the monks of S. Denis, because they were about to take money of a parson for a right of tythe, advised them with *abst ut laici audiant, quod nemo eriam peccatis publicis implicatus in mea parochia facere audeat.* As if it had been almost unheard of in that age (he lived about DCCC.LX) that any man had ever took money for a grant of his tythes, yet plainly the authority of those laws shew, it was no such rarity. Nor was it out of practice about the end of this cccc. years, as may be collected out of a question disputed in ^p *Alexander Hales* touching tythes held by laymen, *in territorio alterius ecclesiae quae non potest eas redimere.* Although perhaps his meaning was only of feudal tythes. But neither did the laity thus only ^q dispose tythes not already consecrated, but in some kind also, by appropriations, such as were before established to parochial churches.

III. In declaration of the course of appropriations, it is first necessary, to know so much of the nature of parish churches in those times, as without which the appropriations then used, cannot be understood. Briefly therefore, for parish churches; it is plain that as metropolitick sees, patriarchats, exarchats also in the eastern church, and bishopricks, those greater dignities, were most usually at first ordained and limited ^r according to the distinction of seats of government, and inferior cities, that had been assigned to the substitutes or *vicarii* of the *praefecti-praetorio*, or vice-roys of the east and west empire; so were parishes appointed and divided to several ministers within the ecclesiastick rule of those dignities, according to the conveniences of country towns and villages; one or more or less (of such as being but ^s small territories might not by the canons, be bishopricks) to a parish; The word *paroeia* or *parish* at first denoting a whole bishoprick, which is but as a great parish, and signifying no otherwise than diocese, but afterward being confined to what our common language restrains it. The curates of those parishes were such as the bishop appointed under him to have care of souls in them, and those are they, which the old Greek councils ^t call *πρεσβύτεροι ἐπιχώριοι* or *ὁ ἐν ταῖς χώραις* or *ἐν ταῖς κώμαις πρεσβύτεροι*, that is, *prebyteri* ^u *parochiani*, within the bishoprick. Neither were the *chorepiscopi* much different from them. These had their parishes assigned them, and in the churches where they kept their cure, the offerings of devout christians were received, and disposed of in maintenance of the clergy and relief of distressed christians, by ^x the *oekonomi*, deacons, or other officers thereto appointed under the bishop. Neither had those parochial priests at first such a particular interest in the profits received in oblations as of later time. All that was received wheresoever in the bishoprick, was as a common treasury to be so ^y dispensed. One part was allowed to the maintenance of the ministry, out of which every parochial minister had his salary, according to the monthly pay spoken of in the first cccc. years; another to the relief of the poor, sick and strangers, a third to the reparation of churches, and a fourth to the bishop. So it appears by the ancient ^z canons, if we may at least herein, conjecture of the use of the time, by what they have ordained. And it is like enough to have been no otherwise, so long as these parochial functions were so personal that they were not as now, so annexed to foundations and endowments, but rather exercised as by messengers, sent from the bishops, who had no such reference to lay-patrons, as they that afterward came in upon investiture or presentment have had, but

^k In ferm. 3. de dedicatione templi pag. 83. tom. 1. nec vigorem ejusmodi donationes obtinere sancivit ille, extr. tit. de dec. c. 7. c. m. apostolica.

^l Decretal. epil. lib. 1. pag. 83.

^m Extr. de paroch. cap. 5. signific. cant.

ⁿ Benedic. Levita capitular.

lib. 5. cap. 46. conc. Mogunt. c. 16. q. 7. c. 7. leges Longobard. lib. 3. tit. 3. cap. 8.

^o Apud Flodoardum in hist. ecclesiae Rhe-

menfis, lib. 3. cap. 25. ^p Summae part. 3. quaest. 51. memb. 6. art. 4.

^q Videlicet Anaclet. & Steph. PP. in epil. decret. Hincmar. Rhemenf. in opusc. 55. cap. 25.

& consulas imprimis Josephum Scaligerum in notitia Galliae, & in epistolis pag. 247. editione Francofurtana. & Ph. Berterii, Diatribas in Pithanon.

^r Concil. Sardic. cap. 6.

^s Neocaesar. cap. 58. & vide Antiochen. cap. 87. & 89.

^t Leg. Aleman.

cap. 13. ^u Vide concil. Gangr. can. 67 & Chalced. can. 204.

^x Synod. Rom. sub PP. cap. 5. & Gelasii decret. cap. 27. atque hic divisionis modus in usu erat vetustioribus

ut aevi christianis, quod innuit Walafridus Strabo, qui floruit A. D. 840. lib. de reb. ecclesiast. cap. 27. vide Grat. c. 12. q. 2. c. 26. & seqq.

only were protected by some appointed by the state for ^a ἐκκλησίαι, or *defensores* of the church, as they called them, the name of *defensores* being in the primitive time, for this and other purposes, given to such protectors, ὡς ἀν' ἀπαλλοξαιεν κακῶν τὸς ἀδικημένους, in regard of their assistance and help to such as suffered injury, as *Justinian's* words are. And in the first ordination of this hierarchy of bishops and parochial priests, it seems, in some lands wherewith the bishoprick was endowed, the churches were erected, in which the bishop had a kind of right of advowson; who, taking on him the general care of his diocese, ordained incumbents in every of them, and the oblations there received were of the churches common treasure, and so to be divided and disposed of quadripartitely. But that quadripartite division was chiefly in the diocese of *Rome*. For by some ^b canons of the *French*, *Spanish*, and some other churches, it was tripartite, and had other differences. But all this in the primitive times; and from the first establishing of christianity by a disposition of the hierarchy, till about *D.* years from *Christ*, it seems, it continued. And such kind of parishes only were those spoken of in that epistle of pope ^c *Denis* the *I.* about *ccl.x.* if at least that epistle be not a fiction: if it be, then our canonists do ill to use it at all; if not, then plainly they abuse it, where they pretend in it an original of such kind of parishes as since for the most part have had their beginning from lay foundations. But not long after such time as laymen began to build and endow parish oratories or churches in their lordships, and in them place or invest chaplains (ordained, that is, made priests by the bishop, but not instituted by presentation as at this day) that might receive the offerings of such as repaired thither for holy service; that former kind, of making a common treasury in every diocese, was discontinued, and the chaplain or incumbent, acknowledging the lord, of his churches territory, for patron (not much otherwise than, as in the antienter course, every parochial priest did the bishop that collated to him) received now the profits that rose out of christian devotion, to a particular use of his own church; the canons nevertheless saving the fourth part to the bishop. For, that episcopal right grew afterward to be so established by the received ^d canon law, that till this day, where prescription of *xl.* years excludes not, the fourth part of all oblations and tythes are, by it, due to the bishop; and some ^e canonists make it as a duty succeeding in lieu or proportion to the tenth of the tenth that was payed by the *Levites* to their priests. But however the canons were (in which also it had been often constituted, that every church, ^f and the profits thereof, should be subject to the bishops disposition, as to the only immediate superior; and in some ^g that the founder should be utterly excluded from all inte-

rest) yet divers lay patrons in those elder times had, or at least challenged, in the oblations received from christian devotion in their churches, an interest somewhat like to what more antiently the bishop had in the offerings made at the churches wherein he only placed the ministers. Whence the erecting of churches became, amongst some, to be rather gainful than devout. For the patron would arbitrarily divide to the incumbent, and take the rest to his own use. This is manifested in the *II.* council of *Bracara*, held about *D.LXX.* where a canon forbids the consecration of churches built not *pro sanctorum patrocinio*, but *sub tributaria conditione*, as the use was of some places; that is, to the end that the lay founder might have half or other part of the oblations. *Si quis*, are the words, *basilicam non pro devotione fidei sed pro quaestu cupiditatis aedificat, ut quicquid ibi de oblatione populi colligitur, medium cum clericis dividat, eo quod basilicam in terra sua quaestus causa condiderit, quod in aliquibus locis usque modo dicitur fieri, hoc ergo de caetero, &c.* And such a practice is titled a custom of the antient times in an epistle ^h attributed to pope *Damasus*. And in the *IX.* council of *Toledo* about the year, *D.C.LX.* lay patrons are forbidden to use *juris proprii potestatem* in church goods or lands, as if great pretence in those times had been of their right in disposition of them. And, in the imperial capitularies of about the year *DCCC.* divers times provision is made against such laymen as thought it had been their right only to dispose of the endowments and offerings of such churches as they were patrons of, and that the bishop should be wholly excluded. But it fell at length, that, without much difficulty, the church, what through constitutions, what by their doctrine, had remedy for this usurpation upon the offerings solemnly consecrated to the priests at the altar. And in the following times it had been abstained from, as the plainest part of sacrilege. Yet nevertheless, another interest, that is, the interest of patronage, and a right of disposition of the temporal endowments, which the lay founders first challenged in their new erected churches, which was a right of collation or investiture, whereby the incumbent might receive full possession without aid of bishop or other churchman, could not so easily be gotten from them, although some ⁱ imperials were provided against it. For although no layman could, of himself, make any building to be a church, without the bishop's consecration of it, as even among the *Gentiles*, it was carefully foreseen, that in all new temples ^j one of the priests solemnly holding a pillar of it in his hand, should make the dedication, yet it being consecrated and endowed, the lay patron, in these antient times, took upon him not only the *advocationem*, or *advowson*, that is, the defence or patronage of the incumbents title; as *officium ad-*

^a Vide, si placet, Theodor. Balsamon. in Μελέταις pag. 454. post con. Carth. can. 7. Justinian. novell. 15. & capitular. Karol. & Ludovic. lib. 5. cap. 31. & lib. 7. cap. 308.

^b Concil. Aurel. 1. cap. 13. Toletan. 9. cap. 6. Bracar. 2. ca. 2. & vide Ansegis. capitular. lib. 1. c. 87. & addit. ad capitular. 4. cap. 37. & c. 9. q. 3. c. 2. & seq.

^c In epist. decretal. & in c. 13. q. 1. c. ecclesiast.

^d Extr. de offic. jud. cap. 16. conquerente, & de praescript. c. 4. de quarta.

^e Paoormir. ad tit. de decim. c. 1. n. 5.

^f Diff. cap. 26. pie mentis.

^g Cicero in orat. pro domo sua

^h c. 10. q. 1. c. 15.

ⁱ Capitular. Karoli & Ludovich

^j lib. 7. c. 213.

vocationis is used in the^l imperials, but also the collation by investiture without presentation at every vacancy. And the right of advowson, whereto the other of investiture in those times was annexed, in some places the bishop confirmed to him by putting a robe or such like on him at the dedication; as the example^m is of Ulric bishop of *Ausbourg*, in one of his dedications, about 1000. where *consecratione peracta*, as the author says, *doteque contradita comprobato illic presbytero, altaris procuratorem commendavit, & ecclesiae advocatorem firmiter legitimo haeredi, panno imposito, commendavit*. From this right of collation and investiture reserved by lay patrons, the practice came to be that parish churches and all the temporalities annexed to them, as the glebe and tythes, and what else in succeeding times became to be endowments, were, at every vacancy, conferred by the patrons to their new incumbents, by some ceremony, not differing from our livery of seisin (which is nothing but investiture; for investitureⁿ is only the immediate giving of seisin or possession) with these words, *accipe ecclesiam*, or the like. Neither upon presentation did the bishop institute, as of later time the use had been. And whereas, at this day, nothing passes out of the patron, or vests in the incumbent, in point of interest, the presentation being only as a nomination, and the interest and possession being immediately had from the acts of the bishop and archdeacon, it was far otherwise in these elder times. For the incumbent as really, as fully, and as immediately received the body of his church, his glebe, and what tythes were joined with it, in point of interest from the patron's hand, as a lessee for life receives his lands by the lessor's livery. Whence by the phrase of the time that kind of giving a church was stiled *commendatio ecclesiae*, that is, the lay patrons committing or livery of the church, and the endowments to the incumbent to take care of and dispose as a usufructuary of what the patron was proprietary, or as a tenant of that whereof he was in the reversion; And in such sense is *commendo* used, joyned often with *trado*, in *Tully*, as, *commendo, ac trado*. And hence came the *commenda*, wherein not the title, but possession, profits, and custody of the church is committed. And the difference is obvious between *ecclesia titulata* & *commendata*; *commendata* having chief reference to the possessions. And hence was the name of benefice, for a church and endowments so given. For as such lands or annuities, as in the empire, were given for perpetual salaries to military persons, had the name of *beneficia*, so, what was thus conferred upon spiritual soldiers in the church, had afterward the like title. But, at this commendation of the temporalities so made only by the patron, the bishop indeed had the usual consecration of the incumbent, but no-

thing at all to do with the disposition of the church or endowments. For, the law then being that orders could not be given *απολυτως*,^q *sine titulo*, or *absolutely*, but only when a title of a church, or some special ministry was at the same time assigned to the ordained clerk; all orders otherwise given being void, so that at every new investiture a lay patron could not have, as at this day, a clerk always ready made for his church; it was a necessity that for every new investiture, unless a resignation of some other church had preceded, the bishop's ordination or consecration was to be used, which afterward grew to be what now is institution. And although the character of orders were general, inasmuch that, as now also, he that received them was an universal priest, yet, in every ordination, special expression was made of the title of the church (that is, the saint, angel, or martyr, to whose memory the church was dedicated; in words^r to this purpose: *Eligimus in ordinem presbyterii, &c. ad titulum S. Mariae, ad ecclesiam quae est in pago illo, &c.*) to denote that the end of it was, that the ordained should there exercise his spiritual function, and not leave it during life. For which a law was made also, that such as were to be consecrated or ordained by the bishop, should before they were ordained by the patron in the church (for the investiture or commendation was also an ordination; and by the name of *ordinatus* also, was he denoted that was so invested) either by oath or caution secure their continuance upon that church only. So you must^t understand that in the capitularies, *ut presbyteri qui in titulis consecrantur, secundum canones, antequam ordinentur, promissionem stabilitatis loci illius faciant*; The use then, it seems, being that clerks ordained would at their pleasure resign into the patron's hand (for it is probable, that resignation^u in those times, into the patron's hand, without assent of the bishop, like surrender of particular tenants to them in the reversion, was in practice, and divested the title of the church; although at this day, by the canon law, it be grown clearly otherwise) and being then capable, without new ordination of the bishop, of any spiritual function, would take investiture of other churches without consent or knowledge of the bishop; against which also, some laws^v were made in the beginning of this 1000. years, but, with the rest, little obeyed. From this use of commendation, or investiture, it came also, that if an advowson had descended in coparcenery, the church had as many incumbents as the parceners had parts. *Singulae partes singulos habebant presbyteros*: Every of them giving an interest in a part, according as they might have done of any other inheritance descended unto them. Nor, as it seems, from other original then this challenged and practised interest, came those *droits honorifiques des*

^l Ulpian. ff. de rei vindicatione l. 54.

^m Anonym. in vita S. Udalrici cap. 7.

ⁿ Ivo Carnotens. epist. 41. & passim jurisperiti.

^o Petrus Damian. lib. 1. epist. 13. ad Alexandr. II.

^p Benedict. Levit. lib. 5. cap. 83. & addit. 4. c. 37. & synod. Rom. c. 16. q. 7. c. 33. monasterium.

^q Concil. Chalced. can. 114 & dist. 70. vide, si placet, extr. de prebend. cap. 16. cum secundum.

^r Ordo Romanus de divinis officiis.

^s Videlicet Duarenus de sacris ecel. ministris lib. 1. cap. 16.

^t lib. 7. cap. 173.

^u Vide eundem. lib. 5. cap. 26. 43.

^v Vide eundem. lib. 5. cap. 26. 43.

^w Addita ad capitul. cap. 25. & concil. Lateran. sub Alex. III. can. 17. & vide append. ad dict. concil. part. 15. cap. 7.

seigneurs es eglises (whereof you may see the treatise lately written by *Matthias Marechal*) and the custom yet remaining in divers places, especially in *France*, whereby the ² incumbent hath not for himself above a small part of the tythes, at the arbitrary disposition of some spiritual patron, who takes the rest, according to this antiently practised interest of patrons, to his own use. What is so allowed to the incumbent, is stiled his *canonica portio*; which was, I think, ^a reserved to him in some grants of the archbishops of *Salzburg* as patrons of their tythes. to the abbey of *Richersperg* in the year M.C.XLIV. Neither let any man out of this, or from other authority in ^b canons, gather, that all tythes were arbitrarily disposed of by the bishop in these middle times; which yet is falsely affirmed by some that rashly think, whatever a canon mentions, because some of the clergy would have had it so, was a practice of the time, but the contrary plainly and frequently appears; Only as in the primitive times, when parishes were not distinguished by limitation of ecclesiastical profits, but only by the ministers function, the bishop alone challenged, and frequently had, all offerings, or *κερποφορία*, as appears in those old canons beforementioned, and especially in those of the council ^c of *Gangra*, made against the *Eustathians*; So also after payment of tythes grew into more use in these middle times, he pretended by the canons (as in the examples which we anon have of the *Turingians*, and those of *Holtz*) a right to tythes through the whole diocese, as his parish, where no parochial right was settled in several rectors of parishes. But clearly, in such as were once, according to secular law, made proper to this or that church, he had not, even by the canon law that was in use, more than his fourth, or other part, varied by several customs; and by customs or ^d prescription he lost it. Neither was this practice of investitures, only in bestowing of parish churches. In monasteries and bishopricks the like was, but the increasing power of the clergy took it away wholly in the less churches (saying that in collations of free chapels, prebends, or other benefices, without parochial cure, according to the *droict de regale* of the kings of ^e *England* and ^f *France* especially, in some kind it hath remained) and much altered it in bishopricks and monasteries. It was in substance forbidden in the eighth general ^g council of *Constantinople*; then by decree in the council of *Rome* under *Gregory* the seventh, about M.LXXVIII. in words, which as well shew how the use of investitures at that time remained in many places (for some few years before, it appears, they were very common among the laity, and scarce taxed by the

clergy) as also what opinion the church had of them: *Quoniam investituræ ecclesiæ contra statuta sanctorum patrum* (that is, against the many canons made against laymens disposition of church-revenues) *a laicis personis in multis partibus cognovimus fieri, & ex eo plurimas perturbaciones in ecclesia imo ruinam sanctæ religionis oriri, ex quibus christiana religio concutatur; decernimus ut nullus clericorum investituram episcopatus, vel abbatie, vel ecclesiæ de manu imperatoris vel regis vel alius laicæ personæ, viri vel foeminae, suscipiat.* And in the general ^h council of *Lateran*, held in M.C.XIX. under *Calixtus* the second, chiefly against investitures, one canon is; *In parochialibus ecclesiis presbyteri per episcopos constituantur, qui eis respondeant de animarum cura, & de iis quæ ad episcopum pertinent. Decimas & ecclesias a laicis non suscipiant absque consensu & voluntate episcoporum, & si aliter presumptum fuerit canonice ultioni subjaceant.* The like was in the next general council under *Innocent* the second; and very many other pontifical decrees ⁱ were to the same purpose. For by this time, through the use of giving of orders without titles of churches (against the old ^k canons) and resignations into lay-hands; every lay-patron easily could have a clerk capable of his benefice, and so invest him, without so much as notice of the bishop. And, notwithstanding those decrees, both oecumenical and pontifical, that practice of investitures could not presently be taken from the laity, although soon after that general council held under *Innocent* the second, in M.C.XXXIX. it began to be less frequent, and institution upon presentation here and there succeeded it. But not long before that council, it was much complained against by the clergy, and stiled by ^l some of them, *hæresis investituræ*: others of them by no means admitting it to be an heresy, but only an usurpation of the rights of the church, which should not be disposed of by lay-hands. Besides other occurrences of investitures in epistles, councils, and story of about M.C. you may see especially the epistles betwixt *Ivo* bishop of *Chartres*, and *John* archbishop of *Lions*, with others of *Godfrey* abbot of *Vendosme*, all written about 1130, in which it is largely disputed of; and in them it appears plainly, that although the church would never have permitted it to the laity, and and did also sometimes extort renunciations of it, yet the pope often re-granted the right of it in *France* and *Germany* to such as had renounced it. Whence also *Ivo* concluded, that it was but a civil right belonging, by their canons, to the church, and no such thing, as of its own nature, could not be enjoyed, by the laity. But the canons gaining force, as the

² Vide extr. tit. de prae bend. c. 30. extripandae, & de jure patron. c. 23. praeterea, & lib. 6. tit. de prae bendis, cap. 1. suscepi, & le code des decif. forenf, decif. 15. lib. 1. tit. 10. ^a Chronic. Richersperg. pag. 176. & 204. ^b Vide synod. vetust. sub Joann. IX.

A. D. 904. ut omnis decimatio &c. & synod. Augustanam, An. 952, &c. ^c Vide concil. Gangr. cap. 7. & 8. & ad ea Zonaram. ^d Extr. de praescript. c. 4. de quarta. ^e Vide 19 Ed. III. tit. quare impedit, 6c. ^f Vide J. Ferhault de privilege, regni

Franciae, priv. 8. & Rebuff. prax. beneficiorum, cap. de reservationibus & Servin. en 2 vol. des playdoiez en l'arrest touchant la chappelle S. Nicholas en l'eglise S. Brice de Colchi, diocese de Noyon, p. 209. & vol. 1. pag. 298. & Petr. Gregor. in syntagm. juris universi lib. 17. cap. 7. & 8. Palquier. Recherch. liv. 3. c. 31. & 32. ^g Actio 10. can. 22. A. D. 871. ^h Extrat in Romanae edi.

tionis, tom. 4. Uti & illud sub Innocent. II. celebratum. ⁱ Et in Vaticana servantur mss. jam vero etiam in nupera Bini editione reperitur. ^k Dist. 70. c. 1. & 2. ^l Vide Goffrid. Vindoci.

nenf. lib. 3. epist. 11. & Ivonem Carnot. Epist. 235. 238, & 239.

papal power encreased, at length, about the end of this cccc years, it became wholly out of use: for not till then was it left off; And that the course of institutions upon presentations was not before commonly practised, especially in the case of lay-patrons, appears by divers ^m canons relating as much, to which I refer you, and more hereof in the *English* use. By reason of these investitures (wherein the glebe, tythes, and all endowments of the church, as well as the church itself, in point of interest or estate, passed from the patron, and at every vacancy were in him as in the only proprietary of them) when appropriations in these antient times were made, it was not only the church itself, or the *titulus ecclesiae* (for that also, once by consecration created, was given by lay patrons, when the clerk had already his orders) or the patronage, that was directly in point of interest conveyed, but withal the glebe and tythe made parochial by grant, foundation, or custom. And the title of the church (the monastery, according to the patrons provision in many appropriations; and in others, at their pleasure) still gave afterward by presentation of a clerk, whom the bishop instituted. For the clergy, except bishops and such as had episcopal right by privilege, gave ⁿ usually by presentations; these investitures being altogether against their canons, and but like the bishops collations. Neither did any such thing follow upon such presentation as disappropriation, in regard of the endowments or temporalities. For such was the nature of the appropriations, that the church remained notwithstanding presentative, and the incumbent, that came in by presentation, had the church only under the name of vicar, and in another's right, and received the tythes and the profit of the glebe, no otherwise than to the use of the monastery, in which the appropriation had settled them, as investiture should have done in an incumbent. Neither was the title of the church, and the endowments, so entire a thing, but that, according to the patrons interest and will, they might by the law then in practice be so severed. The ordinary instruments of such appropriations plainly shew it. And all the maintenance of the incumbent was at the bounty of the monasteries allowance. And it is expressed usually in old instruments of appropriations, that such a clerk should answer to the bishop *de spiritualibus, vobis autem, to the monastery, de temporalibus*. Which is complained against in that of *John of Salisbury: Personatus quosdam introduxerunt, quorum jure ad alium onera, ad alium referuntur emolumenta*. Herewith agrees the general ^p council of *Lateran*, held in the year M.C.LXXX. where the antient course of filling churches, thus appropriated to religious houses, is commanded to be thenceforth better observed. *In ecclesiis suis quae ad eos pleno jure non per-*

tinent, that is, those which they held both exempt from episcopal jurisdiction, and in them had the right of institution and destitution by privilege, *instituendos presbyteros episcopis praesentent, ut eis quidem de plebis cura respondeant; ipsis vero de rebus temporalibus rationem exhibeant competentem*. For however by the canonists of later time, this in the council, and in our appropriations, be understood variously, and, for the most part, of churches whereof religious corporations had only the patronage, and according to their law, no property; Whence also they interpret that *rationem competentem* for an account only which the patrons might exact, but not for a denoting of the property or right that the religious houses had in the profits; Yet doubtless in those times, that *suis ecclesiis* in this and the like canons had reference to churches appropriated only, or to such as were possessed by equal right to express appropriation. And although *Innocent* ^q IV. being of the antientest writers on the decretals, rather justifies that more common opinion (whereof you may have most special declaration in our ^r *Linwood*) yet others, and as great lawyers of that time, expressly suppose, that the temporalities are by that passage understood due and payable to the monastery, and that not an account only was to be made of the dispensing of them. Expressly ^t *Hosienis* upon the difference of their churches held *pleno jure* and not *pleno jure: Ubi pleno jure non pertinet, tunc habet ibi monasterium temporalia & representationem presbyteri vicarii tantum, &c.* Whereas if it were theirs *pleno jure*, they had also institution and destitution to themselves. And ^u elsewhere likewise he makes the enjoying the temporalities to be denoted by, *pro rebus temporalibus debita subjectio*. And so *Durand*, whom they call ^v *Speculator*, in his precedent for the libel, whereby a monastery having founded a church, was to demand the temporalities, thus proposes the suit, *cum ecclesiam illam monasterium a fundatione habuit, for in those antienter times the right of foundation of a church and appropriation were as* ^x *one to religious houses, & sic per consequentiam in temporalibus sibi debeat respondere, petit temporalia in ipsa ecclesia sibi adjudicari, &c.* Is it not then plain, that *respondere in temporalibus* denotes the taking of the temporalities to the monasteries use? *Hosienis* and *Durand* are better authority to prove how the law was antiently taken, than a cart-load of the later and more barbarous. Other reasons might be brought to prove this; but I presume no man will doubt it, that knows how to examine it. I only add this observation, to help clear it, out of a bull of pope *Lucius II.* to the prior and canons of *Kenelworth*, wherein licence ^y is given them, to hold their churches *in proprios usus*, that is,

^m Concil. general. sub Alex. III. can. 9. & 14. Extr. de jure patron. c. 4. 10. 27. & tit. de instit. c. 3. & tit. de praebendis. c. 31. in Lateranensi.

ⁿ Ad hanc rem, vide c. 16. q. 2. 1. & 6. ^o De nugis Curialium, lib. 7. c. 17. ^p Ita etiam

extr. tit. de privileg. c. 2. §. in ecclesiis concil. general. A. D. 1215. cap. 61. extr. de praeb. & dign. c. 31. & Luc. 3. in app. ad concil.

Lateran. de An. D. 1180. tit. de jure patronat. cap. 24. & Roger. Hoveden. in annal. fol. 460. b. ^q Vide eum ad tit. de praeb.

c. in Lateranensi 31. & tit. de privileg. c. 2. §. in ecclesiis. editione Venet. ^r Constat. prov. tit. de locato & conducto. cap. licet

bonae verb. afferunt non ligari. ^t In summ. tit. de offic. ordinarii, c. sunt autem. ^u Hosienf. sum. tit. de capellis

monach. §. quid juris, & vide tit. de privileg. §. quid operetur. ^v Specul. tit. de capellis monach. §. 2. ^x Vide

Hosienf. sum. eod. tit. §. quid sit. ^y Mf. reperitur in vol. quo compingitur Fridericus poeta in biblioth. Cot. onian.

in manu vestra, as the words are, *retinere* & *earum beneficia ad proprios usus reservare, constitutis ibidem vicariis & dioecesano episcopo presentatis, qui eis de spiritualibus, vobis vero de temporalibus omnibus, videlicet decimis & obventionibus debeant respondere, dum modo vicariis & caeteris ministris earundem ecclesiarum in necessariis provideatis, &c.* What can be plainer, than that the phrase of *respondere* in the canons, is here as it were purposely declared, as we have conceived it, according to antiquity? And sometimes also appropriations were made by laymen, ² reserving to themselves a *jus patronatus*, and *jus praesentandi*. But all the profits of received tythes and glebe werethis, who so had the appropriations, and were dispensed at their pleasure; and to the curates, in both kinds, as they thought fit, were some salaries given, which turned afterwards off time into vicarages that belong to such appropriations: whence also it came, that their presentations have been since and are now taken to be only to those vicarages, being made perpetual; whereas indeed, their vicars were originally presented to the whole rectory, but had the benefit no otherwise than is before declared. The words of conveyance in appropriating commonly were, *dedi & confirmavi ecclesiam de N. cum decimis, or cum decimatione, &c.* Whereby the church glebe and tythes passed equally, by way of interest, to the monastery. So antiently, and at this day, many convents, but especially the *Praemonstratenses*, have divers churches continually in their own hands. And some of the monks received into orders, discharged the cure. And in such instruments, of the elder times, as more commonly ordained, that they should keep the church presentative, the church it self passed also it seems as well in right of property, as of patronage; which sometimes also, as is before noted, was excepted to the granter. Examples enough are extant, wherein all this is apparent. For that more general way of appropriating tythes, the church still remaining presentable, which specially is pertinent hither, you may see the grants and bulls made to the abbey ^a of *Clugny*, to the abbey of ^b *S. Germans in Auxerres*, and many other like recited in pope *Innocent III.* his decretals, as also the charter of *Henry* earl of ^c *Brabant*, to his abbey of *Afflighem*, near *Brussels*; of *Thierry* earl of *Holland* ^d to the abbey of *Egmond*; which, being but a few of a multitude, enough shew the use of the time in conveying tythes in appropriations severally, and as distinct from the church; and more are of this nature, where we speak of the *English* use. And although also, confirmations and bulls of popes and bishops are sometimes added to such antient appropriations, as you see in an antient ^e charter, by *Lewis IV.* of *France*, in the year *DECCCEXXXIX.* to the abbey of *Clugny*, where the appropriati-

ons of churches and tythes, *sicut per privilegium Romanum, & per scripta episcoporum adquisierunt*, are confirmed, and in other monuments of succeeding times; yet those were gotten by the monks, to satisfy the canons, not to give validity in secular or common law, then practised. But also some instruments of appropriations are, wherein, from bishops only, tythes of other mens lands were conveyed to monasteries; as in that especially of *Athelbero*, bishop of *Hamborough*, in the year *MCXLI.* whereby ^f he gives to the new minister in *Wipentborp*, then newly founded by *Vicelin*, in the territory of *Holsti*, *ejusdem villae decimam cum aliarum quarundam villarum subter postarum decimis, veluti in villa Stavera, Horgan, Brachtewelde, Tuentborp, Godeland, Wlmerstborp, Boienbutle, Husberg, Cumerveld, Padenworth, Withorp, Padenstede, Bulligstede, sed & alias decimas juxta fluvium Gestere in utroque littore a villa Elmesborne usque ad lacum Wicfet, &c.* with divers others. And by another charter, dated *MCXLVI.* he gives to the same monastery other tythes of great value; and some of his successors ^g follow his example. If you question how the bishop came to have power to make these grants, either in regard of parochial curates by the canon law, or of the lay owners interest, according to the practice of the time; know, that in this and most of the bishopricks of *Germany*, especially which began with the christianity of the dioceses, about, or since the beginning of the *French* empire, the right of tythes, through those dioceses, was challenged by the bishops only, and that justly enough by the laws of the empire, which presently are related, because the parishes being not limited, nor indeed christianity so at first settled, that they could have been well assigned to parochial curates, the bishops were the true and immediate parochial and ministering rectors in their bishopricks. And although afterward, parish churches were founded, yet to them they would not resign their antient right in tythes, which from their first function there, they had either enjoyed, or still pretended to, both in regard of the value of them, as also because every founded church was to be otherwise endowed with manse and glebe. Neither had it been altogether safe among so obstinate a people, which could scarce by any means be brought to pay any tenths, to have permitted every parish rector afterward to have demanded them, or taught them due to himself; for to such as had both at once received the doctrine of the faith, and the declaration of the right of tythes due to the ministers (which were only, when they received it, the bishops; if you respect only, as you must, the ministers settled among them) it might have seemed a different doctrine, to have afterward taught them due to any inferior part of the hierarchy; especially in the weaker years of that church. Hence is it, that the archbishop

^a Amadoeus comes Sabaudiae in chart. monast. Cluniac. A. D. 1025. dat. extat in biblioth. Cluniac. pag. 413.

Cluniac. p. 1430. 1454.

^b Innocent. III. In epist. tom. 2. p. 435. alibi saepe. & vide, si placet, chariam abbat. Verzelav.

apud Andraeam Quercetan. in notis ad biblioth. Cluniac. pag. 133.

& B. Idae diploma consulas.

^d Apud 1. Douzam. annal. Hol. lib. 10.

^e Baldwin. arch. Hamburg. A. D. 1174.

^f Biblioth. Cluniac. pag. 265.

^g In app.

of ^b *Mentz* claimed all the tythes in *Turingia*, the bishop of ⁱ *Lubeck*, of ^k *Saltzburg*, and others, the tythes of their dioceses. And hence only those of *Hamborough* so liberally dispose of them. Neither could any of these reasons so well have place in other countries. For, except in *Germany*, and those more northern parts, christianity was in most places of *Europe*, it seems, so established, and the hierarchy of bishops and parochial rectors so settled, before any common doctrine or general law, for payment of tythes, was so divulged, for a thing of necessary observation, in the church, that when it came after to be commanded, it could not be, in any conceit, better ordered, than according to the division of limited parishes. And, those wanting at the time when the faith, and the doctrine and laws of tythes, came first into those parts, how could it (on the other side) fall out, but that they should be taught due only to the bishopricks? Which opinion also, it is no wonder, that those bishops should be willing to preserve and continue, after parishes were there divided, and after tythes came at length to be paid them. For long they preached, and much stir was about it, before they could get a usual payment of them. Neither need you mistrust, that their right to tythes, so clearly pretended in the appropriations by the bishops of *Hamborough*, was only from the episcopal right which the canonists allow, ¹ in case where the lands, wherein the tythes encrease, are not assigned to any one parish church. The contrary thereof appears enough in other conveyances made to the same monastery; in which the same bishop *Athelbero*, first in MCLXII. appropriates to it the parish church of *Bisborst* upon *Albis*, *cum banno simul & cum omnibus appendiciis ejus acquisitis vel acquirendis*, and with the largest bounty, that the thing given might carry with it; but afterward, in MCLXVI. he grants to it also a good part of the tythes within the ban and precinct assigned to the same church; which plainly shews, that he granted tythes of lands, already assigned to parishes. For his parish churches and their profits were no other, than what foundations, special endowments, and the offerings of the parishioners, within their ban or limits, had made them. Which is well justified by an old rhimer, that in verse, which would grieve *Apollo's* heart to hear, sings *Athelbero's* liberality to the monastery, and expresses the tythes of fourteen villages, and other places given by him, and then comes to two churches, that he afterward appropriated to it, *Bisborst* and *Ichorst*, and names them only as they had bans or limits and parishioners; as

*Bisborst cum bannis, bannos cum parochianis,
Ichorst cum bannis, bannos cum parochianis.*

And then adds,

*Et Bisborstensis decimatio tota paludis
Additur & quaeque fratrum labor occupat
aeque.*

^b Lambert, Schaffnaburg. pag. 487.

¹ Extr. de dec. c. 13. quoniam.

ⁱ Krantz. Wandal. lib. 4. c. 38, & 39.

^m Wandaliae lib. 4. cap. 38, & 39.

praef. ad hist. Norweg. & Dan. lib. 6. cap. 50.

^k Vide Greg. VII. regest. lib. 2. epist. 77.

^a An. D. 1078. Krantz. Daniae 4. cap. 37. & in

Where you see, he diligently remembers also an exemption given to it by that bishop: which could hardly have been, if the general right of tythes had not been supposed in him. But out of these things you may probably collect, that by this time (that is divers years before the end of these cccc years) in some of those northern churches, tenths were paid more justly, according to the desire of the clergy, than in other places; where you shall find arbitrary consecrations by laymen, continuing till about MCC. For if the bishop had not had these tythes paid, but had pretended only right in them, his bounty to the monastery had been to little purpose. So in the diocese of *Oldenburg*, about MCLX, payment was duly, it seems, made to the bishop by all, saving those which had improved the desarts of *Wagria*, which could by no means be brought to it. *Decimas ex more^m solvere recusaverunt*, says, *Krantzius*; being yet ready to give a competent part of their encrease. And although *Gerold* the bishop and count *Adolph* joined together; the one with perswasion (wherein he pretended to them *exempla*, as the same author writes, *ecclesiarum omnium & praesertim proximarum*, and told them of *divinum de decimis praeceptum*;) the other with power, to make them tythe their profits; yet they utterly refused, and with tumult and clamours made open profession, *servili conditioni nunquam se colla submissuros, per quam omne Christianorum genus pontificum pressura laboret*. Neither were the *Danes* in those ages easier to be brought to the payment of tythes to the church. Indeed they so much abhorred it, that no greater cause was, why they barbarously betrayed and murdered their king *Knout* ⁿ the fourth, than that he would have imposed it. And about the year MCLXXX. under king *Waldemar* the first, *Absalon* bishop of *Lunden* would have had them all paid their tythes, and that under pain of an interdict to continue against them: but they stoutly refused, and answered by publick message to the clergy, that notwithstanding the interdict, they should carefully minister divine service and sacraments, or else depart the country: if they did neither, *non solum rerum amissionem sed membrorum etiam truncationem demorarentur*. And it is well noted by *Krantzius*, that the northern nations generally were very hardly brought to pay: but after continual and earnest doctrine of the church, and command of princes, at length many of them yielded; that is, as may be conjectured, in the first half of the year M.CC. Through the frequent use of those arbitrary consecrations, and those appropriations, churches with their tythes and tythes of several possessions, were in exceeding number established in monasteries, as well of nuns as monks. The tythes of LX, of LXXX, or more parishes, were by those courses, annexed sometime to one monastery, which the head and convent possessed, not as any part, or as pretending themselves to be any part of that clergy which made up the evangelical priesthood, or deserved them by ministering

divine service and sacraments to the owners. For indeed, divers of these appropriated tythes were out of such lands, as lay so distant from the monasteries, not in other dioceses only, but also in other kingdoms, that the owners never saw or knew the monks, or their cloyster, nor otherwise heard of them, but by their cellarers or provosts that exacted payment. Whereupon it was in time of our *Edward* the third affirmed in a petition in ^o parliament, that aliens (which by reason of appropriations made to their houses beyond the seas, or to their priories or cells in this kingdom, or the like) did so devour the salaries due to parish curates, and so neglect the divine service which they should have taken care for in every parish, that they did more hurt to holy church, than all the *Jews* and *Saracens* of the world. Which might have been well applicable to some kind of non-residence of denizens also. But the religious persons justified their consuming this ecclesiastic revenue by reason only of their prayers, their tears, their psalms, their alms, and the like exercises of devotion; beside their maintenance of curates with arbitrary salaries, in the parish-churches appropriated to them. Which is at large seen in an epistle of *Peter* abbot of *Clugny*, to *S. Bernard* abbot of the *Cistercian* order at *Clarevaux*, about the monks of *Clugny* their possessing of a large number of parochial tythes. The *Cistercians* had made divers complaints against them, and one was upon this very point, in these words: *Ecclesiarum ^p parochialium, primitiarum & decimarum possessiones quae ratio vobis contulit? Cum haec omnia non ad monachos, sed ad clericos, canonica sanctione, pertineant; illis quippe quorum officii est baptizare & praedicare & reliqua quae ad animarum pertinent salutem gerere, haec concessa sunt, ut non sit eis necesse implicari saecularibus negotiis; sed quia in ecclesia laborant, in ecclesia vivant.* Hereto, among divers other imputations, the abbot of *Clugny* answers, and gives his reason for their enjoying of tythes, thus: *Quia monachi ex maxima parte fidelium salutis invigilant, licet sacramenta minime ministrant, aestimamus ipsorum primitias, decimas & oblationes, & quaeque beneficia eos digne posse suscipere, quoniam & reliqua populo christiano a presbyteris* (that is, by the curates which they maintained) *faciunt exhiberi.* And another of great note before this abbot's time, pretends special charity towards the poor, for sufficient reason why monasteries and hermitages had tythes given them: *Ut copiosiora, scilicet ^a he, alimenta proficiant, dantur in monasteriis & eremis decimae quorumque proventuum, & non modo pecorum sed & ^b ornicum pariter & ovorum.* The same reasons hold in justifying of appropriations to nunneries, where the persons are not capable of the ministry. And among examples of the age, take this one for some confirmation, in these elder times, of the right which monks

pretended to them. In the year *MLIX*, a great controversy ^c fell between *Meginher* abbot of *Herfeldt*, and *Burchard* bishop *Halberstadt*, about tythes of large territories in *Saxony*, appropriated to the abbey. The abbot stood upon the appropriation; the bishop upon his episcopal right, which by the canon law is, and anciently was, the same with parochial, in places not limited to any certain parishes. The bishop's greatness with the judges of both laws, made the abbot so despair of success in the suit, that he prosecuted no further; but withal, summoned the bishop to appear before the almighty in his judgment-seat, within some few days there to answer in the same action; and very soon after departed this life. Not many days interceded, but the bishop, riding towards the court where this suit had depended, to dispatch some proceedings touching it, suddenly fell from his horse very sick; and being carried into his inn, gave most strict charge (as one divinely moved) that the abbey should have restitution and quiet possession of those tythes for ever; and admonished them all, that were by, that whoever had been parties with him in that oppression against the abbey, should by the like judgment from heaven, suffer as he did; confessing to the two bishops of *Magdeburg* and *Hildenesheim*, then visiting him, that he was now called, according to the abbot's summons, to answer his exaction of the appropriated tythes, before the judgment-seat of the almighty; and soon after, he most miserably died; *Uro* his arch-priest, who had been his great instrument in the suit, the same year suddenly following him. But however either the usual practice, or this example wrought; a year or two after, this questioning of tythes upon episcopal right (that is, upon pretence that all tythes of every diocese were due to the bishop, as to the rector of a great parish; for such a right was most specially pretended by bishops in *Germany*, as is already declared, and that both against appropriations and arbitrary consecrations) bred most perillous disturbances of state, and of no small consequence in those parts. For in the year *MLXII*, when *Otto* succeeded his brother *William* in the marquise of *Thuringia*, *Sigifrid* archbishop of *Mentz*, denied him the relieving of his fiefs held of the archbishoprick, unless he would give him all the tenths of his demesnes, and compel all the tenants of his marquise to do the like. This was exceedingly distastful by the *Thuringians*, inasmuch, that they openly professed, they would sooner lose their lives, *quam patrum suorum legitima amittere*; that is, than part with their ancestor's right of detaining, or disposition of tythes, according to their use, either of infeudations or appropriations; so you must of necessity understand it; and other passages in the author (*Lambert* of *Schaffnaburg*, then living, who relates it) make that sense of it plain. Neither was this *Otto*, for as much as in him lay,

^o Rot. parl. 50 Ed. III. art. 94.
 curialium, lib. 7. cap. 21.

^p Petr. Cluniac. lib. 1. epist. 28. circ. An. D. 1150. Vide, si placet, Joann. Sarisbur. de nugis
^a Petr. Damian. lib. 2. epist. 14.

^c Schaffnaburg, in annal. pag. 466. edit. Argentorat. Videtis etiam Francisci Monaldi consilium de jure Abbatis S. Mariae e carceribus in
^b *Ovis*, i. e. avium seu gallinarum.
^d Lambert.

diocesi Patavina apud Joh. Baptist. Caesar. part. 1. consil. 46.

wanting to the archbishops request. But in the year MLXVII. upon his death, he left joy enough to his country men, in regard of that his yielding about the tenths, which none of his ancestors had given example of: But in him it was the chief feminary, as the monk says, of the many calamities suffered in the Saxon war of that time. Great disputation of canonists followed some six years after, in a council held, about this episcopal right, in Erpesfurt, where not only the tythes of laymen were called in question, but tythes appropriated to the abbies of Fulda and Herfeldt, and of all their possessions; were challenged by the archbishop; his canonists vehemently disputing for him; and the emperor Henry the fourth, who much invaded the rights of the church, urging him forward, that indeed he might have had a moiety with him. At length, the abbots divided with the bishop by a special transaction; and, when they yielded, the laymen, serving the time, agreed to give him theirs also. But presently the exaction of them ceased. Hoc anno, MLXXIII, post exortum bellum Saxonicum, says the monk, nulla deinceps exactio facta est decimarum in Turingia; gaudentibus Turingis quod occasionem invenissent, ut traditas sibi a patribus leges manu militari tuerentur. And although the archbishop again questioned it, no success followed. Of appropriations of tythes, hitherto.

IV. THE use of infeodations, or conveyances of the perpetual right of tythes into lay hands, is remembered by Peter Damian, that complained of it to pope Alexander the second, about the year MLX. Insuper etiam & decimae, saith he, ac plebes adduntur in beneficium saecularibus. Where plebes is taken for parish churches, as it is often used in the old canons: and they are the same, to this purpose, with parochial tythes and temporalities; although literally, they interpret only λαοι, that is, the lay people of the parish, or those of whom the cure is; which word is often for plebes in the Greek canons of the African church. The original of the practice of these infeodations of tythes appears not in old monuments. Those which refer them to the time of Charles Martell, * or any age near him, are in gross error; neither is any mention of them, for the space of about ccc years after him. Lands and monasteries consecrated, were † about those times of Martell often possessed by the laity, and often wrongfully, as the story of him, Carloman, and their successors, plentifully discover; and thereof enough in the former chapter. But no tythes in those times were infeodated, as also is judiciously observed and taught by the learned Stephen ‡ Pasquier, advocate-general en la chambre des comptes, whose diligence yet fails, when he confidently delivers, that these infeodations

began about the time of the holy wars that were between mxc and mc. The contrary appears plainly, not only in that of Peter Damian, who lived long before, but also in the council of Lateran, held in MLXXVIII, where this canon is; Decimas quas in usum pietatis concessas esse canonica auctoritas demonstrat, a laicis possideri apostolica auctoritate prohibemus, siue enim ab episcopis vel regibus, vel quibuscumque personis eas acceperint, nisi ecclesiae reddiderint, sciant se sacrilegii crimen incurere: Which in the same syllables is iterated in the general council of Lateran, held in M.C.XXXIX, under Innocent the second. But in the first you see clearly, that infeodations of tythes were antienter than the holy wars: which is plainly confirmed also by the council of Cleremont, held in Mxcv, by Urban the second; where it was forbidden, that laymen should thenceforth altaria vel ecclesias sibi retinere, that is keep churches and consecrated tythes in their own hands, for so was the common † signification of altaria at that time in France. And observe therewithal, that they had been practised not alone by laymen, but by bishops also, as is declared in Peter † Damian's complaint against them for it. Likewise it seems, religious orders made fiefs or tenements of tythes † for laymen. Testimonies of these infeodations are very frequent in the canon law, which commonly styles the tithes so conveyed into lay hands, decimae laicis in feudum concessae, and feudales, and infeudatae, that is, feudal tythes, or as the French lawyers call them, dixmes infeodées. And to this day these infeodations remain; especially in France and Spain, and also elsewhere. Neither are the tithes so possessed, other than meer lay possessions, and determinable before the secular judge. But thereof, more in the practice of the next cccc. years, in which the ancient infeodations have continued. But since the year M. c. LXXX. none could, in France especially, be newly created; that is, no lay man might thenceforth begin infeodations of tithes parochially due by the canons. So was it ordained in the general council of Lateran then held, in these words: Prohibemus † ne laici decimas cum animarum suarum periculo detinentes in alios laicos possint aliquo modo transferre. Si quis vero receperit & ecclesiae non reddiderit, christiana sepultura priuetur. So hath the continual practice, which in such a case is the best interpreter, since been in that country, which hath received this canon for a binding law; Neither is it † otherwise to be understood; however divers of the later canonists, with ignorance enough, draw it to a different sense, and oppose it against the right of all feudal tythes, being antienter than the council, and since passed over into lay hands. And whereas they commonly suppose, that all these antient feudal tythes were at

* Vide Schaffnaburg. pag. 487. † Petr. Damian. lib. 1. epist. 10. & lib. 4. epist. 12. † Vide Krantz. metropol. lib. 4. c. 12. Ubi ad morem Mandrabuli, conjecturas de hac re infeliciter adfert. † Vide, cum his quae supra adnotavimus, Flooard. hist. Rhemenf. eccles. lib. 2. cap. 12. etiam in ecclesia orientali monasteriis & locis aliis sacris laici saepe usi fructu sunt. constat in Anou- rhuadi. omnib. Alexii patriarchae Constantinop. edit. in comment. Zonarae, & in canon. 13. synod. Oecumenicae 7. † En les recherches de la France, liv. 3. chap. 35. † C. 1. q. 3. c. 4. quæsitum. † Lib. 4. epist. 12. † Decretal. 6. tit. de dec. c. 2. §. Sane. † Extr. tit. de dec. c. 19. Prohibemus. † Neque aliter sane intelligunt vetustiores illi juris interpretes Innocent. IV. Hostiensis. Bernardus. & vide Henricum Bowhic. ad tit. de dec. c. 2. §. Anouvi.

first spiritual, and transferred from churchmen, at the request of princes, into lay hands and since wrongfully detained; surely it is an error; neither is there any antient warrant sufficient for it; many of them were doubtless created by laymens grants, as rents-charge, estovers, turbaries, and the like are. Who can doubt of it, that observes but alone this canon *prohibemus*? Whence also may be strongly inferred, that the greater number of infeodations were through grants made by laymen to laymen, as consecrations were, at their pleasure, made to churches. For what is there only forbidden by the council, may be thought the greatest and most prejudicial practice of the time against the profit of the clergy. Neither is any provision there made against the other kind of infeodations, which pass tythes from churchmen. And although the words *ecclesiae non reddiderit*, in the canon (and in the body of the same council, in *Roger of Hoveden*) seem to suppose, as if it had been made for such tythes as had been taken from the church; yet indeed, the truer reading is *tradiderit*, as appears in the body of that council first fully published out of the *Vatican*, in the last tome of the general councils printed at *Rome* by command of the present pope *Paul* the sixth; wherewith agree other editions, but of less authority. And perhaps also some old infeodations were made by lay patrons in the vacancy of their churches, by the same challenged right as they alone made appropriations. For, as by our common law, the patron and the bishop may in the time of vacancy dispose of the endowments (as by the canon law also, if the chapter's consent, or the pope's, be had) so in those elder times, upon equal reason, when the patron had the only disposition and interest of the church, as is already shewed, he alone sometimes granted any part, at his choice, it seems, to lay or clergymen. Why not any part as well as all? And that patrons granted whole churches into lay hands, appears by divers passages in *Flodoard's Rhemish* history, by that before cited out of *Damian*, and by the general council of *Lateran*, under *Innocent* the second, where it is ordained, that they should be restored from the laymen to the disposition of the bishops. And an example is extant among the records of the ^f monastery of *Egmond* in *Holland*; wherein *Charles* king of *France* (who is commonly therein taken for *Charles* the bald; but *Douza* thinks it to be rather *Charles* the simple; and made about D.CCCC. and is thereto perswaded by synchronism, the best trial of such truths) recites, that *Hagano*, one of his nobles, humbly requested of him for *Thierry*, the first earl of *Holland*, *quasdam res; ecclesiam videlicet Hecmunde, cum omnibus ad eam jure pertinentibus a loco qui dicitur Zwtherdes Haghe usque ad Fortrapa & Kinne, &c.* Which by patent he grants him in fee, *& ut libere haec omnia teneat atque possideat, habeatque de his potestatem juxta libi-*

tum suum ordinandi seu faciendi. If the church itself of *Egmond* (the parish church; for it was then no abbey, but afterward made one by that *Thierry*) passed not by this patent into lay hands, I sufficiently understand it not; neither is it spoken of, but as what might, according to the use of that time, be clearly made a lay-fee. Through these kind of grants, practised both by lay and clergymen, princes, and private persons, the antient infeodations of tythes had their original, as well as by leases from the church; and not by imposition of tenths by princes, as some ^s have ignorantly conjectured; although also it be certain, that princes sometimes joined ^h with the bishops to bring in the payment of tythes, that thereby themselves might have beneficial infeodations of them from the church. But as princes made infeodations out of their own demesnes, or their own churches; so other private lay persons. And the clergy, sometimes of tythes already vested in them; and sometimes, it seems, out of their demesnes. And perhaps especially religious persons, exempted from payment by bulls, made some out of their own demesnes, as may be conjectured out of a decree ⁱ of pope *Alexander* the fourth, that speaks particularly of infeodations made *a religiosis exemptis & aliis*. And for examples of tythes already possessed, and thus granted by the church, you may especially see, that of *Engelbert* count of *Goritz*, who had an infeodation ^k antiently from the church of *Trieſte*, in the patriarchat of *Aquilegia*, and *Henry* count of *Ratzenburg* ^l had an infeodation of all the tythes which were paid to the church in his territory, from the bishop of *Oldenbourg*. So one *Hildeward* had one in the diocese ^m of *Hamburg*, and surrendered it to *Baldwin* archbishop there, about M.C.LXXIV. But examples of them were ⁿ very many, the dislike whereof was one especial cause, pretended by those of the deserts of *Wagria* in *Holſt*, about M.C.LXX, why they would pay no tythes. *Practerea*, says ^o *Krantzius*, *& hoc adjecerunt, non multum a veritate aberrantes, quod omnes paene decimae in luxus cesserint hominum saecularium.* To these testimonies, of laymens arbitrary detaining, disposing, or receiving of tythes in those elder ages, you may add ^p *Bernardus Morlanensis* (an *English* monk of *Clugny*, about king *Stephen*) his complaint of non-payment to the clergy; thus speaks he in his affected form of verses.

Rusticus hordea, mittit in horrea, farra recondit.

Horrea grandia, vasa capacia multaque condit,

Nec pecus aut sata dante Deo data vult decimare,

Nec sacra portio, nec decimatio redditur arae.

^f Apud Jan. Douzam. in annal. Holland. lib. 5.

1073. & Krantz, lib. 4. Wandaliae c. 37.

ib. p. 482. edit. Colonienſis.

extr. de dec. c. 17.

^l Krantz, Wandaliae, lib. 4. cap. 38. & 39.

^o Wandaliae, lib. 4. cap. 38.

^s Videſis Krantz, metropol. lib. 1. c. 2.

ⁱ 6. lib. tit. de dec. c. 2. §. Sane.

^k Innocent. III. epist. lib. 2. p. 447. & vide

^m Append. ad hist. Bremſenſ. p. 134.

ⁿ Vide

^p Ms. lib. 2. de contemptu mundi in biblioth. Cotton.

V. THE like liberty as lay-men had enjoyed (in not subjecting themselves to the payment of tythes, according to the laws of the church, but bestowing or retaining them at their own wills in most places, even from the beginning of christianity, until about the year M CC.) was another way purchased, for some time, by religious houses, so to discharge themselves of censure of the canons, and that by exemptions or papal privilege. For however the laity justified themselves by their secular right, admitting of canons that touched their estates, but as they saw cause in their own judgments; yet religious persons, who were always of the pontifical side, and reckoned in the catalogue of the clergy, and possessed divers large territories, durst not so oppose what was ordained either by decree at Rome, or in synods general or provincial. Therefore when from the beginning of this age, both doctrine and canons (of which more presently) had made the duty of tythes of a known right among the clergy; clergy-men became somewhat strict observers of the payment, as you see plainly in that before cited out of Godfrey, abbot of Vendosme, with whom Peter, abbot of Clugny agrees. And, altho' ^a canons be in Burchard, Ivo, and Gratian, referred to, I know not what antient council of Chalons or Mentz, whereby lands, occupied by bishops or abbots, seem to be discharged; according to which also, another decree is found in the Vatican, annexed to some councils of pope Urban the second; yet it seems by the authority of those abbots and other testimony, that they were not practised as church laws. But what some of the clergy durst not do for the canons, they had licence for by exemptions from the pope. And, beside those other canons; from ^b Paschal the second, about M C. there was granted to all religious persons, a special discharge from tythes; But it seems also, that this exemption soon took not force in execution, for it was made divers years before those two abbots wrote, and (if I understand them) expressly affirmed the common practice of the contrary. And in an instrument of composition betwixt the Templars ^c and Praemonstratenses, in the year M CXLII. one special article was, that, *nullus in utroque ordine, alter ab altero, tam de nutrimentis, quam de laboribus decimas exigit vel accipiet*. Whence some inference might be, that no clear exemption preceded (at least in force and practice) for both. But however, afterward, about M CL most of all the religious orders were ^d exempted, by pontifical privilege, from payment out of possessions kept in their own occupation, which pope Hadrian the fourth (about that time) restrained to the Cistercians, Templars, and Hospitalers, and decreed that all other religious orders should pay tythe of whatsoever increase they had in their own occupation, sa-

ving of ^e new improvements by culture, of pasture for their cattle, and of garden fruits. But neither were they by these exemptions freed from payment of tythes, which were taught due only by common right to the church. They were discharged also from such as had formerly been ^f consecrated out of their possessions, by their founders or benefactors, to other churches, over which also the pope challenged supreme authority in disposition of their revenues. But the laity would not permit such exemptions to extend to their infeodations. *Milites Galliarum*, says Peter of Blois, speaking of the Cistercians, *sibi jus decimationis usurpant, nec vestris privilegiis deferentes, eas a vobis potenter extorquent*. But, that of those three orders was afterward, in the year M CCXV. in the general council of Lateran, limited to such lands as they ^g had before that council purchased; Where observe by the way, that exemptions were then chiefly allowed to two orders, which are not properly to be reckoned amongst any part of the clergy, or ecclesiastick persons. For the Templars and Hospitalers were devout soldiers only, neither could ^h they justify their enjoying of tythes, either thro' exemption from the pope, or consecrations from the laity, by the reasons which other cloister monks used. Their prayers, or devotions in private, were not the services expected from them in the church, but their swords and valour only gave the desert; as at this day may be truly affirmed of the Hospitalers, or knights of S. John's of Jerusalem, which being now, as in those antient times they were, only soldiers of the church, have therefore been divers times lately ⁱ adjudged in the court of aides in Paris, to be no part of the clergy. But also, by the succeeding popes, other like privileges were granted to ^j bishops, abbots, and at their pleasure. But of the practice of these cccc years, thus much.

VI. OF the opinions left in the monuments of the clergy, both touching the right of tythes, and those practices, next briefly. Very frequent are the testimonies in the old councils of about the beginning of these cccc years, in which tythes are spoken of as due generally by God's ordinance: As, *decimas Deo dari omnino non negligatur, quas Deus sibi dari constituit, quia timendum est, ut quisquis Deo debitum suum auferat ei necessaria sua*, which occurs in the provincial council of Mentz, held in DCCCXII. and is iterated in some ^k other succeeding of the same province, and in the ^l capitularies. And it is ordinarily grounded upon the Levitical laws (which are obviously cited for the right of tythes in the very ^m syllables of Moses) but sometimes also on Abraham's and Jacob's examples, as in Walafrid Strabo, that lived about DCCCXL.

^a Videtis c. 16. q. 1. c. 46. & notas editioni Gregorianae adjectas.

teran. part. 13. cap. 16.

^b Chronic. ord. Praemonstrat.

nug. curialium, lib. 7. cap. 21. & append. ad concil. Lateran. part. 13. cap. 3. & 10. & part. 41. cap. 4.

^c de dec. c. 2. statuto, & Innocent. III. tom. 2. p. 410. edit. Colonienf.

eccles. Gallican. lib. 6. cap. 19.

^d Extr. de dec. c. 34. nuper abbates.

^e Le Bret advocat en la dicte cour, playdoie 27.

app. ad concil. Later. general. part. 13. cap. 2. & seqq.

Levit. lib. 5. cap. 9.

^f Extr. tit. de dec. c. novum genus, & app. concil. Lateran. part. 13. cap. 16.

^g Extr. de dec. c. 10. ex parte, vide Joann. Sarisburiens. de

^h Extr. de dec. c. 10. & part. 41. cap. 4.

ⁱ Videtis Alex. IV. in

^j Petr. Blesens. epist. 82. apud Bochell. in decret.

^k Videtis Joann. Sarisbur. de nugis curialium

^l Vide Innocent. III. tom. 2. pag. 139. & 410. &

^m Ut in concil. Mogunt. A. D. 846. & A. D. 887.

ⁿ Benedict.

^o Vide concil. Aquisgran. lib. 1. cap. 11. & seqq. tom. 3. edit. penult. Bin. pag. 586.

whose words are, *decimas Deo & sacerdotibus Dei dandas Abraham factis, Jacob promissis insinuat, deinde lex statuit & omnes doctores sancti commemorant*; the self same being^f referred also to one of the councils of *Mentz* of those times. And *res^g dominicae* and *dominica^h substantia* and *Deiⁱ census*, and the like are the attributes given to tythes, by the antients of this age, which also they stile^k *patrimonia pauperum*, and *tributa egentium animarum*, and *stipendia pauperum, hospitum, peregrinorum*; whence also the clergy was not to use them *quasi suis sed quasi commendatis*, as the words are of the council of *Nantz*, held about the former part of these cccc. years. And pope *Alexander III.* in an epistle to^l the archbishop of *Rheims*, says, *non ab hominibus sed ab ipso Deo sunt institutae*. And in another to the bishop of *Amiens*, he calls them *sanctuarium*. And *Coelestin^m III.* *fidelis homo de omnibus quae licite potest acquirere, decimas erogare tenetur*. After him, *Innocent III.* *decimas Deus in signum universalis domini sibi reddi praecepit suas esse decimas & primitias asseverans*. And his general council ofⁿ *Lateran* agrees with him. And it appears that *S. Ulrich* bishop of *Ausburg* about the year *cccc. l.* in his visitations had especially this article of inquiry; *si decimas recte darent*; which shews his opinion that they were generally due. With these take the authority of the poenitentials exercised by the clergy in that age, by which, strict examination was to be made at shrifts, whether the penitent had paid all kind of tythes, in these words. *Hast thou at any time neglected to pay thy tenths to God, which God himself hath ordained to be given him? Or if thou hast done so or consented to the defrauding of the church therein, first restore to God four fold; and then must thou suffer penance with bread and water only, for twenty days.* So it is delivered in *p Burchard* bishop of *Wormes*, that collected the canons about the year *m.* Neither was any difference in the nature of the increase by the common opinion of this time. The tenth of^q all, as well of all kind of personal as predial, was taught due. Neither find I any man in this age that by doctrine expressly opposed any of this, saving only that *French Leutardus*, who about the year *m.* held the payment of them unnecessary. *Decimas^r dare, dicebat omnimodis esse superfluum & inane*. But also other opinions he had, that being against the usual doctrine of the church, gave him the name of heretick, which he kept till his miserable death. This may suffice for the express testimonies of opinion of this cccc. years touching the general right of tythes. But although this opinion be so frequently delivered in such terms as may denote the tenth due by God's law, that is, as it should at first sight seem, by the divine

moral law, or the divine natural law, which should bind all men and ever, and are to this purpose both one, yet it is plain, by so much of the practice of the laity as the clergy commonly allowed of, and by the general opinion of the time, that the persons held capable of them, were not only the labouring priesthood or ministering clergy. The disposition of them in perpetual right to monks, nuns, the poor in hospitals, to religious orders of knights, and that out of one province or kingdom whatsoever into any other, in this time was allowed clearly in practice; and according to that practice they were enjoyed. And the clergy also generally agreed, that, by their canonical form of conveyance, tythes might be given (although some ancient^t canons were for parochial right) to any church, to monasteries, hospitals, relief of poor or sick; that is, as^u *Ivo* bishop of *Chartres*, being a great canonist about *mc. xxx.* in his justifying the right of tythes, expresses it; *decimas & fidelium oblationes ecclesia* (so you must read, and so is his^v ms. copy) *lege caritatis communicare potest non tantum monasteriis sed etiam xenodochiis, infirmis & peregrinis*. For, saith he, *licet decimae & oblationes principaliter clericali debeantur militiae, potest tamen ecclesia omne quod habet cum omnibus pauperibus habere commune*. But this might not be done, as they would have it, by the lay owner only. For he well adds, that nevertheless no monastery might, by the^x canons, lawfully receive a conveyance of tythes, *ab illis ad quos non pertinet, id est, a laicis*. Yet you see clearly that monasteries and other churches did receive them from laymen, and continually enjoyed them. So that the chiefest difference betwixt the laity and clergy herein came to be, who should dispose or convey the tenths according as they varied also about investitures, not what persons (saving in the use of infeodations) might have a perpetual right in them. And in that difference the clergy yielded so frequently in receiving, allowing and confirming arbitrary conveyances, as is before shewed, of tythes, no otherwise than as of houses or glebe, to monks, nuns, or churches far distant; that if they held them due to the labouring and parochial minister, were he bishop or other, by the divine moral law, they did in this no less than commit against their own consciences, and exercise a kind of continual and fearful sacrilege. And indeed it appears that it was expressly held against the divine law, to convey tythes to any other church than where the owner used most commonly to receive his soul's food. For the clergy in a petition to the emperor *Lewis II.* in the council of *Pavia* in *cccc. lv.* confidently affirmed that it was generally taken, that such a conveyance to another church *pro libitu* was as well *divinae^y legi*, as *sacris canonibus contrarium*. But then clearly

^f C. 16. q. 7. c. 6.

^g Levit. lib. 7. cap. 152.

^h Concil. Ticin. quod Regaticinum dicitur, sub Leon. IV.

ⁱ Agrippia.

apud Burclard. lib. 3. cap. 135.

^k Aquilgran. sub Steph. V. c. 116. extr. de dec. c. 26. Nanneren. syn. c. 10.

^l Extr.

de dec. c. 14. & 15.

^m Eod. c. 23. ex transmissa & c. 26 tua nobis.

ⁿ Cap. 54. & extr. de dec. c. 33. cum non sit.

^o Beruo abbas in vita S. Udalrici cap. 10.

^p Lib. 19. de poenitentia, & in poenitential. Roman. tit. 8. cap. 17. idem habetur.

^q Leo IV. in c. 16.

^r Coelest. III. extr. de dec. c. 22. non est. & 23. ex transmissa.

^s Rodolphus Glaber. hist. 2. c. 11.

^t Leo IV. in c. 16.

^u c. 1. c. 45. & c.

^v Epist. 207. astipulator. c. 16. q. 1. c. 68. qui canon falso ad D. Hieronymum refertur.

^w concil. Clarimont. An.

^x Do. 1095. c. 1. q. 3. c. 4. & c. 16. q. 7. c. 2.

^y In bibliothec. Cottoniana; ubi codex editus habet *ecclesiastica*.

^z Urban.

^{aa} II. c. 16. q. 7. c. 39.

^{bb} C. 16. q. 1. c. 56.

also, the chiefest practice of these cccc. years was herein contrary to the divine law; A strange imputation to lay on the time, if at least divine law there, and *Deus praecepit*, and *Deus constituit*, and the like in their other passages for tythes, denoted the divine moral law. But if you so understand it, how could that *lex caritatis*, that *Ivo* speaks of, so dispense with it? And with what colour could the church so frequently practise against it, or pretend arbitrary consecrations to be so meritorious? But for an interpretation of their meaning, by shewing how others conceive that *lex divina* here, look in the next cccc. years. As for exemptions; some complaints were made against them by such as lost by them; as you may² see by the monks of *Clugny*, complaining against the *Cistercians*, and by *Peter of Blois*. But out of them also may be collected, that the general opinion of the age was not, that they were due by the divine moral law. Was *Rome*, in those antient times, so bold to grant so many dispensations expressly against the divine moral law? Yet also *John*^a bishop of *Chartres*, in those times, found much fault with the exemptions given to religious persons. *Miror*, saith he, *ut fidelium pace loquar, quodnam sit quod decimas & jura aliena usurpare non erubescunt. Iniquum forte religiosi sumus. Plane decimas solvere religionis pars est*. And more to this purpose you may find in him, where he tells you, that these exemptions did *derogare constitutioni divinae*. But the clergy generally was much against the use of infeodations of tythes and churches into lay hands, although it were practised by some bishops and religious houses; who committed strangely, if they were also of opinion, that the right of tythes was due to the priesthood immediately from the moral law. *Quid est enim*, saith *Peter*^b *Damian*, *decimas in usum saecularium vertere, nisi mortiferum eis virus, quo pereant, exhibere? Hinc accidit quod & plebeianis justa detur occasio, ut matricibus suis ecclesiis obedientiam subtrahant, ut non eis legitima decimarum persolvant*. And *Alexander III.* directed the bishop of *Amiens* to^c decree, that a gift of a tythe by an abbot into a lay hand, was void, *quoniam sanctuarium de jure haereditario possideri non debet*. But these are only against conveyances of tythes already consecrated to churches, and so hallowed. But, such as were by their first creation infeodated to laymen, can no more be accounted, in their own nature, differing from other temporal and lay possessions, than rents charge, estovers, the tenth sheaf, or the like at this day granted in fee by one lay man to another. Neither indeed was the churches right, whatever it were, to her tythes properly diminished by such grants. For, if at this day the owner grant the tenth sheaf of lands tytheable, to a lay man, may not the grant be good, as a charge out of the land?

And yet the church there hath her right as before. But the truth, it seems, was, that in those elder times, lay men that had created a tenth into lay hands, rarely, or not at all, paid any to the church; and those infeodations, once made gave them greater pretence of withholding what the church demanded; as if it had been enough to say, they must not, could not, pay two tenths out of their land; and that if a tenth were once created to any man, nothing else might be exacted under the like name. The same may be thought on in consecrations to monasteries. For if tythes had been held generally due and paid parochially, as now, then clearly, although a layman had granted a tenth to another church or monastery, what other soever had been due parochially, had^d notwithstanding the grant, still remained payable to the parson. How could it have been otherwise? And so no small number of doubly paid tythes had remained at this day.

VII. The laws made in this time for payment of tythes, were imperial, provincial, and pontifical. The first of the imperial, was made by *Charles* the great, in a general assembly of estates, both spiritual and temporal, under him, in the xth year of his reign over *France* and *Germany*, and in the year of our Saviour, DCC.LXXVIII. It was there ordained, *ut unusquisque suam decimam donet: atque per jurisdictionem episcopi sui (or pontificis, as some copies are) dispensetur*. Which law indeed, with divers others, for true payment of tythes, were generally made by him before his empire, which began not till the year DCCC. yet because this was in the same terms received into those capitularies collected by *Benedictus Levita*, as from him being emperor, it may well enough be titled imperial, and it is the first to this purpose extant, which can be at all stiled general, and was ordained by both powers, secular and spiritual, to any whole state; unless you will believe, that in *Scotland* a law was established by king *Congallus* and his clergy, about D.LXX. after *Christ*, for the general payment of tythes there, according as^e *Hector Boetius* hath related. *Congallus*, indeed, is by others affirmed to have been very careful for the clergies maintenance. But it will, I think, fall out to be too bold an assertion of that feigning *Hector*, who often, as it were, makes laws for the *Scotish* kings, that he may relate them; or else he was deceived by them from whom he took it. No good authority can justify such particulars of that age there; neither is it to be received otherwise than as fabulous, and proceeding out of that common mistaking of antient passages of church revenues, and confident, but ignorant, application of them to tythes. But from that law of *Charles* the great was that exaction of tythes, spoken of before by *Alcum*; and thence are tythes, in *Anse-*

^a Pet. Cluniae, lib. 1. epist. 33. ad Innocent. II. & Petrus Blef. epist. 82. apud Bochel. eccles. Gall. decret. lib. 6. cap. 19.

^b Pet. Cluniae, lib. 7. cap. 21.

^c Extr. de dec. c. 15. ad haec. & vide app ad concil. Lateran. part. 4. cap. 1.

^d Vide, si placet, 44 Ed. III. fol. 5. & 44 assis. pl. 26.

^e Constit. Karoli edit. a Vito Amerbachio, cap. 7. leg. Longobard. lib. 3. tit. 3. cap. 1. capitular. lib. 5. cap. 123.

^f Hist. Scotorum, lib. 9. caute de Congallo Buchananus, lib. 5. Sacerdotes, inquit, praedictis aliisque praesentibus dicitur. 70 decimis adjecte vir doctissimus non ausus est.

gisus his collection of his imperials, so frequently mentioned, as of known right; and hence also had the title of the *German* bishops, before spoken of, its original. Those capitularies, both of *Ansegisus* and *Levita*, were collected by them about the year D.CCC.XL. in both of which, frequent constitutions are for tythes, and for the ^s parochial right also of them. Yet with them also take the constitutions of *Charles* the great, about the same time collected, but published by *Vitus Amerbachius* in the year M.D.XLV. as also others occurring in the collection of *Melchior Goldastus*. These, together with the laws of the *Lombards*, have very many constitutions of about the beginning of these cccc. years for this purpose; and one only shall suffice to be here transcribed. *De decimis^h quas populus dare non vult, nisi quolibet modo ab eo redimantur; ab episcopis prohibendum est ne fiat; & si quis contemtor inventus fuerit, si noster homo fuerit, ad praesentiam nostram venire compellatur, caeteri vero distringantur ut inviti ecclesiae restituant quae voluntarie dare neglexerunt.* This was made either by *Charles*, or *Lewis I.* but it is falsely referred to the emperor *Lothar*, in the laws of the *Lombards*. It was provided, you see, against such as would not give their tythes, unless they were purchased of them for valuable consideration. But the effect that these laws had, was short; the laity soon disobeying such commands as diminished their revenues. And it enough appears in the story of about the yearⁱ D.CCC.XLV. that little or no practice was of any of those laws of the capitularies, in behalf of the clergy; nothing being more frequent, than not only the denying them what they would have had, but also the taking from them what they otherwise possessed. Nor could they have sufficient remedy for it, either in the council of *Meaux*, where, under *Lothar I.* they humbly sought it, or long afterward, as is manifest in the monuments of the succeeding ages. But by the way, whereas some, both strangers, and of our own countrymen, out of the joint mention of *nona* and *decima* in those imperial capitularies of *Charles* and *Lewis I.* fetch an example of a ninth paid to the church as well as a tenth, and bring it as a character of the times devotion; as if the tenth had not then been thought enough, unless a ninth also, like a second tenth, had been offered; it is a ridiculous error, and proceeds from gross ignorance of the common laws, story, councils, and use of that age. The ninth and tenth there spoken of, were only the rent due from the tenants of church lands by the ordinary reservation of the tenth, as of what was held, by many, of itself, due to the clergy, and of the ninth, as of the rent or consideration to be given to them as to lessors for the received profits. So will it plainly appear in a multitude of old^k authori-

ties, to which I refer you. Neither was the ninth here thought due otherwise, than as among the ancient *Bavarians*, the tenth only from occupiers of church lands. The tenth of the profits was all that their laws^l appointed to be paid for rent to the church by lessees. But also very many provincial constitutions were made for the true payment of tythes about the beginning of these cccc. years, as in the council of *Mentz* in the year D.CCC.XIII. *Admonemus atque praecipimus ut decimas Deo omnino dari non negligantur.* Which words were received also into the imperials, and with them agree divers councils, held about the same time; as the council of *Rheims*; the fourth of *Arles*; the second of *Chalons*, and many other following. And in *Scotland* (if we may believe the^m author, for though he speak very good language, yet he is of no such sound credit) about the year DCCC.XL. king *Gregory* in his laws for church liberties ordained that the spiritual court only should have cognizance of tythes; which had been perhaps all one as to have established them to be generally due. For by the opinion of that court, it is likely they would then also have been judged so. And also among the ordinancesⁿ of king *Macbeth* about the year M.LX. the same author puts one in these words, *Decimam partem terrae nascentium pastoribus ecclesiarum libere conferto*: Many more of like nature are where we speak severally of the *English* constitutions. For pontifical decrees; publick monuments, I think, have none in express terms of command (except you look back to that^o feigned one of pope *Damasus*) antienter than that attributed to^p pope *Nicholas II.* *Praecipimus, says he, ut decimae & primitiae seu oblationes vivorum & mortuorum ecclesiis Dei fideliter reddantur a laicis, & ut in dispositione episcoporum sint; quas qui retinuerint a sanctae ecclesiae communione separentur.* The self same words* are also under the name of his next successor *Alexander II.* That of pope † *Leo IV.* about the year DCCC.L. *De decimis. Justo ordine non tantum nobis sed etiam majoribus nostris visum est, plebibus tantum, ubi sacrosancta baptismata dantur, debere dari, may be reckoned for a canon for the right of tythes, if you will. But it seems rather it was at first a declaration of an opinion than a constitution. But both the other and that, with divers passages also out of *S. Augustine*, *S. Ambrose*, and others, and those old provincial councils, that make for the general right of tythes, were confirmed for general canon law in *Gratian's* ‡ *concordia discordantium canonum*, by pope *Eugenius III.* in the year M.C.LI. or presently after; For however some canonists ignorantly otherwise place the collection of that first part of the body of the canon law; it is most plain that it was in that year collected by him; which is best justi-*

^h Ansegis. capitular. lib. 1. c. 155. &c.

^h Benedict. Levit. lib. 5. cap. 46.

ⁱ Vide Baronium tom. 10. An. Do. 845.

& 846. Flodoard. hist. Rhem. eccles. lib. 3. Johan. PP. VIII. epist. 121. 243. 245. 262. 293.

^k Ansegis. lib. 1. cap. 163. lib. 2.

cap. 2. Levit. lib. 5. cap. 145. Concil. Turon. 3. cap. 46. Meldenf. An. Do. 845. cap. 62. Flodoard. hist. Rhem. eccles. lib. 3. cap. 4. vide & Goldast. constit. imp. tom. 3. pag. 648. & quae adjecta sunt c. 16. q. 1. c. 59. edit. Greg.

cap. 4. vide & Goldast. constit. imp. tom. 3. pag. 648. & quae adjecta sunt c. 16. q. 1. c. 59. edit. Greg.

^l Leg. Bajuvariorum tit. 1. cap. 14. de colonis & servis ecclesiae.

^m Hecctor. Boet. hist. Scot. lib. 10.

^o Sup. cap. 5.

^p A. D. 1059. in synod. Rom. &c. 16. q. 2. c. 3.

^q Dist. 32. c. 6. praeter. § deinde.

ⁿ Idem. lib. 12.

q 1. c. 45.

‡ C. 13. q. 1. & c. 16. q. 1. c. 41. & seqq. & c. 16. q. 7. passim.

fied by a most ancient copy of it written before the *paleae* were inserted, and remaining in the *Vatican*, with this ^a inscription: *Decretum Gratiani monachi sancti Foelicii Bononiensis ordinis sancti Benedicti compilatum in dicto monasterio anno Domini millesimo centesimo quinquagesimo primo, tempore Eugenii papae tertii*. Enough other testimony is of it. And in the council of *Cleremont* held in M.XCV, by pope *Urban* the second it was decreed, *ne laici decimam partem de laboribus suis retineant*. Some other passages of popes are about that time against the selling of tythes, which they call *simony*. And in C. 16. q. 7. c. 1. after the passage of *Gregory* the seventh, before cited out of his council of *Rome* against feudal tythes, these words follow, as if he had continued them; *Oportet autem congruentius nos decimas & primitias, quas jure sacerdotum esse sancimus, ab omni populo accipere, &c.* which comprehend in them a constitution. But neither these or any of the rest that follow there, are in that council of *Gregory*, neither find I whence *Gratian* had them. But an epistle ^r of that *Gregory* is extant, wherein among other admonitions to some princes of *Spain* (after such time as the profession of christianity there, was purged of some *Gothick* corruption, by a ^t council held under *Richard* abbot of *Marseilles*, the pope's legate in M.LXXVI, so I understand that reference made, in the epistle, to a kind of new conversion to the faith) he persuades them, *decimas, quae ad usum tam ipsorum quam ecclesiarum & pauperum proficiant, dare, totique regno indicere. Quod quidem nulli debet grave videri, pro meliori parte, videlicet semper vitura anima, quemque decimam Deo offerre, cum pro morituro corpore plurimae gentes conjugibus suis tertiam rerum legibus compellantur exsolvere*. He admonishes, you see, and persuades, but commands not. He thought not, it seems, his own power great enough to have had effect in disposition of a tenth part of every man's revenue, and therefore abstained from command. Neither could he have pretended the authority of any law or canon, generally received into practice; For neither in his time, nor long after, till about MCC, were tythes so generally paid, as since, without special grant or consecration, as is sufficiently shewed; neither had any general council as yet once remembered the duty, or the name of tenths. The first general council that mentions them, is the ninth, that is, that of *Lateran*, held under *Calixtus* the second, about M.C.XIX, extant in the *Vatican*, and first published in the late edition of the *Greek* general councils printed at *Rome* by authority of the present pope *Paul* the fifth, and now newly inserted into *Binius* his last ^r edition. But they are there spoken of only, as they were received by special consecrations. And in the general council of *Lateran*, held in M.C.XXX, under *Innocent* the second, feudal tythes are in

the same syllables mentioned, as in the decree of *Gregory* the seventh, before cited out of the council of *Rome*. And this also, taken out of the *Vatican*, is to be found only in those two late and fullest editions. But of the general councils, before that edition at *Rome*, ordinarily known and read, the first that names tythes, is the eleventh, that was held under *Alexander* the third, in M.C.LXXX. But there infodations of them into lay hands, and consecrations or arbitrary conveyances of them to ^u religious houses, without assent of the bishop, are only forbidden. Neither was any canon of a general council as yet found, that purposely commanded payment of them; nor any that expressly supposed them a duty of common right, before that ^{*} of *Lateran* in the year M.CC.XV. held under pope *Innocent* the third, about which time, ecclesiastical authority became more powerful, the canons were more received into practice (that before were little, especially herein, obeyed) and parochial right to tythes grew to be more established; whereof, more in the next and last part of our general division, and in the *English* practice. But if that canon in the *Lateran* council, held under *Alexander* the third, against arbitrary consecrations of tythes without assent of the bishop, might be understood literally, and of new tythes so created (neither is any thing in the council that denies that to be the meaning of it) then needed we not perhaps seek further for the cause of that assertion amongst our common lawyers, *That, before the council of Lateran, every man might have given his tythes to what church he would*. Whoever observes the practice of the preceding time only, and the words both of that council, and, to the same purpose, of the other held under *Calixtus* the second, may well enough be persuaded, that the intent of those canons was no otherwise. But in regard we find that canon of *Lateran*, under *Alexander* the third, to be differently interpreted by *Innocent* the third, within twenty or thirty years after the making of it, and understood only of feudal tythes formerly granted out from the church into lay hands (according as the canonists after him also take it) we cannot be altogether so secure of that other interpretation. In *Lateranensi concilio* (saith ^v *Innocent*, meaning that under *Alexander* the third) *est inhibitum ne quaelibet religiosa persona ecclesias & decimas de manibus laicorum, sine consensu episcoporum recipiat; per quod indirecte datur intelligi quod sufficit consensus episcopi, ut licitum ecclesiae sit decimas de manibus recipere laicorum. Hoc autem de illis decimis intelligimus quae laicis in feudum perpetuo sunt concessae*. But we must take it upon his word only, and the credit of the following canonists, that the canon was so to be understood. They may, as they will, understand it by judicial application; but you may at least doubt still, that the historical understanding of it, is to

^a Vide prolegom. ad corpus juris canonici auspiciis Gregorii XIII. editum, & abbatem Urspergensium.
epist. 14.
& in extra. tit. de dec. c. 33. cum non sit. & vide caput prox. §. 1. apostolica.

^r Vide Marianam de reb. Hist. lib. 9. cap. 11.

^t A. D. 1618.

^u Vide infra, c. 7. §. 1.

^v Regest. lib. 9.

^{*} Cap. 53.

^y Extra. de his quae f. a. praes. sine assensu, capitulo c. 7. cum

be had out of arbitrary consecrations before practised. And it was even equal to ordain, that laymen should not arbitrarily consecrate, and that they should not consecrate without assent of the bishop; every bishop, I think, being supposed a careful observer of the former canons, which would have induced parochial right to tythes, and general payment. So that what in this kind might not be done without his assent, was conceived as likely to be never done to the church's prejudice. Let every able reader judge here; but let him not be much swayed with the rabble of late canonists, that go away clear with this of pope *Innocent*. When the pope had said so, they made no scruple of the truth of it; and one takes it, as their fashion is, from another with too much easy credulity. But although this be not sufficient ground for that assertion of our common lawyers (which clearly, being rightly apprehended, is true; though lazy ignorance cry against it, even to hoarseness) yet enough other will be found, whereof more toward the end of the tenth chapter.

Of the time from M.CC. or near thereabouts, till this day.

C H A P. VII.

- I. *The canons of general councils, and decretals, for parochial right in tythes, not formerly otherwise conveyed, which now became more established.*
- II. *The opinion of the canonists, in the question of what immediate law tythes are due by, is, that they are payable jure divino.*
- III. *How the same question is determined by the opinion of the schoolmen.*
- IV. *Of those that held them meer alms.*
- V. *The opinion in divinity, that concludes them due jure divino. With a determination of the University of Oxford touching personal tythes.*
- VI. *Laws, customs, and practice of France, in exaction of them. Of their feudal tythes at this day.*
- VII. *Laws, customs, and practice in Spain, touching the general payment of tythes. Tythes there, in laymens hands.*
- VIII. *Customs and infeodations in Italy. Payment in Venice; in Germany. Of the Hungarians, Polanders, Swedes, and others, touching the duty and possession of tythes.*
- IX. *Of tythes in Scotland. With an example of an appropriation of churches and tythes*

there, by Robert de Bruce. And something of tythes in Ireland.

IN these following times, the canon law grew to be of more force, and parochial right (through the decrees made against that former course of arbitrary conveyances, and from the passages of canon law, that supposed the general right of tythes) became to be more established. But the opinions of canonists and divines have been and are much different in the question, upon what law the general right of them is immediately grounded. But by the practice of the common laws, for so much as I have read, of all christian states, they are subject to customs, and that sometimes as well in non-payment as in payment of a less part. And infeodations of them into lay hands, yet continue in *France, Spain, Germany*, and elsewhere. And of customs only and infeodations we shall principally speak in the practice of this time. For, whatever might here otherwise be remembered touching compositions, exemptions, or such like, is but a mere consequent of those customs, and of the opinion that makes them due only by positive, human, or ecclesiastical law.

I. IT is sufficiently manifested in the practice of the former cccc years, that the laity did usually convey their tythes by consecrations and appropriations to what church they would, and by infeodations to laymen. Their infeodations were forbidden by the² general council of *Lateran*, in M.C.LXXX, whence that most known canon *prohibemus*, before cited, was taken into the body of *Gregory's* decretals, and hath ever since been, and still is, in authority, and that also in the secular laws of *France* especially. It was in the same council ordained, that no religious orders should receive any appropriations or consecrations of churches or tythes, without assent of the bishop. *Ecclesias & decimas*, are the words, *de manu laicorum, sine consensu episcoporum tam illos* (that is, *Templars* and *Hospitalers*, against whom the provision was chiefly made) *quam quoscunque alios religiosos recipere prohibemus*. This was confirmed in the general council of *Lateran*, held under *Innocent* the third, in the year M.CC.XV. And a canon of the general council of *Lateran* held under *Calixtus* II. in the year M.C.XIX, (wherein parochial ministers were also forbidden to receive tythes, or churches, from the hands of laymen, by investiture especially, *absque consensu & voluntate episcopi*) was afterward, in divers epistles of pope *Alexander* the third, received² and confirmed. And although many decrees were before against those conveyances, yet till these general councils, under *Alexander* and *Innocent*, neither was the authority of the church so powerful, neither were the epistles sent from *Rome* so frequent, to put that in execution, which had been there established against that challenged right of the laity. But by

² Videfis, cap. 14. & 9. edit. Romana & extr. de dec. c. 19. & de preb. & dig. cap. 31. in Lateranensi tit. de jure patron. c. 17. nullus & de hiis quae sunt a pael. c. 7. cum apostolica.

² Extr. de jure patr. c. 10, 11, 21. & de instit. c. 3. ex frequentibus & ap-

pend. concil. Lateran. part. 15, cap. 18.

this time, when the arbitrary disposition of the owner was thus provided against (reference being made to the bishop's assent, that was bound to square all things by the ^b canons, which would have tythes paid parochially, and became to be much more obeyed than before) it grew frequent, to have decretal epistles sent from *Rome* into every province, both to ratify the former consecrations and appropriations, (which the popes ^c began also, at pleasure, to declare sometimes void, if made by laymen alone) and also to exact parochial payments of other tythes, not canonically conveyed out of the parish: And the reason sometimes was added; that is, ^d *perceptio decimarum ad parochiales ecclesias de jure communipertinet*; And the general council ^e of M.CC.XV. had taken it clear, and so expressed it, that *in signum universalis domini quasi quodam titulo speciali sibi Dominus decimas reservaverat*: And after a few words, the canon is concluded with *decimare cogantur ecclesiis, quibus de jure debentur*. And the action for parochial tythes in those times, as now, is called ^f *jure communi fundata intentio*; that is, by common right, tythes predial and mixed were due to the rector of the parish (were he bishop or priest) if they were not otherwise, by especial title, enjoyed by some other church, or discharged by canonical exemption. But how little this common right had before been practised, appears not only in what is already declared, of the use of the former time, and in the doubts made by *Gratian* in the decree, and pope *Lucius* the third, *Alexander* the third, and others, in their epistles touching it; but also in other occurrences of somewhat before the beginning of these cccc years; amongst which you shall find, that both the religious and secular of the clergy would usually take covenants from their tenants, to pay them the tythes, and so prevent the parson of the parish where the land lay. If parochial right had then been common, how could such a covenant have prevented the parson? That practice is both related and remedied in the ^g general council of *Lateran*, of M.CC.XV. and an example of it in the archbishoprick of *Matera* is remaining among the decretals ^h of *Innocent* the third; where also it appears, that the archbishop had complained to the pope, that the land-occupiers in his diocese used to divide their tythes at their pleasure, and arbitrarily give part to the church, part to the poor, part to their kindred, for which he had remedy by pontifical decree. Hereto you may add that of an old council of ⁱ *Tribur*, in ccccxcv. *Ubi quis decimas persolvebat vivus ibi sepelitur & mortuus*. As if every man, by the choice of the place of his devotion in paying his tythes, might make it his parish. And when *Alexander* the third, about the year M.C.LXXX, was to answer the doubt touching parochial right of predial tythes (that is, whether they were due *intuitu territo-*

rii, in regard of the limits within which they grew, or *obtentu personarum*, by reason of the person, and so to be paid to the church where-soever the owner for the most part received the sacrament and heard divine service) he knew not how to determine it; and withal acknowledged, that although it had been often moved, it was never resolved. *Sane*, saith ^k he, *cum hujusmodi quaestio temporibus praedecessorum nostrorum mota fuerit, non determinata, aliis intuitu territorii, aliis personarum obtentu decimas asserentibus debere persolvi, non est nobis facile certum tibi dicere*: which are the words of that epistle; a part whereof is in *Gregory's* ^l decretals. So, that although by the canons they would have had an universal payment of tythes, and although some much antienter authority ^m be in that law for parochial payment; yet they had long before, and about the beginning of this last cccc years, so much controversy touching parochial right, that even thence alone you may see, it was not so much as, in opinion, established. Enough more like examples are of that time. And you may observe, that where pope *Alexander* doth by decretal command a parochial payment in the case of the monks of ⁿ *Boxley* (for so you must read in *Gregory*, not *Bosse*, as it is in the most polite edition) yet his ground is from a use of parochial payment in that particular; without which, he had been as uncertain there, as he and others are in epistles of that time. But so far also was the former course of arbitrary consecrations now withstood, that not only the lay owner might not of himself consecrate the right of his tythes at will, but also, although the bishops assent had joined with his in conveying any tythes (except only such as were infeodated to him before the council of *Lateran* of M.C.LXXX,) the conveyance had been declared void; and to that purpose only, of passing feudal tythes out of lay hands to the church, was the bishops assent ^o decreed to be sufficient. But however, through those oecumenical and pontifical decrees, a more certainty of parochial right was now begun; And though those old canonists also, pope *Innocent* the fourth, cardinal *Hosienfis*, and some others, about the year M.CC.LX, writing on the decretals, took parochial right as a thing clearly established in law; yet it is reported, by some antients of good credit, that sufficient remedy was not fully provided against that practice of the former course of arbitrary dispositions of tythes, till the general council of *Lions*, held under pope *Gregory* the tenth, in the year M.CC.LXXIV. In which, they say, it was constituted, *ut nulli hominum deinceps liceat decimas suas ad libitum, ut antea, ubi vellet assignare, sed matri ecclesiae omnes decimas persolverent*. So *Randal Higden* the monk of *Chester*, *Henry* ^p *Knigh-ton* abbot of *Leicester*, and *Thomas* of *Walsingham*,

^b C. 16. q. 1. c. 45. & 56.

contingat.

^c Ibid. c. 33. cum non sit.

^d Ibid. c. 31. dudum adversus.

^e Ibid. c. 31. dudum adversus.

^f Ibid. c. 31. dudum adversus.

^g Ibid. c. 31. dudum adversus.

^h Ibid. c. 31. dudum adversus.

ⁱ Ibid. c. 31. dudum adversus.

^j Ibid. c. 31. dudum adversus.

^k Ibid. c. 31. dudum adversus.

^l Ibid. c. 31. dudum adversus.

^m Ibid. c. 31. dudum adversus.

ⁿ Ibid. c. 31. dudum adversus.

^o Ibid. c. 31. dudum adversus.

^e Vide Innocent. III. in extr. de his quae f. a prael. c. 7.

^f Ibid. c. 31. dudum adversus.

^g Ibid. c. 31. dudum adversus.

^h Ibid. c. 31. dudum adversus.

ⁱ Ibid. c. 31. dudum adversus.

^j Ibid. c. 31. dudum adversus.

^k Ibid. c. 31. dudum adversus.

^l Ibid. c. 31. dudum adversus.

^m Ibid. c. 31. dudum adversus.

ⁿ Ibid. c. 31. dudum adversus.

^o Ibid. c. 31. dudum adversus.

^p Ibid. c. 31. dudum adversus.

^q Ibid. c. 31. dudum adversus.

^r Ibid. c. 31. dudum adversus.

^d Extr. de dec. in c. 29. cum

^e C. 56. & extr. de pactis. c. 17.

^f C. 13.

^g De decimis c.

^h De decimis c.

ⁱ De decimis c.

^j De decimis c.

^k De decimis c.

^l De decimis c.

^m De decimis c.

ⁿ De decimis c.

^o De decimis c.

^p De decimis c.

^q De decimis c.

a monk of *S. Albans*, tell us ; and all three of them lived but about c. years from the time of that council, and might so perhaps, have had for it some antienter authority from some now lost monuments. And upon this, doubtless, was that assertion corruptly related in the printed examination of *W. Thorp*, before *Arundel* archbishop under *Henry IV.* where he answers, *That one pope* ^a *Gregory X. ordained new tythes first to be given to priests now in the new law.* But the body of that council (which was first published only in the late edition of the general councils at *Rome*, and is now also in the last edition of *Binius*) hath no such matter in it. One canon is there, especially against alienation of revenues of the church by clergymen, and another, against usurpation ^t of them by lay patrons in time of vacancy ; but neither out of them, or the rest, can you extract what those monks have related. But although they might err in the relation of the canon, yet, doubtless, they had some special memory, that parochial right to tythes had been but of late years, and sometime after *M.CC.* received into the more known and practised law ; although the doctors so confidently before talk of it. For we must not doubt, but that those elder canons, notwithstanding their great authority, were by most different degrees of time received into use, and in some places, not till long after *M.CC.* As we see particularly in that of the practice in the diocese of *Palentia*, till *M.CCC.XXII.* which was, that every man, wheresoever he dwelt, yet might declare himself to be of what parish he would, and to that parish only give his tythes : Which was remedied by a council then held at *Villadolid*, under *William* bishop of *Sabina*, the pope's legate ; where he begins with, *parochiarum divisio a sanctis patribus instituta certitudinem parochianorum & decimarum debitam solutionem inducit.* For indeed, parochial payment regularly was now grown, by the canons gaining force, to be the only *debita solutio.* The next authority of a general council for parochial right (after that of *Lateran* ; wherein yet nothing directly constitutes it, but rather it is supposed, as of former time) is the condemnation, in the council of *Constance*, of *Wickliff's* assertion, That tythes were mere alms, and that parishioners might, *ad libitum suum*, as his position was, *eas auferre propter peccata suorum praelatorum.* And since that, in the general council of *Trent* ^c under *Pius IV.* about *MD.LX.* this canon was published. *Non sunt ferendi qui variis artibus decimas, ecclesiis obvenientes, subtrahere moliantur, aut qui ab aliis solvendas temere occupant & in rem suam vertunt, cum decimarum solutio debita sit Deo. Et qui eas dare noluerint aut dantes impediunt, res alienas invadunt. Praecipit igitur sancta synodus omnibus cujuscunque gradus & conditionis sint, ad quos decimarum solutio spectat, ut eas (ad quas de jure tenentur) in posterum cathedrali aut quibuscunque aliis*

ecclesiis, vel personis quibus legitime debentur integre persolvant. Qui vero eas aut substrahunt, aut impediunt, excommunicantur ; nec ab hoc crimine, nisi plena restitutione secuta, absolvantur. For popes decretals of this time, I refer you further to the laws made or received in *England.*

II. In the opinions that have been since the beginning of these *cccc.* years, touching tythes ; the chiefest to be observed here, are those which determine, by what immediate law tythes are payable. For however, very many other questions about the duty of them, are usually disputed, yet resolve but this, one way or the other, and most of the rest that follow, about customs, appropriations, exemptions, and such more, will soon have little doubt. This point hath been controverted both betwixt canonists and divines, and between divines and others of their own profession. The canonists, except very few, with one consent grounding themselves upon the letter of some of those passages of provincial councils, of fathers, and of popes, before remembered, generally deliver, that predial and mixt tythes, are due to be paid *jure divino*, which is commonly taken for the divine moral law, and they usually cite also the *Levitical* precepts, to justify it. Yet do they allow the right of former tythes, canonically settled by consecrations, appropriations, and exemptions also for the most part. For to those they require pontifical confirmations, or a supply of them, by such prescription of time, as may suppose them. For they take this ecclesiastick revenue to be no otherwise due to the clergy by common right, but that the pope, (whom they, to the utmost maintain, as they have reason ; for out of the pope's authority, first came their general profession, as it now remains one) may as a supreme steward of the clergy's maintenance, dispose of this or that particular part of it. This is their common opinion, although some, in the point of exemptions, have made scruple. But where none of those special titles precede, there they clearly agree also, that by common right, all predial and mixed tythes are due parochially. Neither need ^u the rector in his libel, upon his *actio confessoria* (which is the general name of such actions as lie for demand of incorporeal rights, as with us, our *quod permittat, quare impedit, droit d'avowson*, and the like) propose more, than that the increase is within his parish ; and the other titles, if any be, must be shewed in the exception, or answer. But by the way ; though the doctors commonly suppose the action for tythes to be *confessoria*, and grounded upon common right ; yet that great and antient lawyer, bishop *Durand*, or *Speculator*, would have them demanded by the *condictio ex canone*, that is, as we call it, by *action upon the statute.* The canons, whereupon he would have it grounded, are those passages of *S. Jerome* and *S. Augustine*, in *c. 16. q. 1. c. 65. &*

^a Apud Fox in Hen. IV. pag. 494.
tit. de electione. c. 13. in generali.
Prosper Farinac. criminal. decif. rotæ Rom. 291, n. 13. alii passim.

^t Extat in lib. 6. tit. de reb. ecclef. non alien. c. 2. hoc consultiſſimo.
^c Sess. 25. de reformatione, cap. 12.

^u Speculator lib. 4. part. 3. tit. de decimis.

66. And he takes for his authority, why this kind of action should be brought, that of ^x *Paulus*, out of the imperials, *si obligatio lege nova introducta sit, nec cautum eadem lege, quo genere actionis experiamur, ex lege agendum est*. So that as *ex lege* in the imperials, so *ex canone* in the pontifical law, the action should be brought. He lived long since, and perhaps, in regard of the various practice that had preceded against the common opinion of his profession touching the common right, he thought it most secure for the plaintiff, to ground his libel upon the canon, rather than upon common right. But for personal tythes (which yet they agree not all to be due *jure divino*; although pope ^y *Innocent IV.* make it a wonder to see any man deny it, and divers of them follow him; the old precedents also of libels in *Speculator* being equally for these, as for predial) they are held payable only to the church, where the owner, for the most part, receives the sacraments and divine service; not where the gain is made. Neither in them is any regard had to the parish. Whence it comes, that *Jews* and ^z *Saracens* (because they have no personal use of the evangelical ministry) are to pay none by this law, laying in case where they hinder the continual payment of some former personal tythe had from christians. The best authority they bring for personal tythes, is that in *Deut. xii.* where *tythes and the offerings of your hands* are spoken of. By reason of that most received ground amongst them, that the tenth is due to the church *jure divino*, their most common opinion is also, that every man is bound to pay the whole tenth, or the value of the whole tenth of all increase, notwithstanding any custom or prescription to the contrary. Indeed, no reason is, that a custom should take away what God had immediately, and, by his moral law, established. The consequent is good, were the antecedent clearly proved. But some of them, and such as are of no small name, deliver their law to be only, that custom cannot wholly discharge any land of tythes, but it may diminish the *quota*, or bring them to a less quantity, or value; that is, that a custom to pay a twelfth, twentieth, or less, is good. This, some also allow only in customs immemorial, which they suppose to have the force of a papal privilege or exemption. But, their common and received opinion is, that in predial and mixt, no prescription or custom to pay any less part or value than the tenth, or *de modo decimandi*, much less *de non decimando*, can be good. (Which well agrees with the civil law also. For by a prescription of the emperor *Anastasius*,^a no prescription may be of non payment of all or a less part of tributes, subsidies, or other rents of the publick treasury; that is, of such things as are due to the emperor *in signum universalis dominii*, as tythes are supposed to God and his ministers.) Except only, where the certainty of some equal yearly payment, without regard to every annual increase, may be

adjudged to be equivalent to a tenth, by reason of the incertainty of sterility or fruitfulness. In this ^b case they allow a custom, although the tenth of every particular year be not paid; because, *ecclesia*, they say, *potest se habere ad damnum vel lucrum*, indifferently. But those other common opinions of theirs, are so frequently obvious, that to cite authorities for them, were but to imitate *Rablais* his *Bridoye*. Yet we may specially remember, that the doctors of the *Rota* of *Rome*, I think, according to their profession, also above c. years since, determined, ^c *quod quota denaria est de jure divino hodierno die*. But some canonists withal are, and those of no small note, that agree, the determination of the tenth to be only *de jure ecclesiastico*, and that no more *jus naturale*, or *divinum morale*, is in it, than what commands, a competence of means to be given to the priesthood. So ^d *Convarvius*; so, some others. But few enough are of this opinion. All that are of it, make no doubt of the right of customs (provided always, that a sufficient revenue be possessed by the minister) but allow the payment of them to be diminished or taken away by custom or prescription. But they are generally against the possession of feudal tythes held by laymen (which they suppose, but falsely, to have all had beginning from the church) although infeodated before the council of *Lateran*. Yet indeed some of them express an allowance of them; but that is rather in mingling common laws with their canons, than writing as canonists. The common laws of all nations (where feudal tythes are; and I think certainly, in all christian nations feudal tythes at this day are found) allow them now, and suffer the canons to have no power over them. And thence is it (lest they should grossly determine against such possessions as the church antiently, as well as the laity, had by infeodations settled, and posterity still maintained) that some receive into their conclusions an admittance of what their own profession abhors. Which may not be amiss said also of such of them as maintain a custom in the *quota*, or the like. For that is done rather by striving to conform the canons to the common laws, or secular constitutions of the state where they live (as our civilians, in the practice of the antient canon law, do here also,) than by judging according to the body of the canons, that regularly allow no sufficient exception against parochial payment of the whole predial tenth, but only papal authority, or a title canonically settled in some other church. And the better to make these infeodations stand with their opinions, they have also a usual distinction of *jus percipiendi*, and *fructus decimarum*. The *jus percipiendi*, they say, cannot be transferred, nor ever was, by the old infeodations, because every layman is incapable of it: But the *fructus decimarum* only, as they teach, is what passed, and is still possessed, in consideration that the possessors should defend the church from here-

^x ff. de condit. ex leg. L. unic.

^c tua nos, tit. de decimis.

^b Gl. & Panormitan. ad c. in aliquibus extr. de decimis, ali.

^d Variar. resolut. lib. 1. cap. 17.

^y Ad tit. de paroch. & al. paroch. extr. c. significavit.

^a C. tit. de prescript. 30. vel 40. ann. l. 6. comperit. sed & vide ibid. Bald. Cyn. & Salicetum.

^c Petr. Ravenn. apud Majorem in sent. 3. dist. 37. quaest. 36.

ticks and tyranny. The sum of what the old canons have, both against ancient and new infeodations, is in the former chapter noted; and according to them, how that distinction will hold, I see not. But, among them, great opinion is also, that all feudal tythes are to be restored to the church, and that he which holds them, may not lawfully pass them over to another layman; but may only, with assent of the bishop, give them to some church. *Nec multum refert quae ecclesia habeat dummodo extirpentur a laico*, as *Panormitan* says. And to this, they abuse that canon *prohibemus*, of the council of *Lateran*, that was not indeed made against tythes then infeodated, but only against new infeodations, as pope *Innocent IV.* there well teaches. For, saith he, *non loquitur de decimis infeodatis, sed de aliis male detentis*. Which justifies what is in the former cccc. years, against the received interpretation, delivered.

III. The divines, since the beginning of this time, have had their several determinations and doctrines upon this point, and those may be, for method, put chiefly in a three-fold difference; Although rather the second doctrine, as presently will appear, were but an issue of the first; And the chief question among them comes to this, Whether, by God's immediate moral law, the evangelical priesthood have a right to tythes, as to their inheritance, in equal degree, as the layman hath to his nine; or if they have them only as by humane positive law, and so given them for their spiritual labour? That is, in brief, Whether by original distributive justice, or by commutative, they are payable? Although, in the opinion which we shall here make the third, all positive or human law be, for the most part, neglected; whereof, more presently. But in that (which we here make the first of those three opinions) it hath been held, that the tenth considered *quoad quotam partem*, or, as it is a determined part, and denoted from that number, is due only by law positive and ecclesiastical; but, *quoad substantiam suam*, or *cleri sustentationem*, or in regard to it, as it denotes a necessary or competent part of the maintenance of the clergy, that is due by the divine moral law. And to the purpose of this distinction, they interpret the *Levitical* commandments of tythes; And deliver that *quoad substantiam suam*, or as it was generally for the maintenance of the ministry in the Jewish church, it is moral or natural, there being, according to consideration of it so far, the very character of it written in the tables of mens hearts; that is, that spiritual labourers are to be rewarded with temporal bounty, as every labourer is worthy of his hire. But *quoad quotam partem*, it is, they say, a judicial, or ceremonial, as some will, and that it hath been brought into the law of the gospel by ecclesiastick doctrine and constitutions (both which we have before related) proceeding from it only *per vim ejus exemplarem*, or by imitation of

the Jewish state, ordered by the Almighty; and not in that regard *per vim obligativam*, or any continuing force of it under the gospel. And that the church was not bound to this part, but freely might as well have ordained the payment of a ninth, or eleventh, according to various opportunity. This is commonly taught by the old schoolmen, *Hales*, *Aquinas*, *Henricus de Gandavo*, *R. de Media Villa*, cardinal *Cajetan*, and divers others; (but fullest, in my judgment, by *Joh. Major*) and maintained by great men, that in our times follow their ways of disquisition. The first that expressly made this distinction, was that *Alexander Hales*, that lived about m.cc.xxx. and thus^f determined; *Praeceptum de decimis est praecceptum judiciale; unde non est dicendum morale, quia secundum suam determinationem*, that is, *secundum quotam partem, non est scriptum in corde hominis; nec ceremoniale, quia non est datum principaliter in figuram significationis; sed judiciale, quia datum simpliciter in rationem aequitatis mutuae distributionis, ut sit aequalitas dati* & accepti inter seminantem spiritualia & tantem temporalia, secundum quod possibile est, &c. And^g *Aquinas*; *determinatio decimae partis solvenda est auctoritate ecclesiae*; and adds, that the ground of it, which he calls *radix*, is the text^h, *If we sow unto you spiritual things, is it a great thing, if we reap your carnal things?* The same is by *Hen. de Gandavo*ⁱ expressed in these words; *Adveniente lege evangelica & cessantibus ceremoniis, cessavit & solutio decimae, pro quota illa: sed mansit pro illo quod in illa erat jure legis naturae, & ad illud reduxit lex evangelica*; and delivers accordingly the right of them to be *partim de jure naturae & evangelii*, that is, *quatenus vacantibus divino ministerio communiter ab omnibus debet provideri*; and, *partim de jure humano ecclesiastico, or positivo*, that is, *quoad quotam partem*. And to the same purpose, the rest. But whereas some make that learned *Hales* the first author of this doctrine; doubtless they err. For however *lex divina, Deus praecipit*, and the like, frequently denote the right of tythes in the former cccc. years; yet first consider, what is there admonished touching the practice of the time, and from thence you may, perhaps, interpret their meanings to be otherwise, than as they are commonly, and especially by the canonists, taken. Could the church have, before his time, held clearly, that the tenth was due by the moral law, and yet, against their own consciences, generally, give way to, and practised also, those conveyances, which can have no power over that which the moral law, ever binding uniformly, hath ordained? And indeed, some great doctors teach, that the *jus divinum*, denoted in those passages of the body of the canons, was no otherwise understood, than only that we are bound to it by the law positive of the church, imitating the divine judicials (which retain still, as cardinal *Cajetan* teaches, their *vim exemplarem*, though not

^e Ad 3. sent. dist. 37. quaest. 36.
cap. 9. 11.

^f Quodlibet 4. q. 28. j.

^g Part. 3. q. 51. memb. 3.

^h 2. 2. q. 87. art. 1.

ⁱ Epist. 1. ad Corinth.

obligativam) and is well enough thence styled *jus divinum*. Cum ergo dicitur, says the cardinal, ^k *lege divina, aut Deo jubente ad decimas tenemur; intellige exemplariter*. Neither doth he otherwise interpret other passages of the fathers, which are to that purpose. *Neque aliud* are his words, *sancti patres intellexerunt*. And remember also, that those fathers affirm it not in disputation, but only in exhortation to the people; which is specially observable to any that knows the course of their writing. With *Cajetan* also, in that the law for tythes is not moral, *Bellarmin*, *Suarez*, *Malder* bishop of *Antwerp*, and late professor at *Lowain*, and others accord, and make it the *communis opinio theologorum*: and some will have it ceremonial, rather than judicial. But we dispute not thereof. But also an example is brought out of *S. Ambrose* his use of ^l *quadragesima divinitus constituta*, denoting the ecclesiastick commandment of Lent, that was but in a kind of imitation of our Saviour's abstinence. Which shews, that what is from the holy word exemplarily taken, is denoted sometimes with such attributes, as might signify a moral constitution. And the truth is also, that *jus divinum* is very often, and was, about the time of the body of the canon law published, taken for *jus ecclesiasticum*, or *jus civile quod ad ecclesiae administrationem spectat*; as you may plainly see in an epistle of *Alexander III.* that lived till M.C.LXXX. where he directs, that a church having been in possession XL. years of tythes growing in another parish, should have them still by that prescription, because in such case, *de jure divino & humano melior est conditio possidentis*. Who sees not, that he there uses *jus divinum* for positive and human law of the church? What hath the prescription of XL. years, or primer possession to do with the direction of divine moral law? Or indeed, if he had meant, that tythes, *quoad quotam*, had been due for the minister's salary by the divine moral law, how could prescription have had place against it? Part of that epistle is ^m in the body of the canon law. But because it is fuller, and indeed more authentick, in a very ⁿ ancient copy of decretal epistles (the most of them being of *Alexander III.*) it shall thence be hither faithfully transcribed. *Alexander Mauricio episcopo. Ad aures nostras, te significante, pervenit, duas ecclesias saepius sub examine tuo litigare super decimis quas una ecclesiarum in alterius parochia XL. annis possedit, ac per hoc o petit ejus actionem extantam. Altera vero volens eas jure parochiali evincere, praescriptionem non debere sibi obesse proponit. Ideo quid juris sit in hoc casu, tua nos duxit fraternitas consulendos. Tuae itaque fraternitati literis praesentibus innotescat, quod jure divino & humano melior est conditio possidentis, quoniam quadragenalis praescriptio omnem prorsus actionem secludit.* And, that *jus divinum* was in that sense taken in these ages, appears also by

Hales; where, although ^p he before held clearly, that the commandment of the *quota pars* was judicial; yet he says, that *decima sicut Domini generalis census* is payable *jure divino*, that is plainly, in his meaning, by the ecclesiastick constitution of the church, imitating the divine judicials. Neither was the phrase otherwise used in that of the general council of *Lateran*, held before the time of *Hales*, in the year M.CC.XV. *Illae quippe decimae necessario sunt solvendae, quae debentur ex lege divina vel loci consuetudine approbata*. I know the canonists miserably wrest themselves about the interpretation of that place. But, when they have done all in mistaking it, could the council think, that *loci consuetudine*, some were due, yet that all *lege divina*; taking it for the moral law? For, if any, then all, by the moral law. Clearly then the *English* ^q of that was, *those are necessarily to be paid, which are due either by the positive law of the church*, (which extends not always universally) or *custom of the place*. Some refer that *ex consuetudine* to personal tythes, supposing ^r them due only by custom or positive law. And that also might be a tolerable interpretation, if at the time of the council such a distinction had been received betwixt personal and predial. But can it then stand for truth, that *Hales* was the first that broached this opinion of the *quota* being due by human determination in the church, and not by the divine moral law? Indeed he was the first that accurately disputed the question as a schoolman, and expressly made the distinction, but clearly not the first that so held the point. To the former testimonies hereof, add that of *Hugo de S. Victore*, who lived near c. years before *Hales*. He speaking of payment of tythes before the law, under the law, and since concludes with; *Primum igitur ante legem, parvulus consilio nutritur (Deus) postea sub lege exercitatus praecepto tentavit. Novissime sub gratia perfectus in libertate spiritus ambulare permisit*. By this first opinion of the schoolmen, to which the ancient fathers are, you see, by some of them squared, no difference is to be made of predial, mixed, and personal tythes, however some scruples about that difference, have been needlessly handled by them. For *quoad substantiam decimae*, or *decimam sustentationis*, as they call it, or, as the labourer is worthy of his hire, both are equally due. The moral law, according to them, designs not out real possessions to be more subject here to the natural part of commutative justice, than personal profit. And therefore also *Alexander Hales* aptly determines, that *decimae tam personales quam praediales sunt in praecepto*, that is, both *quoad substantiam*, but neither *quoad quotam*. And, that in *Venice*, and other such cities, where no predial tythes are, a personal tenth is due by the positive laws of the church, as in them also, a sufficient maintenance is to be had for the clergy, by the moral or natural law. In sum, by this

^k Ad 2. 2. q. 87. art. 1. in bibliotheca Cottoniana.

^l Videfis J. Maior. ad 4. sent. dist. 15. quæst. 3.

^m Extr. de praescript. c. 6. ad aures.

ⁿ In ms. lib. 6.

^o L. putat ejus actionem extinctam.

^p Part. 3. q. 51. membr. 5.

^q Bellarm. etiam optime in.

^r Interpretatur, lib. 1. de cler. cap. 26.

^s Vide Henric. Bowhic. in tit. de dec. c. pervenit.

^t Erudit. theolog. lib. 1. part.

opinion, customs of payment of less, of nothing, and other civil titles, that have force against ecclesiastick law positive, are allowed, so long as the maintenance of the minister be otherwise competent. Both failing, then is that defect to be supplied, notwithstanding any civil exception, due by the divine, natural, or moral law; which, inscribed in all hearts, admonishes, that reward is due to every labourer; much more to him of the spiritual harvest. Other questions about tythes are disputed in the schoolmen, but it is not hard to conjecture, how the most are to be determined, according to them, by their resolution of this alone; therefore I omit them. You see how opposite this opinion is to that received among the canonists; betwixt whom and the schoolmen^e was usually great dissension. It is not to be doubted, but that the schoolmen looked much farther into all that they meddled with, than the canonists could do. And had the canonists agreed herein with them, they might, with fewer absurdities, have maintained divers of their scrupulous positions. And some of^u them were so moved at the schoolmens disputations, about *Hales* his time especially, that they knew not which way at all to determine it. This difference of the canonists and schoolmen is remembered by *J. Major. Theologos hic*, saith^{*} he, *canonistae haereticos vocant, quia dicunt decimas non esse de jure divino*. But which are here the more competent judges of the two, he tells you further, in his answers to *Peter of Ravenna*, a canonist of his time. He lived about c years since.

IV. THE second opinion in divinity, is of those, that (having their first ground out of the determination of the schoolmen) held tythes to be mere alms, and not to be paid to the ministers of the gospel by any parochial right, as a necessary duty to the evangelical priesthood, but that they might be retained and disposed of at the owner's will; especially if the pastor^v well performed not his function. Of this, were both some of religious orders in their preaching, and also others opposite enough to them in doctrine. The *Dominicans* and *Franciscans* especially (who began both about the year m.c.c.x, and had in their monasteries store enough of schoolmen) made it a gainful doctrine to teach laymen, that they were not bound to pay their tythes to their ministers, as to whom, by any law of God, that portion necessarily belonged. For when the determinations had preceded, by which the *quota* was concluded not to be due *jure divino*, they of this side neglecting, for the most part, the positive and human laws made for them, and regarding only the express law of God, taught them due only as alms, or as what *debito caritatis*, not *debito justitiae*, was to be dispensed. By this doctrine the *Mendicants* especially often got them to themselves (like the

old * *Eustathians*) as alms to be arbitrarily disposed of to such as took any spiritual labour, as also made their own detaining of them in lands, out of which they were parochially due, to seem the less wrongful. But against their detaining of parochial tythes a canon was made in the general^z council of *Vienna*, held in m.ccc.xl, and their doctrine was taxed by pope *Innocent* the fourth about m.c.c.l, writing^a upon the decretals, where he calls them *isti novi magistri, & praedicatores qui docent, & praedicant contra novum & vetus testamentum*. And *Richard* archbishop of^b *Armagh*, complains against them for possessing the people with an opinion that the command of tythes was not moral, but only ceremonial, and not to be performed by constraint of conscience, to the minister; and that out of whatsoever at least was given to any of the four orders of *Mendicants*, no tythe was in conscience to be deduced for the ministers. With these in substance did others also at the same time agree, that otherwise were opposite to the whole nation of friars; as with us *John Wickliff*, *Walter Brute*, *William Thorp*, and some such more, whose arguments for their opinions are at large in *Fox* his acts and monuments of the church of *England*, whither I had rather send the reader than stuff this place with them. *Wickliff's* c position (for^d which as for an heresy some have been since questioned with us) is before related, as it was condemned in the council of *Constance*; and *Thomas Walden* the provincial governor of the *Carmelites* in *England*, about the end of the time of *Henry* the fourth, wrote against him in it, vindicating the duty to the church, but not so much, *secundum quotam sed magis secundum substantiam*, as his^e own words are. Hereto may be added, one of the articles of the *Bobemians*, published about cc years since, wherein a divine right to tythes since the^f gospel, is denied; whereupon also they long since took all temporalities from their ministers, and brought them to^g stipends. Others have been possessed with this conceit, and among them you may remember *Gerardus* h *Sagarellus*, before *Wickliff*, burnt also for an heretick. And the great *Erasmus* gave the common exacting of tythes by the clergy of his time, no better name than tyranny. But that of his, divers have sufficiently both reprehended and confuted, and especially *Albertus Pius Carpenfis*, in his labour against him. With this may be reckoned that of *William Russel* a *Franciscan*, who under *Henry* the fifth had publicly preached, that the payment of personal tythes to the pastor, were not in God's commandment; but that it was lawful for every christian to dispose of them arbitrarily to charitable uses. But of him, see more in the next and third opinion, where the words of his doctrine are expressed in a letter from the university of *Oxford*, to the convocation of the clergy.

^{*} Ockam. lib. 1. dialog. 3. quæst. 36.

^z Clementin. tit. de decim. c. 1. religiosi. vide, si placet, Alex. lib. 4. consil. 60.

^a Doctrinal. fidei rom. 1. lib. 2. artic. 3. cap. 64, & 65. in sent. 3. dist. 37. q. 36.

^u Raynulfus apud Hostiensem in summ. tit. de decimis, num. 10.

^v See Wickliff his complaint to the king and parliament, art. 3.

^a Ad extr. tit. de paroch. c. ult. significavit.

^b Et videlicet in fascicul. rer. expetendarum, pag. 143. in Wiclevi thesibus.

^c Fox in Hen. V. pag. 602.

^d 10 Hen VII.

^e Joh. Major.

^f J. Baptif. Caesare.

V. THE third opinion is of those who agree with the canonists, that the right, of the *quota* of tythes, immediately is from the moral or divine natural law; some impudently urging with a commandment given to *Adam*; others of them providently restraining all their arguments to such grounds for the conclusion, as may be had out of *Abraham's* example, referred to the application of it in the epistle to the *Hebrews*; but others also not so circumspectly, taking in the *Levitical* commandments of tythes for their most sufficient authority. For the first kind that talk of *Adam*; I think indeed that in the time of this light of learning, none have durst venture their credits upon such fancies. Yet, that it was some opinion that had at least in pretence many authors in the church of *England*, in the blinder time of our ancestors; I thence collect, for that in a *penitential* made for direction of priests in auricular confession, and written, as my copy is, about *Henry* the sixth, the priest's examination and advice upon the point of tything, is thus expressed: *Hast thou truly doo thy tythings and offryngs to God and to holichirch? Thou shalt undirstande that at the beginning of the worlde, when ther was but on man, that is to sey, Adam, God chargyd him that he sholde truly of al maner thyng give God the X^a parte, and bad hym that he sholde teche his children to doo the same maner, and so forth be al men into the worldis ende. And forasmuch as ther was that tyme no man to receive it of hem in the name of holichirche, and God wolde not that thei sholde have but ix parties, therefore he commandid hem that of every thyng, the tithe parte sholde be brent. I fynd that afterward Adam had two sonnes Caime and Abell. Abell tythed truly and of the best, Cayme tythed falsely and of the werst. At last the fals tyther Cayme slough Abell his brother, for he blamyd hym, and seyde that he tythed evel, wherefore our Lord God accursid Caym and al the erth in his werk. So ye mow se that fals tything was the cause of the first manslaughter that ever was, and it was cause that God cursid the erthe.* It is literally transcribed as I find it; That writing of Cayme for Cain is ordinary in the monuments of that age, as you may find in *Wickliff's* works, *Waldensis* his doctrinal, and others of like nature. But see here the effect of perverse opposition on both sides. Some friars, providing only for their own wealth, would have had them reckoned meer alms, and so have gotten them from the secular priests, and others would have had them retained by laymen. The secular priests on the other side would rather instruct the laity with ridiculous falsehoods (in the terms whereof they would not spare to abuse the holiest name) than not seem to say enough for their own gain. In those times they did so: they saw the friars dangerous doctrine to their revenues, and therefore omitted no argument, no course in opposing it. A notable testimony whereof is had also in that of friar ¹ *William Russel* a *Franciscan*, that in the convocation

5 *Hen. VI.* was vehemently accused because he had preached, that personal tythes were not necessarily payable by God's commandment, but that every man might dispose them at his pleasure in charitable uses: The sum of which was, that every man might or should rather give them to the begging friars, a doctrine of no small prejudice to the secular priests, if once publickly received. This *Russel* was by the convocation enjoined to recant at *Paul's* cross on a prefixed day, before which, he fled the kingdom; and after publick citations against him, was solemnly pronounced an heretick for it; his opinion also being condemned by both the universities. The letters then sent to the convocation from *Oxford*, both shew the determination of that university on the point, and the particular tener also of *Russel*; therefore we insert them. The direction is to the clergy of *Canterbury* province from the *universitas studii generalis Oxoniae*, after which follows a preface in general terms against such as forsook the antient ways and fell into new heresies; then they go on with; *Sed quia in multis novitas* (so are the words of it, as I have it faithfully transcribed^k to me through the courtesy of my most honoured friend Mr. *Thomas Allen* of *Glocester Hall*; whose name it were not without offence in me, at all to mention without special reverence, as well to his singular humanity as to his fulness of learning and worth in good arts) *parit pericula, in quibus antiquitas non peccabit, illud esse censemus inconcusse tenendum quod ab antiquis patribus constat clarissime praefinitum. Verum quia nuper nobis innotuit cujusdam novelli* (that is of *Russel*) *insana doctrina contra decimas personales (cujus miramur audaciam & dolemus insipientiam) sed ejus pertinaciam & ecclesiae contemptum sustinere veremur, & ne nostra^l taciturnitate seu negligentia tacito consensui adscribatur, in ipsa materia scribere curavimus quod concordēs sentimus, & in evidens testimonium nostro sigillo communire decrevimus, ad veritatis dilucidationem & obsequium ecclesiae, ut tenemur.* Then they deliver their determination thus. *Dicimus & firmiter concipimus quod decimae personales tam ex praecepto juris divini quam sanctorum patrum traditionibus sub autoritate ecclesiae in concordi juris judicio debentur ecclesiis & earum ministris curam animarum habentibus & sacramenta ministrantibus ex autoritate ecclesiae. Magna namque est sacrosanctae ecclesiae autoritas extra quam fides plane perpendit nullam posse pervenire salutem fidelibus. Ne illic ergo resideat spiritus pestilens aut opinio corruptans ubi locus quaeritur fidei orthodoxae, verba per adversarium praemissae nostrae sententiae praedicata, quae etiam sub avaritiae subtili furo deprehendimus palliata, reprobamus & tanquam etrunea & haeretica declaramus. Quorum demens tenor cum reprobo sensu sic sequitur, catholica damnatione fulminandus. Decimae personales* (this was the doctrine of

¹ Ex archivis arch. Cant. haussit v. c. Arch. Duck LL.D. in viita Th. Chicheley Cant. archiepisc. pag. 73.
Oxon. in bibl. o. h. Bodleiana.

^l L. taciturnitas.

^k Ex archivis

frar *Russel* non cadunt sub praecepto divino, saltem ut solvantur parochiali curato; quare licet vestrum unicuique, nisi consuetudo in contrarium fuerit, in pios usus pauperum eas dispensare. Et iterum. Personales decimae sub divino non cadunt. praecepto neque jure debentur, ubi solutionis non est consuetudo. But they thus damo it. Quisunque hanc sententiam tenuerit, & pertinaciter defenderit apud reputationem nostram haereticus est censendus, & quia a sana doctrina ecclesiae est divisus, a corpore ejusdem ecclesiae, velut membrum putridum, est praescindendus. O honorabiles fratres & domini! O universitates catholicae, & quicunque fideles! scrutamini scripturas, canones inspicite, ac eorum naturales concipite rationes. Quam proditorum est tributum negare altissimo? Quam inhumanum a laborantibus abstrahere debitum? Quam grave schismatis exemplum auctoritati ecclesiae publice & pertinaciter resistere? Ac etiam justitiae obviam contra praecepta canonum res alienas invadere? Nimirum cruenta ac sacrilega est haec avaritia quae antiquissimi juris decimale debitum solum consuetudini adscribit, & in dubium revocat ut laborantium victum juste exhauriat. Quod ministris ecclesiae ad eorum honestam sustentationem firmum persisteret, si decimae possunt ad libitum conferri & jus decimandi ex debito non esset? O utinam aut respiciant & ad ecclesiae gremium redeant, qui tanto facinori favere conantur; aut asperimis censuris, ne simplices inficiant, mordaciter feriantur. Sic unanimes in vera doctrina ecclesiae permanamus ut ad eum tendere valeamus, de quo canit propheta, quaeite Dominum & confirmamini, quaeite faciem ejus semper. Sic laetetur cor quaerentium Dominum hic in via, quatenus ipsum quaerentibus dignetur esse merces in patria. Amen. They were, methinks, somewhat vehement and very confident in the point. Neither have I elsewhere seen so great authority against *Russel*. If *Russel* was therefore an heretic, doubtless he hath had, and now hath many, fellow heretics. For thus, many, say the most of such as most curiously inquire herein, and divers canonists also that are for the moral right of predial and mixed tythes, deny that personal are otherwise due regularly than as custom, or law positive, which is subject to custom, directs. But judge you of it, reader. I only relate it, and return to their prosecution against *Russel*. At length news came, that he was at Rome, whether presently the convocation sent agents (to whom they allowed for an honorary salary, a farthing out of every pound of church livings) that might there question him before the bishop of Rome. A delegation of the cognizance of the cause was made to a cardinal, who adjudged him to perpetual imprisonment unless he recanted. The friar afterward broke prison and ran home again, where at *Paul's* cross (when nothing else could satisfy the secular part of the clergy) he solemnly abjured his heresy, as they called it;

and to prevent the like in the doctrine of other minorites, *Chicheley*, the archbishop, enjoined them all, that in their publick sermons they should teach personal tythes to be due by the laws of God and the church. Of later time, others have written for the divine right and general duty of tythes. You may see *Albertus Pius Carpenfis* against *Erasmus*, *Baronius* in his digression touching them, others; but especially the divers treatises written to that purpose of late by our countrymen, which are read in every hand. I purposely abstain from particular mention of their names. But neither have only single authors been lately of that side for predial and mixed; whole synods also of this age have in express words been for them, through whose authority and this antienter before remembered they might have fortified their conclusions with far greater names, than by citing some one or two late single men, as they usually do. To omit the council of *Mentz* held in the year M.D.XLIX, where it is delivered that decimae debentur jure divino (and some other are to that purpose in the decreta ecclesiae Gallicanae, collected by *Bochell*) in an edict of *Henry* the second of France in M.D.XLII, relation is of a remonstrance made to him by the bishop, dean, canons, chapter, and clergy of *Paris*; wherein they take it clear, that tythes and first fruits were introduites & institues de droit divin & partant deussent estre payees loyaument & sans fraude. The like, of the clergy of the diocese of *Troyes*, is mentioned in an edict of *Charles* the ninth, in M.D.LXII, in the same words. And in the year before, by a general synod of all the clergy of France at *Poissy*, a complaint was made with that pretence in it. The words of the edict best shew it, *Charles, &c. a tous ceux qui ces presentes lettres verront, salut. De la part de nos chers & bien amies conseillers les archevesques & evesques de nostre royaume & des deputez des clergez, qui ont este nagueres assemblez a Poissy par nostre commandement, nous a este remonstré, que combien que les dixmes & primices, qui sont leur principall revenu, soient introduites & instituees de droit divin, & partant deussent estre payees loyaument & sans fraude: ce neantmoins plusieurs agriculteurs, proprietaires, &c.* With these may be reckoned, that of the clergy's petition in the parliament of 50 Ed. III. wherein they begin with licet decima silvae, praesertim caeduae, de jure divino & ecclesiastico Deo & ecclesiae sit solvenda, &c.

VI. But although by this opinion and that of the canonists, tythes be generally due by the divine law, and so not subject (if with them you take it for the divine moral or natural law) to civil exceptions, as customs and prescriptions, of discharges or of payment of less, or such more, whence also real compositions have been condemned, quia decimae cum temporalibus non sunt commutandae, as the words of an old pope

^m Ad annum Christi 75.

ⁿ Edictes & ordonnances de France tom. 4. tit. 22.

^o Rot. parl. 50 Ed. III. art. 199.

^p Append. ad concil. Lateran. part. 4. cap. 1.

were to the bishop of *Cusa*; yet the practised common law (for by that name, as common is distinguished from sacred, are the civil or municipal laws of all nations to be stiled) hath never given way herein to the canons, but hath allowed customs, and made them subject to all civil titles, infeodations, discharges, compositions, and the like. Of compositions no more shall be spoken, seeing they consist rather in individuals, than of any general course, we only remember them here as one kind of discharge, among other that have been allowed by common laws. And where customs, and infeodations hold, no man can doubt of the lawfulness of compositions. But for customs; In the edicts made by those kings of *France* upon those remonstrances, it appears, that whatever the clergy supposed by their *dixmes introduites institues de droit divin*, they complain of abuse only in due payment of tythes out of lands *su jets & redevables aux dits dixmes*, &c. that is subject and liable to the payment of tythes. Neither in other words do the edicts and their verifications give them remedy. And notwithstanding that it were once, according to sundry canons of that church, thus commanded by an old law of the year ^a M. CC. XXXVIII. made by *S. Lewis*, *decimae quibus fuit longo tempore ecclesia per malitiam inhabitantium defraudata, statuimus & ordinamus quod restituantur citius, & amplius laici decimas non detineant, sed eas habere clericis permittant*; Yet, in that state, against the whole course of the canon law in this kind, they have, what by reason of ancient infeodations still continuing, what through customs, allowed divers lands to be not at all subject to any tythes payable to the church. For their infeodations (although none can be there new created) such as were made before that canon *prohibemus* of the council of *Lateran*, held under *Alexander III.* are to ^t this day remaining, and are conveyed and descend as other lay inheritances; excepting only such, as being discharged of feudal service, have been given into the church. For, their lawyers with the common opinion, but erroneously, suppose that all such infeodations came from the church; and therefore they agree if any feudal tythes be conveyed into the church ¹ freely by themselves (not as annexed to other fiefs, as castles, or manors, nor subject to tenures reserved) that then they are in the church, as it were *jure postliminii*, or, as we say, *by way of remitter*; that is, they are so annexed, that they may not be transferred again into lay hands, more than any other tythes which are the ancient revenue of the church; whence it hath been adjudged also in the parliament of *Paris* in the case of the bishop of *Baieux*, that tythes so conveyed are not ¹ subject to the custom of *droit de retrait lignager*, that is, the right of the heir apparent's redeeming an inheritance sold by his ancestor within a year and a day, or some such certain

time. But this point of remitter, they ground not so much upon the nature of the tythe, as upon an old law of *S. Lewis*, wherein liberty is given that all persons *decimas percipientes in nostra terra, & in feudis moventibus mediate vel immediate de nobis quas clerici perciperent, si eas laici non perciperent, possint eas relinquere, dare & alias quocunque justo titulo, & licito modo ecclesiis concedere tenendas imperpetuum, nostro vel nostrorum successorum assensu minime requisito*, &c. Whereas, by the way, some of their lawyers ^u say, that feudal tythes there purchased by clergymen, are at this day subject to the *droit de nouveaux acquets*, i. e. a kind of fines for alienation, which I could not yet learn how it well stands with this of *S. Lewis*. But they commonly interpret it as an ordinance to this end, that when the church (the parish ^x church only to which they are supposed to have been due) had gotten them free by sale or gift or otherwise, they should be perpetually annexed to it; And were it not for this ordinance, which interpretation hath thus applied, their lawyers ought to have enquired more carefully about the original of every infeodation; For, where it began from a layman, there, what cause is of remitter? And these kind of feudal tythes also of their own nature are mere lay possessions, and determinable in that kingdom, only before the secular judge; As it appears, not only in an old ordinance of *Philip le Beau*, touching the jurisdiction of tythes, and in the protocolle or register of the chancery of *France*, but also in a late arrest of the parliament of *Paris*; where a curate sued before an official for his *canonica portio* (which hath been there sometimes ^v adjudged the fourth part, but is arbitrarily determined) against some other churchman that enjoyed the tythes of the parish, who pleaded to the jurisdiction, that the tythes were feudal, and desired that he would not hold plea of what so much belonged to the king's court; but the official first gave sentence that the defendant should bring in his proofs of the tythes being feudal; which failing, he proceeded to the point of the action. Thereupon by *appel comme d'abus* it came into the parliament of *Paris*, which after solemn argument gave ^z judgment that the official had usurped over the royal jurisdiction, in that he had at all proceeded after the simple allegation of infeodation, which alone binds the hands of the ecclesiastical judge that hath no more power to enquire of the infeodation or of tythes as feudal, than of any other lay inheritance. And in the same case, reference is made to some other judgments of like nature; and the reason given in the arrest is mainly, because tythes of their own nature, and originally are not otherwise spiritual, or belonging to a spiritual court, than only as they were annexed to a church or some other hallowed place. *La raison est*, are the words, *que suivant la doctrine de S. Thomas*,

^a Edicts & ordonnances tom. 4. pag. 493.

^x Vide *Guidonem PP.* decif. 288. & consuet. Bituricens. tit. 10. de custumes

prediales, §. 11.

¹ Vide *Carol. Molin.* in consuet. Paris. des fiefs, §. 68. pag. 1296. & seqq. & *Bertrand d'Argentre* in cout.

luct. Britan. artic. 266. pag. 1114.

^u 1. *Lucius Paris.* placit. curiae lib. 2. tit. 5. §. 2.

maine tract. 4. part. 3. chap. 30.

^v Voyez *Pasquier* en les recherches liv. 3. chap. 35.

tit. 10. decif. 15.

^z *Bacquet* des droicts de do-

notaire vol. 2. liv. 8. fol. 551.

^z *Corbin* en les loix de la France arrest 66. Et code des decif. liv. 1. tit. 10. decif. 17. & voyez *Papon* en

nous tenons qu'en la loy de grace, les dixmes sont deues non de droit divin, mais positif; & l'eglise en naissant n'a este faitte dame de ce droit, ains par le don & concession des rois, princes, & autres a qui de droit il appartenoit. Whence, if they were annexed to any church, they were of ecclesiastical jurisdiction that was given antiently for them; but being as feudal inheritance, although they once were in the church, yet a new character of being mere lay is restored to them. Those^a infeodations of tythes are there very frequent, and in very many parishes the tythes are taken only by laymen. But for them, so much. Customs in payment and non payment of the tenth, have ever held in that church, which might alone be proved out of some passages in *Gerfon*, and in *Johannes Major*, who tells us, that *plurimi in Italia & Francia de multis rebus quotam non dant*. But it may more fully be manifested by edicts of late time. In one of *Charles IX.* and another of *Henry III.* *Dixmes se leveront selon la coustume de lieux & la cote accoustumee in iceux. Et ou la dit coustume serra obscure & incertaine, serra suivie celle des lieux circumvoisins.* The French customs (according to divers usages of their provinces) are frequent for paying a less part than the tenth, and clearly allowed^c by divers judgments. Neither is the canon law, which allows not customs, suffered to be there practised. And for customs of paying none or *de non decimando*; in some cases they hold there also; and that by force of that *lex famigerata*, as *Du^d Molin* calls it, their *Philippine*, which is an ordinance made by *Philip le Beau* in M.CCC.IV. (but it is falsely and diversly referred to other of their *Philips*) commanding that no new exaction should be made of tythes not accustomed to be paid. *Senescallus*, it says, *ad requisitionem consulum locorum quoruncumque, defendat ipsos consules & universitates & singulos a nova impositione servitutis facienda per praelatos & alias personas ecclesiasticas, & a nova exactione decimarum & primitiarum & prestationis passatae, prout de jure fuerit & hactenus est consuetum fieri.* By this authority, whereas in the parish^e of *Branthel*, in the diocess of *Meaux*, the prior and convent *de nostre dame de Vaurart* purchased certain land that had formerly paid tythe-corn to the rector, and made fish ponds in it, the rector afterward was barred in his action for tythe of the fish; and one reason was upon this *Philippine*, because no such tythe had been used to be paid. So in *Auvergne*, in *Berry*, and other provinces, some customs of^f non payment hold good. And oft-times the king there sends commands grounded upon this *Philippine*, that new tythes not usually paid should not be exacted by the clergy. *Literae*, saith^g my author, *dietim conceduntur in cancel-*

laria regia super novis decimis, ne a laicis exigantur per eorum praelatos, quae fundantur in ordinatione Philippi pulchri Francorum regis facta die Veneris ante cineres, anno M.CCC.IV. cap. XXXI. hujus tenoris, Item quod Senescallus, &c. And expressly the customs of^h *Berry*. *Item par la custome, disme est doibt paier seulement des choses d'ont est accoustume payer disme, &c.* where *Boerius* says, he hath seen it accordingly for other places often adjudged at *Paris*. And in an edict of 10 *Hen. IV.* of *France* touching the payment of tythes by those of the reformed religion, the payment is commanded only, *selon l'usage & coustume des lieux*, and accordingly divers arrests of parliament also have been. And although sometimes customs have been there disallowed, especially *de non decimando*; yet that hath proceeded chiefly from the usurpation of the canons, where the secular law was wrongfully neglected; as you may see in the example of that of the ecclesiastical court at^k *Rhose*, wherein the laity were compelled *ad reddendas decimas de feodo & aliquibus aliis de quibus apud eos inconsumtum erat reddere decimas*, as *Major's* words are, who concludes, that had the judge been other than a canonist, he would not so have adjudged it.

VII. In *Spain* also some infeodated tythes from antient time are in lay hands, which the^l clergy about MCCC.LXXX. would have had into their revenue, under *John I.* of *Castile* and *Lions*; but could not. And in an ordinance of the same *John*, against all such as should usurp the^m right of tythes, a proviso is, that it should not extend to such tythes or church revenue, as the crown or any subject had from antient time enjoyed. And a third part of tythes due to the king, is mentioned in theirⁿ laws, as granted to him from the pope, of which, at his pleasure, new infeodations are made. And *Petrus^o de Lorca* remembers, that the pope *regibus Hispaniae concessit tertiam partem decimarum & aliis secularibus absque consensu singularum ecclesiarum*. Among these you may reckon those tythes in the crown, which by grant from the pope, king *Ferdinand* and queen *Isabel* had in the kingdom of *Granada*, in consideration of their endowment of churches there; and of them and their jurisdiction, whereto they are subject, thus^p *Covarruvias* an excellent lawyer of *Spain*. *Semel*, says he, *ex literis regis vidi decimarum causam tractari inter ecclesiasticos apud Granatensem praetorium, ex eo quod reges catholici Ferdinandus & Elizabeth decimas hujus regni Granatensis obtinuerint a pontifice maximo cum onere dotandi ecclesias*. That is, the judges held plea of them by commission from the king, not by spiritual power, which otherwise regularly hath cognizance of

^a Bertrand d'Argentine in conf. Brit. art. 266. des appropriances, pag. 1111. Guidonem papar. decif. 284. Code des decif. lib. 1. tit. 10. decif. 7. Romanae.

^c Code des decif. lib. 1. tit. 17. decif. 9.

^e Carol. de Grassia regal. Franc. lib. 2. jure 7.

tom. 1. liv. 2. pag. 225. in. 8.

^h In 3. sent. dist. 37. quaeft. 36.

^k In 3. sent. dist. 37. quaeft. 36.

^l Recopilacion por Philip. II. lib. 1. tit. 5. & Gregorio Lopez in partida 11. tit. 20. leg. 22.

^m D. Thom. disput. 40. memb. 1. num. 16.

ⁿ P. Pract. quaeft. cap. 35.

^b Ad sent. 3. dist. 37. quaeft. 36.

^d Ad edict. Hen. II. contra datas paru. & abus. curiae

^f Et testatur ex iis Covarruvias lib. 1. var. resolut. cap. 17.

^g Costumes prediales, §. 12.

ⁱ P. Marth. ad Guid. pap. decif. 228. ex

^j P. Marth. hist.

^o Ordennances reales de Castella lib. 1. tit. 5. ley

^p In 2. 2.

tythes; although another great lawyer^a of that country deny that the cognizance of such tythes lawfully belongs to any other jurisdiction than spiritual. Neither hath the canon law been so powerful there, as to make tythes payable against customs, for payment either of a less part, or none. And however in an ordinance of the year M.CC.XCIV, *Alfonso*^r the ninth, published his *mandamos y establecemos por siempre, que todos los hombres del nuestro regno den sus diezmos derechamente y cumplidamente a nuestro senor Dios de pan y de vino y ganados y de todas las otras cosas que deven dar derechamente segun manda sancta yglesia*, wherein he seems to establish, that whole tythes without any diminution should be always paid to the church, of corn, wine, and cattle, and all other things, (which ordinance also is exemplified and confirmed by *John* the second of *Castile*, and *Ferdinand* and *Isabel*; and accordingly, *Alphonso Diaz de Montalvo* his gloss on it, makes it to be consonant wholly to the canon law) and the whole course of their antient body of the law, in their *partidas*, be agreeable with it; yet the practice in that state hath been and is, that if suit be commenced in the spiritual court for new tythes, formerly not accustomed to be wholly or not at all paid, and such custom or prescription be pleaded, and the official or ordinary allow it not, upon complaint to the king's court, the defendant shall, as in case of prohibitions in *England*, have his remedy. This is declared by^r their *Covarruvias*. *Erit*, saith he, *observandum, causam decimarum quandoque in his regnis* (that is, *France* and *Spain*) *tractari apud regios auditores; nempe cum laici contendunt decimas ab eis exigi, quae legitima temporis praescriptione* (which is usually thought should be immemorial, and so is their^r practice; although the most common time in other things be XL years) *minime debentur, & sunt remissae; denique conqueruntur contra morem & consuetudinem decimas ab eis exigi; nam etsi condemnentur a iudice ecclesiastico, nihilominus, ex quaerela, causa, retinetur apud regia praetoria. Siquidem & literae regiae passim dantur a supremo senatu ad id ut laici non cogantur decimas illas solvere, quae solvi legitima temporis praescriptione non consueverunt*. And with him agrees *Alfonso de Azevedo*, that writes upon their *ordenanças reales*. But these kind of their prohibitions are grounded upon their ordinances, forbidding *decimas a laicis exigi, quae per consuetudinem contrariam non consueverunt solvi*, as *Covarruvias* says; And to that purpose was an edict^u of their *Charles* the first (emperor the fifth) at *Toledo* in M.D.XXV, and another like of his at *Madrid* about three years after, and before four years were thence past, at *Segovia*, and another at *Villadolid*.

And upon these oftentimes, says *Alfonso de Azevedo*, writs of prohibition go out to the ecclesiastical judges, that proceed *super novitate*, to forbid that *similes non permittant novitates, & processum causae regio ipsi senatui originaliter mittant*. Which agrees with the very words of the ordinances^x, that speak of *novidades* in exaction of tythes against custom. And one special use is there, that the kings give their personal^y tythes to their own chaplains attending on them.

VIII. Neither hath the canon law wrought otherwise in *Italy*, but that there also particular customs, as well of *non decimando*, as in the *modus*, are frequent. *Multis Italiae locis*, says^z *Cajetan*, *contingit ex consuetudine*, that nothing at all is paid. And so is the practice there, for the most^a part, at this day; the parish priests being sufficiently maintained by manse and glebe, and the revenues that are in some places paid, as according to a *modus*. And of the *Italians* and others, where like customs were, *Aquinas* thus; *b Hand laudabiliter ministri ecclesiae decimas ecclesiae requirunt, ubi sine scandalo requiri non possint propter desuetudinem vel propter aliquam aliam causam*. In *Venice*, says^c *Panormitan*, *non in vita sed in morte solvuntur decimae personales de omnibus mercantiis localibus & aliis mobilibus*. And in the whole signiory of *Venice*, as my^d author delivers, no parish church hath through that name *decimas seu jus decimandi*, but only another stipend or *quartesium*, as they call it, *de possessionibus seu terris consistentibus intra confines eorum curae*. Neither have infeodations of tythes into lay hands been less known in *Italy*, than elsewhere. For example, you may see the^e case of the *Mutii*, a noble family of *Piacenza*, who had by immemorial prescription and confirmation by bulls, an antient infeodation of all tythes growing in the territory of *Verrano*, within the diocese of *Piacenza*.

By the^f ordinance of *Fredrick* the second, about M.CC.XX, in the kingdoms of *Naples* and *Sicily*, a command is, that of all profits belonging to the crown of those kingdoms, a whole tenth should be paid, and that every subject should truly pay all such tenths as had been used to be paid in the time of *William* king of *Sicily*. *Subiectis*, are the words, *nostris indicimus, ut decimas quas de feudis & bonis suis antecessores eorum praedicti regis Guilielmi tempore praestiterunt, venerabilibus locis, quibus decimae ipsae debentur, cum integritate persolvant*.

In *Germany*, the canonists note a custom, that^g *pro decimis solvunt certas mensuras sive coloni aliquid recolligant, sive non*. And this by their law they allow, because it stands indif-

^a Gregorio Lopez ad partida 3. tit. 4. leg. 17.

por mandado de los &c. Ferdinand & Isabel.

tit. 5. l. 5. ^u Covarru. var. resolut. lib. 1. c. 17.

rida 1. tit. 20. leg. 11. & ibi Lopez.

relation of the religion used in the west parts, §. 39.

summae part. 4. tit. 11. cap. de decimis.

num. 51. edit. J. Baptista Caesaris.

tit. 7.

^x Faero real d' España lib. 1. tit. 5. y en pragmáticas y leyes recopiladas

^f Practic. quaest. 35.

^z Alfonso de Azevedo in reg. constit. lib. 1.

^a Recopilacion de las leyes por mandado de Phil. II. lib. 1. tit. 5. l. 6.

^y Partida 1.

^z Ad 2. 2. q. 87. art. 1. sic & Joh. Major ad 3. sent. 37. dist. 36. quaest.

^c Vide, si placet, Henric. Bowhich, ad extr. de dec. c. pervenit.

^d Et Antonia, in part. 1. confil. 46.

^e Ad c. in aliquibus tit. de decimis.

^f Maria Anguiffola edit. dict. part. 1. confil. 49, 50, &c.

^g Constit. Sicul. lib. 1.

ferent, whether the church lose by it, or no ; but also, some laymen take tythes of new improvements by right of their lordships. *Status imperii saeculares*, says a ^h judge of the imperial chamber, *decimas novarum percipere jure territorii possunt*. Which the clergy complained against, in a diet at Norimberg, but in vain. And of ⁱ those tythes, infeodations are there made, at the pleasure of the owners, into lay hands. Which was so in practice there also anciently, as is witnessed by an old ^k canonist, that lived above ccc.lx years since ; where disputing the question, *utrum laicus possit sine peccato decimas percipere* ? and bringing the ordinary authority for the negative part, he tells us, both for Germany and other countries, in these words, *In contrarium potest induci generalis consuetudo in Hispania & Francia & Burgundia & Alemania in plerisque locis*. And in the county of Flanders an edict was ^l made by Charles V. dated at Malines in m.cccc.xx. which commanded, that no clergy or layman pretending right to tythes, should exact or sue for other *nouvelles dîmes* aultres qu'ilz & leur predecesseurs ont accoustume prendre & avoir passe quarante ans & audessus : but that they should rest content with what was due only, according to the former use of payment, saving in case of new improvements, and such like, as it was explained by another edict some ten years after : both together are the same almost as our statute of 2 Ed. VI. And in the general council of Lateran of m.cc.xv, a relation is of some nations, who although christians, yet *secundum suos ritus decimas de more non solvunt* ; and, that other men leased their land to them, because in regard of no tythe being paid by them, the greater rent might be reserved ; against which, remedy is there provided. The words are, *in aliquibus regionibus quaedam permixtae sunt gentes quae secundum suos ritus decimas de more non solvunt, quamvis censeantur nomine christiano*, &c. Whereupon Innocent the fourth, that might well know the meaning of the council living so near it, notes that the christians, who by their own customs did not pay, were Greeks, Armenians, and the like. And ^m Antoninus expressly remembers the general non-payment of them in the eastern church, as a thing not to be censured to be against God's law. Neither indeed have I met with any canon law of all that church that ever commanded any thing touching tythes.

Among the laws of Hungary, we find ; *decimas non solvunt nobiles de propriis terris, et decimas non solvunt Rasciani, Rutheni, Valachi, et decimas non solvunt iudices propter laborem eorum circa decimandum* : although for other persons generally they have strict laws for payment of them.

In the statutes of Poland, it appears that ^o about m.ccc.lxx, under king Cazimir the second, the clergy, especially for the diocese of

Cracow, made divers laws, with his consent, upon great differences about the paying of tythes. One in especial is, that tythe must be paid of all that increases through the labour of the plough, *exceptis rapis, papavere, caulibus, cepis, allio, & quae his sunt similia in hortis* ; and *si quis ligonifando plantaverit, decima ab eo nullatenus exigatur*. Some other particulars they have about paying tythe of hemp and flax (which happens sometime to be more, sometime less than a tenth ; because the certainty is only from the number of beasts used to the plough) and of other things : whence it appears, that the use of tything there is not consonant to the canon law. And Theodore Zazwake delivers it for a law of this country, that *decimae ex terris vastatis accipi non debent*, which I think is to be referred to a thirty years liberty of non-payment given especially by Bodantza bishop of Cracow, to such as were tenants of lands lately wasted by the Lithuanians and Tartars ; which is declared in the law, remaining at large in the collections of Herbort and Prilussus, whither for more particulars I refer you.

In the laws of Swedeland and Gothland, the text ^p is, *decimae separantur & reponantur in agro, quarum tertiam partem suscipiat presbyter, & de reliquis duabus partibus capiat ecclesia tertiam partem*. Which I understand so, that the parson is to have all, saving a third part out of the two parts, which were to be employed on maintenance of the church.

In Scotland, by a ^q law of David the second about m.ccc.xl, it was constituted that no man should hinder the clergy in disposing tythes : *Sic quod suis decimis possint pacifice & cum integritate gaudere, sub poena excommunicationis, quoad clerum, & decem librarum penes regem*. And tythes there, have been, and in many places ^r are paid, parochially, yet also granted, altered, and disposed of by ^t positive law as in other countries. In the late plantation of new churches ordained by the last parliament ^u there, manse and glebe and vitale are assigned for maintenance to the rectors, but not tythes. And after the statute of annexation in the eleventh parliament of our present sovereign, whereby church revenues (saving parochial tythes, manse and small glebe, and some other special possession) were resumed to the crown, an act was made in the parliament ^v following against a kind of infeodations, which they call *erections of temporalities and teindes of kirkland into temporal lordships*, saving such as had been before erected. And for the particular course of setting out payment of tythes some special laws of late time they have in Scotland, and in the other states before spoken of ; but they belong not so much hither, being not of the essential part of the practice of payment, nor of the received right of tythes, therefore I wholly omit them. One example of an appropriation in

^h Thomas Michael in lib. de jurisd. conclus. 49.

stienf. in summ. tit. de dec. num. 13.

ⁱ Ordonancien in Vlaenderen bouck, 2. rubric. 12.

^k J. Herbort. in stat. Poloniae lit. D. & Jacob. Prilussus leg. Polon. lib. 1. cap. 4.

^l Ruzwald. Ingemundi de jure ecclesiastico, lib. 1. cap. 7.

^m Statut. David. II. cap. 42. n. 3.

ⁿ Statut. David. II. cap. 42. n. 3.

^o Statut. David. II. cap. 42. n. 3.

^p Statut. David. II. cap. 42. n. 3.

^q Statut. David. II. cap. 42. n. 3.

^r Statut. David. II. cap. 42. n. 3.

^s Statut. David. II. cap. 42. n. 3.

^t Statut. David. II. cap. 42. n. 3.

^u Statut. David. II. cap. 42. n. 3.

^v Statut. David. II. cap. 42. n. 3.

^h Zafius de feud. p. 4. & Vulteijs de feudis, lib. 1. cap. 5. §. 13.

ⁱ Summae part. 4. tit. 11.

^k In

^l enchirid. artic. decret. regni Hungar. a Sambuco edito.

^m J. Herbort. in stat. Poloniae lit. D. & Jacob. Prilussus leg. Polon. lib. 1. cap. 4.

ⁿ Ruzwald. Ingemundi de jure ecclesiastico, lib. 1. cap. 7.

^o Statut. David. II. cap. 42. n. 3.

^p Statut. David. II. cap. 42. n. 3.

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^r Statut. David. II. cap. 42. n. 3.

^s Statut. David. II. cap. 42. n. 3.

^t Statut. David. II. cap. 42. n. 3.

^u Statut. David. II. cap. 42. n. 3.

^v Statut. David. II. cap. 42. n. 3.

^w Statut. David. II. cap. 42. n. 3.

^x Statut. David. II. cap. 42. n. 3.

^y Statut. David. II. cap. 42. n. 3.

^z Statut. David. II. cap. 42. n. 3.

^{aa} Statut. David. II. cap. 42. n. 3.

^{ab} Statut. David. II. cap. 42. n. 3.

^{ac} Statut. David. II. cap. 42. n. 3.

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^{aw} Statut. David. II. cap. 42. n. 3.

^{ax} Statut. David. II. cap. 42. n. 3.

^{ay} Statut. David. II. cap. 42. n. 3.

^{az} Statut. David. II. cap. 42. n. 3.

^{ba} Statut. David. II. cap. 42. n. 3.

^{bb} Statut. David. II. cap. 42. n. 3.

^{bc} Statut. David. II. cap. 42. n. 3.

^{bd} Statut. David. II. cap. 42. n. 3.

^{be} Statut. David. II. cap. 42. n. 3.

^{bf} Statut. David. II. cap. 42. n. 3.

^{bg} Statut. David. II. cap. 42. n. 3.

^{bh} Statut. David. II. cap. 42. n. 3.

^{bi} Statut. David. II. cap. 42. n. 3.

^{bj} Statut. David. II. cap. 42. n. 3.

^{bk} Statut. David. II. cap. 42. n. 3.

^{bl} Statut. David. II. cap. 42. n. 3.

^{bm} Statut. David. II. cap. 42. n. 3.

^{bn} Statut. David. II. cap. 42. n. 3.

^{bo} Statut. David. II. cap. 42. n. 3.

^{bp} Statut. David. II. cap. 42. n. 3.

^{bq} Statut. David. II. cap. 42. n. 3.

^{br} Statut. David. II. cap. 42. n. 3.

^{bs} Statut. David. II. cap. 42. n. 3.

^{bt} Statut. David. II. cap. 42. n. 3.

^{bu} Statut. David. II. cap. 42. n. 3.

^{bv} Statut. David. II. cap. 42. n. 3.

^{bw} Statut. David. II. cap. 42. n. 3.

^{bx} Statut. David. II. cap. 42. n. 3.

^{by} Statut. David. II. cap. 42. n. 3.

^{bz} Statut. David. II. cap. 42. n. 3.

^{ca} Statut. David. II. cap. 42. n. 3.

^{cb} Statut. David. II. cap. 42. n. 3.

^{cc} Statut. David. II. cap. 42. n. 3.

^{cd} Statut. David. II. cap. 42. n. 3.

^{ce} Statut. David. II. cap. 42. n. 3.

^{cf} Statut. David. II. cap. 42. n. 3.

^{cg} Statut. David. II. cap. 42. n. 3.

^{ch} Statut. David. II. cap. 42. n. 3.

^{ci} Statut. David. II. cap. 42. n. 3.

^{cj} Statut. David. II. cap. 42. n. 3.

^{ck} Statut. David. II. cap. 42. n. 3.

^{cl} Statut. David. II. cap. 42. n. 3.

^{cm} Statut. David. II. cap. 42. n. 3.

^{cn} Statut. David. II. cap. 42. n. 3.

^{co} Statut. David. II. cap. 42. n. 3.

^{cp} Statut. David. II. cap. 42. n. 3.

^{cq} Statut. David. II. cap. 42. n. 3.

^{cr} Statut. David. II. cap. 42. n. 3.

^{cs} Statut. David. II. cap. 42. n. 3.

^{ct} Statut. David. II. cap. 42. n. 3.

^{cu} Statut. David. II. cap. 42. n. 3.

^{cv} Statut. David. II. cap. 42. n. 3.

^{cw} Statut. David. II. cap. 42. n. 3.

^{cx} Statut. David. II. cap. 42. n. 3.

^{cy} Statut. David. II. cap. 42. n. 3.

^{cz} Statut. David. II. cap. 42. n. 3.

^{da} Statut. David. II. cap. 42. n. 3.

^{db} Statut. David. II. cap. 42. n. 3.

^{dc} Statut. David. II. cap. 42. n. 3.

^{dd} Statut. David. II. cap. 42. n. 3.

^{de} Statut. David. II. cap. 42. n. 3.

^{df} Statut. David. II. cap. 42. n. 3.

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^{di} Statut. David. II. cap. 42. n. 3.

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^{dl} Statut. David. II. cap. 42. n. 3.

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^{dn} Statut. David. II. cap. 42. n. 3.

^{do} Statut. David. II. cap. 42. n. 3.

^{dp} Statut. David. II. cap. 42. n. 3.

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^{dt} Statut. David. II. cap. 42. n. 3.

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^{dx} Statut. David. II. cap. 42. n. 3.

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^{dz} Statut. David. II. cap. 42. n. 3.

^{ea} Statut. David. II. cap. 42. n. 3.

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^{ed} Statut. David. II. cap. 42. n. 3.

^{ee} Statut. David. II. cap. 42. n. 3.

^{ef} Statut. David. II. cap. 42. n. 3.

^{eg} Statut. David. II. cap. 42. n. 3.

^{eh} Statut. David. II. cap. 42. n. 3.

^{ei} Statut. David. II. cap. 42. n. 3.

^{ej} Statut. David. II. cap. 42. n. 3.

^{ek} Statut. David. II. cap. 42. n. 3.

^{el} Statut. David. II. cap. 42. n. 3.

^{em} Statut. David. II. cap. 42. n. 3.

^{en} Statut. David. II. cap. 42. n. 3.

^{eo} Statut. David. II. cap. 42. n. 3.

^{ep} Statut. David. II. cap. 42. n. 3.

^{eq} Statut. David. II. cap. 42. n. 3.

^{er} Statut. David. II. cap. 42. n. 3.

^{es} Statut. David. II. cap. 42. n. 3.

^{et} Statut. David. II. cap. 42. n. 3.

^{eu} Statut. David. II. cap. 42. n. 3.

^{ev} Statut. David. II. cap. 42. n. 3.

^{ew} Statut. David. II. cap. 42. n. 3.

^{ex} Statut. David. II. cap. 42. n. 3.

^{ey} Statut. David. II. cap. 42. n. 3.

^{ez} Statut. David. II. cap. 42. n. 3.

^{fa} Statut. David. II. cap. 42. n. 3.

^{fb} Statut. David. II. cap. 42. n. 3.

^{fc} Statut. David. II. cap. 42. n. 3.

^{fd} Statut. David. II. cap. 42. n. 3.

^{fe} Statut. David. II. cap. 42. n. 3.

^{ff} Statut. David. II. cap. 42. n. 3.

^{fg} Statut. David. II. cap. 42. n. 3.

^{fh} Statut. David. II. cap. 42. n. 3.

^{fi} Statut. David. II. cap. 42. n. 3.

Scotland may be here not untimely added, which falls about the year M.CC.XC. and shews a kind of arbitrary disposition, even at that time, of parochial tythes of lands lying there, in a conveyance of a layman's made to the monastery of *Gisburn in Torkshire*. The grantor was that *Robert de Bruis*, afterward king, and one of the ancestors of our sovereign. The original thus speaks. * *Omnibus ad quos praesens scriptum pervenerit, Robertus filius Roberti de Brus dominus vallis Anandiae salutem in Domino sempiternam. Noverit universitas vestra me concessisse, & praesenti scripto confirmasse Deo & ecclesiae sanctae Mariae de Gisburn & canonicis ibidem Deo servientibus & servituris, ecclesiam de Anand cum terris, decimis, & possessionibus ad eam pertinentibus, & ecclesiam de Logmaban cum terris decimis & possessionibus ad eam pertinentibus, & ecclesiam de Kirkpatrick cum capella de Logan & omnibus suis pertinentiis, & ecclesiam de Rainpatric, & ecclesiam de Cumbartres, & ecclesiam de Gretenhowe cum omnibus pertinentiis earum; Tenendum & habendum Deo & praefatis canonicis, & eorum successoribus, libere quiete & honorifice, ita quod liceat eis perpetuis temporibus de decimis praedictarum villarum, libere disponere & ordinare pro voluntate sua, & cuicumque voluerint eas ad firmam dimittere dare vel vendere, & alio quocunque modo voluerint, & ubicunque voluerint commodum suum facere, sine impedimento mei & haeredum meorum & hominum nostrorum, &c.* The seal, in green wax, annexed to it, hath impression of a knight armed and mounted, as for present onset in the wars, and is circumscribed with *esto ferox ut leo*.

How the laws of *Ireland* stand for tythes, is best seen in the statutes of that country of 28 *Hen. VIII.* cap. 17. of dissolutions, and 33 *Hen. VIII.* cap. 12. of payment according to antient custom and recovery of tythes, after the dissolution, given into lay hands, in like manner as in *England*. And here may be no unfit place to remember that antient law ordained by *Henry III.* within the archbishoprick of *Dublin*, whereby it was commanded that every man *non expectato mandato regis vel assensu, de gurgitibus & piscariis, ecclesiis in quarum parochiis sunt praedicti gurgites vel piscariae, decimas solvant. Quia R. non vult in periculum animae suae, hujusmodi decimas detineant.* We purposely omit particular mention of such of the reformed churches; as in this last age have brought their ministry to stipends, and altered almost all the former practice of ecclesiastick policy. For the practice of payment, and other disposition of tythes, and for the laws; and opinions, touching the right of them, thus much. But whatever this kingdom of *England* might have specially afforded, for laws and practice of tything, shall by it self, in its own singular order, be next delivered.

C H A P. VIII.

The laws of England made in the Saxon mycel rynoder or pitenagemoter, in parliaments, and in the councils here held, either national or provincial, or by the pope, for the due payment or discharge of tythes in this kingdom. Petitions, or bills in parliament touching them, are inserted. All in their course of time.

MOST of the *English* laws, constitutions and bills in parliament, that are reserved to this place and here collected, were originally written in *Saxon, Latin, or French*. And the *Saxon*, for the most part, were antiently (but it seems since the *Norman* conquest) turned into a barbarous *Latin* that yet better shews their meaning than a purer. Such as are found in *Latin* only, I have faithfully delivered according to the copies that gave them. Neither durst I suspect that any reader fit for the matter, should need an interpreter, no otherwise have I done in what is of the old *French*; it can hardly be any thing but inexcusable sloth, that can trouble any reader (that is fit also for the matter) in the understanding it. But in regard the old *Saxon* is known at all to few, and that hardly any better interpretation of the laws written in that language, can be than the old barbarous *Latin*, I have joined always, where it might be, both the *Saxon* and the translation. To have left out the original, had prevented some freedom of the reader's judgment, and tied it to the translator's. To have added no translation, had been as a purpose to have troubled even the fittest readers with a strange tongue; which also to have otherwise interpreted, had been but to envy them the help of those antients (that had better means to know the interpretation of those laws) and so make them look only as through spectacles of mine new made. I was willing to give all (as the course of the collection would permit) that herein might help to make a ground of free judgment. Yet also where I see cause of note I add it, but refer all to able censure. The laws and constitutions thus succeed.

I. An antient^z collection of divers canons written about the time of *Hen. I.* with this inscription of equal age:

Incipiunt excerptiones domini Ecgberti archiepiscopi Eburace civitatis, de jure sacerdotali, habet hese words; Ut unusquisque sacerdos cunctos sibi pertinentes erudiat ut sciant qualiter decimas totius facultatis ecclesiis divinis debite offerant. And immediately follows; Ut ipsi sacerdotes a populis suscipiant decimas; & nomina eorum,

* Servatur autographum in thesauro Cottoniano. Cottoniana.

⁷ Rot. pat. 14. Hen. III. membr. 4.

^z Mf. in biblioth.

quicumque dederint, scripta habeant, & secundum autoritatem canonicam coram testibus dividant, & ad ornamentum ecclesiae^c primam eligant partem, secundam autem ad usum pauperum atque peregrinorum per eorum manus misericorditer cum omni humilitate dispendent; tertiam vero sibimet ipsis sacerdotes referent.

If the credit of this be valued by the inscription, then it is about DCCC.L. years old. For, that *Ecbert* lived archbishop of *York* from the year DCCXLIII. to DCC.LXVII. But the authority of that title must undergo censure. Whoever made it, supposed, that *Ecbert* gathered that law and the rest joined with it, out of some former church constitutions; neither doth the name *excerptiones* denote otherwise. But in that collection some whole constitutions occur in the same syllables as they are in the capitularies of *Charles* the great, as that of *unicuique ecclesiae*^b *unus mansque integer*, &c. and some others which could not be known to *Ecbert*, that died in the last year of *Pipin*, father to *Charles*. How came he then by that? And how may we believe that *Ecbert* was the author of any part of those excerpts? Unless you excuse it with that use of the middle times, which often inserted into one body, and under one name, laws of different ages. But admit that, yet what is *secundum canonicam autoritatem coram testibus dividant*? The antientest *canonica autoritas*, for dividing tythes before witnesses, is an old imperial, attributed in some editions^c to the XI. year of the reign of *Charles* the great, being king of *France*, in others^d to the emperor *Lothar* I. But refer it to either of them, and it will be divers years later than *Ecbert's* death. And other mixed passages there plainly shew, that whose soever the collection was, much of it was taken out of the imperial capitularies, none of which were made in *Ecbert's* time. Perhaps, the greatness of his name was the cause why some later compiler of those excerpts might so inscribe it, to gain it authority. For he was both brother to *Edbert* king of *Northumberland*, and the first also that, after *Paulinus*, restored the name of archbishoprick, and the pall, to *York*. And the heads of a synod held in *Ecbert's* time, under king *Ethelbald*, and *Cuthbert*, archbishop of *Canterbury*, are yet extant; but not any express mention is found in them of tythes, although most of the particulars of church government are touched there.

II. The authors of the centuries^e have a synod held in the year D.CC.LXXXVI. under two legates sent from pope *Adrian* I. with letters for reformation and establishing of church laws, to *Offa* king of *Mercland*, and *Aelfwold* king of *Northumberland*, and to the two archbishops. The particulars of the synod are related in an epistle to the pope from those legates (which were the first that had so come from *Rome* hither, after

Augustine) wherein it is related, that *Gregory*, bishop of *Ostia*, one of the legates, went into *Northumberland*, and *Theophilact*, bishop of *Todi*, the other, to *Offa*, who with *Kenulph* king of *West-Saxony*, called a council for the northern part, as *Aelfwold* for the northern. *Gregory* says, that in the northern parts *ad diem concilii convenerunt omnes principes regionis tam ecclesiastici quam seculares*; and after many institutions of canon laws there, the XVIIIth chapter is,

De decimis dandis sicut in lege scriptum est: Decimam partem ex omnibus frugibus tuis septuaginta deferens in Domum Domini dei tui; rursum per prophetam: Adverte, inquit, omnem decimam in horreum meum, ut sit cibus in domo mea, & probate me super hoc, si non aperuero vobis cataractas coeli & effundero benedictionem usque ad abundantiam, & increpabo pro vobis devorantem qui comedit & corrumpit fructum terrae vestrae, & non erit ultra vinea sterilis in agro dicit Dominus. Sicut sapiens ait: Nemo iustam elemosynam de his quae possidet facere valet, nisi prius separaverit Domino quod a primordio ipse sibi reddere delegavit. Ac per hoc plerumque contingit ut qui decimam non tribuit ad decimam revertitur. Unde etiam cum obtestatione praecipimus, ut omnes studeant de omnibus quae possident decimas dare; quia speciale domini Dei est; & de novem partibus sibi vivat & elemosynas tribuat. Et magis eas in abscondito facere suasimus, quia scriptum est: cum facis elemosynam, noli tuba canere ante te. *The authority of this canon, may be known out of what is there further added.* Haec decreta, beatissime papa *Hadriane*, in concilio publico coram rege *Aelfwoldo* & archiepiscopo *Eanbaldo* & omnibus episcopis & abbatibus regionis seu senatoribus ducibus & populo terrae proposuimus; & illi ut superius facti sumus, cum omni devotione mentis iuxta possibilitatem virium suarum, adjuvante superna clementia, se in omnibus custodire devoverunt, & signo sanctae crucis in vice vestra, in manu nostra confirmaverunt, & postea stylo diligenti in charta hujus paginae exaraverunt, signum sanctae crucis insignentes. *Then follow some subscriptions of bishops*, Et his quoque saluberrimis admonitionibus, presbyteri, diaconi ecclesiarum, & abbates monasteriorum, judices, optimates, & nobiles uno opere, uno ore consensimus & subscripsimus.

After this so concluded in the northern state, the same legate, together with Malvin and Pyttel, ambassadors from Aelfwold, take with them all those decrees and canons, and go to the council held under Offa for the western parts.

Ubi, as the words are, gloriosus rex *Offa* cum senatoribus terrae una cum archiepiscopo *Iaenberchto* (some call him *Lambert*) sanctae ecclesiae *Dorovernensis* (that is, of *Canterbury*) & caeteris episcopis regionum convenerat, & in conspectu concilii clara voce singula capita

^a Vide supr. cap. 6. §. 3.
bard. lib. 3. tit. 8.

^b Ansegif. lib. 1. cap. 91.
^c Centur. 8. cap. 9. pag. 583. edit. Basil. 1567.

^e Edit. Viti Amerbachii, cap. 7.

^d Leg. Longo-

perleſta ſunt, & tam Latine quam Teutonicæ (that is, in English Saxon, which then was the ſelf ſame with Dutch or Teutonic) quo omnes intelligere poſſent, dilucide reſerata ſint : qui omnes conſona voce & alacri animo gratias referentes apoſtolatus veſtri admonitionibus (the legates ſo write to the pope) promiſerunt ſe divino adminiculante favore juxta qualitatem virum pro mitiſſima voluntate in omnibus hæc ſtatuta cuſtodire.

And *Offa* and his biſhops, abbots, and ſome princes ſubſcribe with the croſs to it. What copy of this ſynod the centuriators had, or whence they took it, I find not. But if it be of good authority, it is a moſt obſervable law to this purpoſe ; being made with ſuch ſolemnity by both powers of both ſtates, of *Mercland* and *Northumberland*, which took up a very great part of *England* ; and it is likely, that it was made general to all *England*. In the relation of the legates to the pope, mention is of *Kenulph* king of *Weſt Saxony*, his joining with *Offa* in calling the council ; but the confirmations of the decrees have no reference to him. But, by the way, if you examine it by ſtory and ſynchroniſm, *Kenulph* perhaps could not have at all to do with it. For ſome of our old monks expreſſy affirm, that in the ſecond year^f of *Britbric*, next ſucceſſor after *Kenulph*'s death, pope *Adrian* ſent his legates in *Britanniam ad renovandam fidem quam prædicaverat Auguſtinus*. And that they then held their ſynod at a place called *Cealchithe*. How could *Kenulph* be there then, as the legates relate ? Believe the monks as you will : but indeed, an exactneſs here is not eaſily extracted out of the diſturbed times of our chronicles. They talk alſo of a ſynod held in *Wicanhale* for the north parts, a year or two after. Doubtleſs they intend this ſame that is extant in the centuries ; if at leaſt it be of ſufficient credit. Neither can it be ſuſpected by any circumſtance in the ſubſcriptions ; which being ſo many, might have by chance ſoon got among them a character of falſhood, had it not been genuine. In the printed *Hoveden*, *Gregory*, one of the legates, is called *Georgius*, perhaps for *Gregorius*. But my mſ. hath alſo *Georgius*. But if *Henry* of *Huntingdon*, and *Roger* of *Hoveden* give us the time right of the legates coming hither, then is that mention of *Kenulph*, in their ſuppoſed epistle to the pope, a plain character of falſhood, or ignorance, in ſome tranſcriber ; who alſo, in one place, hath *Oſwaldus* for *Ælſwaldus* king of *Northumberland*. But thoſe which ſpeak of that ſynod of theſe legates, ſeem to ſuppoſe it extending through the whole kingdom. See alſo §. VIII.

III. In the^g laws made between king *Alfred* and *Guthrun* the *Dane*, (to whom the provinces of *Eaſt-Anglia* and *Northumberland* were

given to hold of the crown) and renewed alſo between the ſame *Guthrun* and king *Edward*, ſon to *Alfred*, about the year D.CCCC. this occurs, Giſ hya teopunge forþheols, gylbe laſhlite mið Denum, wite mið Englum, that is, as the old *Latin* tranſlation hath it, ſi quis decimam contratenear, reddat laſhlite cum Dacis, witam cum Anglis. *Laſhlite* denotes the *Daniſh* common forfeiture ; which, as it is thought, was in moſt offences twelve ores (that was commonly twenty ſhillings, for twenty pence made an ore commonly ; and ſometime, according to the variation of the ſtandard,^h ſixteen pence was an ore ; but in *Oxfordſhire*, ſpecially, and *Gloceſterſhire* in *Domeſday*, twenty go to an ore) as the *Engliſh* common forfeiture, or the *wite*, was thirty ſhillings. The occurrence of theſe two names, is frequent in the *Saxon* laws ; and it may ſeem by this, that ſome other law preceded for the payment of tythes, or elſe that the right of them was otherwiſe ſuppoſed clear. For the authority of this and the reſt comprehended in thoſe of *Alfred* and *Guthrun*, obſerve that in their title ; 7 ða witan eac ðe gýþpan wæron, oþ 7 unrelban 7 reaf 7 genipodon 7 mið goðe gehýhton, that is, and the wiſemen (or the baronage) of ſucceeding times, very often renewed that council of theirs, and in *bonum adduxerunt*, as in the old tranſlation thoſe laſt words are turned.

IV. It is reported of king *Æthelulph*, that in the year D.CCC.LV. decumavit (as *Æthelward* writes) de omni poſſeſſione ſua in partem Domini & in univerſo regimine ſui principatus ſic conſtituit. The words of his charter, whereby he did it, are ; Cum conſilio epiſcoporum ac principum meorum conſilium ſalubre atque uniforme remedium (he means remedy againſt thoſe miſeries which the *Engliſh* had endured by *Daniſh* irruptions) affirmantes conſenſimus, ut aliquam portionem terrarum hæreditariam antea poſſidentibus omnibus gradibus ſive famulis & famulabus Dei Deo ſervientibus, ſive laicis miſeris, ſemper decimamⁱ manſionem ubi minimum ſit, tum decimam partem omnium bonorum in libertatem perpetuam donari ſanctæ eccleſiæ adjudicavi, ut ſit tuta & munita ab omnibus ſæcularibus ſervitutibus, &c. So is it reported in the abbot of *Crowland*'s hiſtory, and varies not much in *William* of *Malmsbury*, and *Nicholas*^k of *Gloceſter*, who both have it alſo at large. But in *Matthew* of *Weſtmiſter*, no other *decima* is mentioned in it, than *decima terræ meæ*. Out of the corrupted language, it is hard to collect what the exact meaning of it was. How moſt of the antients underſtand it, is beſt known by the words wherein they ſum it. *Ingulphus* thus of it ; Omnium, prælatorum ac principum ſuorum qui ſub ipſo, variis provinciis totius Angliæ præerant, gratuito conſenſu tunc primo cum decimis omnium terrarum ac bonorum aliorum ſive catallorum

^f *Henric*, *Huntingdon*, lib. 4. pag. 197. & *Rog. de Hoved.* p. 235. edit. *London.* ſed vide etiam *Rog. de Hoveden*, ſub ann. 786. & *Æthelward*, lib. 2. cap. 20. & *Flor. Wigorn.* ſub ann. 785.

^g Vide foed. *Edouard.* & *Guthruni* edit. *Lambard.* cap. 6.

^h Vide regiſt. *Burton.* apud *Camden.* in Belg. pag. 186. edit. lat.

ⁱ i. hydam, ſeu familiam.

^k Mſ. in biblioth. Cottonian.

universam dotavit ecclesiam Anglicanam per suum regium chirographum. And he tells us further, that *Æthelulph*, in the presence of his baronage, at *Winchester*, offered the charter upon the altar, and the bishops received it, and sent it to be published in every parish church through their dioceses. In *Florence of Worcester*, it is in these words abbreviated. *Æthelulphus rex decimam totius regni sui partem ab omni regali servitio & tributo liberavit, & in sempiterno graphio in cruce Christi pro redemptione animae suae & antecessorum suorum uni & trino Deo immolavit.* So also *Roger of Hoveden*. An old French fragment of the English history says, that he *dismast la dixme bide de tute Westsaxe*, and that it was *pur pestre & vestre les pauvres*. The old archdeacon of *Huntingdon* thus; *Totam terram suam ad opus ecclesiarum decimavit propter amorem Dei & redemptionem sui.* And in the rhimes of^m *Robert of Gloucester*,

The king to holpe chirche thereafter ever the more drough.

And tithed well all his lond, as he ought, well enough.

If we well consider the words of the chiefest of these antients, that is, *Ingulphus*, we may conjecture that the purpose of the charter was to make a general grant of tythes payable freely and discharged from all kind of exactions used in that time, according as the monk of *Malmesbury*, and^a *John Pike* in his supplement of the history of *England*, express it. *Decimam*, say they, *omnium hydarum infra regnum suum a tributis & exactionibus regis liberam Deo donavit*, that is, granted the tythe of the profits of all lands, free from all exactions; for, the granting of the tenth part of the hides or plough-lands, denotes the tenth of all profits, growing in them, as well as *decima acra sicut aratrum peragrabit*, which is used for tything of the profits, in the laws of king *Edgar*, *Ethelred*, and *Knout*, and accordingly also is this of *Æthelulph*, related in the *Saxon*^o chronicles of *Peterborough*, *Canterbury*, and *Abingdon*. He did tythe his lander orep all his rice gobe to lorse, &c. as the words are, that is, *his lands over all his kingdom*, &c. And doubtless *Ingulphus* no otherwise understood it than of perpetual right of tythes given to the church, where he remembers it by *tunc primo cum decimis*, &c. So that the tythe of predial or mixed profits was given, it seems, perpetually by the king with consent of his states both secular and ecclesiastick, and the tythe of every man's personal possessions were at that time also expressly included in the gift, because, it seems, before that, the payment of all tythes had commonly been omitted. The antientest of writers that hath the charter whole, is that *Ingulphus*: But questionless it is much corrupted, especially in that of *portionem*

terrarum haereditariam antea possidentibus omnibus gradibus. For what may that signify? But in *Matthew of Westminster*, it is farthest from depravation of language; where, after *portionem*, follows *terrae meae Deo & beatae Mariae & omnibus sanctis jure perpetuo possidendam concedam, decimam scilicet partem terrae meae ut sit tuta, &c.* The privilege or liberty annexed to it, is, that it should not be only free from all taxes and exactions used then in the state, but also from that^p *trinoda necessitas* (whereto all lands whatsoever were subject, although otherwise of most free tenure) by which they meant their *expeditio* or military service, *pontis extructio*, & *arcis munitio*. This freedom of that time, you must, it seems, so interpret, that every man was from henceforth to be valued in all subsidies and taxes according only to his nine parts of his lands and profits; and the profits of the tenth being due to the church, were both in his and their hands hereby discharged from all payments and taxes whatsoever. But should it be understood only for a particular consecration to the church of one time, and of the land^q it self to be possessed by the clergy or employed to other good uses of charity, then had it no more due place here among the laws of tythes, than the story^r of *Robert earl of Gloucester* his giving every tenth stone (of his provision for the building of a tower near to *Bristol*) to the erecting of a chapel, or *Edward*^s the confessor his building *Westminster* abbey with the tenth of one year's revenue, or *Offa*'s giving the tythe of his estate to the clergy and the poor, or the like. But I conceive it as is before declared. It is fit to add here also another of *Æthelulph*'s grants or constitutions by the parliamentary consent of that time, made to like purpose; and that at large, because it is not in any published author. In the^t chartularies of the abbey of *Abingdon*, it occurs in the one, with the title of *privilegium Æthelwulfi Regis*, in the other with, *quomodo Æthelwulfus rex dedit decimam partem regni sui ecclesiis*. Then follows the charter or constitution. *Ego Æthelwulf gratia Dei occidentalium Saxonum rex, in sancta ac celeberrima Paschali solennitate, pro meae remedio animae, & regni posteritate & populi ab omnipotenti Deo mihi collati, consilium salubre cum episcopis, comitibus, & cunctis optimatibus meis perfeci, ut decimam partem terrarum per regnum nostrum non solum ecclesiis darem, verum etiam & ministris nostris in eadem constitutis in perpetuum libertatem habere concessimus, ita ut talis donatio fixa incommutabilisque permaneat ab omni regali servitio & omnium secularium servitute absoluta. Placuit autem Æthelstano episcopo Scirburnensis ecclesiae & Swithuno Wentanae ecclesiae episcopo, & ducibus communiter. Hoc autem fecimus in honorem Domini nostri Ihesu Christi & beatae semper virginis Mariae & omnium sanctorum & Paschalis festi reverentiam, ut Deus omnipotens*

¹ Mf. ad calcem Nich. Glocest. in bibl. Cotton.

² Mfs. in bibl. Cottoniana.

³ Mf. in bibl. Cottoniana.

⁴ Mf. in bibl. Cottoniana.

⁵ Mf. in bibl. Cottoniana.

⁶ Mf. in bibl. Cottoniana.

⁷ Mf. in bibl. Cottoniana.

⁸ Mf. in bibl. Cottoniana.

⁹ Mf. in bibl. Cottoniana.

¹⁰ Mf. in bibl. Cottoniana.

¹¹ Mf. in bibl. Cottoniana.

¹² Mf. in bibl. Cottoniana.

¹³ Mf. in bibl. Cottoniana.

¹⁴ Mf. in bibl. Cottoniana.

^a Mf. in bibl. Cotton. & apud v. c. Tho. Allen. Oxon.

^b Vide, si placet, tit. honor. part. 2. col. 726, 727.

^c Camden, in Belgis, fo. 173.

^d Idem, pag. 308. in Trinobantibus.

^e Idem, pag. 308. in Trinobantibus.

^f Idem, pag. 308. in Trinobantibus.

^g Idem, pag. 308. in Trinobantibus.

^h Idem, pag. 308. in Trinobantibus.

ⁱ Idem, pag. 308. in Trinobantibus.

^j Idem, pag. 308. in Trinobantibus.

^k Idem, pag. 308. in Trinobantibus.

^l Idem, pag. 308. in Trinobantibus.

^m Idem, pag. 308. in Trinobantibus.

ⁿ Idem, pag. 308. in Trinobantibus.

nobis & nostris posteris propitiari dignetur. Scripta est autem haec cartula anno ab incarnatione domini nostri Ihesu Christi DCCC.LIV. indictione 11 die Paschali, in palatio nostro qui dicitur Wilton. Qui autem augere voluerit nostram donationem, augeat omnipotens Deus dies ejus prosperos: si quis vero minuire vel mutare praesumpserit, noscat se ante tribunal Christi redditurum rationem nisi prius satisfactione emendaverit ✠. Ego Aethelwlf rex ✠. Ego AElstan episcopus ✠. Ego Swithun episcopus ✠. Ego Wlstaß abbas ✠. Ego Werferd abbas ✠. Ego Eðbered & ego Alfred filii regis consensimus. The antientest hand wherein this is written in the chartularies, is of about Henry the second his time; and for the credit of it, you must rely upon those chartularies. It differs in date both of place and time from the other; this is dated at *Wilton*, that at *Winchester*; this in DCCC.LIV, the second indiction at *Easter*, that DCCC.LV, and in some, the fourth indiction, and in others, the third in *November*; Such a difference of indictions may well be, if the authors that deliver it, added that note for the time that they conceived it to be made in, not for the very characters of the date of the original instrument; For, *November* falling in the fourth indiction imperial, may be of the third indiction pontifical, the one beginning in *September*, the other in *December* following. That difference is in the relations of it between *Florilegus* and the abbot of *Crowland*; and the abbot perhaps reckoned by the pontifical indictions, and the other monk by the imperial, if at least their copies be not corrupted. But whereas in *Malmesbury* the date of that first charter is DCCC.XLIV. indict. iv. v nonas *Novembris*; plainly it is false, neither could that indiction be in the character of the year DCCC. XLIV, which fell in the seventh indiction.

V. In a volume x that belonged to the abbey of *S. Augustine's* in *Canterbury*, titled *statuta synodorum*, written in a hand of about DCCC years after *Christ*, or somewhat more, one paragraph is *de decimis*. But the *Mosaic*al commandment (for few of the judicials of *Moses* are wanting in it) and a passage in *S. Augustine* are the only authorities brought for them. No council or positive canon is mentioned in it to that purpose; although for other things, *synodus Romana*, *synodus Araithensis*, *Narbonensis*, and very often *synodus Hybernensis* occur in it. The authors used by him that compiled it, are *S. Augustin*, *S. Jerom*, *S. Gregory*, and *Isidore*, (which were in those middle times the y chief, almost the only fathers of the church that were read) and sometimes *Gildas* and *S. Patrick*, whence it may seem that it was collected by some *Briton* or *Irishman*, and certain canons of that abbot *Adoman* spoken of by z *Bede*, are annexed to it. Neither did the author of it doubt but that he had all the councils of credit that prece-

ded him, as his own testimony in his preface justifies. There, after a short relation of the four most known and generally received, of *Nice*, of *Constantinople*, of *Ephesus*, of *Chalcedon*, he adds: *Hae sunt quatuor synodi principales fidei doctrinam plenissime praedicantes; sed & si qua sunt concilia quae sancti patres spiritu & divino pleni sanxerunt post istarum quatuor auctoritatem, omni manent stabilia vigore, quorum gesta in hoc opere condita tenentur.* But to the same volume is joined another collection, with this inscription; *incipiunt pauca iudicia quae desunt de supradictis*, in which the old canons of *Rome* (that is, the *codex Romanæ ecclesiae*, or some other in the nature of it, which was received into these northern parts, as a director of the church, in the eldest times of christianity here, as you may see in our a antientest church-story) are cited, and divers authorities out of those fathers and a few of the elder councils. But, no denominated pontifical or synodal is remembered there for tythes. Only the texts of *Moses* for tythes, first fruits, the first born, and such more are numbered together; and then follows a chapter *de divisione decimarum*, with this declaration: *Lex dicit; ipsi sacerdotes populi suscipiant decimas, & nomina eorum, quicquid dederint, scripta habeant & secundum auctoritatem canonicam &c.* in the self same words as are before attributed to the excerpts of *Ecbert*. The exact age of those *statuta synodorum*, appears not. But they were collected about king *Aethelstan's* time; at least, then was the copy that remains of them written, as may be conjectured alone, if other reasons failed, from the similitude betwixt the character found in them and that of the text of the holy evangelists, which king *Aethelstan* caused to be fairly written, and consecrated to *S. Cuthbert*. That text with those *statuta*, are both yet preserved from the injury of time, among those inestimable monuments of that noble knight *Sir Robert Cotton*. For those *pauca iudicia* that follow; they are of later hand than the *statuta*; but of what time, it sufficiently appears not. That *lex dicit* in them may be referred to the canon b related out of the excerpts of *Ecbert*; but whence that canon is originally, I have not yet learned.

VI. King *Aethelstan* c about the year DCCCXXX by advice and consent of the bishops of the land, made a general law for predial and mixed tythes; in these words, Ic ðeþelstane cýning mis geþeahte pulphelmeþ mineþ hebbiþceoper. 7 oþra minra biþceopa beþeoðe eallum minum geþearfum 7uph ealle mine rice (on þær ðrihtæneþ nama. 7 ealra halgena; 7 for mine lufu) 7 hi æþorþ mineþ aþeneþ æhter 7am teoþe 7eryllaþ. 7e 7æaþ libbenþeþ 7þper. 7e 7æaþ 7eapliceþ perþemeþ; d 7 þ ilce 7eoð eac 7a biþceopaþ heopa 7eþhilepa. 7eac mine ealþonmanna. 7 7eþeara; e 7 ic wille 7 mine biþceoper 7 7eþeara 7æaþ

x Ms. in biblioth. Cottoniana, cap. 65. de variis causis. y Quod elicere fas est ex Leonis epist. in dist. 20. cap. 1. z Eccl. hist. lib. 5. cap. 16. a Protulii eundem librum canonum, ait Theodorus Cant. arch. in concil. circa ann. 670. apud Hertford celebrato. Bed. hist. eccles. lib. 4. cap. 5. b Sup. §. I. c Leg. Aethelst. edit. a Lambardo. d In ms. Cottoniano inferuntur illic haec verba: 7pa man rihtwæt mæge. oððe gemetan, oððe 7etellan, oððe 7eagan. i. e. in the justest way that may be; either by measure, number, or weight.

semaph eallum ðe hio gehýrnþum geþýnaþ. 7 þalce
to þum tibe fulþremaph ðe se hio reccaþ. 7 þer se
to ðæm ðæc ðæp beheapþunge Seint Iohanne
þær fulþceper: which is antiently thus* turned
into Latin. *Ego Athelstanus rex consilio Wulf-*
helmes archiepiscopi mei & aliorum episcopo-
rum meorum, mando praepositis meis omnibus
in toto regno meo, & praecipio (in nomine Do-
mini & sanctorum omnium & super amicitiam
meam) ut inprimis de meo proprio reddant Deo
decimas tam in vivente capali quam mortuis
frugibus terrae: & episcopi mei similiter faci-
ant de suo proprio, & aldermanni mei, & prae-
positi mei. Et volo ut episcopi & praepositi
mei, hoc judicent omnibus qui eis parere de-
bent, & hoc ad terminum expleant quem eis po-
nimus, i. e. decollatio S. Johannis Baptistae.

And the example of Jacob, with a text or two
out of holy writ and S. Augustin, is added to
move devotion. That translation agrees whol-
ly enough with the Saxon, saving in those words
mortuis frugibus; the Saxon being yearly fruits,
which also another copy of this translation ex-
presses by *ornotinis frugibus*, corrupted plainly
from *hornotinis frugibus*, i. e. the fruits of one
and the last year, or the yearly increase; and
perhaps some ignorant monk finding *ornotinis*,
and not understanding it, because he would be
sure to square it to his own ability of learning,
made it *mortuis*, which kind of changing hath
examples enough in bold but ignorant criticism.
That which the old translator calls *vivens cap-*
itale, is, libbenþer ýpper i. e. living cattel, in the
Saxon; which hath often^e ceap also for *chat-*
tels, and sometimes especially for living cattel;
but the old^s Latin of the Saxon laws turns ceap
also into *capitale*, whence *cattalla* is like enough
to have descended. And the first stock of cattel
which by king Ina's^h laws was to be given to
orphans, was called *þrumstol* in Saxon, but *primum*
capitale in the old translations. In Bramp-
ton'sⁱ history (which is full of the laws of the
Saxon times) after those constitutions of Grate-
ley, part of which are in Lambard's *Archæologia*,
follows a thankful acknowledgment to king A-
thelstan for this law of tythes, in these words:

Karissime; episcopi tui de Kent & omnis
Kentfirae, thani, comites & villani tibi domi-
no dulcissimo suo gratias agunt, quod nobis de
pace nostra praecipere voluisti, & de commodo
nostro perquirere & consulere; quia magnum
opus est inde nobis divitibus & egenis. Et hoc
incepimus, quanta diligentia potuimus, consilio
horum sapientum quos ad nos misisti. Unde,
karissime domine, primum est de nostra decima,
ad quam valde cupidi sumus & voluntarii & tibi
supplices gratias agimus admonitionis tuae.

VII. ABOUT D.CCCC.XL, Edmund king of
England in micelne ýrnos, that is, a great synod,
or council, a kind of parliament, both of lay and

spiritual men (which are expressed by *gobcunþa*
and *poplcunþa*) held in London, made this
act. Teoþunge se bebenþaþ aelcum cýrcenum
men be hyr cýrcenbome. 7 cýrcýceat. 7 aelmerpeoh:
Eþ hit hpa ðon nýlle. 7 y he amanyuþos. Which
is antiently¹ turned; *decimam praecipimus om-*
ni christiano super christianitatem suam dare;
& emendent cyrcsceat, i. e. ecclesiae censum,
& aelmesfoh, i. e. eleemosynae pecuniam, siquis
hoc dare noluerit, excommunicatus sit. And
all agrees with the Saxon, saving only, that no-
thing answers to the word *emendent*. That
cyrcsceat is a church-rent of corn, or the first
fruits of corn yearly in those times, and regular-
ly payable at S. Martin's day to the^m church;
and is sometimes written *curscet*; sometimes
otherwise. And in an old ms. exposition of law-
terms, occurs, *cherche-fonde, une mesure de ble*
que checun homme soleit envoyer a seint esglise
en temps de Bretons. Plainly, church-corn is
understood; and *cyrcsceat*, that is, church-rent
is the original whence *cherche-fonde* is there
corrupted. And among articles² inquirable by
every escheator in 44 Hen. III. about the pro-
fits, estate, tenure, and issues of the king's re-
nants, one is of *cherchescot tam in blado quam*
in gallinis, & in aliis exitibus. It is *circeft*
often in the book of *domesday*. Where it is
found belonging sometimes to abbies, sometimes
to parish churches, sometimes to others. It
was still as first fruits. And this old testimo-
ny is for the antiquity and continuance also
of payment of it here. ^o *Churcheset cer-*
tam mensuram bladi tritici significat quam
quilibet olim sanctae ecclesiae die sancti Marti-
ni tempore tam Britonum quam Anglorum^p:
Plures tamen magnates post Normannorum ad-
ventum in Angliam illam contributionem, secun-
dum veterem legem Moysi, nomine primitia-
rum dabant, prout in brevi regis Knuti ad sum-
um pontificem transmissa continetur, in^q *qui-*
bus illam contributionem appellat churchsed,
quia semen ecclesiae. But what the author
means by that letter or brief of king Knout, sent
to the pope, I as little know, as why he cites
that for authority to prove what the baronage
did after the Normans. Indeed, an epistle^r is
extant, which Knout sent into England (by Li-
ving abbot of Tavistock) as he was taking his
journey homewards from the pope; and there-
in, mention is of this *curscet*, of any other I
am yet ignorant. That *aelmerpeoh*, or *alm-*
money, was the *Peter-pence*, due yearly at the
first of August, by institution, as some will, of
king Ina, as others, of king Aethelulph. And
they were called also Romepeoh, Romercoþ, heopþe-
pening.

VIII. OF the same time, some constitutions
are extant, made by Odo archbishop of Can-
terbury (yet not, for ought appears by them, in
a synod) with this preface: *Ego Oda humilis*

* In historia Jornallensi ms. in bibl. Cotton.

diſta historia Jornallensi ms.

¹ In dict. hist. Jornallensi.

Lambard. in explic. verb. in *primitiae*.

Thom. Allen Oxoniens.

lib. 2. c. 11.

^h Cap. 38.

^m Videſis Inae leg. cap. 4. & 62.

^c Canuti leg. c. 10. & Edgari leg. cap. 2. & 3.

^p Fleta ms. lib. 2. c. 47.

^q Supple. solvebant.

^r Ms. compact. in vol. quod codex eccleſ. Landav. dicitur in bibl. Cotton.

^e Vet. leg. ibid. ms.

ⁱ Dict. hist. Jornallensi.

^k Leg. Edmund. apud Lambard. cap. 2.

^l Lib. 2. c. 11. Cnutonis r. epist. ad Anglos. &

ⁿ Annal. monast. Burtonens. ms. apud v. c.

^o Lege quo.

^p Apud G. Malmes.

^q In

^r ex-

¶ *extremus divina largiente clementia, almi praefulus & pallii honore ditatus, quaedam documenta omni chriscicola non indigna, quae a praecedentibus illustrium virorum praeceptis certissima comperi, ad consolationem domini mei regis scilicet Aetmundi omnisque populi excellenti imperio ejus subjecti, in ista cartula, coadunare decrevi. Unde devotissime obsecro & clementissime hortor audientum mentes ut si quando haec recitanda audiant, interius videlicet & in corde frequenti meditatione plantent, & multiplici bonae operationis munere ex eo fructum paccatissimum in tempore messis sibi colligant. Primo capitulo praecipimus & mandamus ut sancta Dei ecclesia, &c.* And so goes on with some particulars which belong to church discipline; the tenth and last chapter being only for tythes in these words. *X. capitulo mandamus & fideliter obsecramus de decimis dandis sicut in lege scriptum est. Decimam partem ex omnibus frugibus tuis seu primitiis deferas in domum domini Dei tui. Rursum propheta, afferte, inquit, omnem decimam in horreum meum, ut sit cibus in domo mea, & probate me super hoc si non aperuero vobis catarractas coeli & effundero benedictionem usque ad abundantiam & inderabo pro vobis qui comedit & corrumpit fructum terrae vestrae; & non erit ultra vinea sterilis. Unde & cum obtestatione praecipimus ut omnes fideant de omnibus quae possident dare decimas; quia speciale domini Dei est; & de novem partibus sibi vivant & elemosynas tribuant.* Where note, the syllables are of that which in the centuries is referred to an *English* council of D.C.CC.LXXXVI. before in §. II. For this of *Odo*, although no express occurrence denote, that it was in a council; yet you may much incline to believe it was in one, if you compare it with ^a what you find in the monk of *Malmesbury* of him.

IX. King *Edgar*, about the year D.CCCC.LXX. mis his prena geþeahhte, that is, with the advice and council of his wisemen, or baronage, ordained, That the church should enjoy all her liberties, 7^a man ægýre ylce ælc teoþunge to þæm ealban mýnre þe se þeo hýpnesse tohyrþe, 7 ryþonne ssa gelearþ. ægþer of ðægner inlanð. ge of neahtlanð. ssa his rult gega;

2. 7 ssa hpa ðonne ðegna ry. ðe on his boclanðe cýpcan hæbbe ðe lægeþrope on ry. 7 gerylle he ðonne ðriðban ðæl his agenpe teoþunge into his cýpcan;

3. 7 ssa hpa cýpcan hæbbe ðe lægeþrope on ne ry. ðonne so he of ðæm nýgan ðælum his sþeoce þ þ he pille;

4. And ry ælcpe geoguþe teoþunge gelearþ be Pentecosten; 7 þapa eoþþærma be Eamhte.

5. 7 ssa hpa ðonne þa teoþunge gelearþan nelle ssa þe ge-craðen habbaþ. þape ðær Lýnunges geþeþa to.

7 þær Biceoper. 7 ssa mýnreþer mæsseþeoce. 7 niman unþanceþ ðone teoþen ðæl to ðæm mýnre ðe hit to geþýppige. 7 tæcan him to þæm nýgon ðæl, 7 to ðæle mon þa eahta ðælar on tpa. 7 so se 7 hlafoþ to healfan. to healfan se biceop. ry hit cýnunges man, ry hit ðegener: that is, in the old ² Latin copies.

1. Et reddatur omnis decimatio ad matrem ecclesiam cui parochia adjacet, de terra ^a thainorum & villanorum, sicut ^b aratrum peragrabat.

2. Si quis thainorum sit qui in feodo suo ecclesiam habeat ubi coemiterium sit, det ei tertiam partem decimae suae.

3. Si non sit ibi atrium (but the Saxon hath here the same word as before, for coemiterium, that is, laeþeþrope) det, ex suis novem partibus, presbytero, quod vult.

4. Et omnis decimatio juventutis reddita sit ad Pentecosten; & terrae frugum, ad aequinoctium.

5. Si quis decimam dare sicut diximus noluerit, adeat praepositus regis & episcopi, & sacerdos illius ecclesiae, & reddant ecclesiae cui pertinebit decimam suam; & nonam partem dimittant ei qui decimam suam detinuit, & octo partes in duo dividantur dimidium domino, dimidium episcopo; sit homo regis, sit homo thaini. This Latin agrees well enough with the Saxon; although in this last §. si quis, for episcopi ^c sacerdos, Lambard hath & episcopus & sacerdos illius ecclesiae, &c. But whereas the translator uses the word ecclesiae only for church; in the Saxon, that which he calls matrem ecclesiam, is denoted by ealban mýnreþe, and that ecclesia, in §. 2. si quis thainorum, by cýpcan; whence, our word kirk, or church, is framed. For the difference of church and minster here, somewhat where anon we speak of parishes of that time.

X. A council, or a kind of parliament, held under king *Ethelred*, by the advice of his two archbishops, *Elfpheg* and *Wulfstan*, (about the year M.x.) is yet extant, wherein laws are for tythes. But because it remains only a manuscript of about the time of the *Norman* conquest, the preface of it shall be here first noted, that thence the authority of it may be the better understood. It is inscribed with ^d *Incipiunt synodalia decreta*. Then begins with,

Quodam tempore contigit ut regis *Aethelredi* edicto concrépante, archipraefulumque *Alfegi* & *Wulfstani* hortatu instigante, universi Anglorum optimates die sancto Pentecostes ad locum ab indigenis *Eanham* nominatum acciti sunt convenire. Collecto itaque ibidem christi-
colarum coetu venerabilium quamplurimorum de catholicae cultu religionis recuperando, deque

^a Malach. 3. ^b De gest. pontif. lib. 1. fol. 114. a.

^c Apud Brantton in hist. Jorنال. fol. 54. ^d Vide infra §. ix. & x. ^e Vide §. xii. & xvii.

^f Leg. Edgari, cap. 1, 2, & 3. apud Lamb.

^g Lanð hlafoþs ^h i. baronum seu libere tenentium

ⁱ m. in biblioth. Cottoniana. in volumine quo ordo coronationis qui

etiam rei statu publicae reparando vel consulendo plura & non pauca utpote divinitus inspirati ratiocinando fermocinabantur. *Then follows some constitutions about monks, abbots, canons, and other of the clergy. After which, the council goes on with,* Post haec igitur archipontifices predicti convocata plebis multitudine collectae, regis edicto suprascripti omniumque consensu catholicorum omnibus communiter praedicabant unum Deum colendum esse debere, patrem videri licet, &c. *And divers canons succeed; and among them occurs,* Nec ecclesiae antiquitus constitutae decimis vel aliis possessionibus priventur ita ut novis oratoriis tribuantur; *Which very words are found in an elder council of Mentz, and in the imperial capitularies. Then immediately follows,* Decimationes frugum & vitulorum & agnorum; nec non & aratrales eleemosynae, ecclesiasticaeque munera domino per singulos annos temporibus rependantur congruis. Eleemosynae videlicet aratrales quindecim diebus post pascha peractis; vituli quoque & agniculi decimales erga Pentecosten, frugum vero terrae decimationes circa omnium festivitatem sanctorum ecclesiis persolvantur opportunis.

To it, is joined the most part of it^e in *Saxon*: but that preface is wholly therein wanting, neither doth any thing in the *Saxon* answer to that, *nec ecclesiae antiquitus constitutae, &c.* But those tythes are there reckoned among *göber gepightar*, that is, *things due unto God*. And the *Saxon* text for them is; *geogöbe teo unge be Pentecosten. Jeopð paetma be ealpa halgenamærran*, that is, *the tythe of young cattle is to be paid at Whitsontide, and of fruits of the earth at Alhallows*, and according to this, in an old *Saxon* ⁱ collection of christian duty, *aels man* (says the author) *te. ðung. ge aerte mid rihte*, that is, *let every man pay his tythes justly*. Those *aratrales eleemosynae* were called *rihlaelmejran*, that is, *plough-alms*; which was a penny to be paid of every plough-land; and the *ecclesiastica munera* were only the first fruits of corn paid at *S. Martin's day*; whereof before §. VIII.

XI. In some laws of king *Ethelred*, remaining in abbot *Brampton* his history, we read.

⁵ Omnis Thainus decimet quicquid habet, and, Præcipimus ut omnis homo super dilectionem Dei & omnium sanctorum det cyricceatum & rectam decimam suam sicut in diebus antecessorum nostrorum fecit quando melius fecit, hoc est, sicut aratrum peragrabit, decimam acram, & omnis consuetudo reddatur super amicitiam Dei ad matrem nostram ecclesiam cui adjacet, & nemo auferat Deo quod ad Deum pertinet, & praedecessores nostri concesserunt.

The inscription of those laws amongst which these are found, is, *haec instituerunt Ethelre-*

du & sapientes ejus apud Habam. By this, and that of *Edgar* before cited, it appears that the tythe of every tenth acre according to the order of tything the whole farm, was to be paid to the church. Which also is made more plain in the next law of king *Knout*.

XII. *Gelaerte man* (are the words of ^h one of king *Knout's* laws made about M.XX.) *Göber gepighta aeghþile geape rihtlice georne, paet is rihaelmejre pirtene niht oþer eartran. J geogöbe teopunge be Pentecosten. J eopþ paetma be ealpa halgena maerjan, J gif hpa þonne pa teopunge gelaertan naelle. Jpa ge gepedan habbaþ. þir ge teoþa accen. eal Jpa ge riht hit gezaþ. þonne Jape to þaer Lyminger geþeþa. J þar birceopaþ, J þaer land nicaþ, J þaer mýnster Jmaerþeþe. J niman unþanceþ þonne teoþan ðael to þam mýnster þe hit to gebýrge. J taecan him to þam nigobum ðael; J to ðaele man þaeha ðaelar on tpa. Jpo ge landhlafopð to healfum, J to healfum ge birceop, rý hit Lyminger man. rý hit ðegener; this is ⁱ antiently thus turned;*

Reddantur Deo debitae rectitudines annis singulis, hoc est eleemosyna carucarum xv. diebus post Pascha, decimae de novellis gregibus in Pentecosten, terrenorum fructuum in festo omnium sanctorum. Si quis hanc decimam dare nolit sicut omnium nostrum commune est institutum, hoc est decimam acram sicut aratrum peragrabit, eat praepositus regis & episcopi & domini ipsius terrae cum sacerdote & ingratu auferant & ecclesiae cui pertinebit reddant. Nonam vero partem relinquunt ei qui decimam dare nolit. Octavas partes reliquas in duo dividant, & sit una medietas episcopi, alia terrae domini, sive sit homo regis sive thaini.

With this *Latin*, the *Saxon* agrees: and it is almost but a repetition of king *Edgar's* law for tythes, and those two paragraphs in king *Edgar's*, the one touching a conveyance of a third part of the tythes to a church that had right of sepulture, the other concerning a church that wanted that right, are also repeated (as many other laws of the former ages) in those of king *Knouts*; which are called *leges* ⁱ *Anglicae* generally in the antientest *Latin* copies that I have seen.

XIII. The copy of the laws of *Edward* the confessor, that bears this title; *leges boni regis Edwardi quas Guilielmus bastarus postea confirmavit*, hath this ¹ for tythes.

De omni annona, decima garba Deo debita est & ideo reddenda. Et si quis gregem equarum habuerit, pullum reddat decimum. Qui unam vel duas habuerit, de singulis pullis singulos denarios. Similiter qui vaccas plures habuerit, decimum vitulum. Qui unam vel duas, de vitulis singulis obolos singulos. Et qui caseum fecerit, det Deo decimum; si vero non

^e Exemplar item Saxonium reperitur in codice vetustiss. legum Sax. in saepius laudata bibliotheca. in bibl. Cottoniana. ⁵ Hist. Jorhallens. ibid. fol. 65.

71. b. m. bibl. Cotton. sed optimum harum legum exemplar

^h In biblioth. d. serenissimi principis.

343. b.

¹ Leg.

^h Leg. Canuti, cap. 8.

ⁱ Edward. confess. cap. 8. & in Rog. de Hoveden. annal. 2. pag.

^f Mf. inter leg. Saxonica.

^h In historia Jorhallensi fol.

ⁱ In historia Jorhallensi fol.

^h Brit. ad D. Jacobi.

fecerit lac decima die; similiter agnum decimum, vellus decimum, caſum decimum, butyrum decimum, porcellum decimum. De apibus vero ſimiliter decima commodi. Quin & de boſco, de prato & aquis & molendinis, parcis, vivariis, piſcariis, virgultis & hortis, & negotiationibus & omnibus rebus quas dederit dominus. Decima pars ei reddenda eſt, qui novem partes ſimul cum decima largitur. Qui eam detinuerit per juſtitiam epiſcopi & regis (ſi neceſſe fuerit) ad redditionem^m arguatur. Haec enim praedicavit B. Auguſtinus, & conſeſſa ſunt a rege baronibus & populo.

But however thoſe laws are attributed to the confeſſor; it is certain, that as the ordinary copies of them are, and as they ſpeak in the publiſhed volume of *Saxon* laws, they are not without many mixtures of ſomewhat later tranſcribers.

XIV. In a ſynod, ⁿ written in *Saxon*, and held about the conqueſt, divers laws preceding, about the puniſhment of crimes by faſting ſix, ſeven, ten years together with bread and water, a perſwaſion follows for alms, &c. In it we read *teopge on gober eſt eal þ he age*, that is, *let tythe be paid of all that is poſſeſſed through the Lord's bounty*.

XV. Out of a mſ. of *Exeter* I have ſeen^o tranſcribed a canon of a council held at *Windsor*, ſome years after the *Norman* conqueſt, I think under *Lanfrank*, in theſe words, *Ut laici decimas reddant ſicut ſcriptum eſt*.

XVI. In a convocation at *Weſtmiſter* ^p held in 3 *Hen. I.* under *Anſelm* archbiſhop of *Canterbury*, and *Girard* archbiſhop of *York*, for both provinces, it was ordained, *ut decimae non niſi eccleſiis dentur*. It was not only a Synod of the clergy; but royal authority with the aſſent of the baronage (at leaſt of the greater nobility) was joined with it. For thus ſpeaks the monk of *Malmesbury* relating it.

Anno Dominicae incarnationis 1102. quarto autem praefulatus Paſchalis ſummi pontificis, tertio regni regis glorioſi Henrici Anglorum, ipſo annuente, communi conſenſu epiſcoporum & abbatum & principum totius regni, adunatum eſt concilium in eccleſia beati Petri in occidentali parte juxta Londoniam ſita, in quo praefedit Anſelmus, &c. and then. Huic conventui affuerunt, Anſelmo archiepiſcopo petente a rege, primates regni, quatenus quicquid ejuſdem concilii autoritate decerneretur, utriuſque ordinis concordia cura & ſollicitudine ratum ſervaretur. Sic enim neceſſe erat; quia multis retro annis, ſynodali cultura ceſſante, vitiorum veſtribus ſucceſcentibus, chriſtiana religionis fervor in Anglia nimis refrigerat.

And agreeing to this reaſon, is a paſſage in the ^q ſynod of *London*, held under *Lanfrank* archbiſhop of *Canterbury*, in 9 *Will. I.* *Et quod* (are the words) *multis retro annis in An-*

glico regno uſus conciliorum obſoluerat, renovata ſunt, &c. That canon ſeems to have been made againſt arbitrary conſecrations of tythes then practiſed, whereof anon largely.

XVII. The laws^r of *Henry I.* have one title, *De placitis eccleſiae pertinentibus ad regem*, and under that, are theſe words; *Si quis rectam decimam ſuperteneat, vadat praepoſitus regis & epiſcopi & terrae domini cum preſbytero, & ingratis auferant, & eccleſiae cui pertinebit reddant, & nonam partem relinquant ei qui decimam partem dare noluit*; according to thoſe of king *Edgar* and king *Knout*^t before related.

XVIII. *Alberick* biſhop of *Oſtia*, legate in *England* to pope *Innocent II.* in 3 of king *Stephen*, held a ſynod at *London*; and in that (as I have ſeen it^t tranſcribed out of a book of *Worceſter*) this canon is, *De omnibus primitiis rectas decimas dari apoſtolica autoritate praecipimus, quas qui reddere noluerit anathematis in eum ſententia proferatur*. *Primitiae* muſt, it ſeems, be here underſtood for every new year's increaſe.

XIX. Under *Henry II.* a pontifical decree was ſent to all the biſhops of the province of *Canterbury*, about the year M.C.LXX. by pope *Alexander III.* ^u commanding them that they ſhould admoniſh all men in their ſeveral dioceses, *& ſi opus fuerit*, as the words are, *ſub excommunicationis diſtinctione compellere, ut de proventibus molendinorum, piſcariarum, ſoeno, & lana, decimas eccleſiis, quibus debentur, cum integritate perſolvant*. The direction of it was, *Canuarienſi archiepiſcopo & ejus ſuffraganeis*. To this you may add, that other^x of the ſame pope to the biſhop of *Wincheſter*: *Mandamus, quatenus paroecianos tuos de apibus, & de omni fructu decimas perſolvere eccleſiaſtica diſtinctione compellas*. Both theſe were afterward made part of *Gregory's* decretals, and are of force to this day in the canon law of the church of *Rome*.

XX. In 21 of the ſame king *Henry II.* *Richard* archbiſhop of *Canterbury* held a provincial ſynod at *Weſtmiſter*, in which were near all the biſhops and abbots of his province, as alſo the two kings, the father and the ſon; there, divers conſtitution out of old councils and popes decrees were publiſhed to be obſerved in his province, among them, one is out of a ſynod at *Roſne*, in^y theſe words:

Omnes decimae terrae ſive de frugibus ſive de fructibus, domini ſunt & illi ſanctificantur: ſed quia multi modo inveniuntur decimas dare nolentes; ſtatuiſmus, ut juxta domini papae praeccepta admoneantur ſemel, ſecundo, & tertio, ut de grano, de vino, de fructibus arborum, de foetibus animalium, de lana, de agnis, de butyro &

^m Forte adigatur. ⁿ Recens mſ. apud v. c. Rob. Cotton. ^o Apud eund. lib. diſt. fol. 129. b. a. d. 1102.

^p Apud eund. lib. diſt. fol. 117. b. & in epiſt. Lanfranci mſ. in bib. Cottoniana.

^q In lib. rub. ſcaccarij mſ. cap. 12.

^r Extr. tit. de dec. cap. 5. pervenit & in app. ad concil. Lat. tit. de decim.

^s Extr. tit. de dec. cap. 5. pervenit & in app. ad concil. Lat. tit. de decim.

^t Extr. tit. de dec. cap. 5. pervenit & in app. ad concil. Lat. tit. de decim.

^u Extr. tit. de dec. cap. 5. pervenit & in app. ad concil. Lat. tit. de decim.

^v Extr. tit. de dec. cap. 5. pervenit & in app. ad concil. Lat. tit. de decim.

^w Extr. tit. de dec. cap. 5. pervenit & in app. ad concil. Lat. tit. de decim.

^x Extr. d. tit. c. 6. nuncios.

^y Apud Rogerum

casco, de lino & canabe & de reliquis quae annuatim renovantur, decimas integre persolvant. Quod si commoniti non emendaverint, anathemati se noverint subjacere.

XXI. *Hubert*, archbishop of *Canterbury*, by his power legatin, received from pope *Coelestin* III. in 6 *Rich.* I. held a provincial council for the province of *York*; and therein² one of the canons thus speaks for tythes. *Cum decimae sint tributa egentium animarum & ex praecepto domini dari debeant, non est reddentis eas diminuerere. Statuimus itaque ut de his quae renovantur per annum, cum omni integritate decimae debitae & consuetae conferantur; ita ut inprimis decimae absque ulla diminutione ecclesiae dentur, postmodum de novem partibus mercedes messorum & aliorum servientium pro arbitrio solventis tribuantur.*

XXII. The same archbishop *Hubert* in 2 of king *John*,^a generale celebravit concilium *Lundoniis* apud *Westmonasterium* contra prohibitionem *Galfredi filii Petri comitis de Effexe* tunc temporis summi justitarii *Angliae*. For it appears, that in those elder times, there^b was great controversy between the king, in whose right the chief justice of *England* here sent out his prohibition, and the archbishop touching this point, whether the archbishop, either as archbishop, or as legat, might hold a provincial or national council without authority from the crown; but that is now declared clear^c and so practised that he may not. In that council, notwithstanding the prohibition, he ordained thus for tythes.

Cum Deo & sacerdotibus Dei decimas dandas, Abraham factis, & Jacob promissis innuant, & autoritas veteris & novi testamenti nec non & sanctorum patrum statuta declarent decimas de omnibus, quae per annum renovantur praestandas; id inviolabiliter decernimus observandum, ita quod occasione mercedis servientum vel messorum decima pars non minuat, sed potius integre persolvatur. Habeant etiam presbyteri potestatem ante autumnum excommunicandi omnes fraudatores decimarum suarum, & eosdem secundum formam ecclesiasticam absolvendi. Huic adjudicimus sanctioni, ut de terris noviter cultis, non alias dentur decimae quam ecclesiis parochialibus infra quarum limites terrae illae de quibus decimis proveniunt excoluntur. Detentores vero decimarum, juxta *Rothomagensis* concilii constitutum, si semel secundo & tertio commoniti, excessum suum non emendaverint, usque ad satisfactionem condignam anathematis vinculo feriantur, salvo in omnibus S. S. R. E. honore & privilegio. Which *salvo* is to every of his canons.

XXIII. Among the decretal epistles of pope *Innocent* III. one^d is directed,

Cantuariensi archiepiscopo, ut ecclesiis parochialibus juste decimae persolvantur; and thus speaks. Pervenit ad audientiam nostram quod multi in dioecesi tua decimas suas integras, vel duas partes ipsarum non illis ecclesiis in quarum parochiis habitant, vel ubi praedia habent, & a quibus ecclesiastica percipiunt sacramenta, persolvunt; sed eas aliis pro sua distribuunt voluntate. Cum igitur inconveniens esse videatur & a ratione dissimile, ut ecclesiae quae spiritalia feminant, metere non debeant a suis parochianis temporalia, & habere; fraternitati tuae autoritate praefentium indulgemus, ut liceat tibi super hoc non obstante contradictione vel appellatione cujuslibet, seu consuetudine hactenus observata, quod canonicum fuerit ordinare, & facere quod statueris per censuram ecclesiasticam firmiter observari. Nulli ergo, &c. confirmationis, &c. Datum Lateran. II nonas Julii.

XXIV. In a collection of divers constitutions for the *English* church, out of councils and others, titled only^e *constitutiones cujusdam episcopi*, and written about *Hen.* III. time, one of tythes occurs. *Decimas de omnibus quae renovantur per annum & maxime consuetas, dandas decernimus, & potissime de molendinis & piscariis & foenis & apibus & de terris arabilibus & ad prata postea vel ad pasturam redactis, ita ut occasione mercedis servientum vel messorum decima parte non frustrentur quo minus eam plene percipiant. Detentores vero earundem decimarum si semel, secundo, & tertio commoniti excessum suum non emendaverint; concedimus quod per capellanos locorum usque ad satisfactionem congruam excommunicationis vinculo feriantur. Cum autem hi qui decimas detinuerint vel subtraxerint ad poenitentiam acceperint, non admittantur nisi per se vel per manum sacerdotis ei, cui decimae debentur, satisfaciant competenter.*

XXV. A constitution for due payment of tythes^f was made about 30 *Hen.* III. by *Walter Gray* archbishop of *Tork*. I have only a note of it which I took out of the ms. but the words I could not now transcribe for want of the copy. The copy itself I once saw in the library of Mr. *Henry Savil* who is now with God.

XXVI. The chiefest of the *English* canon-laws, made for tythes (both predial and personal) is that commonly attributed to a council of *Robert Winchelsey* archbishop of *Canterbury*, held 23 *Edw.* I. at *London*; some copies^g referring it to archbishop *Boniface* and the time about 30 *Hen.* III. or to an old synod of *Merton*. But in the synod of *Merton* held 42 *Hen.* III. no part of it is extant. That I examined in the^h annals of the abbey of *Burton*, where the canons of that synod are at large col-

² Apud eundem part. 2. fol. 430.

vol. in quo Turgotus Dunelmensis reperitur in bibliothec. v. c. Tho. Allen, Oxon. & 41. *Hen.* III. in annal. *Burton*, apud eundem. ^e Stat. 25. *Hen.* VIII. cap. 19. ^f *Burton*, apud v. c. Tho. Allen Oxon. ^g *Burton*, apud v. c. Tho. Allen Oxon. ^h *Burton*, apud v. c. Tho. Allen Oxon.

^a Apud eundem part. 2. fol. 457. b. & 460. a.

^b *Innoc.* III. in epist. decret. lib. 2. pag. 452. edit. Colonien.

^c *Constit.* Eborac. ms.

^d *Ms.* apud v. c. Tho. Allen, Oxon.

^e Consulas lit. de 10 Ed. II. in

^f In vol. in quo annal.

^g Vide *Lindw.* in province, const. tit. de dec. c. quo-

lected. Yet in the *pupilla oculi*, written by *John de Burgo*, chancellor of *Cambridge* in M.CCC.LXXXV. it is called *constitutio facta apud Merton per omnes episcopos Angliae*. These are the words of it, as it remains in the body of the provincial constitutions.

Quoniam propter diversas consuetudines in petendo decimas per diversas ecclesias inter rectores ecclesiarum & parochianos suos, rixae, contentiones, scandala & odia maxima multoties oriuntur. Volumus & statuimus quod in cunctis ecclesiis per Cantuariens. provinciam constitutis, uniformis sit petitio decimarum & proventuum ecclesiarum. Imprimis volumus quod decimae de frugibus, non deductis expensis, integre & sine aliqua diminutione solvantur : & de fructibus arborum : & de seminibus omnibus, & de herbis ortorum, nisi parochiani competentem fecerint redemptionem pro talibus decimis. Volumus & statuimus etiam quod decimae de foenis ubicunque crescant, sive in magnis pratis sive in parvis sive in cheminis exigantur, & prout expedit ecclesiae persolvantur. De nutrimentis autem animalium scilicet de agnis ; statuimus quod pro sex agnis & infra, sex oboli dentur pro decima. Si septem sint agni in numero, septimus agnus detur pro decima rectori, ita tamen quod rector ecclesiae qui septimum agnum recipit, tres obolos in recompensationem solvat parochiano a quo decimam illam recepit. Qui octavum recipit, det denarium. Qui vero nonum, det obolum parochiano vel expectet rector usque ad alium annum donec plenarie decimum agnum possit recipere si maluerit ; & quum ita expectat semper exigat secundum agnum meliorem vel tertium ad minus de agnis secundi anni : & hoc pro expectatione primi anni. Et ita intelligendum est de decima laninae. Sed si oves alibi in hyeme & alibi in aestate nutriantur, dividenda est decima. Similiter si quis medio tempore emerit vel vendiderit oves, & certum sit a qua parochia illae oves venerint : earundem dividenda est decima sicut de re quae sequitur duo domicilia. Si autem incertum fuerit, habeat illa ecclesia totam decimam infra cujus limites tempore tonsionis inveniuntur. De lacte vero volumus quod decima solvatur dum durat ; videlicet de caseo tempore suo. Et de lacte in autumno & hyeme nisi parochiani velint pro talibus facere competentem redemptionem, & hoc ad valorem decimae & commodum ecclesiae. De proventibus autem molendinorum volumus quod decimae fideliter & integre solvantur. De pasturis autem & pascuis tam non communibus quam communibus statuimus quod decimae fideliter persolvantur ; & hoc per numerum animalium & dierum ut expedit ecclesiae. De piscationibus & apibus sicut de omnibus aliis bonis iuste acquisitis quae renovantur per annum, statuimus quod decimae solvantur & exigantur debito modo. Statuimus etiam quod decimae personales solvantur de artificibus & mercatoribus, scilicet de lucro negotiationis. Similiter de carpentariis, fabris, cementariis textoribus, pandoxatricibus, & omnibus aliis operariis stipendiariis, ut videlicet dent decimas de stipendiis suis,

nisi stipendiarii ipsi aliquid certum velint dare ad opus vel ad lumen ecclesiae si rectori ipsius ecclesiae placuerit. *Then a word or two of mortuaries ; after which,* Sed quoniam inveniuntur multi decimas sponte dare nolentes ; statuimus quod parochiani moneantur primo secundo & tertio ut decimas Deo & ecclesiae fideliter solvant. Quod si non emendaverint, primo ab ingressu ecclesiae suspendantur, & sic demum ad solutionem decimarum per censuram ecclesiasticam si necesse fuerit compellantur. Si autem dictae suspensionis relaxationem vel absolutionem petierint ; ad ordinarium loci mittentur absolvendi ; & debito modo puniendi. Rectores autem ecclesiarum seu vicarii aut capellani annui qui praedictas decimas praedicto modo propter formidinem hominum seu favorem, timore Dei postposito, ut praedictum est, cum effectu non petierint ; paena suspensionis innodentur donec dimidia marcā argenti pro sua inobedientia archidiacono loci persolvant.

And then follow two other constitutions, under *Winchelsey's* name, for some more peculiar order in payment. But that first referred to him, is in a ms.^k (written of about the time of *Henry VI.* of the *English* episcopal constitutions) severally thus titled, *constitutio domini Stephani de Langtone archiepiscopi edita de modo decimandi*. *Stephen of Langton* was archbishop under king *John*. But it is not extant in the synod of his time.

XXVII. In a council at *London*, under *Simon Mephām*, archbishop of *Canterbury*, held in 3 *Edw. III.* a¹ canon is against such as hindered churchmen from taking their tythes, either by keeping them and their servants from entering into the land, or by exacting^m gloves, stockings, or some such bribes, before they would permit them to take that right, which God, as it is there inserted, in *signum universalis domini sibi reddi praecepit*, & pro suo cultu clericis assignavit. All such offenders are branded with excommunication ; and another constitution of a council of *Pauls*, held in 17 *Edw. III.* under *John Stretford* archbishop of *Canterbury*, is to the self-same purpose.

XXVIII. For tythe of copice-wood, or *silva caedua*, also in that of *Stretford*, was aⁿ canon in these words :

Quamquam exsolventibus bene decimas Deus frugum omnium abundantiam & possessionum promiserit ubertatem ; tamen dolentes referimus quod nonnulli nostrae provinciae contra testamenti veteris atque novi doctrinam de sylvis suis caeduis & lignis arborum caeduarum excisis, circa quae minus, quam circa fructus agrorum, laboris impendunt, decimas Deo & ecclesiis quibus debentur notorie, propter hoc quod ipsas in praeteritum non dederunt, solvere contradicunt ; quod aestimant idcirco licere quod legem moris de longa invaluisse consuetudine arbitrantur, in dubium etiam revocantes quid *silva caedua* sit censenda. Nos igitur advertentes quod si sua

¹ Part. 9. cap. 3.

^k In biblioth. autoris.

¹ Extat. in constit. provinc. lib. 3.

^m Conqueritur etiam de hac injuria Jo.

de Athona in constit. Othoboni c. mandata Dei verb. iustitiam favor expellit.

ⁿ Extat. ibid.

portione ecclesia sit defraudata diutine, crimen praeterea non minuitur sed augetur: ac fumes & penuria omniumque rerum egestas opprimunt bene decimas non solventes; hujusmodi declaramus provisione concilii silvam caeduum illam fore quae cujuscunque existens generis arborum in hoc habetur ut caedatur, & quae etiam succissa rursum ex stirpibus aut radicibus renascitur; ac ex ea decimarum utpote realem & praedialem parochialibus ac matricibus ecclesiis perfolvendam; nec non silvarum possessores hujusmodi ad praestationem decimarum lignorum ipsorum excusorum in eis, sicut foeni & bladorum omni censura ecclesiastica fore canonice compellendos.

By this, tythe of all kind of wood was payable; but in the^o parliament with which that convocation was held, a petition was exhibited by the commons, *Que nul home soit tret en plee en court chrestien pur dismes de boison de south bois si non en lieux ou tieux dismes soloient estre donez.* And the answer was, *Soit fait de cella auxi come il ad este fait einz cez heures.*

XXIX. And the year following, in the next parliament, a^p complaint was against that constitution by the commons. *Item pria le commun que come constitution soit fait per les prelates a prendre disme de chescun maniere de bois quel chose ne fuit unques usee, & que niefz & femes poent faire testament que est contre reson, que plese per lui & per son bon conseil ordainer remede, & que son people demoege en mesme l'estate qu'ils soloient estre en temps de tous ses progenitours, & que prohibitions soient grantes a touz ceux que sont empledes de dismes de bois sans avoir consultation.* Which was no otherwise answered, but with, *le roy voet que ley & raison ent soient faits.*

XXX. Three years after, in^a 21 Ed. III. a petition was touching the same matter put thus in by the commons. *Item monstre la commune come nadgairs l'ercevesque de Cantirbiry & les autres prelates ordenerent une constitution a donner dismes de subbois venduz tantselement, la ou avant ces heures nulles dismes furent donez, ore les gentz de seint esglise per force de la constitution pernent & demandent les dismes auxibien de gros bois come de subbois venduz & nient venduz econtre ce qu'ils ont usez puis temps de memoire, a grant damage de la commune de quoi ils prient remede del un point & del autre.* To this is answered. *L'ercevesque de Cantirbiry & les autres evesques ont responduz que tiele disme nest demandee per reson de la dit constitution forsque de subbois.* But I well conceive not why they complain of the constitution, as made only for the tythe of wood sold. No such thing appears in it, that justifies their supposition.

XXXI. This tything of wood, and of such other things as were not of custom paid, still

vexed the commons. And therefore again in a parliament^r of 25 Edw. III. they exhibit this petition. *Item pria la commune, que si la clergie en droit des dismes de haut bois & southbois ou d'autre chose riens demandent ou attemptent de novel forsque solement ceo & en les lieus dont ils ont este d'aunciens temps seisis come en le droit de lour esglises, que pleise a nostre seignior le roy ent granter prohibition sans consultation a touz ceux que le voillent demander en tiel cas, & que les dites gents de s. esglise soient defenduz a demander dismes de grosse bois.* Here the commons would have had such a liberty of discharge of tythes not usually paid, as the *Philippine in France*, and the like edicts of some other nations give the subject; but the answer was; *Le roy & son conseil se voillent de ceste petition aviser.*

XXXII. But upon new petition, by the lords temporal and commons in the parliament of 45 Edw. III. it was enacted (as you see in the published statutes, agreeing with the record) that tythe should not be exacted of great trees, being of twenty years growth, or above. And that upon a suit commenced in the spiritual court for such tythes, a prohibition should be granted, as it had been in former time also used: but that use, it seems, had been somewhat discontinued, through a reverence given to that synodal canon of archbishop Stretford. Although in 50 Edw. III. fol. 10, b. Belknap says, *That it was never seen, that tythes had been demanded of great trees and of timber.* This statute^f hath had still force in practice to this day.

XXXIII. Yet, notwithstanding this statute, the clergy were not so contented; but under pretence that it was not indeed, by sufficient authority, made a statute, but only an ordinance (the contrary whereof appears both in the roll and in the consent of following time) oftimes afterward brought the temporality in question upon their canons; insomuch, that in the parliament of^r 47 Edw. III. a bill was put in by the commons, reciting that of 45 Edw. III. and then relating, *that les persons de seint esglise entendants que cel ordinance ne restreint my lour aunciens accrochements, surmettants que ce ne fust my afferme pur estatut, font occasions in court chrestien a contrarie del ordonnance susdit a grant damage del people, per qui pleise a nostre seignior le roy d'asfermer la dite ordonnance pur estatut a durer pur temps avener, & que prohibition especiall sur mesme l'estatut de ceo soit fait en la chancellerie defendant que eux ne tignent plee en court chrestien des dismes de bois del age avantdit, that is, of twenty years.* The answer hereto was; *Soit tiele prohibition grantee come ad este use d'aunciens temps.* Thus did the clergy and commons so differ touching execution of the canons; and insomuch, that afterward also the commons put in a bill,^u *Que nul estatute ne ordonnance soit faite ne grante au*

^o Rot. parl. 17 Edw. III. art. .^p Rot. parl. 18 Edw. III. art. 9.

^q Rot. parl. 21 Edw. III. art. 48.

parl. fest. Hill. 25 Edw. III. art. 37.

^f Plowd. comm. fol. 470. 9 Hen. VI. fol. 56, &c.

^r Rot. parl. 47 Edw. III.

^u Rot. parl. 51 Edw. III. art. 46.

petition du clergie si ne soit per assent de voz commens. Ne que vous dites commens ne soient obligez per nulles constitutions qu'ils font pur leur avantage sanz assent de voz dites commens. Car eux ne veulent estre obligez a nul de voz estatutz ne ordonances faitz sanz leur assent. But the answer was only thus; *Soit ceste mature declare en speciall.* This by the way.

XXXIV. Here may be * remembered that agreement in the parliament at *Salisbury*, *Quod consultationes fieri debent de silva caedua, eo non obstante quod non renovatur per annum.* But to what parliament to refer that agreement, expressed by *concordatum fuit coram consilio regis in parlamento*, &c. I sufficiently know not, unless to that of 7 *Rich. II.* held at *Salisbury*, the rolls whereof have nothing of it.

XXXV. In 5 *Hen. IV.* a bill was put in by the y commons, against the exaction of tythes of quarries of stone and slate. Thus it speaks. *Item prient les commens que come plusors lieges nostre seignior le roy sont souvent foits vexiez & travaillez per parsons & vicaires de seint esglise per citations & censures de seint esglise par dismes de peres & sclattes overes & trabez hors de quares de sicome nul disme de nut tiel pierre ne sclatte unques ne feust demande ne nulle disme ent paie, que pleise a granter que si ascun prohibition soit fait en le cas que nul consultation soit grant a contrarie.* Hereto the answer was; *Le roy s'advysera.* But you may see hereof more in the antient opinions of the judges, delivered in the z register and a *Fitzzherbert.*

XXXVI. In 27 *Hen. VIII. chap. 20.* it is enacted by parliament, that through all the king's dominions, every subject according to the ecclesiastical laws and ordinance of this church of England, and after the laudable usages and customs of the parish or other place where he dwelleth or occupieth, shall yield and pay his tythes &c. And some other especial courses for recovery of tythes, are in that act ordained.

XXXVII. By the statute of dissolution of monasteries of 31 *Hen. VIII. chap. 13.* it was enacted, That the king and his patentees should hold the possessions of the dissolved monasteries discharged and acquitted of payment of tythes, as freely, and in as large and ample manner, as the houses of religion held them at their time of the dissolution.

XXXVIII. After the dissolution of monasteries, to which, divers tythes and parish churches had been appropriated, and were now settled in the crown, and thence conveyed into lay hands, an act was made in 32 *Hen. VIII. cap. 7.* commanding every man, fully, truly, and effectually, to divide, set out, yield or pay all and singular tythes and offerings, according to the lawful customs and usages of the parishes and

places where such tythes or duties shall grow, arise, come, or be due. And remedy is given for ecclesiastick persons before the ordinary; and for laymen, that claimed appropriated tythes by grant from the crown, in the secular courts, by such actions as usually lay possessions had been subject to.

XXXIX. By the acts of 27 *Hen. VIII. cap. 21.* 37 *Hen. VIII. cap. 12.* and the decree made upon them, the citizens and inhabitants of *London* and the liberties were commanded to pay their tythes to the parsons, vicars, and curates of the city, according to a rate of the rents of their houses: that is, two shillings nine pence for every pound: and that if no rent be reserved, the tythe should be duly paid, according to what their houses had been last let for; and according to that also, are owners bound to pay. But a proviso is in the decree, that where a less sum than after two shillings nine pence the pound hath been accustomed to be paid for tythes, in such places the former custom should be continued. And some other particulars are in it, which are too long to be here transcribed; you may easily see it whole. But antiently, in *London*, on every *Sunday*, and other principal feast-day, the chief maintenance of the ministers was increased, by a farthing offered out of every ten shillings of rent. *Ex ordinatione antiqua*, says *Lindwood*^b, (and that ordinance, as I have heard, was either made by *Roger Niger* bishop of *London*, in 13 *Hen. III.* as a new one, or as a confirmation of former use, as which of these, I purposely abstain here to enquire) in *dicta civitate, tenentur singulis dominicis diebus & in principalibus festis & sanctorum apostolorum & aliorum quorum vigilie jejunantur, offerre pro singulis x solidis redditus domus quam inhabitant unum quadrantem.* And the *LII* farthings so yearly paid on *Sundays* only, came so near to the just tenth of the rent, that they were thought on as a tythe paid; the other being reputed rather by the name only of offerings. Which you may see in the same *Lindwood*; where he disputes the question, whether those farthings excused the citizens from personal tythes of their gains; and concludes, that they did not. But before these acts and the decree, no tythes, as tythes, were generally paid in that city. In some places^c they were, as in the liberty of *S. Martin's le grand*, which is rather in *London* than of it. Neither can I but here remember, that custom of the eastern church thus maintained chiefly with offerings, or *navona*, as they called them, which especially appears in the answer of *Theodore Balsamon*^d patriarch of *Antiochia*, to *Mark* patriarch of *Alexandria*, touching the quantity of what was to be offered. He tells him, that no certain quantity is appointed by the canons, and that through inequality of mens estates (none of them giving any such part to the church as that it could discover their abilities) which permits not a regular certainty, they were contented

* Regist. orig. fol. 49. a.

^b In consil. provinc. tit. de dec. c. sancta, §. negotiationum.

^c Vide 16 Ed. III. quare impedit. 147. 38 Ed. III. fol. 13. a.

^d In respons. 57. inter monumenta juris Græco-Romani, edit. a Leunclavio & Fræhero.

^e Rot. parl. 5 Hen. IV. artic. 65.

* Orig. fol. 59. b.

* Nat. br. fol. 53. E. G.

with what custom and free bounty of the givers bestowed. Ἐπεὶ δὲ (says he) ἡ τὴν παρανομίαν των ἀνομιλία, καὶ ἐνδεῖα τὴν τέτων ἐχέλυσεν ἀποσπῶσιν (πολλοὶ κλέβοντες καὶ οἱ αὐτῶν ἐδίδωσι πρὸς ἐπίσκεψιν) ἀρκεῖν μεθὰ τῇ συνουσίᾳ καὶ παραίρεσιν τὴν διδόντων. Which is in substance the same before in *English*.

XL. In 2 and 3 *Ed. VI. chap. 15.* it was enacted that all predial tythes should be thenceforth paid as of right they had been within forty years next preceding, or according to custom ought to have been, with allowance of privileges lawful prescriptions or compositions real: and personal tythes of gain by merchandise and artifice in such places, and as within XL years preceding they had been accustomed to be paid, are commanded to be paid yearly at or before *Easter*. Other particulars and the remedies given by the act may be easier found in it, than I can transcribe them.

XLI. To these may not amiss be added those laws for tythes, proposed by the VIII persons chosen to begin a new body of canon law for *England* in 5 *Ed. VI.* according to the first purpose of the statute of 25 *Hen. VIII. cap. 19.* (which was seconded also by the statute of 3 & 4 *Ed. VI. cap. 11.*) whereby XXXII. persons assigned by the king should have made it; neither were those VIII to have given sufficient authority to it according to those statutes, without approbation of XXXII afterward that should have censured their reformation. The VIII were *Thomas Craumer* archbishop of *Canterbury*, *Thomas* bishop of *Ely*, *Richard Cox* the king's almoner, and *Peter Martyr* doctors of divinity, *William May* and *Rouland Tailor* doctors of law, and *John Lucas* and *Richard Gooderik* esquires. In what they proposed, is found a constitution in the king's name, that all predial tythes should be paid in kind to the ministry *integre & explete* (with an exception of timber trees of xx years growth) as also of the profits of mills, of turbaries, coal-mines, quarries of stone, and all other of like kind. Of all agistments also tythes are there payable, and of the increase of all kind of beasts, wild and tame: of fish, of butter, cheese, milk, wool, wax: and the statute of 2 and 3 *Ed. VI.* for tythes is there received for so much of it as is not against a general payment which they would have had ordained. But these, as the rest in the volume with them, were only intended for laws, but never had sufficient authority or confirmation. The intent was first that those canon laws only, which according to the purpose of the two statutes of *Hen. VIII.* and *Ed. VI.* should be compiled, might have authority in the universities, and force in practice; but so, that there might still be *præservatio legum nostrarum communium in suo vigore remanentium*, as the words are in the patent of *Edward* the sixth, that authorizes the VIII persons to consult about them.

For our laws of tything either made or desi-

red, thus much. But before we speak of the practice, it is requisite that we enter into some disquisition touching parishes or parochial right according whereto at this day from ancient time the payment of tythes is regularly performed.

CHAP. IX.

- I. *Of parishes in the primitive church of the Britons.*
- II. *Parishes in the primitive church of the English Saxons: first limited only in regard of the ministers function, not of parochial profits. All the profits of every whole diocese, first made a common treasure to be disposed of by the bishop and his clergy, of the same diocese. Residence of the bishop and clergy in those times. The great regard then had to every clergyman.*
- III. *Of division of our parishes. Whether Honorius archbishop of Canterbury first divided them? Parochia or paroecia diversly taken.*
- IV. *Lay foundations of parish churches; from whence chiefly came parochial limits in regard of the profits received to the singular use of the incumbents. Limitation of tythes by king Edgar to the mother-parish church, or monastery. Monasteries preferred before other churches for burial. Mortuaries. MORTUARY. A third part of tythes (according to king Edgar's law) must be given to a new built church that had right of sepulture by the founder. Sepultura and baptisterium. Capella parochialis. A parish commanded to be made (out of another that was too large) by the pope. One parish joined to another by the king.*

IN consideration of our parish churches and parochial limits, the times of the *Britons* first, then of the *English-Saxons* and forward are to be thought of; that is, the elder times of their christianity.

I. FOR the *Britons*; little or no testimony of credit is extant that discovers the ecclesiastical policy used by them, in their primitive times, or declares the possessions of their hierarchy. And we omit here wholly what might be collected out of that fabulous tale of *Augustine* preaching at *Cometon* in *Oxfordshire*, whereof more in the next chapter. Although king *Lucius* had instituted XXVIII bishops, and III archbishops (as the *British* story tells us) yet, how in those dioceses any distinct parishes were, appears not expressly. But we may very well think that such kind of parishes only were in those bishopricks as we have already shewed

to have been in the primitive church elsewhere: neither is it likely that in those times, the custom of this island therein should differ from what was even uniformly received through those parts of christendom, whereof we have best testimony remaining. But if all antient authority were of credit, parish churches expressly mentioned of about the time of cccxc, and endowed as at this day, might be found among the *Britons*. For when *Dubritius* was made archbishop of *South Wales* which they called *dextralis Britannia*, and his see appointed at *Llandaff* under *Maurice* prince of that *Wales*, divers churches with their endowments of tythes, oblations, and other profits were appropriated to him and his successors; by the relation of an old author: *Propter sanctitatem suam*, are his words, *et praedicationem praeclaram beati pastoris et regalem parentelam suam plures ecclesiae cum suis dotibus, decimis, oblationibus, sepulturis, territoriis et libera communione eorum datae sunt sibi et successoribus suis omnibus a regibus et principibus totius regni dextralis Britanniae*. And then; *Videns autem sanctus Dubritius largissimam potentum manum erga sibi commissam ecclesiam, partitus est discipulos mittens quosdam discipulorum suorum per ecclesias sibi datas, et quasdam fundavit ecclesias, et episcopos per dextralem Britanniam coadjutores sibi, ordinatis parochiis suis, consecravit*. But this author wrote not before about the beginning of the last cccc years from *Christ*, and spoke of these things in the phrase of his own time; the hand and context and their relations in him justify it. He talks, you see, of churches endowed and appropriated and founded, as if he meant no other than such as now are conveyable by patrons and ordinaries in the course of appropriations used in later ages, and filled with incumbents that had in them like estates and particular interest in the profits, as parsons at this day. Indeed, that in those times churches were built here, no doubt can be made; Neither is it to be conceived how^a christianity could be in any nation much antienter (if generally received, or by any number) than churches or some convenient houses or other places in the nature of churches, appointed for the exercise of devotion. And express mention^b is of a church built here in the time of the *Romans*, to the honour of *S. Martin*, in which *Augustine* and his followers, when they came first from *Rome*, made their holy assemblies, and others also they repaired: and says *Gildas*, of the clergy of his time, that is, about D.LXXX. *ecclesiae domus habentes, sed turpis lucri gratia eas adeuntes*. But I guess, that under *Dubritius*, few or no parish churches were otherwise erected than for convenient places for such ministers as the bishop out of his clergy arbitrarily sent thither, and that the offerings and other profits there received, were to the common treasury of the diocese, and to be dispensed as is before declared, where we speak generally of those elder

times; And in regard no more certainty of the establishing of the endowments, or places of residence in the *British* hierarchy, may be found; I willingly permit to every man his own conjecture.

II. For the age of the *Saxons*; we read that *Augustine* and his company, when they first came to king *Ethelbert* in *Kent*, began there to imitateⁱ *apostolicam primitivae ecclesiae vitam, ea tantum quae victui necessaria videbantur ab eis quas docebant accipiendo*; and that after they had converted the king, they builded and repaired churches; *majorem praedicandi per omnia, et ecclesias fabricandi vel restaurandi licentiam accipiebant*. So *Ethelbert* in his charter of foundation (if you will believe the authority^k whence we have it) of his abbey in *Canterbury*, talks of *alias quas fabricavi ecclesias*. And doubtless those churches which they built, or repaired, as also the temples of the *Gentiles*, which by advice of pope *Gregory* to *Mellitus*, were not to be destroyed, but converted to christian service, had some kind of limits of adjoining villages or towns, and so were in that respect, parochial. But those limits and churches were variously chosen and assigned to ministering priests, according to the convenience of the assembling of the neighbour-inhabitants; but not so ordained that every parishioner was bound to keep his devotion within the limits of this or that parish church; that is, parishes were then limited only in regard of the ministering presbytery (whence they were called *paritercypen*, i. e. *circuits*, within which the priests exercised their *shriving*) but not in regard of the profits received from the parishioners. For the whole diocese (first of *Canterbury*, then of the other elder bishopricks, as they were instituted) was indeed the only limited parish, in regard of the parishioners profits; And the clergy of the bishop, that is, his family of churchmen, were the curates in inferior churches, according as the bishop appointed and altered them; And whatsoever they received through devotion of good christians, made up a common treasure for the whole diocese (whence it followed, that it was not material at what church any parishioner offered his christian bounty, so he did it within the diocese) which was both consonant to what is found to be the use of other churches in the primitive times, and is also confirmed by that *Augustine* in his question to pope *Gregory*, touching bishops. He demanded *qualiter cum suis clericis converferentur? vel de his quae fidelium oblationibus accedunt altari, quantae debeant fieri portiones?* Whereto the pope answers, that the custom is generally to make a quadripartite division for the bishop, for his clergy, for the poor, and for reparation of churches: but he admonishes him, that in the tenderness of the *English-Saxon* church, he and his clergy should still imitate the community of all things used in the primitive times under

^a Anonym. ms. de primo statu Landavens. ecclesiae in bibl. Cottoniana; eadem in codice Landav. qui Tilo dicitur, habenti r. Recens autem excerptus Tilo reperitur in eadem bibliotheca.

^b Beda hist. eccles. lib. 1. cap. 26.

^c Beda lib. 1. cap. 26.

^k Cart. antiq. l. 8. in arc. Londin.

the apostles. The Saxon of that question¹ is observable. *ſpærþe biſceþpuni; hu hie mæs biþpa geþeþpum ðpohetan 7 lupian ſcý'en. Oððe in þæm lacum geþeþpunn þe hie to þeofoðum, 7 to goðeþ cýþcum tþengað, hu m onige bælar þaþa beon ſcýle: þat is, Firſt concerning biſhops. How they ſhould bear themſelves among their clergy, or how many parts they ſhould have in the offerings that good chriſtians brought to altars and to God's churches?* Here it is more plainly expreſſed, that whatever came to any altar or church, within the dioceſe, was one common profit to be divided or employed, as pope Gregory answers; where he tells him alſo that the biſhop and his clergy^m muſt live together. *Sed, ſaith he, quia fraternitas tua monaſterii regulis erudita, ſeorſum vivere non debet a clericis ſuis in eccleſia Anglorum &c.* So that you may collect that in theſe primitive times of the *Engliſh-Saxon* church, the biſhop and the whole clergy of the dioceſe were as one body living upon their endowments (beſtowed on the biſhoprick) and their treaſure that came from the fundry places of devotion, whither ſome one or other of them, at the biſhop's appointment, was ſent to preach the word and miniſter the ſacraments; every clerk having his dividend for his maintenance. Neither in theſe elder times, I think, did any of theſe of his clergy or chaplains uſually reſide elſewhere than with him at his biſhoprick, as deans and chapters at this day, or in ſome monaſteries; whence they might as occaſion required, at certain times go into thoſe pariſhes which were diſtinguiſhed only for ſeveral functions of thoſe chaplains, leſt want of ſuch diſtinction might the ſooner have cauſed alſo a want of ſpecial diſcharge of this or that cure. So that there were *ſingularum eccleſiarum preſbyteri*ⁿ *qui populum erudire debent*, and they were particularly ordained for the title of this or that church, and every one was bound by our canons of that time not to leave the church for which he was ſo ordained. And from their reſidence with the biſhop, or out of the pariſh in monaſteries, came it, as it ſeems, that they were but rarely ſeen abroad among the people; for ſo rarely were they ſeen abroad, that whenever any of them were eſpied in the country, the people uſed preſently to flock about him, and with all reverence humbly to beſeech his benifons, either by ſigning them with the croſs, or in holy prayers for them; and, with all earneſtneſs of attention, they heard what he preached. This is that which *Bede*^o teaches, when he tells us, that *ſi quis ſacerdotum in vicum forte deveniret, mox congregati in unum vicani, verbum vitæ ab illo expetere curabant*. And again; *Erat quippe moris eo tempore populis Anglorum, ut, veniente in villam clerico vel preſbytero, cuncti ad ejus imperium verbum audituri conſuerent, libenter ea quæ dicerentur audirent, libentius ea, quæ audire & intelligere poterant, operando ſequerentur*. How long this communi-

ty in every dioceſe between the biſhop and his attending clergy, which is denoted often by the name of *epiſcopi clerus*, continued, fully appears not. But that it was not out of uſe till paſt more than c years after *Auguſtine's* coming, that is, till paſt D.CC years from *Chriſt*, may be conjectured out of thoſe teſtimonies of *Bede*, which extend as far.

III. Yet it is commonly received, that *Honorius*, the firſt archbiſhop of *Canterbury* after *Auguſtine*, about the year D.C.XXX. firſt divided his province into pariſhes. And in the late hiſtory of the archbiſhops of *Canterbury*, written by Mr. *Joſcelin*, it is thus delivered of him. *Neque ſolum epiſcopos tanquam ſuperiores turrium cuſtodes eccleſiæ ſuperimpoſuit, ſed etiam, provinciam ſuam primus in parochias dividens, inferiores miniſtros ordinavit*. And according to this, have ſome of our greateſt and moſt learned writers related. But I doubt much how it can at all ſtand with truth. For if *parochiæ* be here meant only for ſuch as were aſſigned limits for thoſe which were ſent arbitrarily from the biſhop, out of the number of his chaplains, or his *clerus*, reſiding for the moſt part, in thoſe elder times, with him at his biſhoprick; then clearly, *Honorius* was not the firſt that made diviſion of them. Such kind of *parochiæ* are even near as antient as biſhopricks; and queſtionleſs, in *Auguſtine's* time. How could otherwiſe, God's ſervice be orderly had in the infancy of the church? And when ever ſeveral churches for chriſtian ſervice, or other places for holy aſſemblies, began, then began ſuch *parochiæ*. And that churches were built here before *Honorius* his time, is before manifeſted. If, on the other ſide, *parochiæ* be taken for what it is uſually underſtood, that is, for ſuch limits as now make pariſhes, bounded as well in regard of the profits received from the pariſhioners (due only to the miniſter of that church) as of the incumbent's function and reſidence; how will that ſtand with the community of eccleſiaſtick profits, and the biſhop's and his clergy's living together, that may be without much difficulty diſcovered out of *Bede*, to have continued after *Honorius* alſo? But where ever that teſtimony of his dividing pariſhes was firſt found, I doubt it was miſunderſtood, through the various ſignification of *parochia*. For in thoſe antient times, *parochia* uſually denoted as well a biſhoprick, or dioceſe, or *biſceþpocýpe*, as the Saxons called it, as a leſs pariſh. That ſignification is very obvious in the old councils of both tongues (as it is alſo ſpecially obſerved by the learned *Fileſacus* in his *paroecia*) and in the monuments of this kingdom. For it is related of king *Cenwalch*, that he divided^p *provinciam* in duas *parochias*, when he made a new biſhoprick at *Wincheſter*, that was taken out of the dioceſe of *Dorcheſter*. And in the council of *Hertford*, held under *Theodore* archbiſhop of *Canterbury*, one canon is; ^q *Ut nullus epiſcoporum paro-*

¹ Extat in Beda exemplaris Saxonici ms. lib. 3. in bibl. Cottoniana.

Anglic. c. 1. & 6. ann. 786. ſæcul. 8. cap. 9.

eccl. lib. 3. cap. 7.

² Idem lib. 4. c. 5. & vid. ſis c. 16. q. 2. c. 6. ſane.

^m Vide ſis Bedam hiſt. eccleſ. lib. 4. cap. 27.

^o Vide eum hiſt. eccleſ. lib. 3. cap. 26. & lib. 4. c. 27.

ⁿ Synod.

^p Beda hiſt. ec-

chiam alterius invadat sed contentus sit gubernatione creditae sibi plebis. So in *Florence* of *Worcester*, under the year D.C.LXXX. *Merciorum provincia in quinque parochias est divisa*, that is, *into five bishopricks.* And the truth is, that it may be said properly enough, that *Honorius* was the first under whom his province was divided into such *parochiae*, or bishopricks; that is, no other bishopricks (except *Canterbury*, *London*, and *Rochester*) were in his province until his time; those three being almost of one antiquity. But under him, *Byrinus* was made first bishop of the *West-Saxons*, and had his see or bishopric as they called it, at *Dorchester*, and *Foelix* the *Burgognian* was likewise ordained first bishop of the *East-Angles* at *Dunwich*. Which two ordinations, in regard the like had not been in this province of *Canterbury* from *Augustine's* time till this *Honorius*, were perhaps the cause why it might be related, that *Honorius primus provinciam suam in parochias divisit.* Which, although it were to be conceived of such parishes as at this day we call by that name, yet could not extend to all his province. For not till long after his time, was christianity received in the kingdom of *Suffex*, which was first converted by *Wilfrid*, first bishop of *Selesey*, in the year D.C.LXXIX. Hitherto then, for ought can out of ancient monuments be proved, no limits parochial, in regard of the profits to be received from the parishioners, and spent by this or that minister only, were assigned. But the ancient course of a kind of community of all profits of the diocese, with the bishop and his clergy, remained still in use. Neither was the interest of many churches, it seems, as yet here in any layfounders. But the bishops, as I think, had both the interest and governance of the churches built by the king, and took care for building new in their own endowments, and hallowing old ones, that had been either profaned since christian service used in them among the *Britons*, or formerly consecrated only to heathenism. So may you understand that of *Byrinus*, first bishop of *Dorchester*. *Factis dedicatisque ecclesiis multisque ad dominum, pro ejus labore, populis advocatis, migravit ad dominum*, as *Bede's* words are; in the *Saxon* of which it is expressed, that he cūicean þ phte ȝ gehalgode, that is, *made churches, and hallowed them.*

IV. But afterward, when devotion grew firmer, and most laymen, of fair estate, desired the country-residence of some chaplains, that might be always ready for christian instruction among them, their families, and adjoining tenants; oratories and churches began to be built by them also; and being hallowed by the bishops, were endowed with peculiar maintenance from the founders, for the incumbents that should there only reside. Which maintenance, with all other ecclesiastick profits that came to the hands of every such several incumbent (in regard, that now the lay-founder had,

according to the territory of his demesnes, tenancies, or neighbouring possessions, made and assigned both the limits within which the holy function was to be exercised, and appointed the persons that should repair to the church, and offer there, as also provided a special salary for the performance) was afterward also restrained from that common treasury of the diocese, and made the only revenue; which became perpetually annexed to the church of that clerk who received it. Neither was it wonder, that the bishops should give way to such restraint: For had they denied that to lay-founders, they had given no small cause also of restraining their devotion. Every man, questionless, would have been the unwilling to have specially endowed the church, founded for the holy use chiefly of him, his family, and tenants, if withal he might not have had the liberty to have given his incumbent, there resident, a special and several maintenance; which could not have been, had the former community of the clergy's revenue still remained. Out of these lay-foundations chiefly; doubtless came those kind of parishes, which at this day are in every diocese: their differences in quantity being originally out of the difference of the several circuits of the demesnes or territories possessed by the founders. And after such time as upon lay-foundations, churches had their profits so limited to their incumbents, no doubt can be, but that the bishops, in their prebends, or advowsons of parishes, both in cities and in the country, formerly limited only in regard of the minister's function, restrained also the profits of every of their several churches, to the incumbents; that so an uniformity might be received in that innovation of parochial right. At what time these lay-foundations began to be frequent, plainly enough appears not. But some mention is of them about the year D.CC. as you may see in *Bede*, where he speaks of one *Puch*, a *Saxon* nobleman, that had built a church, and entreated *John*, bishop of *Hangulstad*, to consecrate it; and the like also of one *Addi*. *Alio item tempore*, says he; *vocatus ad dedicandam ecclesiam comitis vocabulo Addi.* Some such more, of about that time, may be found. But about the year D.CCC. many churches, founded by laymen, are recorded to have been appropriated to the abbey of *Crowland*, as you see in the charters of confirmation made by *Bertulph* king of *Mercland*, and of others, to the same abbey, reported by *Ingulphus*. Whence it may be observed, that by this time lay-foundations were grown very common, and parochial limits also of the parishioners devotions. And in a council held in D.CCC.XVI, under *Wilfrid*, archbishop of *Canterbury*, we find, *Ubi ecclesiae aedificentur, à propriae diocesis episcopo sanctificantur.* And a canon of the same synod ordains, that upon the death of every bishop, *Statim per singulas parochias in singulis quibusque ecclesijs, pulsato signo, omnis famulorum Dei coetus ad ba-*

¹ Hist. eccl. lib. 5. cap. 4 & 5.

² Ms. (in biblioth. Cottoniana) cap. 10.

silicam conveniat. Ibique pariter xxx. psalmos pro defuncti anima decantent, & postea unusquisque antistes & abbas dc psalterios & cxx missas celebrare faciat, & tres homines liberet, & eorum cuilibet tres solidos distribuat, &c. with other ceremonies of fasting and prayer, according to the time, for the soul of the bishop. Here, it may seem, parishes limited as at this day, are understood. But the first express mention of limitation of profits, other than of the endowing, to be given to this or that church, is in those laws of king *Edgar*, made about D.CCCC.LXX, where a threefold division is of churches. The first is called *ealsan mýnrtpe*, that is, *senior ecclesia*, which name antiently was given to cathedral churches; the second, a church that hath *legeþrope*, or place for burial; the third, a church that hath no *legeþrope*. Where it is ordained, that every man, having not erected a church of his own, should pay his tythes to the *ealsan mýnrtpe* ðe seo hýpnesse to hýpþ; that is, to the *antientest church or monastery where he hears God's service*. Which I understand not otherwise, than of any church or monastery, whither usually, in respect of his commorancy or his parish, (determined according to the farms, houses, and lands, occupied with those houses or farms) he repaired; that is, his parish church or monastery. For we must remember, that in those times, monasteries (which somewhat before *Edgar*^a were for the most part filled with secular clerks, who also, as other clergymen took pains abroad in the spiritual harvest; and under him by archbishop *Dunstan*'s procurement were restored only to cloyster-monks or *Benedictines*) as well as other churches erected either by bishops or laymen, were in many places the only oratories and auditories that the near inhabitants did their devotions in, and perhaps were in regard of burial most commonly preferred before other churches whatsoever; Which may be collected from a canon of an^{*} old synod of Ireland held about these elder times of the *English* church: Neither is it likely but that the manners of these northern churches in that age were enough agreeable to each other. In that synod it appears, that any man might have bequeathed his burial to what abbey best pleased him, and that the abbot to whose monastery the bequest was made, should have the apparel of the dead, his horse and his cow for a mortuary, although he had before solemnly given all that he had to any other abbot. Whence may easily be conjectured that monasteries were in chiefest reputation for^y burial, and had a right of it before any other kind of parochial church, if the dead made choice of any of them. And by the way, for that course of payment of a mortuary (which the *Saxons*, I think, called *raplreac*) the same synod^z affirms, that *omne corpus sepulchrum habet in jure suo vaccam & equum & vestimentum & ornamentum sui lecti; nec quicquam horum reddetur in*

alia debita, quia corpori ejus tanquam vernacula debentur. And although the certain age of that synod appears not, yet it was after such time as parishes were limited in regard of the parishioners repairing to one certain church, and giving their devotions there only. For in it also are these words: *quicumque discesserit de sua ecclesia & in alia ecclesia sepultus fuerit, &c.* What can *sua ecclesia* be but such a kind of parish church, as at this day is titled so? that is, one limited in regard of the parishioners and their profits received from them. But in that of *Edgar*'s *ealsan mýnrtpe*, it is plain that although *mýnrtpe* especially denote a monastery, yet all other parish mother-churches are understood by it: and indeed *cýpic* and *mýnrtpe* are frequent, as synonymies in the *Saxon* monuments. But as the first part of his law that gives all tythes to the mother church of every parish, meant in them a parochial right to incumbents; so also the second part, that permits a third portion of the founder's tythes to be settled in a church new built, whereto the right of sepulture is annexed, makes a dispensation for a parishioner that would build such a church in his *bocland*, or land possessed *optimo jure*, or as inheritance derived from a charter of feoffment. And however that second part also of this law, is iterated by king *Knout*; yet I doubt not but that such new erections within old parishes bred also new divisions which afterward became whole parishes, and by connivance of the time, took (for so much as was in the territory of that *bocland*) the former parochial right that the elder and mother-church was possessed of. For, that right of sepulture or having a *legeþrope*, was, and regularly is a character of a parish church or *ecclesia*, as it is commonly distinguished from *capella*: And antiently if a *quare impedit* had been brought for a church, whereas the defendant pretended it to be a chapel only, the issue was not so much whether it were church or chapel, as whether it had *baptisterium* or *sepulchrum*, or no. So it appears in a case of^a 23 Hen. III. where *William* of *Whitaston* in his count against the archbishop of *Canterbury*, expresses, *ecclesiam de Hey in Suffex* to be of his advowson, and the archbishop pleads, that what he calls a church, *non est ecclesia, imo capella pertinens ad matricem ecclesiam de Terringes, ita quod non est ibi baptisterium neque sepultura, imo omnes qui ascuntur ibidem baptizantur apud Terringes, & similiter omnes qui ibi moriuntur, sepeliuntur apud Terringes, &c.* And thence was it also that the whole clergy of *England* put the inquiry of such an issue among their grievances, when in 21 *Henry* III. they desired *Orto* the pope's legate, among other freedoms, to get for them of the king, *Quod^b judices seculares non decident causas ecclesiasticas in foro seculari, nec tales homines determinent utrum talis capella debeat habere baptisterium & sepulchrum an non.* For, if it had the right of administration of sacra-

^a Leg. Francic. apud Filescum, lib. de parocia.

^b Regular. concordia Anglica nationis monach. sanctimonialiumque ms.

in bibl. Cotton. & Malmesbur. lib. 1. de gest. pontific. fol. 115.

^{*} In statut. synod. ms. in saep. dict. biblioth. cap. 9.

^y Videlicet c. 16. quæst. 1. c. 13. Agapinus, & 13. q. 2. c. 6. ubicunque, sed & vide append. ad concil. Later. part. 43. cap. 4.

^z Vide Canuti leg. cap. 13.

^a Trinit. placit. 23 Hen. III. rot. 15. in arce Londinenli.

^b In annal. ms. monasterii Burtonensis, sub anno 1237. apud v. c. Th. Allen. Oxon.

ments in it and sepulture also, then differed it not from a parish church, but might be stiled *capella parochialis*, by which name some chapels are with us known; And in the *Saxon* times also we find *coemiterium* * *capellae*, for the burial place of a chapel, which must be understood of a church that had the like right as that which is mentioned in the second part of *Edgar's* law. And those other churches which in his and king *Knout's* laws are spoken of, that is, churches without burial places, *pseſtycan*, or *field-churches*, are only what at this day we call chapels of ease, built and consecrated for oratories, but not diminishing any thing of the mother churches profits. But also besides those original lay-foundations, some parishes have had other beginnings since from alterations made in regard of the inconvenience of their former limits. And this by direction or authority both from the pope, or bishops, according as they saw occasion exacted; and from the king. For the pope; We may see in the example remaining in the decretals ^d, where pope *Alexander* the third sends his decree to the archbishop of *Tork*, reciting that in a complaint made to him, he had heard that a certain town in his province was so distant from the parish-church, that it was very difficult for the inhabitants to repair thither, especially in winter, and withal that the church revenue of the parish, although that town were exempted, was not insufficient for the minister of the mother church; wherefore he commands the archbishop to build in that town a church, and with assent of the founder of the mother-church, to institute at the presentation of the rector an incumbent there, that might have to his own use all ecclesiastick profits encreasing in the limits of the same town; and also acknowledge a superiority to the mother-church; and that he should do it also whether the rector of the mother-church would assent or not. For the king; An old example is in 13 *Hen. III.* where because the church of *S. Peter's* in *Chichester* was very poor, and that only two parishioners were in it, the king at request of *Ralf Nevill* then bishop there, and chancellor of *England*, grants, *quod eadem ecclesia demoliat-ur, & praedicti duo parochiani qui spectabant ad ipsam assignentur imperpetuum hospitali S. Mariae, quod eidem ecclesiae est vicinum, ut ibi deinceps percipiant spiritualia & sint parochiani ejusdem hospitalis.* And such like commands, occasions, and conveniences, doubtless have altered and made the limits of divers parishes every where, both in the country and cities, which have to this day many of small territory, but of large number of communicants. For parochial limits, thus much.

C H A P. X.

I. The practice of tything. Of king *Cedwalla's* tything, being no christian. The custom

of the German-Saxons, in sacrificing their tenth captive to Neptune. Decima used for a less part also in antient monuments.

II. The practice of tything in the christian times of our ancestors. The tale of Augustine and the lord of Cometon touching non-payment of them. The tythe of every dying bishop's substance to be given to the poor, by an old provincial synod. Tythes how mentioned in Domesday. Testimonies of payment of them. Henry the third his grant of the payment of tythe of hay and mills out of all his demesnes. The beginning of parochial payment of tythes in common and established practice in England. How that common assertion, that every man might have disposed his tythes at his pleasure, before the council of Lateran, is true and to be understood.

THE laws of this kingdom for payment of tythes, and the original of parochial right to profits accruing within the limits of every parish church (which were, after lay-foundations grew common, distinguished according to the adjacent possessions and tenancies of the founders, and their farms, manors, towns, and the like) being hitherto declared; the practice of the times remains to be also discovered.

I. IN that, something also is observable among the antients of this kingdom of a kind of tything, related to have been where christianity was not yet received. Some of them tell us of *Cedwalla* king of the *West-Saxons*, that before his being made christian, about the year 686, he tythed all his spoils of war to the deity. So the monk of *Malmesbury*. *Arduum memoratu est, fuisse, quantum etiam ante baptismum inserviret pietati, ut omnes manubias, quas jure praedatorio in suos usus transcripsisset, Deo decimaret.* Neither, it he did so, was it without some example of his ancestors the German-Saxons, whence *England* was chiefly filled, who were wont to sacrifice to Neptune, I think, the tenth of all captives taken in their piracies and incursions made by sea upon the *Gauls* especially. So says my author, that lived about the time of the German-Saxons first arrival here: his words of them are. *Praeterea priusquam de continenti in patriam vela laxantes, hostico mordaces anchoras vado vellunt, mos est remeaturis decimum quemque captorum per aequales & cruciarias poenas, plus ob hoc tristi quod superstitioso ritu, necare superque collectam turbam periturorum mortis iniquitatem sortis aequitate dispergere. Talibus se ligant votis, victimis solvunt: & per hujusmodi non tam sacrificia purgati quam sacrilegia poluti, religiosum putant caedis infusae perpe-*

^c Lindwood, in tit. de censibus, c. quamvis lex naturae verb. una ecclesia & in tit. de celebr. missar. c. effrenata. & vide Bract. fol. 241. b. & Flet. lib. 5. cap. 14. & Breton. fol. 226. b. ^{*} Ingulphus, fol. 489. b. ^d Extr. tit. de eccles. aedificand. c. 3. ad audientiam. ^e Pat. 13 Hen. III. part. 1. membr. 7. ^f Sidon. Apollinaris lib. 2. epist. 6.

tratores, de capite captivo magis exigere tormenta quam pretia. Neither, I think, is any other express mention of this their tything, among ancient monuments. And, for that their sacrificing to *Neptune*; indeed the author *Apollinaris* here mentions him not; but it being done at sea, and *per aquales* (for so is the true reading, although some there read *aequales poenas*) you may well conjecture it was to *Neptune* or to their supposed deity of the sea. And thus the most learned and noble monsieur *Savaron*, in his notes upon *Apollinaris*, expressly also makes it a sacrifice to *Neptune*. And although it be true that among their gods we find none named, that is denoted to answer to *Neptune*; yet, that some deity of the same nature, that is some great sea-god was in their superstition, may be easily collected not only from this relation of their cruel devotions, but also from their wondrous and accurate observation of the ebbs and floods, called by them *ledons* and *malins*, which were the⁸ chief directors of their account of times, as the sun and moon's motion hath ever been to other nations. Which doubtless was no small cause that the sea was to them reputed a deity, as the sun and moon also, before other creatures, in the ancient theology of the *Gentiles*. But for that of *Cedwalla*; let it be upon *Malmesbury's* credit, that he tythed his spoils. *Bede*, who might better have known it than *Malmesbury* could, relates no such thing of him. He says only, that when he conquered the isle of *Wight*, according to a vow that he made to the deity, he gave for the Lord's use, the fourth part of the isle (that is, ccc hides or plough-lands of M.cc) and of his martial gains, to *Wilfrid* archbishop of *York*, then being in those parts in banishment, and bishop of *Selesey*. And¹¹ *Fridegod*, that in the *Saxon* times wrote the life of *Wilfrid* in verse, says hereof only by apostrophe to *Cedwalla*,

Tu quoque pontificem multa tellure beasti.

and mentions no more in particular. That which in the *Latin Bede*, in this story, is called *familia*, is *hys* in the *Saxon*. And perhaps only such a kind of giving a fourth, or any part, upon vow to the Lord, was in that passage of *Malmesbury* understood for tything. Why might it not, as well as the four thraves of corn of every plough-land, in the east-riding of *York*, given by king *Athelstan* to the church of *S. John* of *Beverley* (which came, on the other side, not near to the tenth) are stiled *decimae* in a bull of one of the pope *Gregories*, (I think the ninth) which I have seen transcribed? As if *decimae* in one notion had signified any kind of revenue, devoutly offered to holy uses: as, upon other reasons, *δικατεύειν* denotes also *καθίστην* among the *Greeks*. Those four thraves of every plough-land were, before that grant, payable into the king's avenary¹ by custom of the country. And in *Athelstan's* charter, as I^k found it transcribed, they were thus expressed,

Ða þonne ðraue by heuen cýng
Of ðle a plou of Eðtpeðing.

And for that more general notion of *decima* or *decimatio*, I have seen the transcript of a deed made¹ by *Robert de Hesel* to the monastery of *Gisfeburne* in *Yorkshire*, wherein he gives *duas garbas de tota terra quam de novo colui interitorio de Hesel, postquam illam tenui, aut quam ego de caetero colam, vel haeredes mei, ita ut decimatio haec cedat in fabricationem ecclesiae novae de Gisfeburne*. Here the gift of two sheaves is called *decimatio*.

II. FOR the practice of payment among christians, both *Britons* and *Saxons*; Might we believe the common tale of that *Augustine*, the first archbishop of *Canterbury* province, his coming to *Cometon* in *Oxfordshire*, and doing a most strange miracle there, touching the establishing of the doctrine of due payment of tythes, we should have as certain and express authority for the ancient practice of such payment, as any other church in christendom can produce. But as the tale is, you shall have it, and then censure it. About the year, they say, Dc. *Augustine* coming to preach at *Cometon*, the priest of the place makes complaint to him, that the lord of the manor having been often admonished by him, would yet pay him no tythes. *Augustine* questioning the lord about that default in devotion; he stoutly answered, that the tenth sheaf doubtless was his that had interest in the nine, and therefore would pay none. Presently *Augustine* denounces him excommunicate, and turning to the altar to say mass, publicly forbad, that any excommunicate person should be present at it, when suddenly, a dead corpse, that had been buried at the church-door, arose (pardon me for relating it) and departed out of the limits of the churchyard, standing still without, while the mass continued. Which ended, *Augustine* comes to this living-dead, and charges him in the name of the Lord God to declare who he was. He tells him, that in the time of the *British* state he was *bujus villae patronus*, and although he had been often urged by the doctrine of the priest to pay his tythes, yet he never could be brought to it; for which he died, he says, excommunicate, and was carried to hell. *Augustine* desired to know where the priest that excommunicated him, was buried. This dead shewed him the place; where he makes an invocation of the dead priest, and bids him arise also, because they wanted his help. The priest rises. *Augustine* asks him, if he knew that other that was risen: he tells him, yes; but wishes he had never known him; for, saith he, he was in all things ever adverse to the church, a detainer of his tythes, and a great sinner to his death, and therefore I excommunicated him. But *Augustine* publicly declares, that it was fit mercy should be used towards him, and that he had suffered long in hell for his offence (you must suppose, I think, the author

⁸ Videbis Joseph. Scalig. de emendat. temp. lib. 2. & lib. 1. de mirabilibus s. scripturae D. Augustino falso ascriptum &c. in biblioth. Cotton. de quo apud Malmesbur. lib. 1. de gest. pontif. fol. 114. a.

de Beverlaco recens ms. in biblioth. Cotton.

^k Ms. in eadem biblioth.

¹ Fulcardus Dorobornens. de vita & mirac. J. Chartular. ms. monasterii de Gisfeburne, in dist. bib.

meant purgatory) wherefore he gives him abso-
lution, and sends him to his grave, where he
fell again into dust and ashes. He gone, the
priest new risen tells, that his corpse had lain
there above c.lxx years; and *Augustine* would
gladly have had him continue upon earth again,
for instruction of souls, but could not thereto
entreat him. So he also returns to his former
lodging. The lord of the town standing by all
this while, and trembling, was now demanded
if he would pay his tythes; but he presently
fell down at *Augustine's* feet, weeping and con-
fessing his offence; and receiving pardon, be-
came all his life-time a follower of *Augustine*.
Had this legend truth in it, who could doubt,
but that payment of tythes was in practice in
the infancy of the *British* church? The priest
that rose here from the dead, lived, if he ever
lived, about ccc.xxx after *Christ*, and would not
surely have so taxed the lord of this manor on-
ly, if the payment had not been usually among
other good christians here, not taught only, but
performed also. Neither need I admonish much
of the authority of it: the whole course of it di-
rects you how to smell out the original. Beside
the common legend of our saints, it is in some
volumes put alone, for a most observable monu-
ment; and I found it bound up at the end of the
ms. life of *Thomas Becket*, archbishop of *Can-
terbury*, written by *John de Grandison*, and it
remains in the publick library of *Oxford*.
There also you have it related in *Johannes An-
glicus*^m his *historia aurea*, and in the margin
are noted to it these words: *Hoc miraculum
videbitur illis incredibile qui credunt aliquid
Deo esse impossibile. Sed nulli dubium est quod
nunquam Anglorum duras cervices Christi jugo
se submisissent nisi per magna miracula sibi
divinitus ostensa*. But let the truth be as it will,
I do not believe, that the fable can be found,
nor any steps of it, above cccc years old at
most. But, to leave such testimony, no doubt
can be, but that some practice of payment was
here used very antiently, which (beside the de-
votion to be supposed in christians, and the do-
ctrine of antient fathers, which very likely
wrote here as in other western churches) might
be collected, by good probability, out of those
laws alone of the *Saxon* times, which questionless
were not without some effect, being so often re-
newed. Neither is the memory of some use of
payment here, in these more elder times, omit-
ted in the relicks of antiquity. In the ms. life
ⁿ of the *British* saint *Cadoc*, among some laws
of his church of *Lhancarvan*, which seem to be
attributed to his time, which falls about our
Augustine or before, one is, *Quicumque decimave-
rit, debet dividere in tres partes: primam da-
bit confessori, secundam altari, tertiam oran-
tibus pro eo*. But the author of this whence
we have it, wrote not till after the *Norman* con-
quest. And it is reported also of *Eadbert* bi-
shop of *Lindisfarn*, or *Holy-island*, that he was
eleemosynarum operatione (as^o *Bede's* words

are) *insignis, ita ut juxta legem omnibus annis
decimam non solum quadrupedum, verum etiam
frugum omnium & pomorum necnon & vestimen-
torum partem pauperibus daret*: which words
are almost repeated also by *Turgot* prior of *Dur-
ham*, that wrote the story of that^p bishoprick.
But here no custom of the place or common use
is noted, but only a special devotion of *Ead-
bert*; and for that of *juxta legem*; you must un-
derstand it of *Moses's* law. And so is it expre-
ssed in the *Saxon* copy of *Bede*, where I read
that he did it æfter *Moyses* æt, and that is, ac-
cording to the law of *Moses*. Neither is the re-
gard in those times had to a tenth, although not
yearly, to be paid as for a soul's ransom, to the
poor, after the death of every bishop out of his
estate, to be here wholly neglected. Out of
this regard may be inferred that therein also the
tenth was reputed as a sanctified part. And we
learn it out of a council^q held in dccc.xvi. In
loco famoso, as the words of it are, *qui dicitur
Celichyth, praesidente vero Wlfrido archie-
piscopo caeterisque adsedentibus australibus
Anglorum episcopis*, which hath this canon.
*Jubemus, & hoc firmiter statuimus ad servan-
dum tam in nostris diebus quamque etiam futu-
ris temporibus, omnibus successoribus nostris
qui post nos illis sedibus ordinentur quibus
nos ordinati sumus, ut quandocunque aliquis
ex numero episcoporum migraverit de seculo,
tunc pro anima illius praecipimus ex substantia
uniuscujusque rei decimam partem dividere, ac
distribuere pauperibus in eleemosynam, sive in
pecoribus & armentis, seu de ovibus & porcis,
vel etiam in cellariis, necnon omnem hominem
Anglicum, liberare, qui in diebus suis sit servi-
tuti subjectus, ut per illud sui proprii laboris
fructum retributionis percipere mereatur & in-
dulgentiam peccatorum*. And for the succeeding
times of the *Saxons*; we may well conjecture a
practice of payment out of king *Knout's* epistle
sent in m.xxxi, as he departed homeward from
Rome, by *Living* abbot of *Tavistock* to *Athel-
noth* and *Alfrick*, the two archbishops by name,
and to the rest of the bishops and baronage of
England. He therein straitly charges them all,
that according to the antient law they should
take care that tythes were duly paid among
other church revenues, wherein if he found de-
fault, at his coming, they should expect severe
punishment: the words were: *Nunc igitur
obtestor omnes episcopos meos & regni mei
praepositos per fidem quam mihi debetis & Deo,
quatenus faciatis ut antequam in Angliam ve-
niam, omnium debita, quae secundum legem an-
tiquam debemus, sint persoluta, scilicet eleemo-
syna pro aratris, & decimae animalium ipso an-
no procreatorum, & denarii quos Romam ad
sanctum Petrum debetis, sive ex urbibus sive ex
villis, & mediante Augusto decimae frugum, &
in festivitatem S. Martini primitiae seminum ad
ecclesiam sub cujus parochia quisque degit quae
Anglice curciset nominatur. Haec & alia, si
cum venero, non erunt persoluta, regia exactio-*

^m Ms. part. 2. lib. 17. cap. 72.

Cotton. & apud v. c. Th. Allen. Oxon.

ⁿ Apud G. Malmesbur. de gest. reg. Angl. lib. 2. cap. 11.ⁿ In bibl. Cotton.^q Ms. (compact. inter monimenta eccles. Landav. in biblioth. Cott.) cap. 10.^o Eccles. hist. lib. 4. cap. 29.^p Ms. in biblioth.

ne secundum leges in quem culpa cadit districtè absque venia¹ comparabit. And the monk that relates it, adds, *nec ditto deterius fuit factum.* But whatever may be out of these testimonies concluded, it is noted among the laws attributed to *Edward* the Confessor, that what through the coldness of devotion, what through the neglect of demanding tythes by the clergy, that were otherwise grown very rich in real endowments, the practice of payment of them was much diminished. *Sed postea instinctu diaboli* (are the words which follow immediately what is before in the chapter of laws, §. XIII.) *multi decimam detinuerunt, & sacerdotes locupletes negligentes non curabant inire laborem ad perquirendas eas, eo quod sufficienter habebant suae necessaria vitae. Multis enim in locis modo sunt tres vel quatuor ecclesiae, ubi tunc temporis una tantum erat, & sic coeperunt minui.* But we are not sure that this addition to the law is as antient as the Confessor. I think it indeed rather of somewhat later time: yet doubtless the general practice of payment according to those antient laws, however it might be in elder times, was about the *Norman* conquest, much discontinued, which may be especially observed out of that book of *Domesday*, (the original copy whereof yet remains in the receipt of the exchequer) in which the possessions and revenues both of the clergy and laity were accounted and valued, by the oaths of inquests taken in every county upon commission, and so returned thither about the end of the Conqueror's reign. There, frequently enough, churches are mentioned by the words of *ibi ecclesia & presbyter*, or such like; and how many carves or hides of land, how many villans, and other endowments and revenues belong to them, are reckoned, with their values. But very rarely any tythes among those church-revenues are there found: if none at all had been named, it might have been thought that they had been omitted as a more sacred profit, than was fit to be taxed in such a description. But some, although very few, occur in it: As under *terra Osborni episcopi in Boscum in Suffex*, you may there find that *decimam ecclesiae clerici tenent, & valet xl^s.* where the least value of the manor is made at *xl^{li} per annum.* In *Hampshire* under *terra Osborni episcopi*, you read *ecclesia S. Michaelis de Monte tenet de rege in Basingstoches hundred, unam ecclesiam cum i. bida & decimam de manerio Basingstoches. Ibi est presbyter.* So in the same shire under *terra regis*; *ipse rex tenet Walpole &c. ibi ecclesia, cui pertinent una bida & medietas decimae manerii & totum² curset, & de decima villanorum xlvi denarii & medietas agrorum. Ibi est adhuc ecclesiola ad quam pertinent viii acrae de decima.* For these viii acres of tythes, see before in the chapter of laws §. IX, X, and XI. And in the same shire also among the abbot of *Lire*'s possessions, the tythe of *Cladford* is reckoned, as also of *Adrintone*, and also the tythes of *Stanham* are pos-

sessed there by one *Richerius* parson of the church of *Stanham*; and under *terra canonico-rum de Tuinham*, is found, *ad hanc ecclesiam pertinet tota decima de Tuinham, & tertia pars decimarum de Holchest*; and in the isle of *Wight* there vi churches belonging to the abbey of *Lire*, *decimas habent de omnibus redditibus regis.* So in *Bedfordshire* the church of *S. Mariae de Cormelits*, hath divers tythes among its revenues. But the mention of tythes where churches are nevertheless spoken of, is but very seldom through that whole description. And indeed in certain counties, as *Somerfet*, *Devon*, *Cornwal*, and some few others, you shall rarely have a parish-church noted, but in others, very often churches are, but very few examples of their having tythes. Sometimes also grants of tythes by lay-owners are there mentioned, out of the use of which it may be well thought that the moyeties or third parts of tythes belonging to this or that church, had their beginnings. But thereof more particularly in the next chapter, where we speak of arbitrary consecrations. And in most appropriations of parish-churches made in the *Saxon* times, (the antient course being to grant, in appropriating *ecclesiam cum decimis*) no mention is of *decimae*, but other possessions of the churches granted are most particularly inserted in the instruments; of which some examples are published in *Ingulphus* abbot of *Crowland*, and very many occur in chartularies of "old monasteries. But see also for this matter the authorities anon brought to another purpose in the fourteenth chapter §. II. For the following age (besides some examples related in the next chapter, out of which some kind of known payment at least, to some churches, may be without difficulty collected) that we may here omit also the divers appropriations, in the * times presently ensuing the conquest, of *ecclesiae cum decimis*, which denotes either some payment or interest of tythes settled by consecrations in them. In the life of *S. Cuthbert* bishop of *Lindisfarn* written by some monk under *Henry I.* it is related, that in that author's time a great penury of food being in *Lindisfarn* (that is in *Holy-island*) the sea left upon the shore *Lxv* fishes, whereof every one was a sufficient draught for a yoke of oxen; and that a monk came to the lord of the adjoining soil, and desired the tenth of that abundance so lent by the hand of God. *Saltem decimas*, as the words are, *quod legis & provinciae consuetudo exigebat, ecclesiae requisivit, sed omnibus negatis rubore simul & dolore confusus discessit.* Here the practice of payment is noted by *provinciae consuetudo*; And about the same time the fashion about *Abingdon* was to pay the tythes to the abbey (due either as it was an *earl*dom by king *Edgar*'s law; or as they had been consecrated; whereof more in the next chapter) by whole hides and acres. *His diebus*, says the chartulary of that abbey, *raro a quoquam decima messium ut lege praecipitur in abbacia ipsa dabatur, sed aut de hidagio xl manipuli quos vul-*

¹ Forsan compensabit.
placet, cartul. Rossensis ecclesiae, ibid.

² i. Church-secr.

³ Ms. in bibl. Cott.

⁴ Ante alia vet. monumenta, consulas, si

go garbas vocant, aut decima suae culturae aera porrigebantur. And for the time under Henry the second, an epistle sent from Rome by pope Alexander the third, to the bishops of Worcester and Winchester, recites the general institution, which may be understood for custom, of the church of England to be, that every parishioner should pay his tythe corn to his own parish. *Cum homines*, so it speaks, *de Hortuna secundum generalem ecclesiae Anglicanae institutionem, de frugibus suis novem partibus sibi retentis decimas ecclesiae cuius parochiani sunt sine diminutione solvere teneantur &c.* Wherewith agrees the preamble of his decretal, remaining yet in the body of the canon law. There he begins with; *Quod cum parochiani vestri* (that is, all the parishioners within the diocese of Canterbury) *decimas bonorum suorum consueverint ecclesiis, quibus debentur, cum integritate persolvere; nunc tam laudabili consuetudine praetermissa quidam ex eis de lana & de foeno, & de proventus molendinorum & piscinarum decimas ipsis ecclesiis subtrahere non verentur.* Hereto add that of one of his predecessors, ^a Hadrian the fourth, to the archbishop of Canterbury, where a parochial payment of tythes seems to be spoken of as of known right; and in a composition made by the abbot ^b of Evesham, a judge delegate from pope Honorius in m.c.xx. it is taken clear, that certain tythes de jure communi pertinent ad ecclesiam de Leonminster, eo quod sitae sunt infra limites parochiae ecclesiae de Leonminster, according as the texts of the canon law of about that time expressly also affirm. The composition was between some of the diocese of Hereford, and the abbot of Wigmore. Like admissions of that law are in other instruments, in the leiger-book of Reading, for the church of Leominster. But conclude not out of them for practice, without observation of the examples of the next chapter. And it appears, that in 11 Hen. III. a special grant was made by the king, that tythes of hay and mills should be paid from thenceforth in all his demesnes lands (that is all occupied either by his villains or bailiffs, or by lessees that came in after the grant) which before then had not been paid. *Dominus rex*, says the ^c record, *de concilio archiepiscoporum & episcoporum suorum concessit, ut decimae foeni & molendinorum de singulis dominicis suis in regno suo de caetero praestentur. Et mandatum est ballivis de Corsham quod de dominico suo de Corsham decimas foeni ecclesiae de Corsham dari faciant. T. r. apud Westmonasterium xviii die Maii.* And according to this, were divers close writs sent out in the following years. Of the times afterward, we find more certain testimonies shewing the common right of tythes and that parochial; as the writ of *indicavit*, grounded upon the statute of *circumspecte agatis*, made in the thirteenth of Ed. I. discovers, that in and be-

fore that time the parochial tythes were most known revenues of every church; with which agrees the antient and present form of the count in a writ of right of advowson of a parish-church, wherein the esplees are chiefly laid in tythes, because the *advowson of the whole tythes, is no other than the advowson of the church*, as judge Stoner ^d says in Corbet's case. And by the practice of the kingdom, it became clear law, as it remains also at this day, that regularly, if no other title or discharge, to be specially pleaded or shewed in the allegation of the defendant, might appear, every parson had a common right to the tythes of all annual increase, predial and mixed, accruing within the limits of his parish, without shewing other title to them in his libel. That appears frequently in our year-books, where the issues, taken upon parochial limits, are reported. But we may here not untimely remember an occurrence in the petitions ^e of the parliament, of 33 Ed. I. touching the tythes of Cornwall, challenged by the parsons and vicars there. *De personis & vicariis*, says the entry, *petentibus decimam in Cornubia, ubi rex solvit annuatim episcopo Exoniensi pro decima praedicta; ita responsum est. Fiat sicut consuevit tempore comitis & regis.* The earl and the king there meant, are that great Richard, and Henry the third. But this must not be understood of the tythes generally in the county, although the words might import as much as if the bishop had received them all. It was doubtless for the tythe of the stannaries only. For it is true, that the bishop of Exeter had the tythe of the profits or rent of the stannaries there antiently given and paid him, and thereof testimony enough ^f is upon record; and to that purpose also is that marginal note, in the book of those parliaments, *flagmen Cornubiae*; clearly, that goes for the *stannum Cornubiae*, as *flagminatores* for those of the works. For the time of Edward the third and Richard the second, (beside that of the tythes of *sylva caedua*, or copice-wood, whereof enough before, in the laws that belong to it) you may remember those complaints of Chaucer's plowman against the clergy of his age.

*Their tything and their offering both
They clemeth it by possession,
Thereof nil they none forgo,
But robben men by ransome.*

And then of parish-rectors.

*For the tything of a ducke,
Or an apple, or an * aye,
They make men sweere upon a boke,
Thus they foulen Cristes say.*

And,

*He woll have tything and offering,
Maugre whosoever it grutch.*

And in the freres tale,

^b In regit. mon. Leominst. five Radrig. in bibl. Cotton. & vide app. ad concil. Lat. part. 48. cap. 1.
^c Rot. clauf. 11 H. III. part. 1. membr. 9. in dorso. & rot. clauf. 12 Hen. III. membr. 7. in dorso. & clauf. 17 Hen. III. dorso. 16. & dorso. clauf. 20 Hen. III. membr. 24. & clauf. 21 Hen. III. membr. 10.

^d Extr. tit. de decimis c. 5. pervenit.

^e Ibid. c. 4. commissum est.

^f Vide rot. fin. 4 Hen. III. membr. 1. & clauf. 5 Hen. III. membr. 6.

^g Rot. clauf. 11 H. III. part. 1. membr. 9. in dorso. & rot. clauf. 12 Hen. III. membr. 7. in dorso. & clauf. 17 Hen. III. dorso. 16. & dorso. clauf. 20 Hen. III. membr. 24. & clauf. 21 Hen. III. membr. 10.

^h Egg.

ⁱ Ibid. c. 4. commissum est.

^j Rot. clauf. 11 H. III. part. 1. membr. 9. in dorso. & rot. clauf. 12 Hen. III. membr. 7. in dorso. & clauf. 17 Hen. III. dorso. 16. & dorso. clauf. 20 Hen. III. membr. 24. & clauf. 21 Hen. III. membr. 10.

^k Ibid. c. 4. commissum est.

^l Rot. clauf. 11 H. III. part. 1. membr. 9. in dorso. & rot. clauf. 12 Hen. III. membr. 7. in dorso. & clauf. 17 Hen. III. dorso. 16. & dorso. clauf. 20 Hen. III. membr. 24. & clauf. 21 Hen. III. membr. 10.

^m Ibid. c. 4. commissum est.

ⁿ Rot. clauf. 11 H. III. part. 1. membr. 9. in dorso. & rot. clauf. 12 Hen. III. membr. 7. in dorso. & clauf. 17 Hen. III. dorso. 16. & dorso. clauf. 20 Hen. III. membr. 24. & clauf. 21 Hen. III. membr. 10.

^o Ibid. c. 4. commissum est.

^p Rot. clauf. 11 H. III. part. 1. membr. 9. in dorso. & rot. clauf. 12 Hen. III. membr. 7. in dorso. & clauf. 17 Hen. III. dorso. 16. & dorso. clauf. 20 Hen. III. membr. 24. & clauf. 21 Hen. III. membr. 10.

^q Ibid. c. 4. commissum est.

^r Rot. clauf. 11 H. III. part. 1. membr. 9. in dorso. & rot. clauf. 12 Hen. III. membr. 7. in dorso. & clauf. 17 Hen. III. dorso. 16. & dorso. clauf. 20 Hen. III. membr. 24. & clauf. 21 Hen. III. membr. 10.

^s Ibid. c. 4. commissum est.

^t Rot. clauf. 11 H. III. part. 1. membr. 9. in dorso. & rot. clauf. 12 Hen. III. membr. 7. in dorso. & clauf. 17 Hen. III. dorso. 16. & dorso. clauf. 20 Hen. III. membr. 24. & clauf. 21 Hen. III. membr. 10.

^u Ibid. c. 4. commissum est.

^v Rot. clauf. 11 H. III. part. 1. membr. 9. in dorso. & rot. clauf. 12 Hen. III. membr. 7. in dorso. & clauf. 17 Hen. III. dorso. 16. & dorso. clauf. 20 Hen. III. membr. 24. & clauf. 21 Hen. III. membr. 10.

^w Ibid. c. 4. commissum est.

^x Rot. clauf. 11 H. III. part. 1. membr. 9. in dorso. & rot. clauf. 12 Hen. III. membr. 7. in dorso. & clauf. 17 Hen. III. dorso. 16. & dorso. clauf. 20 Hen. III. membr. 24. & clauf. 21 Hen. III. membr. 10.

^y Ibid. c. 4. commissum est.

^z Rot. clauf. 11 H. III. part. 1. membr. 9. in dorso. & rot. clauf. 12 Hen. III. membr. 7. in dorso. & clauf. 17 Hen. III. dorso. 16. & dorso. clauf. 20 Hen. III. membr. 24. & clauf. 21 Hen. III. membr. 10.

^{aa} Ibid. c. 4. commissum est.

^{ab} Rot. clauf. 11 H. III. part. 1. membr. 9. in dorso. & rot. clauf. 12 Hen. III. membr. 7. in dorso. & clauf. 17 Hen. III. dorso. 16. & dorso. clauf. 20 Hen. III. membr. 24. & clauf. 21 Hen. III. membr. 10.

^{ac} Ibid. c. 4. commissum est.

^{ad} Rot. clauf. 11 H. III. part. 1. membr. 9. in dorso. & rot. clauf. 12 Hen. III. membr. 7. in dorso. & clauf. 17 Hen. III. dorso. 16. & dorso. clauf. 20 Hen. III. membr. 24. & clauf. 21 Hen. III. membr. 10.

^{ae} Ibid. c. 4. commissum est.

^{af} Rot. clauf. 11 H. III. part. 1. membr. 9. in dorso. & rot. clauf. 12 Hen. III. membr. 7. in dorso. & clauf. 17 Hen. III. dorso. 16. & dorso. clauf. 20 Hen. III. membr. 24. & clauf. 21 Hen. III. membr. 10.

^{ag} Ibid. c. 4. commissum est.

^{ah} Rot. clauf. 11 H. III. part. 1. membr. 9. in dorso. & rot. clauf. 12 Hen. III. membr. 7. in dorso. & clauf. 17 Hen. III. dorso. 16. & dorso. clauf. 20 Hen. III. membr. 24. & clauf. 21 Hen. III. membr. 10.

^{ai} Ibid. c. 4. commissum est.

^{aj} Rot. clauf. 11 H. III. part. 1. membr. 9. in dorso. & rot. clauf. 12 Hen. III. membr. 7. in dorso. & clauf. 17 Hen. III. dorso. 16. & dorso. clauf. 20 Hen. III. membr. 24. & clauf. 21 Hen. III. membr. 10.

^{ak} Ibid. c. 4. commissum est.

^{al} Rot. clauf. 11 H. III. part. 1. membr. 9. in dorso. & rot. clauf. 12 Hen. III. membr. 7. in dorso. & clauf. 17 Hen. III. dorso. 16. & dorso. clauf. 20 Hen. III. membr. 24. & clauf. 21 Hen. III. membr. 10.

^{am} Ibid. c. 4. commissum est.

^{an} Rot. clauf. 11 H. III. part. 1. membr. 9. in dorso. & rot. clauf. 12 Hen. III. membr. 7. in dorso. & clauf. 17 Hen. III. dorso. 16. & dorso. clauf. 20 Hen. III. membr. 24. & clauf. 21 Hen. III. membr. 10.

^{ao} Ibid. c. 4. commissum est.

^{ap} Rot. clauf. 11 H. III. part. 1. membr. 9. in dorso. & rot. clauf. 12 Hen. III. membr. 7. in dorso. & clauf. 17 Hen. III. dorso. 16. & dorso. clauf. 20 Hen. III. membr. 24. & clauf. 21 Hen. III. membr. 10.

^{aq} Ibid. c. 4. commissum est.

^{ar} Rot. clauf. 11 H. III. part. 1. membr. 9. in dorso. & rot. clauf. 12 Hen. III. membr. 7. in dorso. & clauf. 17 Hen. III. dorso. 16. & dorso. clauf. 20 Hen. III. membr. 24. & clauf. 21 Hen. III. membr. 10.

^{as} Ibid. c. 4. commissum est.

^{at} Rot. clauf. 11 H. III. part. 1. membr. 9. in dorso. & rot. clauf. 12 Hen. III. membr. 7. in dorso. & clauf. 17 Hen. III. dorso. 16. & dorso. clauf. 20 Hen. III. membr. 24. & clauf. 21 Hen. III. membr. 10.

^{au} Ibid. c. 4. commissum est.

^{av} Rot. clauf. 11 H. III. part. 1. membr. 9. in dorso. & rot. clauf. 12 Hen. III. membr. 7. in dorso. & clauf. 17 Hen. III. dorso. 16. & dorso. clauf. 20 Hen. III. membr. 24. & clauf. 21 Hen. III. membr. 10.

^{aw} Ibid. c. 4. commissum est.

^{ax} Rot. clauf. 11 H. III. part. 1. membr. 9. in dorso. & rot. clauf. 12 Hen. III. membr. 7. in dorso. & clauf. 17 Hen. III. dorso. 16. & dorso. clauf. 20 Hen. III. membr. 24. & clauf. 21 Hen. III. membr. 10.

^{ay} Ibid. c. 4. commissum est.

^{az} Rot. clauf. 11 H. III. part. 1. membr. 9. in dorso. & rot. clauf. 12 Hen. III. membr. 7. in dorso. & clauf. 17 Hen. III. dorso. 16. & dorso. clauf. 20 Hen. III. membr. 24. & clauf. 21 Hen. III. membr. 10.

^{ba} Ibid. c. 4. commissum est.

^{bb} Rot. clauf. 11 H. III. part. 1. membr. 9. in dorso. & rot. clauf. 12 Hen. III. membr. 7. in dorso. & clauf. 17 Hen. III. dorso. 16. & dorso. clauf. 20 Hen. III. membr. 24. & clauf. 21 Hen. III. membr. 10.

^{bc} Ibid. c. 4. commissum est.

^{bd} Rot. clauf. 11 H. III. part. 1. membr. 9. in dorso. & rot. clauf. 12 Hen. III. membr. 7. in dorso. & clauf. 17 Hen. III. dorso. 16. & dorso. clauf. 20 Hen. III. membr. 24. & clauf. 21 Hen. III. membr. 10.

^{be} Ibid. c. 4. commissum est.

^{bf} Rot. clauf. 11 H. III. part. 1. membr. 9. in dorso. & rot. clauf. 12 Hen. III. membr. 7. in dorso. & clauf. 17 Hen. III. dorso. 16. & dorso. clauf. 20 Hen. III. membr. 24. & clauf. 21 Hen. III. membr. 10.

^{bg} Ibid. c. 4. commissum est.

^{bh} Rot. clauf. 11 H. III. part. 1. membr. 9. in dorso. & rot. clauf. 12 Hen. III. membr. 7. in dorso. & clauf. 17 Hen. III. dorso. 16. & dorso. clauf. 20 Hen. III. membr. 24. & clauf. 21 Hen. III. membr. 10.

^{bi} Ibid. c. 4. commissum est.

^{bj} Rot. clauf. 11 H. III. part. 1. membr. 9. in dorso. & rot. clauf. 12 Hen. III. membr. 7. in dorso. & clauf. 17 Hen. III. dorso. 16. & dorso. clauf. 20 Hen. III. membr. 24. & clauf. 21 Hen. III. membr. 10.

^{bk} Ibid. c. 4. commissum est.

^{bl} Rot. clauf. 11 H. III. part. 1. membr. 9. in dorso. & rot. clauf. 12 Hen. III. membr. 7. in dorso. & clauf. 17 Hen. III. dorso. 16. & dorso. clauf. 20 Hen. III. membr. 24. & clauf. 21 Hen. III. membr. 10.

^{bm} Ibid. c. 4. commissum est.

^{bn} Rot. clauf. 11 H. III. part. 1. membr. 9. in dorso. & rot. clauf. 12 Hen. III. membr. 7. in dorso. & clauf. 17 Hen. III. dorso. 16. & dorso. clauf. 20 Hen. III. membr. 24. & clauf. 21 Hen. III. membr. 10.

^{bo} Ibid. c. 4. commissum est.

^{bp} Rot. clauf. 11 H. III. part. 1. membr. 9. in dorso. & rot. clauf. 12 Hen. III. membr. 7. in dorso. & clauf. 17 Hen. III. dorso. 16. & dorso. clauf. 20 Hen. III. membr. 24. & clauf. 21 Hen. III. membr. 10.

^{bq} Ibid. c. 4. commissum est.

^{br} Rot. clauf. 11 H. III. part. 1. membr. 9. in dorso. & rot. clauf. 12 Hen. III. membr. 7. in dorso. & clauf. 17 Hen. III. dorso. 16. & dorso. clauf. 20 Hen. III. membr. 24. & clauf. 21 Hen. III. membr. 10.

^{bs} Ibid. c. 4. commissum est.

^{bt} Rot. clauf. 11 H. III. part. 1. membr. 9. in dorso. & rot. clauf. 12 Hen. III. membr. 7. in dorso. & clauf. 17 Hen. III. dorso. 16. & dorso. clauf. 20 Hen. III. membr. 24. & clauf. 21 Hen. III. membr. 10.

^{bu} Ibid. c. 4. commissum est.

^{bv} Rot. clauf. 11 H. III. part. 1. membr. 9. in dorso. & rot. clauf. 12 Hen. III. membr. 7. in dorso. & clauf. 17 Hen. III. dorso. 16. & dorso. clauf. 20 Hen. III. membr. 24. & clauf. 21 Hen. III. membr. 10.

^{bw} Ibid. c. 4. commissum est.

^{bx} Rot. clauf. 11 H. III. part. 1. membr. 9. in dorso. & rot. clauf. 12 Hen. III. membr. 7. in dorso. & clauf. 17 Hen. III. dorso. 16. & dorso. clauf. 20 Hen. III. membr. 24. & clauf. 21 Hen. III. membr. 10.

^{by} Ibid. c. 4. commissum est.

^{bz} Rot. clauf. 11 H. III. part. 1. membr. 9. in dorso. & rot. clauf. 12 Hen. III. membr. 7. in dorso. & clauf. 17 Hen. III. dorso. 16. & dorso. clauf. 20 Hen. III. membr. 24. & clauf. 21 Hen. III. membr. 10.

^{ca} Ibid. c. 4. commissum est.

^{cb} Rot. clauf. 11 H. III. part. 1. membr. 9. in dorso. & rot. clauf. 12 Hen. III. membr. 7. in dorso. & clauf. 17 Hen. III. dorso. 16. & dorso. clauf. 20 Hen. III. membr. 24. & clauf. 21 Hen. III. membr. 10.

^{cc} Ibid. c. 4. commissum est.

^{cd} Rot. clauf. 11 H. III. part. 1. membr. 9. in dorso. & rot. clauf. 12 Hen. III. membr. 7. in dorso. & clauf. 17 Hen. III. dorso. 16. & dorso. clauf. 20 Hen. III. membr. 24. & clauf. 21 Hen. III. membr. 10.

^{ce} Ibid. c. 4. commissum est.

^{cf} Rot. clauf. 11 H. III. part. 1. membr. 9. in dorso. & rot. clauf. 12 Hen. III. membr. 7. in dorso. & clauf. 17 Hen. III. dorso. 16. & dorso. clauf. 20 Hen. III. membr. 24. & clauf. 21 Hen. III. membr. 10.

^{cg} Ibid. c. 4. commissum est.

^{ch} Rot. clauf. 11 H. III. part. 1. membr. 9. in dorso. & rot. clauf. 12 Hen. III. membr. 7. in dorso. & clauf. 17 Hen. III. dorso. 16. & dorso. clauf. 20 Hen. III. membr. 24. & clauf. 21 Hen. III. membr. 10.

^{ci} Ibid. c. 4. commissum est.

^{cj} Rot. clauf. 11 H. III. part. 1. membr. 9. in dorso. & rot. clauf. 12 Hen. III. membr. 7. in dorso. & clauf. 17 Hen. III. dorso. 16. & dorso. clauf. 20 Hen. III. membr. 24. & clauf. 21 Hen. III. membr. 10.

^{ck} Ibid. c. 4. commissum est.

^{cl} Rot. clauf. 11 H. III. part. 1. membr. 9. in dorso. & rot. clauf. 12 Hen. III. membr. 7. in dorso. & clauf. 17 Hen. III. dorso. 16. & dorso. clauf. 20 Hen. III. membr. 24. & clauf. 21 Hen. III. membr. 10.

^{cm} Ibid. c. 4. commissum est.

^{cn} Rot. clauf. 11 H. III. part. 1. membr. 9. in dorso. & rot. clauf. 12 Hen. III. membr. 7. in dorso. & clauf. 17 Hen. III. dorso. 16. & dorso. clauf. 20 Hen. III. membr. 24. & clauf. 21 Hen. III. membr. 10.

^{co} Ibid. c. 4. commissum est.

^{cp} Rot. clauf. 11 H. III. part. 1. membr. 9. in dorso. & rot. clauf. 12 Hen. III. membr. 7. in dorso. & clauf. 17 Hen. III. dorso. 16. & dorso. clauf. 20 Hen. III. membr. 24. & clauf. 21 Hen. III. membr. 10.

^{cq} Ibid. c. 4. commissum est.

^{cr} Rot. clauf. 11 H. III. part. 1. membr. 9. in dorso. & rot. clauf. 12 Hen. III. membr. 7. in dorso. & clauf. 17 Hen. III. dorso. 16. & dorso. clauf. 20 Hen. III. membr. 24. & clauf. 21 Hen. III. membr. 10.

^{cs} Ibid. c. 4. commissum est.

^{ct} Rot. clauf. 11 H. III. part. 1. membr. 9. in dorso. & rot. clauf. 12 Hen. III. membr. 7. in dorso. & clauf. 17 Hen. III. dorso. 16. & dorso. clauf. 20 Hen. III. membr. 24. & clauf. 21 Hen. III. membr. 10.

^{cu} Ibid. c. 4. commissum est.

^{cv} Rot. clauf. 11 H. III. part. 1. membr. 9. in dorso. & rot. clauf. 12 Hen. III. membr. 7. in dorso. & clauf. 17 Hen. III. dorso. 16. & dorso. clauf. 20 Hen. III. membr. 24. & clauf. 21 Hen. III. membr. 10.

^{cw} Ibid. c. 4. commissum est.

^{cx} Rot. clauf. 11 H. III. part. 1. membr. 9. in dorso. & rot. clauf. 12 Hen. III. membr. 7. in dorso. & clauf. 17 Hen. III. dorso. 16. & dorso. clauf. 20 Hen. III. membr. 24. & clauf. 21 Hen. III. membr. 10.

^{cy} Ibid. c. 4. commissum est.

^{cz} Rot. clauf. 11 H. III. part. 1. membr. 9. in dorso. &

And small tythers they were soule yshent

before the archdeacon. To these, for personal tythes, you may add that of mortuaries, payable in beasts regularly, before the statute of 21 Hen. VIII. which were reputed due upon the general presumption of every defunct's negligence in payment of his personal tythes. The mortuary was therefore, by the canons, to be presented with the body at the burial, as a satisfaction of omission, and negligence in paying to the church ² those personal duties. And thence was it stiled *corse-present*; according whereto, I have seen a justification in the cire of *Derby*, of 4 Ed. III. to an action of trespass brought by *Thomas of Goussill* against the parson of *Whitwell*, for the taking of a horse; in which the defendant pleads, that it was the horse of one *J. Leyer*, his parishioner that died, *et que le dit chival ensemblement oue autres choses fust mesnes & present al esglise come en nosme de mortuarie devant le corps mesme le jour, &c. & il come parson les pristi & resceut auxi come custome de la terre & de seint esglise est, &c.* These shew plainly the received and acknowledged parochial right, in the practice of those times, which hath to this day continued. Neither is it at all necessary to add more for the uniform continuance of it. Saving only, that where any statute hath made a discharge, or prescription, or custom hath settled a *modus decimandi*, or certain quantity payable, though never so little, for the tythe; there, by the laws of the kingdom, the owner is not bound to pay other tythe, than the statute or custom or prescription binds him to. Which yet must be so understood in the case of laymen, that custom or prescription, founded in their possessions as lay, cannot wholly discharge the tythe, or be *de non decimando*, but may well be *de modo* only; otherwise is it in the case of spiritual persons, that may by the common law be by prescription wholly discharged and prescribe *de non decimando*. And this is regularly clear law. But at what time this parochial and common right became first settled with us in practice, is not so clearly known. And though those decretals, before cited, suppose it a thing of custom here in *Henry II.* his time; yet if credit might be given to the report of those *English* monks, which, as we have before related, referred the ordaining of parochial right in tythes to the general council of *Lions*, held under *Gregory X.* then we might conclude the right of it no antienter than about the beginning of our *Edward I.* But whatever they meant, it is certain, that some, both synodal and secular laws of this kingdom, had, before that time, ordained this right. Yet indeed it will be found, that the practice of it here, as also in other countries, was not settled till some m.cc. years after *Christ*, or, at least, was, for many years before, and some after, discontinued. Which may partly be collected out of that decretal of pope *Innocent III.* sent into this kingdom, and dated in the *Lateran*; which is be-

fore at large in the chapter of laws, §. XXIII. For however the recitals are in those of *Alexander III.* (the one speaking of *generalis institutio* for parochial payment, which, as it may denote common custom, so also may be understood for some law of the kingdom, as that of *Edgar's*, *Knout's*, the Confessor's, or some other before related; the other, of *consueverint ecclesiis quibus debentur*, which doth not of necessity include a general practice of parochial payment, but may as well denote the duty that comes from arbitrary consecrations; of which, in the next chapter) it is most certain, that before, about the year m.cc. after *Christ*, that is, about the time of king *John*, it was most commonly practised by the laity, to make arbitrary consecrations of the tythes of their possessions to what monastery or church they would, sometimes giving half, sometimes a third part, and at their pleasure all, in perpetual right, or otherwise, according to the nature of those consecrations in other countries; of which, enough is before related. Neither doth exprels testimony hereof want in that decretal of *Innocent III.* made against these kind of arbitrary consecrations. *Multi*, saith he, *in diocesi tua* (that is the province of *Canterbury*) *decimas suas pro sua distribuunt voluntate*. Neither may you understand it, as if it had been done by the wayward opposition of some only against the received and allowed laws of the kingdom. For notwithstanding all those ordinances, both secular and synodal, antiently here made for due payment, it is clear, that in the time before about that *Innocent*, it was not only usual, in fact, for laymen to convey the right of their tythes, as rents charge, or the like, so what church or monastery they made choice of, but by the course and practice of the law also of that time (both common and canon, as it was here in use) such conveyances were clearly good, and what was through them so acquired, was continually, and is to this day (except some particulars, which either the pope's authority of later time, or new compositions or grants, or the like, have altered) enjoyed by the churches, that, yet remaining, had portions so antiently given them, or by the king or his grantees of impropriated tythes; very many of which had their chief original from those arbitrary consecrations (which you may well call appropriations of tythes) and not from the appropriating only of parish churches, as some out of gross ignorance, with too much confidence, deliver. But thereof you may see more in the examples of the next chapter; where, for most apparent proof of the practice of arbitrary consecrations in those times, monuments enough are collected. This arbitrary disposition, used by the laity as well *de jure* (as the positive law, then received and practised, was) as *de facto*, is that which *Wickliff* remembered in his complaint to the king and parliament under *Richard II.* His words are: *A Lord God, where this be reason, to constrain the poor people to find a wordly priest, sometime unable*

² Lindw. tit. de consuetudine, c. statutum, lit. f. & 21 Hen. VIII. cap. 6.

^b Why is this reason, or is this reason,

both of life and cunning, in pomp and pride, covetise and envie, gluttonie, drunkennesse and lecherie, in simonie and heresie, with fat horse, and jolly and gay saddles and bridles, ringing by the way, and himself in costly clothes and pelure, and to suffer their wives and children, and their poor neighbours, perish for hunger, thirst, and cold, and other mischiefs of the world? A Lord Jesu Christ, sithe within few yeeres, men payed their tythes and offerings at their own will free to good men, and able, to great worship of god, to profit and fairness of holy church fighting in earth. ° Where it were lawful and needful, that a worldly priest should destroy this holy and approved custom, constraining men to leave this freedome, turning tythes and offerings into wicked uses? But what he calls a few years, will fall out to be about cc. for he wrote about the year M.ccc.xc. With him well agree some passages in our year-books of the times before him. As in 7 Ed. III. fol. 5. a. *Parning* truly affirms, that in *ancien temps* devant un constitution de nouvelle fait per le pape, un patron d'un esglise puit grantier dismes, deins mesme le paroche a un autre paroche. And *Herle* there in his answer, seems to admit it clear. So also, touching others as well as patrons, *Ludlow*, judge of assize in 44 Ed. III. fol. 5. b. *En ancien temps* chescun home purroit grantier les dismes de sa terre a quel esglise il voudroit. *Quod verum est*, says judge *Brook*, in abridging the case. But what new constitution of the pope is meant there by *Parning*? Some later ^a books tell us, that from the council of *Lateran* the first alteration of that course of arbitrary disposition came. But plainly, no council of *Lateran* hath any canon that altered the law in it, except that under *Alexander III.* before spoken of in the end of the sixth chapter, may have place here; which, indeed, the canonists will not endure, unless you restrain it only to antient feudal tythes. And they suppose, every man might have arbitrarily conveyed, before that council, his feudal tythes to what church he would. And so expressly says our ^a *Lindwood*. *Ante illud concilium bene potuerunt laici decimas in feudum retinere & eas alteri ecclesiae vel monasterio dare; non tamen post tempus dicti concilii.* But if those which with us talk here of the council of *Lateran*, mean, that under *Alexander III.* and apply it generally to arbitrary consecrations of new tythes, not feudal, I doubt they are much nearer the true meaning of that council, than any of the canonists; especially while they speak of this kingdom. For arbitrary consecrations before about the time of that council are found here infinite, as presently shall be shewed. But of antient feudal tythes (however they were common in other states) scarce any mention at all, or taste is with us: but thereof more in the xiiith chapter. And, it may be, that when, from the canonists, some of our lawyers had learned that feudal tythes might have been conveyed before that council arbitrarily by the

owner; and saw withal, that scarce any sign was of feudal tythes in this kingdom, yet an abundance of old arbitrary consecrations, the use whereof ceased about the time of the council; in the words of it no regard or mention being had of feudal, but only tythes in general; they concluded, (who sees enough why they might not?) that before that council, every man might have arbitrarily disposed of his tythes, that is, such tythes as were not formerly settled by any civil title. But if this will not be allowed for the law of change of those arbitrary conveyances; why may it not first be that *Parning* by his constitution de nouvelle fait per le pape, meant that ^r of pope *Innocent III.* sent to the archbishop of *Canterbury* in king *John's* time (and perhaps it was soon after received into the province of *York*, either by imitation or through the power legatin, which the archbishop of *Canterbury* commonly exercised through the whole kingdom) to command a parochial payment? For also by the name of a constitution newly made by the pope, some such thing rather than a canon of a general council is perhaps denoted. And then why might it not happen that the decretal of *Innocent III.* bearing date in the church of *Lateran* should be thence denominated, and that afterward those which truly understanding it, called it therefore a *Lateran* constitution, gave cause of mistaking to others that took it for a constitution of a general council of *Lateran*? Especially too, because it was about the time of the general council of *Lateran*, held under the same pope that sent it, of which more notice hath been taken in our law than of any other of that name. And indeed he that affirms, that before the council of *Lateran*, lay-owners might have disposed their tythes, *cuicunque ecclesiae secundum meliorem devotionem*, as *Dyer's* words are, speaks true enough, if his words may receive this easy interpretation; that is, that till about that council of *Lateran* they might have done so; not that the council under pope *Innocent* restrained it, but that either the next council of *Lateran* before, that is under *Alexander III.* or the pope by a constitution, received here from *Rome* and dated in the church of *Lateran*, about the time of that council of the year M.ccxv. ordained the contrary: So that in this last way, the name of the council may be a note only of the time about which it was restrained, not of the authority whence it was forbidden. Perhaps those canons of pluralities, of exemptions, of the three orders, and some such more which we received from that council under *Innocent*, were brought into *England* at once with this decretal epistle; And if so, then also it was no more strange to have the decretal afterward titled by the name of a constitution of the *Lateran* council, than it happened in the denomination of the statutes of *aide de roy* and *voucher*, made in 4 *Edw. I.* every of which are stiled by the name of *statutum de bigamis*: yet only one law *de bigamis*, received out of the general council of *Lions*, is among those

^a Why is it lawful.

^p Vide 10 Hen. VII. fol. 18. a. 7 Ed. VI. *Dyer* fol. 84. b. & *Coke* report. 2. fol. 44. b.

de locat. & conducto c. licet. verb. portiones.

^r Quam vide sup. cap. 8. §. 23.

^q Tit.

statutes; and that is even as much a stranger to the rest of the constitutions bearing the same name with it, as pope *Innocent's* decretal was to the whole council of *Lateran*. However, it is most clear (let forward ignorance as it can continue to oppose the assertion) that for cc. years at least before, about the time of the council of *Lateran*, held under the same pope, arbitrary consecrations of tythes with us were frequent, and practised as well of positive right (if we may take that for right, in things subject to human disposition, which general consent of the state allowed; as no man that knows what makes a positive right, can deny) as of fact; which because they are best conceived of by the particular testimonies and precedents of them, in the following chapter many shall be transcribed, that are all (except one or two in the province of *York*; neither is it likely that in every place here, and by every man the intent of that constitution was suddenly observed, and perhaps also it was not so soon altered in *York* province, as in this of *Canterbury*, in regard that the decretal was sent only to *Canterbury* province) of the time before that decretal, and taken out of the most choice and authentick monuments, that may afford help to the disquisition of this point so little, so not at all vulgarly, or indeed any where publickly discovered.

CHAPTER XI.

- I. *Arbitrary consecrations of tythes (before about the time of the most known council of Lateran) by conveyance from the owner of all or part to any church or monastery at his pleasure, in examples selected out of monuments of infallible credit.*
- II. *As it in the Register intelligible only from those arbitrary consecrations. A like example to it out of the book of Osney.*
- III. *The liberty of the baronage antiently challenged to build churches in their territories. Parochial right to tythes settled in practice.*
- IV. *Of tythes of increase in lands not limited to any parish. How by the common law they are to be disposed of.*

BESIDES the many testimonies that may be had out of the portions, especially possessed by some churches or monasteries, many of which had no other beginning than from arbitrary consecrations, made by owners of tythes, in two parts, or third parts, or otherwise at their pleasure to any church or monastery; the frequent memory of instruments of such consecrations (made according to the practised law of the time chiefly interceding from the year m. till some years after m.c.c. of our saviour) is to be principally observed in this disquisition. The original monuments of those elder ages afford us

plenty of them. And in regard of the easier connexion and more compendious way of delivery, we shall rather severally follow the singular courses of every of the chartularies or other monuments, which tell us of those kind of consecrated tythes, than dispose together every arbitrary consecration according to the order of time. The several titles of books whence we have them shall chiefly direct in the general order; but neither shall the particular time, of every of these selected examples of consecration be omitted.

I. The chartulary of the abbey of *Abingdon* shall obviously have first place. In it, in the time of king *William II.* and *Rainald* abbot, occurs, that,

Vivente praedicto *Rainaldo* abbate, trium decimationum, ecclesiae huic facta est una ab *Herberto* de villa sua *Lakine*, appellata *Henrici de Ferrariis* * milite; scilicet frugum, agnorum, caseorum, vitulorum, & porcellorum. Quod & *Robertus* filius ejusdem post patris mortem confirmans, concedente domino suo praedicto *Henrico*, *Abendoniam* venit, pro patris & sui suorumque salute praefatam hic decimationem perpetualiter tradidit; sibi fratribus suis germanis *Huberto* & *Stephano* in his faventibus; etiam istis amicis suis videntibus *Quirio* de *Moenais*, & fratre ejus *Hugone* & *Roberto* filio *Aldulsi* de *Betretuna*. Altera a *Seswaldo* de villa sua *Hildeslea* caseorum scilicet & vellerum suarum ovium. Quod & haeres & filius ejus *Frogerus* post eum devote confirmavit. Quae utraque decimationes luminaribus & ministeriis altaris sanctae Mariae ab eo die specialiter delegatae hucusque in hoc expendantur. Tertia a *Rotberto* cujus erat cognomen *Marmium*, & a filio ipsius *Helto*, de villa sua *Henreda*, frugum omnium suae propriae lucrationis. Sed & post illos a *Radulfo* cognomento *Rosel* idem concessum. And then follows *Rosel's* charter to that purpose: Ego *Radulphus* agnomento *Rosellus* concedo volo atque praecipio servientibus meis ut segetes meas de *Henred's* deciment ad ostium granciae meae quae ibidem habetur, & ipsam decimam recte & fideliter servienti S. Mariae deliverent.

And this tythe was in the sole disposition of the almoner of the abbey. Out of four hides also lying in the same *Henred*, a consecration of the tythe had been made before in the time of the *Danish* government, by a *Dane*, and is thus there reported.

Tempore Danorum, fuit quidam eorum qui possidens vii. hidas in *Henreda*, propter vicinitatem *Abendoniae* & amorem S. Mariae virginis & aliorum sanctorum qui mihi digniter coluntur, dedit decimam de dominio ejusdem terrae ecclesiae S. Mariae *Abendonensi* in elemosynam pauperum, hoc est de iii. hydys; quam terram *Helto Marmium* Deo & sancto *Stephano* Cadomi dedit. Ecclesiae vero *Abendonensi* decima de dominio praedicto in aevum permansit.

* In bibl. Cottoniana.

* L. militis.

Then follows a charter of *Henry I.* wherein all the grants of lands, churches and tythes, made, or thence after to be made by *Alberick de Ver* and *Beatrix* his wife; their son *Alberick* and his brothers, or by their tenants to the monastery of *Colme* in *Essex* (which was a member, or as a cell of *Abingdon*, and erected by *Alberick* their father) are confirmed; and in them two parts of the tythe *de omnibus rebus* in the manors of *Hethingham*, *Belcheam*, *Laureham*, *Aldeham*, *Duurecort*, *Bonecleide*, and *Rodiges*, and half of the tythe of *Walde* and *Wadane*, are recited to have been conveyed to the same monastery, *et dimidia decima* *Deimiblanco de Cola*, & *tertia pars decimae Rannulfi magni*. This is dated 11 *Hen. I.* at *Reading*, that is, MC.XI. And *Faritius*, abbot of *Abingdon*, as it is further remembered, at *Colme*, solemnly received investiture or seisin of every of those and other possessions so granted by the hand of *Picot*, sewer to *Alberick de Ver*, with the testimony of his wife, children, and many of his tenants. And the patent of *Henry I.* is there extant, wherein *tota decima de venatione quae capta fuerit in foresta de Windsor*, is granted to the abbey, which was after confirmed by *Henry II.* *Richard I.* and others. In the same chartulary, about the beginning of the same *Henry*, the tythes of *Bulbey* of *Cildestun*, are given to the abbey by *William* of *Sulabam*; in *Hanney* by *Osbern* and *Turol*; of *Offington* by the tenants there; of *Wekenfeld*, by *William* of *Wecenfeld*; of *Eton* by *Roger Fitz-Alured*; and divers such are related, and the words of the most observable passages touching them shall be here inserted.

Anno v. regni *Henrici* regis intrante (*says the book*) *Willielmus de Sulabam* dedit Deo & sanctae *Mariae* & abbati *Faritio* & monachis in *Abbondona* decimam villae suae quae *Bulbea* vocatur, die videlicet assumptionis ejusdem *S. Mariae*. Eodem etiam die confirmavit donum de alia decima quam antea dederat de villa *Cildestuna* quae ad haereditatem *Leodselinae* privignae suae pertinebat, ipsa puella coram monachis concedente donum, & cum ipso *Willielmo* & cum matre sua super altare idem imposuit, coram his testibus; abbate praedicto & omni conventu, *Johanne* fratre conjugis ejusdem *Willielmi*, *Humfrido* ejusdem milite, *Hugone* *Conred*. But that of *Turol* is thus expressed. Similiter *Turol* de eadem villa (*that is*, *Hanney*) dedit Deo & sanctae *Mariae* de *Abbondona* coram *Faritio* abbate & omni conventu, in capitulo, decimam omnium suarum possessionum, porcellorum scilicet agnorum, vellerum. Sed decimam carucae suae tantummodo ita discevit, ut duas istius decimationis partes huic loco, tertiam vero partem presbytero sibi servienti concederet; hoc idem concedente & confirmante uxore sua *Hugulina*, & filio suo *Willielmo*; & hanc donationem donavit anno v. *Henrici* regis.

Here especially you see as well arbitrary division as consecration of the tythe by the owner's grant. And for the example of the tythes of *Offington*, the words of it are most observable also.

Eodem anno (*says the monk that wrote it*) cum venisset abbas *Faritius* in villam suam *Offentunam*, ut opus ecclesiae quod ibi lapideum a fundamento inchoaverat ad perfectum determinaret, congregaverunt se homines sui ex eadem villa, & obtulerunt communi devotione & concessione decimam suam totius villae ejusdem, *S. Mariae* & ipsi abbati & loco *Abbondoniae* ab illo in reliquum tempus. Ut videlicet abbas de suo proprio ecclesiam ejusdem alacrius construendo perficeret, & ipsi mererentur in fraternitate loci annumerari. Hanc expetitionem cum abbas audisset, inquisivit utrum ecclesiae ejusdem villae antiquitus decima ab illis hominibus daretur; nolens scilicet eam sua rectitudine minuere pro alicujus donatione sibi suoque loco oblata; dictumque est, hoc esse moris villae ut a singula virgata ecclesiae illi *xxiij* garbae pro decima numeratae donarentur. Quod sciens abbas, statuit ante ipsos homines ut, sicut ipsimet voluerant & obtulerant, reciperet eorum decimam, ea determinatione assignata inter ipsum abbatem & ecclesiam ejusdem villae, scilicet, ut tempore colligendarum decimationum abbas ipse mitteret *Offentonam* quem vellet de suis, & ipse reciperet a singulis, secundum singulorum possessionem, rectam decimationem, & post illam totam collectam, de singula virgata illius villae tot manipulos presbytero illius ecclesiae tribueret quot superius diximus ei deberi. Reliqua vero decimationis abbati fervaret.

Here plainly, no tythe was parochially paid before this grant, but only twenty four sheaves of every-yard land; which was now diminished also by the consecration of the true tythe to the abbey. Then *Willielmus de Wecenfeld* dedit suam decimam ex omni sua pecunia *S. Mariae* & monachis in *Abbondon* de tribus videlicet bidis in *Wecenfeld*, & duabus de *Boxore*, excepta una acra quae ecclesiae de *Boxore* adjacet. This was in 7 *Hen. II.* And in the relation of the tythes of *Eaton*, granted to the abbey by *Roger Fitz-Alured*, it is added; *Et promisit quod cum Osmundus & alii suis hominibus de illa villa faceret ut & ipsi de suo tenore similiter decimam ecclesiae huic concederent*. So in 9 *Hen. I.* *Aldred* & *Lured* homines ecclesiae de *Waliford* dederunt monachis hujus ecclesiae decimas de omnibus videlicet suis pecoribus, & de agrorum suorum cultura, in capitulo coram toto conventu. And in the same year, one *Ralf* gave them the tythe of his farm or manor of *Bradendene*, and assured them, he would intreat *Robert de Insula*, his lord of whom he held *Bradendene*, quatenus illius permissione & concessu suo hoc confirmaret, ut haec ecclesia ipsius decimae donatione firmitus in posterum potiretur. The like gift occurs there, made by *Hugh Fitz-Wichtgar* in 10 *Hen. I.* of the tythes of *Bennaham*. And about the same time, *Gilbert Bassett* gave for ever to the abbey, with his son *Robert* entering there into religion, the tythe of his land in *Waneting*, to be employed ad usum pauperum. Not long after, *Hugo dispensator regis* (it seems, treasurer of the household) granted to the abbey, suam decimationem de omni pecunia tam de mobilibus rebus quam

quam immobilibus de manerio Spesholt quod de ecclesia tenebat, sua conjuge Helewisa favente, coram his testibus; Poidras suo homine, & Anfchitillo suo praeposito de praedicta villa, & multis aliis. The like did Ralf the abbot's chamberlain grant out of two hides in *Sterlingford*. So one *Jocelin* and his son *Randal* granted to the abbey two parts of all kind of tythes in possession *quadam quae Grava dicitur*. And one *Norman*, when his son *Eudo* there took habit of religion, consecrated with him *decimam domini sui de Winterburne, quam cui placeret ecclesiae libere donare poterat, quae sic concessa sub manus sacristae redacta est*. And among other possessions of the abbot and convent, confirmed by the bull of pope *Eugenius* the third, in the year *M.C.LII.* (that is, in *xvii* of king *Stephen*) these tythes granted, are particularly reckoned in it, as part of what they did in *praesentiarum iuste & canonice possidere*; so are the words of the bull. Neither to other purpose are the words of the bishops of *Salisbury*, ordinaries of the diocese, in their general confirmations of churches and tythes to the abbey. These confirmations of theirs came divers years after the grants made by the owners, and are at large extant in the chartularies of the monastery. The first that made any, was *Hubert*, who was consecrated bishop in *1 Rich. I.* that is, *M.CLXXXIX.* In the time of *Henry* the second, through the procurement of *Richard* sacristan of the abbey, one *Giralin de Curzun* granted to the abbey, *decimam xxx acrarum de Westlakinge quam parentes sui prius concesserant, & ipse altari sanctae Mariae concessit, addens de porcellis sive agnellis aut caseis aut rebus aliis quae decimari solent, decimam, quam priores sui minime dederant. Hanc vero donationem super altare S. Mariae devotus obtulit; trium tantum acrarum decima de xxx ecclesiae de Waneting reservata.* Then, for tythes in *Chiltune*; it is there reported, that in *2 H. II.* *Nicholas Fitz-Turold* gave them to that monastery: His whole charter is recorded, and so take it here for that part transcribed. *Notum sit praesentibus & futuris testimonio huius scripti sigillo meo signati, quod ego Nicholaus filius Turoldi de Estuna pro salute animae meae parentumque meorum, & pro eo quod licitum mihi esset ab ecclesia de Abbendona coemiterium habere capellae meae de Winterburna, concessi firmiter & finaliter dedi praedictae ecclesiae Abbendonensi, singulis annis imperpetuum habendas decimas terrae meae quam in dominio meo teneo in villa Chiltune. In blado scilicet ad osium grangiae meae suscipiendo & in caseis & in velleribus & agnis & porcellis, & in omnibus quae decimari solent.* And at the time of the grant, it was by the abbot *Ingulph* assigned to the use of the poor and strangers, that is, to the almonry, as indeed most other of their consecrated tythes were: which is yet to be seen in the accompts of the revenues of every office of the house.

Out of the^r chartulary of the abbey of *Osney*.

The abbey being founded in *29 Hen. I.* that is, in *M.CXXIX.* by *Robert d'Oily* high constable of *England*; in the charter of the foundation are given to it the tythes of the founder's mills, that were near the castle of *Oxford*, & *decimatio Nicholai de Stodeham quam Fromundus* (a chaplain mentioned in the charter) *tenebat*: and that is iterated often in other charters to the same monastery. And after in the same chartulary is a catalogue of divers portions of tythes belonging to the abbey, and as issuing out of the demesnes of such as had encreased the revenues of it with endowments of tythes newly granted; nor are they expressed with any reference to this or that parish, but only to the demesnes and names of the donors. And then comes a confirmation^u of *Richard* bishop of *Lincoln* (within that diocese *Oxfordshire* was, till the later institution of a bishoprick in *Oxford*) wherein, among the ancient possessions of the abbey, enjoyed through their having *Saint George's* church in the castle by *d'Oily's* gift, two parts of the tythes of all things *quae decimari solent, in dominico horum maneriorum, videlicet, Berencestre, Erdinton, &c.* are confirmed to it. Neither is the number of those manors there named, under forty. Which way is it likely, that the church of *S. George* came to two parts of the tythes of so many manors, if not by consecration of the owners? And indeed afterward is a transcript of a charter of *Robert d'Oily's*, that was above *c.xxx* years before the bishop's confirmation, to the abbey, wherein he gives three hides in *Walton*, and *terram de Twenti* acre & *decimam earundem terrarum, & pratum quod vocatur Brunmannes Mead, cum decima ejusdem prati* (where note, the land and the tythe of the same land is given, which could be but a discharge of tythes in the abbey) & *cum decima de Northam, Wiveleya, & Lincha, & omnium terrarum & pratorum & aliarum rerum decimabilium quae sunt inter castellum Oxoniae, & * Heunteleyam aut Botleiam scilicet in comitatu Oxoniae.* And then, *duas partes decimae, de omni re quae decimari solet, de omnibus dominicis utriusque honoris qui adjacent castello Oxenefordiae, videlicet de Hokenorton, Swerefordia, Bereford, Wiginton, &c.* with a recital of above forty towns and manors, which are also in that confirmation long after made by the bishop. In the same book, *Richard* of *Dodeford* gives them in perpetual right, the tythes *de assarto bosci mei de Hecolthe cum assartatus & excultus fuerit, sive ego sive alius per me illum assartaverit & excoluerit.* This seems to be of about king *John's* time. And one *Hugh de Croftes* grants them *decimas domini mei de Wauretun de omnibus rebus quae decimari possunt & debent, tenendas de priore & monachis de Tedford imperpetuum, sicut cartae utriusque monasterii inter eos factae testantur.* And this was in *3 Rich. I.* And a

^c In biblioth. Cotton.

^u An. Dom. 1259.

^{*} Hincsey.

pension was yearly payable for them to the prior of *Thetford* by that clause of *tenendas*, as appears in the confirmation made of the same charter by *William* bishop of *Hereford*. You must know, that the ancestors of *Croftes* had formerly given those tythes to the priory of *Thetford*, as is remembered there also.

*Out of the chartulary or * Leiger-book of the priory of Gisburne or Gisburgh in the North-riding of Yorkshire.*

In a fine there of 23 *H. III.* between *Peter de Brus* demandant, and *John* prior of *Gisburne* tenant, it appears, that when *Robert de Brus*, ancestor of *Peter*, under king *Stephen*, founded the monastery; he by grant endowed it, among other possessions, with the tythe of his demesnes of *Litburn*. And in another of 26 *Hen. III.* the concord hath these words in it, & similiter idem *Petrus concessit pro se & haeredibus suis, quod idem prior & successores sui habeant in parochiis suis decimam venationis suae & haeredum suorum; & foenorum suorum ubicunque foenum falcabitur, praeterquam in locis subscriptis, scilicet in parco sub castro de Daneby, & in iv laundis in foresta de Daneby, scilicet in launda de Souresby, Eskebriggethwoyt, Karlethwoyt, & in launda sub Threlkeld, & in haya de Skelton clausa ex aquilonali parte de Routheline, & in parvo parco circa castrum de Skelton, in quibus locis nullas decimas foeni habebunt.* That of the tythe of venison, taken within the parishes of the priory, was confirmed in another fine of 30 *Hen. III.* levied before the justices of *Eyre* in *Yorkshire*; and therein also was further added, *concessit etiam idem Petrus pro se & haeredibus suis, quod ipsi de caetero reddent singulis annis praedicto priori & successoribus suis & ecclesiae suae praedictae decimas molendinorum suorum in parochiis suis existentium imperpetuum.* So that if the mills were in lease, the tenth of the rent was payable; if in the hands of the grantor, or his heirs, the tenth of the multure; and for true payment, the millers were, by the concord of this fine, bound to do fealty to the prior and his successors. But I have not seen an example of such disposition of tythes of so late time. Few or none else, I think, exceed the year of that constitution of *Lateran* before spoken of. And remember, that this is of *York* province, in which perhaps the decretal sent to *Canterbury* had not such effect till somewhat after, as is before touched.

Out of the chartulary of the monastery of S. Andrew's of Rochester.

Henry I. gives to the monks there divers churches with tythes, & dimidiam decimam meam de Tarentford in annona tantum, & totam decimam meam de Strodes, & totam decimam meam de Chealches, & hoc facio pro anima patris mei & matris meae & pro anima mea & uxoris meae. T. Eudone dapifero & Haymone dapifero apud Rovecestriam. Other tythes

*of whole manors he gave also to them, & decimam b. lenarum quae captae fuerint in episcopatu Rossensi. And about the same time Ralf archbishop of Canterbury by charter gave them totam decimam de meo dominico, & omnes decimas omnium villanorum qui habent terram in Dune, necnon & aliorum omnium, quorum decimae meo tempore adquisitae sunt vel quocunque tempore adquirentur. Many other charters are in it to like purpose, as: Ego Willielmus de Albineio pincerna regis concedo Deo & Sancto Andraee de Rovecestria, & monachis ejusdem loci, totam meam decimam de villa mea quae vocatur Elham in omnibus rebus, scilicet de blado & de pasnagio, & de molendinis, & de pecudibus, & de lana, & de cafeis &c. & medietatem decimae de Bilsintune in omnibus rebus pro anima domini mei Willielmi regis, & Hewrici regis, atque pro anima mea, & patris mei, & matris meae, & uxoris meae, & fratris mei Nigelli, & nepotis mei Humfridi, & aliorum parentum meorum vivorum atque mortuorum. Testibus militibus meis, Nigello de Wast, &c. That d' Aubigny was earl of Chichester or Suffex or Arundel (for all these titles he used) and divers confirmations were afterward by his successors, of this grant. And king *Henry* the first also confirmed this of the first *William*; and the prior and convent not long after made a lease of that their tythe in *Bilsintune* to one *Gilebert de Perieres* for 19 years, reserving half a mark rent, payable at *Easter*. And this was confirmed by the archbishop of *Canterbury*.*

Roger Bigot earl of *Norfolk* under *Richard* the first, and *William* his younger son, had given divers revenues to the priory, and among them occur the church of *Waltune*, and then by itself, *tota decima villae Waltune de omni re & tota decima molendinorum ad eandem villam pertinentium.* This is related in the confirmation of *Hugh Bigot* earl of *Norfolk*, and son to *Roger*: and some other churches were granted, but no tythes mentioned with them. And afterward the first charter of *Roger's* grant is in the same volume at large. The tythes of *Buggeley* were given to the priory by the ancestors of *Osbert de Cappavalle*, and charged with three shillings yearly rent, payable to the monks of *Colchester*. This instrument there remaining shews it. *Notum sit omnibus, as the words are, quod ego Osbertus de Cappavalle & Adeliza uxor mea, & Humfridus privignus meus & haeres patris sui, accepta societate Rossensium monachorum pro amore Dei & Sancti Andraee, & salute animae nostrae, & omnium parentum nostrorum, concessimus eis omnem decimam de Buggeleia, sicut eam antecessores nostri in eleemosynam dederunt, firmiter & stabiliter, & quiete perpetuo tenendam; reddituris inde annuatim monachis de Colecestr. tres solidos quamdiu eandem tenent & habere poterunt, & hanc concessionem nostram praesenti sigillo confirmavimus, &c.* This was afterward confirmed by *Philip of Leiburn* and his wife *Anne*, and *Robert of Leiburn* tenants of *Buggeley*.

* In biblioth. Cotton.

† In saepius dict. bibliotheca,

‡ Hae n. captae regis sunt. praerog. reg. cap. 11. &c.

The tythe of *Gedding* was thus granted by the ancestors of *Payn*, Sheriff of *Surrey*. *Notum sit omnibus praesentibus atque futuris quod ego Paganus vicecomes Surregiae, do & concedo decimam de Geddinges quam antecessores mei dederunt Deo & ecclesiae S. Andreae de Rovecestria pro anima patris mei & matris meae, & pro me & uxore mea. Et mihi concessum est ab eadem ecclesia quod post obitum nostrum singulis annis anniversarium mei & uxoris meae in perpetuum persolvetur.*

The tythe of *Stalefeld* is granted to the monks by *D. de Monei*, and sic tenendam sicut tenuerunt de antecessoribus meis.

In 8 *Hen. I.* half the tythe of *Halegele* was given to them by *Henry de Port*, the other half being before conveyed to them.

---Decimam totam de *Halegele*, de qua (*so speaks the charter*) praedictus sanctus, *that is S. Andrew*, dimidiam partem habuerat, caeteram vero pro amore *Radulphi* episcopi, ut praedictum est, supra taxato tempore donavi.

These others also follow.

Walchelinus Maminot omnibus sanctae matris ecclesiae filiis tam posteris quam praesentibus salutem. Notum vobis facio quod decimam de dominio de *Bertreia* quam pater meus pro salute animae suae & suorum, ecclesiae *Roffensi* & monachis ibidem Deo servientibus in perpetuum elemosynam dedit, me similiter pro redemptione delictorum meorum & uxoris meae, & haeredum meorum concessisse & praesenti scripto confirmasse. Quod si aliquid de praedicto dominio in rusticanam servitutem translatum est vel fuerit, decima tamen secundum primam donationem integra permaneat. Teste *Rodberto de Binham* presbytero, &c.

Omnibus Christi fidelibus ad quos praesens scriptum pervenerit, *Willielmus de Lamualai* aeternam in domino salutem. Noverit universitas vestra quod ego *Willielmus de Lamualai* divinxerit pietatis intuitu pro salute animae meae & uxoris meae, & liberorum meorum, & antecessorum meorum & successorum, concessi & hac praesenti carta mea confirmavi Deo & ecclesiae *S. Andreae* & monachis *Roffensibus* in puram & perpetuam elemosynam, medietatem totius decimae de dominio meo de *Henberst* quam antecessores mei eis dederunt & concesserunt; tenendam & habendam bene & in pace libere & quiete de me, & successoribus meis, & per manus elemosynarii eorum in usus pauperum distribuendam; ideoque volo & firmiter praecipio ut praedicti monachi habeant, &c.

Omnibus sanctae matris ecclesiae filiis ad quos praesens scriptum pervenerit, *Adam Pincerna* aeternam in domino salutem. Noverit universitas vestra, quod ego *Adam Pincerna* cognita & comperta dilectione quam antecessores mei habuerunt erga ecclesiam *S. Andreae Roffensis* & monachos in eadem ecclesia Deo servientes, decimam de dominio campo meo in *Culinges*, qui vocatur *Westbroc*, quam *Radulfus Pincerna* eis dedit intuitu Dei, praedictae ecclesiae, & *S. Andreae*, praefatis monachis in puram & perpetuam elemosynam concessi & praesenti carta mea confirmavi, ita vide-

licet quod *Richardus* frater meus, qui successit *Gervatio* decano in personatu ecclesiae de *Culinges* ad praesentationem meam, successores sui reddent annuatim, nomine decimae illius, praefatis monachis dimidiam marcam argenti in crastino festivitatis sancti *Andreae* omni occasione remota & dilatione, &c.

It seems that the parson of *Culinges* by the patron's will herein declared, was to have the tythe of *Westbroke* in kind, and pay half a mark for it yearly to the priory.

Sciant tam praesentes quam futuri quod ego *Henricus de Malemeins* concedo & confirmo monachis ecclesiae sancti *Andreae* apostoli *Rovecestriae*, decimam meam totam de dominio meo, & eam vehendam quocunque voluerint & transferendam; cum ante hanc concessionem solummodo granum habuerint. Praeterea dono eis & concedo decimam meam de vitulis & porcellis. Has concessionis confirmo illis pro amore Dei & salute animae meae & uxoris, & antecessorum meorum, libere & quiete possidendas assensu haeredis mei & voluntate uxoris & amicorum meorum. Teste, &c.

And *William Hachet* confirms the moiety of the tythes of his demesnes in *Hainwold* (which his ancestors had granted to the priory) to hold free sine omni molestia & exactione. And warrants them contra omnes homines sicut liberam elemosynam nostram.

A like confirmation is from *William of Srambroche* of the tythe of *Srambroche*, granted formerly from his ancestors to the priory.

William of Gurnay had given to the priory certain tythes in *Edintune*, which lying dispersed, were not so commodious for the receipt of the monks as of the parson of the parish; thereupon *Galiene*, grandchild to *William*, declares, that for that cause provisum est & statutum, ut quaelibet illius ecclesiae personae nomine decimarum illarum liberaliter solvent annuatim praedictis monachis *Rovecestriae* quinque solidos, ad festum beati *Andreae*, and so confirms both the gift of her ancestor, and this composition between the parson of *Edintune* and the prior and convent.

Haimo filius *Guidonis de Dudindale*, confirms, in puram & perpetuam elemosynam, the gift made by his ancestors *Gerold* his grandfather, and *Guy* his father, of all the tythes of his land in *Dudindale*; which was afterward confirmed also by his son and heir *John*.

Hamelinus de Columbeirs establishes the perpetual right of all the small tythes of his demesnes, in the chantor of the priory, to whom by ancient possession of his predecessors, he found they belonged, when controversy was about them, betwixt the chantor and *Ralf* parson of *Frendesbury*.

William the son of *Thomas of Tsfield* and all his coparceners, confirm the tythes of *Tsfield* formerly given by their ancestors in puram & perpetuam elemosynam. And further grant all small tythes of *Tsfield*, as of lamb, calf, piggs, fleece, and the like. Et ut haec nostra donatio (says the deed) & confirmatio inconcussa permaneat, ego *Willielmus omnium fratrum meorum voluntate*

voluntate pro omnibus sigilli mei appositione corroboro. Which I note for the special kind of sealing with the eldest brother's seal only.

Henry of Tuang confirms to them decimam de Tuange, quam praefati monachi habent de dono Smalemanni avi mei, tam in Tuange, quam in Rundel.

These grants, or arbitrary consecrations, were all divers years before the end of M.CC. after *Christ*, and for the most part in the times of *Henry I.* king *Stephen*, *Henry II.* and *Richard I.* Neither need you make doubt of the allowance of them by the clergy of that time. The tythes so arbitrarily given by laymen, were not only possessed by the priory, but were also afterward with others which are not mentioned in the chartulary, solemnly confirmed to them by the archbishops of *Canterbury* with their prior and convent, who supplied that which now is the dean and chapter. For in 23 *Hen. II.* upon a controversy arising about some tythes challenged by the priory, a confirmation was given by *Richard* archbishop of *Canterbury*, in which he grounds their right upon the deeds of the grantors. *Cognito*, are his words, *jure praedictorum monachorum per inspectionem instrumentorum suorum, considerata etiam diuturna illorum possessione, &c.* And then he confirms to them all the tythes granted to them within his diocese, and reckons by name several tythes in eight parishes, most of which occur in those examples; after which he confirms also their appropriated churches with tythes belonging to them. For tythes given with the churches appropriated they had as belonging to those churches; but others severally consecrated were no otherwise in them, than as if rents or other profits had been granted out of lands to them. A like confirmation was made by *Baldwin* in 1 *Rich. I.* of all tythes in particular, that were formerly settled in them by laymen's grants. And another such was by *Hubert* archbishop in 1 of king *John*, wherein he confirms to them, *omnes decimas a quibuscunque Dei fidelibus usque in praesens in archiepiscopatu nostro illis collatas.*

Out of the chartulary of the monastery of ^a *Reading, for Leonminster or Lemster in Herefordshire, that was annexed by Henry I. to Reading, in the foundation.*

Walter Clifford, for the health of his father's soul, and for his wife and children, gives *ecclesiae de Leonminstre, decimam de tota Hamenefca tam de dominio quam de villanis, s. de omnibus unde decimae dantur tam de vivis quam de mortuis.* But the church of *Lemster* is called there the mother church of the place. This was about king *John's* time. And *Robert Malherbe* gives to the same church *decimam de toto dominio meo de Rifebury, de omnibus unde decimae dantur tam de vivis quam de mortuis.*

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^a In jam memorata bibliotheca.^b Ibidem.^c In biblioth. Cotton.^d Balaeo Thomas Spor dictus est.

Out of the chartulary of the nunnery of ^b *Clerkenwell.*

Among many possessions confirmed to it by *Henry II.* we find,

Ex dono *Gaufridi* comitis de *Essex* & *Eustaciae* uxoris ejus totam decimam totius vicus & procurationis illorum & domus suae & familiae suae; And, ex concessione *Alexandri* prioris & monachorum ecclesiae sanctae Mariae Magdalenae de *Stanesgate*, assensu conventus ecclesiae sancti *Pancratii* de *Lewes*, omnes decimationes illarum de feodo de *Clerkenwell* cum pertinentiis suis.

And *Maurice* of *Totbam* and *Muriel* his wife grant to the nunnery,

Jus parochiale in perpetuo habendum in terris nostris quas habemus & tenemus de episcopo *Londonensi* juxta *Londoniam*, & in hominibus in eisdem terris existentibus, & in certis terris nostris quae ad parochiam pertinent.

And further, that those lands and his tenants should be joined *jure parochiali* to the church of the nunnery;

Et quod homines illi reddant & faciant quae parochiani debent reddere & facere suae matri ecclesiae.

And that the nuns should quietly enjoy all tythes of those lands, according to the intent of grant from the priory of *Lewes* in *Sussex*; which also is remembered elsewhere in the same chartulary.

Maud of *Mandevill*, countess of *Essex* and *Hereford* grants,

Totam decimam totius vicus nostri & familiae nostrae ubicunque fuerimus, de panibus & potibus & carnibus & etiam de piscibus, sicut in carta domini *G. de Mandevilla* comitis *Essexiae* antecessoris nostri continetur.

And a great curse is added to all such as should disturb or prevent the nuns in their enjoying of that tythe. The reference made, is to that which is beforementioned in the patent of confirmation, made by *Henry II.* This of *Maud* was about the beginning of *Henry III.* and is but a confirmation of that of *Geoffry* of *Mandevill*, made earl of *Essex* by *Maud* the empress.

Out of the lives of the abbots of S. Augustines ^d *of Canterbury, written by Thomas Spror, a monk of the abbey under Edward I.*

Eodem anno domini (videlicet M.LXX.) in villa de *Fordwico*, *Willielmus* rex contulit sancto *Augustino* & fratribus ejusdem coenobii, ecclesias de *Faversham* & de *Middeltune*, & decimas de omnibus redditibus provenientibus ex illis duobus maneriis s. de *Middeltune* & *Faversham*, & decimam de omnibus appendentibus, terra, sylvis, pratis, & aqua, excepta decima mellis & gabuli denariorum. Et sunt

istius donationis septem cartae diversorum regum praeter istam. That *gabulus denariorum* is rent paid in money. Scotland was then abbot there.

In the same abbot's time, Odo bishop of Bayeux, and earl of Kent, gave to the abbey, decimas aliquas quas mei fideles habebant, id est, *Atbekwoldus* de tribus villis quae dicuntur *Knolton*, *Tiskenberst*, *Ringelton*, & decimam totius terrae *Turstini*, necnon decimam *Osberni filii Letardi* de duobus locis, id est, *Bedlesangre*. Decimam etiam *Osberni Payfori* de villula quae dicitur *Bochland*. Haec omnia (as the words of his charter are) dono, concedo, & confirmo, &c. Si quis vero huic donationi contrarius fuerit, vel aliquam calumniam ingesserit, aeterno anathemate ipso facto sit reus & regiae majestatis &c. Then the author tells us, that afterward *William d'Aubigny* wrongfully took the tythe of *Knolton* and *Ringelton* from the abbey, as *Roger of Memires* did the tythe of *Bochland*.

In the year M.LXXXIX. Scotland being still abbot, *Herebert Fitz-Ivo* gave to the abbey, decimas quinque mansionum suarum, vel centum solidos nummorum, quod in arbitrio abbatibus & fratrum S. Augustini constituit utrum decimas ipsas vel centum solidos pro decimis acceptarent. Those five mansions, or farms, or manors, were *Olive*, *Ewelle*, *Osprenge*, *Heregedsham*, and *Langedone*. But this tythe was afterward, says *Sprot*, wrongfully detained from them by *William Peverell*.

About the same time, abbot Scotland made a lease of v *solings* (that is, *solins*, or *selions*, which are made the same with hides or ploughlands, by some good authority) about *Northbourne*, to one *Wadard* for life, reserving rent of xxx shillings, and the tythes of all profits there accruing, to himself.

The same abbot leased for life to *Amfrid Maclerc* his land of *Riple*, and of *Alvetune*, upon like condition, that *Maclerc* should pay to the abbey all the tythes both of those lands as also of his five manors, *Hortun*, *Legu*, *Ernolton*, *Seeldrissam*, and *Oslacestone*, and also all other tythes of his yearly increase whatsoever. Decimam etiam tam frugum quam omnium animalium suorum & caeterarum rerum.

One *Hugh Fitz-Fulbert* had a lease for life of the same abbot, of two solings of land in *Siberfsweld*, whereupon rent of xx shillings yearly was reserved, and this condition also annexed, ut daret etiam decimam omnium rerum suarum quas ipse in dominio haberet.

When *Hugh of Trottescliffe*, abbot there, founded his hospital of S. Laurence, among other endowments, he gave it, totam decimam totius annonae de dominio de Langeport. This was under king Stephen.

And anno Domini M.C.LXXXVIII, *Rogerus abbas* tradidit priorissae de *Scapeia* decimas de Westland intra parochiam praedictae priorissae, pro quatuordecim solidis annuatim reddendis sacristae S. Augustini. What tythes were intra parochiam of the priores of *Shepey*, were by

former grant of the owner conveyed to the abbey.

Out of Peter of Blois his continuance of the history of the abbey of Crowland in Lincolnshire.

At the foundation of the church, new built by abbot *Joffrid*, in the time of *Henry* the first, a great meeting was of the devoutest sort, of *Yorkshire* men especially, and others, to the number of above five thousand in all, and most of them laid stones at it, and upon the stones some offered money, some the patronages of churches granted by charters, others tythes of their lands: As for example, the words are, *juxta illos proximum lapidem versus boream posuit Simon miles & uxor ejus Gulana, offerentes ecclesiae decimam de Morton, & de Schapwik; & juxta illos proximum lapidem versus boream posuit Reinerus de Bathe miles, & uxor ejus Goda, offerentes operi decimam de Houtona & de Birtona*.

Out of the leiger-book of the abbey of S. Albans in Hertfordshire.

The abbot and convent, about 20 of *Henry* the third, gave to the church of the holy trinity de *Bosco*, and the nuns there, for ever, totam decimam de dominio nostro de *Caysho*, in omnibus rebus de quibus decimae dari solent, and two parts of the tythe-corn of the parish of *Watford*, and some other moieties of tythes, the rest being in the parson of *Watford*. But that of the demesnes of *Caysho* was newly now created, and expressed for the provision of apparel for the nuns. But this being so long after the constitution of *Lateran*, and being made only out of their demesnes, which perhaps they had discharged, doth only give an example among many, of another original way of creation of tythes in some monasteries, but not so much add to or confirm the arbitrary course of disposition of them, by laymen in times before that so frequently used.

Henricus rex Angliae r. episcopo *Dunelmensi* & omnibus baronibus suis salutem. Sciatis me (it is *Henry* the first) dedisse Deo & S. Mariae, & S. Oswino, & abbati de S. Albano, & monachis de *Tinemuth* omnes decimas suas per *Northumberland* quas *Robertus comes* (that is *Robert of Mowbray earl of Northumberland*, who in time of *William* the second founded the priory of *Tinemuth*) & homines ejus donaverant eis, scilicet decimas de *Colebrige*, & illas de *Ovinton*, & de *Wylun*, illas etiam de *Newburn*, & illam de *Discington* & de *Calverdon*, & de *Elstwic*, & illas etiam de *Bothall*, & de *Werkwrth*, & de *Anebell*, similiter & de *Roubyrie* & de *Wulloure*, & volo ac praecipio quatenus supradictus abbas & monachi de *Tinemutha*, bene & integre habeant illas ac libere teneant in mea pace, & quod nullus eis inde aliquid auferat super meam forisfacturam. T. Nigello de *Alben*. apud *Brantonam*.

^e Regist. monasterii S. Martini de Bello in archivis regis quae ad forum a regiorum proveniunt incremento dictum spectant. ^f In saepe dict. biblioth. ^g Ibidem. ^h Videbis cart. antiq. B. B. 14. & 15. 72. in arce Lond. & G. 21. in dorso.

By the same king. H. rex Angliae Ranulpho episcopo Dunelmensi, & Alfrico & Lailio vicecomitibus salutem. Sciatis me concessisse & dedisse Deo, & Sanctae Mariae, & S. Oswino, & abbati de S. Albano decimas quas *Hubertus* de *Lavall* ante dederat monachis de *Tinemuda*, scilicet de *Setona* & *Calverdona*, & de *Discingtona*, & volo ac praecipio ut bene & integre in mea pace teneant eas, & quod nullus super eis injuriam faciat. *T. Nigello* de *Alben*. apud *Wintoniam*. This was either a confirmation of a consecration made by *de Lavall*, or else a gift of tythes out of the same lands, by the king, after some escheat or other new title accrued to the crown. The church or priory of *Tinemuth* was given to the abbey of S. *Albans* by *William* the second, after *Robert de Mowbray* had forfeited the patronage, among the rest of his estate, by treason.

Henry the second confirms to the monks of *Tinemuth* all their churches appropriated, and decimas de *Corebriga*, & *Newburna*, & de *Werteurtha*, & de *Rodbiria*, & de *Botala* & *Wlonera*, & de *Wylum* & *Ditentona*, & de *Calverduna*, & de *Alfwicha*, & de *Anibella*, & decimas de dominio de *Herth*, & de *Setona*, & de *Tunestal*, & de *Daltona*, & de *Mideltona*, & de *Ovinthuna*. All which were, without churches, formerly and in perpetual right consecrated by the owners' devotions. The like often occurs in confirmations made to them by the succeeding kings.

In 7 *Rich. I.* *Hugh* of *Pudsey* bishop of *Durham* confirms to the monks of *Tinemuth*, omnes decimas & obventiones tam in blado quam in aliis decimationibus tam de dominiis regis quam baronum, five aliorum fidelium & propriarum villarum, & dominiorum tam in *Northumbria* quam in *Haliwarchfolk* (that is in the territory of the bishoprick of *Durham*) ita plenarie & libere possidendas, sicut eas plenius & melius habuerunt vel habere debuerunt, tempore nostro vel antecessorum nostrorum, & sicut donatorum cartae testantur. And some other churches of such general ratification they have from the archbishop of *Tork*.

In the instrument of foundation of the cell of *Belveir*, made between abbot *Paul* and *Robert* of *Belvedeir* or *Belveir*, or de pulchro visu, that *Robert* grants it the tythes of all lands that he should hereafter purchase. Omnium terrarum quasunque per Dei adjutorium & concessum regis in suum dominium adquirere, quoquo modo posset, dedit & concessit decimas eidem ecclesiae sanctae Mariae; that is to the cell, which was at first purposed for a parish-church, but by advice of archbishop *Lanfrank* was converted into a cell. Dedit etiam & concessit decimas vinearum suarum omnium & sedem molendini in proxima aqua, & concessit decimas decem villarum ad praesens, ex suo videlicet dominio annonae, omniumque rerum de quibus decima danda est & datur, semota quidem tertia parte presbyteri villae. The names of the manors or towns of which he thus gave two parts of

the tythes, are, *Horton*, *Fraton*, *Saperton*, *Rishendon*, *Stoches*, *Wiberteston*, *Segeton*, *Medburne*, *Wirwell*, and *Wylanestorp*.

Robert of *Piriton* gave to the abbey, the church of *Saint Mary* that he had built in *Piriton*; and endowed it with gift of all the tythe ejusdem villae sui domini & omnium suorum hominum ibi manentium omnium illarum rerum de quibus recte decima datur; And in *Nicentton* he gave all the tythe of his demesnes only. In *Cavendeis* & *Hocaton* & *Aperston*, decimam domini sui, excepta cantaria.

Ralf of *Limefi* gave to the church of *saint Mary* also that he built in *Piriton*, decimam suam in eadem villa &c. & decimas hominum ejusdem villae ipsi libenter concedentibus. Apud *Nicenttonam* dedit duas partes decimae suae &c. Apud *Hulferlea* dedit similiter duas partes decimae suae, & apud *Eprestonam* similiter, & apud *Cavendeis* & *Hocktentunam*. And these endowments are there called *beneficium ecclesiae*. These and other tythes so severally granted are confirmed to the abbey by *Alan* de *Limsey*, *Gerard* de *Limsey*, and others of the posterity of *Ralf*. The tythe of the agistment of *Bibsworth* wood, also was granted by *Ralf*, and of other agistments, with provision also, that if the woods were affarred or improved by culture, the abbey should have tythe in kind of the improvements. The whole deeds of conveyance are there at large; and a bull of confirmation was long afterward obtained from pope *Alexander*, as I think, the fourth.

W. Peverell gives to the monks of *Hatfield*, decimam denariorum meorum de *Meldona*, & rectam decimam de *Dona* de omnibus rebus de quibus recte datur decima. And then adds churches of other places cum decimis. That was in *Henry* the first his time.

Out of *Matthew Paris* ⁱ his lives of the abbots of *S. Albans*.

In the time of abbot *Paul*, under *Henry I.* Data est, saith he, huic ecclesiae decima de *Cundella*, & decima de *Rigentona*, & decima de *Roniges*, & de *Brethelham*, & de *Herlaga*, & de *Thamisford*, & de *Cliftona*, & decimae quatuor villarum istarum s. *Hunteslege*, *Gertheham*, & de *Brunfield*, & *Redlang*. Et duae partes decimae villarum istarum s. *Sedintonae* & *Boctonae*. Et tota decima de *Trumpinton*, & duae partes decimae de *Wacerleia*. Porro in *Hertfordstra* duae partes decimae de *Efenden* & *Beiford*, & de *Hertfordingbirie*. And other like.

Out of the chartulary^k of the priory of *Boxgrave* in *Suffex*.

About the year M.C.LXXX. a confirmation is made by *William S. John*, of what had been formerly granted to the priory by his ancestors; and among other possessions, occurs decima de *Chienore*, and decima omnium nemorum suorum

ⁱ In biblioth. Cotton.

^k In eadem biblioth.

de honore Halmaci in paissione & venditione, & aliis exitibus. And this William for the maintenance of a fourteenth monk (there being but thirteen by the first foundation) which he added, gave, *decimam gabulorum suorum de Estretintona*, and other places, & ex dono Petri de Hampton *decima molendini sui*, is related to be theirs.

The same William in another charter grants, In subscriptis ecclesiis, scilicet *Walborton, Bernabam, Hantoneta, Honesum, Mundebam*, duas portiones de terris & decimis omnibus quae ad ipsas pertinent (for the third parts were assigned by him, and the bishop, and the prior to vicarages) & in omnibus praescriptis ecclesiis advocacionem liberam & praesentationem presbyterorum qui in sua persona in illis ecclesiis Deo assidue deserviant &c. Et reddidi *decimam gabulorum de Stretinton*, videlicet viii solidos per annum: and the tythe of other rents.

Robert S. John, brother of this William, gives *decimam omnium gabulorum de Walborton*, & *decimam omnium gabulorum totius villae de Bernbam*, quam frater meus *Willielmus de S. Johanne* dedit mihi, ad tenendum in servitio Dei quartumdecimum monachum in conventu *Boxgrave*, quia prius solum tredecim fuerant. Quod si quartus decimus ibi defuerit, *Tustinus* nepos *Dunelinae*, vel haeres suus colliget & tenebit eas usque ad annum integrum; si vero ultra; dabuntur pauperibus & viduis, & orphanis duarum villarum. Teste *Willielmo de S. Johanne, Waltero & Willielmo capellanis, Rogero Hai, & Thoma* filio suo, *Rogero de Kaisfui*.

And a confirmation is there also by *William S. John* of the gift, that is of the profits received by the lord in money or rent, which lay indeed properly in the lessor's grant. And therefore also *William* the lessor had, by another charter, granted those *decimas gabuli* to *Robert*, to the same purpose, which he expresses in his deed of consecration to the priory; The lessor's grant to him, the confirmation and his consecration were enough to settle this tythe-rent in the monastery: but clearly this could not have discharged any former right of tythes in kind payable out of the land.

The churches of *Warberton* and *Berubam*, and the rest before named with others, were, with the belonging tythes, appropriated to the priory, but the tythes alone of *Thadebam* and *Kienor*, which they call *Chienor*, were by grant from the ancestors of the *S. Johns*, settled in the priory, and never named with any church, as appears in sundry confirmations of them. So also is *decima de Liperinges*, in the ratification of such grants to them made about that time by *John* and *Seffrid* bishops of *Chichester*, and *Richard* bishop of *Canterbury*. Of that tythe of *Liperinges* see more within a few lines.

Sciant praesentes & futuri quod ego *Richardus de Tresgoz* filius *Philippi Tresgoz* dedi & concessi, & hae praesenti carta mea confirmavi Deo & ecclesiae B. Mariae de *Boxgrave*, & monachis ibidem Deo servientibus pro salute animae

meae & uxoris meae & antecessorum meorum, & ut missa pro anima mea, & uxoris meae, & pro animabus patris & matris meae, & antecessorum meorum, in praedicta ecclesia de *Boxgrave*, ter in unaquaque septimana celebretur, omnes donationes quas habent de donationibus *Philippi* patris mei & antecessorum meorum, tam in terris quam in decimis magnis & minutis, in manerio meo de *Hamptunete*. Et insuper dedi & concessi & hoc scripto autentico confirmavi praedictis monachis de *Boxgrave*, omnes minutas decimas de praedicto manerio meo de *Hantunete*, scilicet in agnis, in vitulis, in pullis, in porcis, in aucis, in lanis, in caseis, in pomis, in fructibus, & in omnibus aliis rebus undecunque decimae sanctae ecclesiae spectant aut provenire debent, tam majores videlicet quam minores. Et ut haec mea donatio & concessio perpetuae firmitatis robur obtineat, eam praesentis scripti testimonio & sigilli mei munimine roboravi. His testibus *Roberto* persona de *Storhetune*, *Stephano* capellano, *Philippo Bernbuse*, *Willielmo Picoth*, *Willielmo Purcaz*, *Philippo de Perbam*, & multis aliis. This was in the same time, under Henry the second.

Geffrey of Colevill gives to the priory *decimam de Kienore*, de toto dominio meo in terris cultis & incultis, in pomeriis, in piscariis, & molendinis, in perpetuam & liberam eleemosynam, salva tertia portione totius decimae praefatae de dominio meo, quae ad ecclesiam de *Hidlesham* pertinet, cum tota decima de vilanagio meo. Et ut hoc firmiter teneatur, sigillo meo confirmavi hoc scriptum. His testibus *Humfrido de Sartill*, &c.

Robert of Colevill grants them duas portiones decimae garbarum de toto dominio meo de *Kienore*, in perpetuam & liberam eleemosynam, ex donatione antecessorum meorum iis prius colatam.

Sciant praesentes & futuri quod ego *Radulphus de S. Georgio* & *Agatha* uxor ejus & *Alanus* haeres eorum dederunt & concesserunt Deo & S. Mariae & monachis de *Boxgrave*, *decimam de Liperinges* in perpetuam eleemosynam, quam prius dederat is *Basilias* mater ipsius *Radulphi*. Et ipsi monachi debent facere habere ecclesiasticum servitium in ecclesia sua de *Ichenor* vel in capella sua de *Brideham* hominibus praedicti *Radulphi* morantibus apud *Liperinges*, & in singulis hebdomadis unum servitium pro anima *Basiliae*, & pro cunctis fidelibus defunctis, donec praedictus *Radulphus* vel haeredes sui ibi fecerint quoddam oratorium, in quo unus de capellanis monachorum faciet praedictum servitium in hebdomada. Testibus *Ramulpho* capellano, *Ricardo* capellano de *Boxgrave*, *Roberto Legato*, & aliis multis. This was about king John's time.

Out of the ¹ chartulary of S. Neots or Needs in Huntingdonshire.

Omnibus sanctae matris ecclesiae filiis *Severus de Quincy*, salutem. Sciatis me concessisse & confirmasse monachis S. Neoti decimationes

¹ In biblioth. Cotton.

quas antiquitus habuerunt de terra mea in *Grantesete*, s. totam decimationem dominiorum quae fuerunt *Roberti Fafiton* in eadem villa, tam terrarum quam virgultorum. His testibus &c.

A like instrument of confirmation from him, is of two parts of the tythes of *Subo*, and of a third part of the tythes of *Einsbury*, which had been likewise formerly settled by arbitrary consecration, in the monastery. This was about the fourth year of king *John*, and was confirmed by the bishop of *Ely*.

Sciant praesentes & futuri, quod ego *Albinus Fafiton* concedo & per hanc cartam confirmo Deo & ecclesiae S. *Neoti* fratribusque meis, ejusdem ecclesiae monachis, decimam illam quam *Robertus Fafiton* avus meus & *Eustachius* pater meus eis dederunt & concesserunt, s. de terris & pecuniis totius domini mei in *Grantesete*, & in *Subo* & in *Weston* duas partes decimae: & juxta ecclesiam de *Grantesete* unam mansuram, quam pater meus cum eadem decima eis concessit &c. Hoc donum factum est anno quo rex Angliae *Henricus* secundus duxit exercitum apud *Tolosam*.

Sciant praesentes & futuri, quod ego *Galfridus* filius *Snani* & *Hathewis* uxor mea & *Adam* filius noster concessimus Deo & ecclesiae sancti *Neoti* & monachis *Becci* (*this priory was a cell of the abbey of Bec in Normandy*) ibidem Deo servientibus, pro salute nostra, duas partes decimae bladi, & omnium rerum quae decimari debent, illius hydae terrae in *Croxton*, quam tenuit *Adehwoldus Flammangus* avus praedictae *Hathewis*, quas ipse dedit ecclesiae S. *Neoti* in perpetuum & liberam eleemosynam. T. &c.

Ego *Robertus Wasse* concessi Deo & S. *Mariae Becci* & S. *Neoto* confessori & ecclesiae ejus de *Ernelesberia*, & monachis qui inibi deserviunt, duas partes totius decimae meae de *Wereslai*, in omni videlicet substantia mea, in fegetibus & animalibus unde decima dari debet, & hoc fieri praecipue pro anima *Soeni de Effessa*, & pro salute domini mei *Roberti* filii praedicti *Soeni* qui mihi hanc terram dedit, & pro salute *Gonnor* uxoris suae, & pro salute mea & uxoris meae, & *Willielmi* filii *Gerei* patris sui, & pro anima patris mei, & matris meae, & fratris mei, & omnium amicorum & antecessorum meorum, &c.

This was afterward confirmed by the heirs of *Robert Wasse*. But in the confirmations it appears, that *Torold Wasse* had also granted it before *Robert*. *Torold*, I think, was *Robert's* father, and had granted it about *Henry* the second his time.

In the titles of the deeds there, is *carta Roberti de Ferrers de decimis* de Benewell; but the charter itself is wanting.

Out of the chartulary of the^m hospital of S. Leonard's in Yorkshire.

Stephanus rex Angliae archiepiscopo *Eborum*, justiciariis, vicecomiti, baronibus, mini-

stris, & omnibus fidelibus suis *Eboracshire*, salutem. Sciatis quia concessi & dedi in perpetuam eleemosynam pro anima regis *Henrici* avunculi mei, & pro salute animae meae, & *Matildis* reginae uxoris meae, & *Eustachii* filii mei, & aliorum puerorum meorum, Deo & hospitali sancti *Petri Eborum* omnem decimationem de theloneo villae de *Thicabilla*, & omnem decimationem molendinorum ejusdem villae, & praeter haec v bovatas terrae in *Whethuat*, & unam bovatom in campo de *Bagalaia*. Quare volo & firmiter praecipio quod bene & in pace & libere & quiete & honorifice hanc eleemosynam teneant, quicumque honorem de *Thicabilla* habeat, sicut eleemosynam Deo & pauperibus Christi in perpetuum datam. Teste *Henrico de Essex*, & *Adam de Belin*, & *Willielmo de Clara-fai* apud *S. Edmundum*. But in the bulls of confirmation from divers popes made to the hospital, no mention is of these tythes.

Out of a ms. of constitutions, ^a charters, and writs, touching the province and church of York.

Ael Dei gratia *Carleolensis* episcopus. Omnibus sanctae matris ecclesiae fidelibus in Christo salutem, & orationem. Notum sit omnibus & videntibus & audientibus has literas, me dedisse & concessisse decanatu *Eborum*, & *Willielmo* decano, & omnibus ejus in decanatu successores, decimas molendinorum de *Pokelinton*, & de dominio meo & de tota foca. Sic enim provissum fuit & constitutum a rege *Henrico*. Constitutum autem & confirmatum est de omni possessione debere decimas dari tam in molendinis quam in rebus aliis, ideoque autoritate apostolica & nostra per excommunicationis sententiam prohibemus, ne aliquis has decimas molendinorum auferre & diminuire praesumat, regia tantum dignitate excepta, in quam nullam dare praefumus sententiam. Valete.

This *Ael* is *Aethelulph*, the first bishop of *Carlisle*, confessor to *Henry* the first, who first made it a bishoprick in M.CXXXII.

Out of old charters remaining in the hands of that noble knight Sir Robert Cotton.

R. Dei gratia *Cicestrensis* episcopus *G.* decano cacterisque fidelibus sanctae ecclesiae salutem & benedictionem. Sciatis me concessisse *Brunkino* de *Hasting* dare decimam suam totam de dominio suo de terra quam ipse tenet in marisco de *Penensel* Deo & ecclesiae sancti *Martini de Bello* (*to the abbey of Battell*) pro anima sua & omnium parentum suorum salute. Concedo etiam hanc decimam & omnes alias decimas quas ipsi monachi de *Bello* habent in parochia mea quatenus eas libere & quiete teneant & possideant imperpetuum absque omni molestia; videlicet nominatim decimam *Vulwini de Henam*, decimam *Sewini de Glutintune*, decimam *Lewini de Badeberste*, decimam quam parochiani ecclesiae sanctae *Mariae de Bello* dant de

^a In eadem biblioth.

^a In biblioth. authoris.

Nedrefelde, decimam quam *Ailricus* de *Ora* dat, decimam de *Helinfalde* quam ipsi parochiani sanctae *Mariae* de *Bello* dant, decimam de *Boccholte*, & decimam de *Brombam*, quam *Ailwi* & *Ethelida* dederunt cum filio suo *Benedicto*, quando effectus est monachus, absque omni calumnia in perpetuum tenendam. Similiter etiam & omnes ecclesias & decimas quae eidem ecclesiae datae sunt, vel quas eadem ecclesia & monachi tenent in parochia mea, ut eas libere & quiete teneant episcopali autoritate confirmo. Unde vobis & omnibus successoribus vestris, & omnibus Christi fidelibus ne eis inde aliquam molestiam, vi, aut venditione, vel qualibet occasione faciatis, super anathematis vinculo defendo. *T. Henrico* archidiacono, *Rad.* capellano, *Calone* cantore.

Neither the whole name of the bishop, nor the date, are found in the instrument. But it appears by the hand, and that *R.* designing the name, to be of the time of *Henry I.* and made by *Ralf* then bishop of *Chichester*.

In a deed of *William* earl of *Warren* and *Surrey*, made in the time of king *Stephen* to the priory of *Lewes* in *Sussex*, after some immunities given them in all lands which they held of his fee, this grant follows.

Dono etiam illis de omnibus dominiis meis plenariam decimam, videlicet, de blado, de foeno, de agnis, de velleribus, de caseis, & plenariam decimam denariorum de omnibus redditibus meis de *Anglia*. Quamvis autem ex illis denariis in procuracione mea five aliorum quorumlibet expendatur, ex illis tamen plenaria supradictis monachis reddatur decima. Et si dominium meum aut redditus mei creverint, eotenus crescat & decima monachorum. Haec supradicta ego pro salute animae meae, & pro animabus antecessorum meorum, praedictis monachis concessi & hac mea praesenti carta confirmavi, quando feci dedicari ecclesiam sancti *Pancratii* (that is, the priory of *Lewes*) & de decima denariorum de omnibus redditibus meis de *Anglia* dotavi ipsam ecclesiam, & inde seivivi eam per capillos capitis mei & fratris mei *Radulphi* de *Warenn*a, quos absceidit cum cultello de capitis nostris ante altare *Henricus* episcopus *Wintoniensis*. Teste *Teobaldo* archiepiscopo *Cantuariensi*, *Henrico* episcopo *Wintoniensi*, *Rodberto* episcopo *Bath.* *Ascelino* episcopo *Rovecestr.* qui eandem ecclesiam dedicaverunt, & teste *Edwardo* abbate *Rading*, *Waltero* abbate de *Bello*, *Waltero* priore *Cantuariensi*, *W...* archidiacono *Cant.* *Richardo* decano *Cicestr.* *Rodberto* archidiacono, *Johanne* de *Pagham*, *Willielmo* comite *Cicestr.* *Rad.* de *Warenn*a, *Reg.* de *War.* *Hugone* de *Petrep.* *Radulpho* de *Pleiz*, *Rodberto* de *Wesnevall*, *Rodberto* de *Frieveill*, *Rodberto* de *Petrep.* *Willielmo* de *Petrep.* *Adam* de *Puninges*, *Guidone* de *Merccurt*, *Willielmo* filio suo, *Willielmo* de *Drosio*.

The intent of this was to settle the tythes of all his revenues wheresoever through *England*, in the priory, in kind, of his demesnes; in money, of his rents. Neither did he grant only the tythe

of what he then was seised of, but of all future purchase also and improvements. That livery of seisin, as it were, made upon the altar by the hair of the head both of the grantor and of his brother, is not without other example of those ancient times, wherein both tythes^o and other possessions, were solemnly consecrated, either by hair, or a horn, or a cup, or a knife, or a candlestick, or whatever that might be really delivered on the altar. For, the form of conveyance in perpetual right, both to the church and laity, was to give into^p the hands of the grantee or feoffee some such thing, as at this day a twig or a turf is in feoffments, or as in institutions (according to the formulary of the court of *Rome*) a ring is to be given; and the altar was usually made the place of such a livery. But in the examples of cutting the hair, especially in this where *Henry* bishop of *Winchester* doth it, perhaps more was understood than only a livery upon the grant. Had it not also some reference to the ancient ceremony of cutting the hair at a confirmation? Which was usually done by the godfathers, as may be collected out of that of *Adrevald*, where^q he speaking of *Charles Martel*, says, that *pepigit hic foedus cum Luitprando, eique filium suum Pipinum misit, ut more Christianorum fidelium ejus capillum primum attonderet, ac pater illi spiritualis existeret*. I dare affirm nothing with confidence herein. But it is specially observable, that this charter of the earl of *Surrey* was not, it seems, made without great advice as well as testimony, both of clergy and laymen; whereto you may add the judgment of *Theobald* archbishop of *Canterbury*, in his reprehension of *Ala*, countess dowager of *Warren* and *Surrey*, for not payment of the tythes of her dowry according to the grants of the ancestors of her husband. The original of the admonition to her, speaks thus:

T. Dei gratia Cantuariensis archiepiscopus Anglorum primas & apostolicae sedis legatus. Dilectae filiae suae *Alae*, comitissae *Warennae* salutem. Pervenit ad aures nostras religiosorum fratrum *Lewensis* ecclesiae monachorum stupenda querimonia, quam cum ipsi ex antiqua donatione comitum *Warennae*, videlicet avi & patris *Willielmi* viri tui, & sui ipsius etiam, antequam dotem tuam consecuta fuisses, de omnibus dominiis comitis decimationem denariorum semper inconcussae, tanquam ecclesiae tuae dotem possederint, tu post perceptam dotis tuae investituram, ejusdem fratribus ipsam decimationem, quae ad dotem tuam spectabat, subtraxeris. Quod si ita est, vehementer admiramur, cum eorum quae Deo & ecclesiae tuae in elemosynam collata esse noscuntur; nihil doti tuae vindicare debeas nec possis. Crudele nimirum est & sacrilegio proximum quod super divinum altare semel devote oblatum est iterum repetere, & ad secularia transferre. Proinde tibi salubriter consulimus, & in domino admonemus, quatenus sicut vis justum tibi a Deo libere conservari, ita jus suum cum integritate monachis relinquas; & nullatenus datam eis denariorum decimationem dotis

^o Videfis app. ad concil. Lateran. part. 47. cap. 5. cap. 14.

^p In Thesaur. Cottoniano.

^q Ingulph. hist. fol. 512. b.

^r De mirac. S. Benedicti lib. 1.

tuæ retineas; alioquin eis in iustitia deesse non poterimus, cujus debitores omnibus existimus. Although he speaks only of the *decimatio denariorum*, yet in regard that he mentions it with *de omnibus dominicis comitis*, it cannot be well understood otherwise than of all the tythes of the earl's possessions, according to the former grant.

Richard de Muchegros, about king *John's* time, confirms to the abbey of *Perfore* two parts of the tythes which were wont to be paid to it out of his land of *Whaveshulle*, *tam bladi quam lini & fœni* (exceptis *linis curtilagii mei de dominico meo de Whaveshulle*) as also the third part of the tythes of his tenants there, and further grants them *duas partes decimarum bladi de omnibus assartis meis ibidem de novo factis, & de omnibus assartis per me vel per hæredes meos in posterum faciendis, &c.* this is sealed. The seal is circumscribed with *† J. Richardi de Whaveshulle*.

W. prior of Lewes in Suffex gives in 44 *Hen. III.* for ever to the priory of *Southwark*, *decimas quas habuimus de dominico Henrici de Hologhe apud Reygate*, reserving yearly two shillings and sixpence to be paid for them to the sacristan of the priory of *Lewes*. How could this tythe have been in the prior of *Lewes* to have granted, without a precedent consecration from *Hologhe*, or some other, from whom he had derived his estate?

Willielmus Dei gratia Wintoniensis episcopus, *Stephano archidiacono*, & omni clero *Surreiaæ* & baronibus, salutem & benedictionem. Notum sit vobis quod *Sewardus de Ealdeste* venit, me præsentem ad *Sudwerchiam*, ibique super altare divina præventus gratia obtulit decimam de *Hludebrake* Deo & ejusdem genitrici & virgini *Mariae*, & canonicis ibidem Deo fervientibus perpetualiter, & hoc meo consensu. Quare jubeo ex parte Dei & mea ne possit eam retineat, vel ab eodem loco auferat, vel possidentes illam perturbet. Si quis vero citra hoc præceptum quicquam inde facere præsumpserit, perpetuo anathemate feriatur. Cujus rei testes isti sunt *Henricus de Twim*, *Stephanus archidiaconus*, *Livingsius de Coleces* canonicus, *Rogerus* canonicus, *Helias* dapifer, *Joannes* capellanus, *Richerius*, *Vitalis* de *Wicford*, *Gozzo* clericus de *Micheam*, *Oswardus* monetarius, *Walchelinus*. This was in the time of *Henry I.* *William Giffard* being then bishop of *Winchester*. The seal remains to it.

Willielmo Dei gratia Norwicensi episcopo, archidiaconisque suis de *Sudfole*, omnibusque sanctæ matris ecclesiæ filiis, *Galsfridus* filius *Roberti* & uxor sua *Anneis* in domino salutem. Sciatis nos concessisse ecclesiæ apostolorum *Petri* & *Pauli* de *Gipefwico*, & canonicis regularibus ibidem Deo fervientibus, in perpetua elemosyna, decimam molendini de *Hagenford*, scilicet viii. solidos annuatim, duos ad nativitatem Domini, duos ad pascha, duos ad festivitatem *S. Johannis*, duos ad festivitatem sancti Michaelis, & dimidiam marcā argenti de *Fachendune*, & decimam fœni, & omnia quæ habent infra villam de *Broches*, & extra, ad eam pertinentia, tam in terris quam in decimis & redditibus, & in

omnibus libertatibus datis prædictis ecclesiæ a prædecessoribus & parentibus nostris, &c.

Under king *Stephen* it was made; and hath a seal annexed.

Out of an original charter of king *Stephen's*, made to the priory of *Eye* in *Suffolk*. It was in the hands of that learned and honorable the lord *William Howard*. I had the use of it through the courtesy of that noble knight *Sir Robert Cotton*.

Quoniam, divina misericordia providente, cognovimus esse disposum, & longe lateque prædicante ecclesiæ, sonat omnium auribus divulgatum, quod elemosynarum largitione possunt absolvi vincula peccatorum, & adquiri coelestium præmia gaudiorum: Ego *† Stephanus Dei gratia Anglorum rex*, partem habere volens cum illis qui foelici commercio coelestia pro terrenis commutant, Dei amore compunctus; & pro salute animæ meæ *†* & patris mei, matrisque meæ, & omnium parentum meorum *†* & antecessorum meorum regum *† Willielmi* scilicet regis avi mei *†*, & *Willielmi* regis avunculi mei *†* & *Henrici* regis avunculi mei, *†* & *Roberti Malet*, & consilio baronum meorum, concedo Deo & ecclesiæ *Sancti Petri de Eia* & monachis ibidem in Dei servitio congregatis, ut habeant omnes res suas quietas & liberas ab omni exactione, & teneant eas in terris, in decimis, in ecclesiis, in omnibus possessionibus sicut unquam melius & honorabilius tenuerunt tempore *Roberti Malet*, & tempore meo antequam rex essem; cum *soca* & *saca*, & *tøl* & *tiem* & *infanganathief*. *†* Præcipio etiam ut teneant de quocunque tenebant (& non mittantur in placitum) sicut tenebant die quam *Henricus* rex fuit vivus & mortuus, & die qua ad regni coronam perveni. Sit etiam ipsa ecclesiæ in meo dominio cum rebus subscriptis. Concedo ecclesiæ de *Holesle*, de *Dinevet*, de *Bordenis*, de *Suttun*, de *Stadebroc*, de *Wingefel*; et mercatum & theloneum de *Oreford*; præter navium quæ pertinent ad firmam de *Donerou* * p. p. *†* xxx. sol. ecclesiæ ipsam ubi monachi habitant cum terris suis; decimam de *Eia*, duodecim solidos de foro, unam feriam per quatuor dies ad festum *sancti Petri* kalendas Augusti, nullusque in feria habeat potestatem nisi monachi & homines eorum, & omnes illuc venientes & inde redeuntes habeant meam firmam pacem, nullusque eos in aliquo disturbet super x. libras forisfacturæ. *†* Habeat etiam ecclesiæ eandem libertatem de episcopo, de archidiacono, de decano, quam habuit a tempore regis *Eadwardi*, & a tempore *Eadrici* de *Lexefeldæ* & regis *H.* *†* Sitque de priore ponendo & removendo sicut constitutum fuit in tempore *Roberti Malet*. *†* Habeat etiam omnes decimas de maneriis sicut habuit in tempore *Roberti Malet*, scilicet de *Eia*, *Stadebroc*, *Radingefeldia*, *Dinevet*, *Tatinget*, *Bedingham*, *Keleton*, *Olesleia*, *Leest*, *Donerwic*, *Lessfeld*, *Bergebi*, *Welleburn*, *Seggebroc*, *Colum*, *Cave*. *†* Concedo etiam ecclesiæ has, de *Beweseia*, *Seggebroc*, *Bergebi*, & ecclesiæ de *Donewico*, quæ factæ sunt & faciendæ. De

Bedingeham, Lessfeld & presbyterum ejusdem villae, & de omnibus meis filvis decimam pascuagii, piscariam etiam de Wells. Atque totam Bedesfeldiam, Storas, Pelecoc, Frasingefeld. Hoc etiam terrae quod habebant tempore Rotberti Malet, in Bedingeham, & omnia inconcussae teneant. Concedo etiam ecclesiam sancti Botulfi de Ica cum appendiciis suis, quam dedit Willielmus de Rovill, & Beatrix uxor ejus, & terram Godem. de Iakl. & ea quae habebant in Donewico eodem Rotberto vivente. ✠ Horum igitur supradictorum socam & sacam in omnibus concedo, & nominatim in Donewico & decimas meorum hominum; Walteri scilicet Arbalastarii, & ecclesiam sancti MARGARETAE de Halgestowe, & terram quae ei pertinet. Decimam quoque Rogeri filii Walteri de Huntingefeld, & de Benges, Ricardi Hoveell de Wiverdest, de Geslingelb, Richingebal, Reindun; decimam Hugonis de Alvilario in Brom, & in Selfhangers, & hoc quod Alwinus presbyter tenet de eo in Beria. Decimam Willielmi de Rovilla in Clakestorp, & in Glemeham, & de xxx. acris quas tenet Willielmus Bole de feudo comitis Britanniae; decimam Willielmi Gulafri unchennel; decimam Petri de Bedingefeld; decimam de Pleesford, & ecclesiam villae & Aluricum Delfen cum sua terra; decimam Hernaldi filii Rogeri in Wivingeham & Ascheton; terram Osberti de Cratevill in Acolt, & hoc quod Benedictus capellanus tenebat de Rotberto Malato in decimis, & rebus aliis; decimam Will. de Pesenhale; decimam Jordani de Wilebebe; V. fol. de Pentenhabe, quos Will. de Rovilla dedit; III. solidatas quas tenet Johannes filius Rotberti; terram Alwini filii Wulstan in Bedesfeld; VII. solidatas quas tenet Wulmer presbyter de Codenham; decimam Hunfridi filii Urvei; decimam Radulfi Grossi de Gretinges; XII. solid. de aquitania in Aldefen; terram Wulmari in Akeleia; et, praeter haec supradicta, concedo eis quod decima eorum de Donewico crescat quoque anno in denar. & hareng. & in omnibus aliis rebus secundum hoc quod redditus mei ibidem crescent. Teste Nig. Eliensi episcopo, & Roger. cancellar. Henrico nepote regis Stephani; Galer. com. de Mell. Rotberto filio Rich. Will. Mart. Adam de Belu. Johan. maresc. Hubert. Demunc. Johan. filio Rotb. vicecom. Gauffred fil. Walt. Will. fil. Rog. Herv. de Glavill. Rich. de Alenc. Roger de Hosa. Anno ab incarnatione domini M.C.XXXVII. apud EIA secundo anno regni mei, in tempore Ebrardi episcopi Norwicensis, & Gausleni prioris Eie. Ipse rex subscripsit. Eustachius filius ejus subscripsit. Mathildis regina subscripsit. Willielmus Cantuariensis archiepiscopus subscripsit. Turstanus Eboracensis archiepiscopus subscripsit. Alexander Lincoln. episcopus subscripsit. Henricus Winton. episcopus subscripsit. Joannes Rossensis episcopus subscripsit. Ewardus Norwicensis episcopus Simo Wigornens. episcopus subscripserunt. Rotbert. Herefordens. episcopus, & Rotbert. Badonens. episcopus, & Gislebertus Londonens. episcopus sub-

scripserunt. Quicunque aliquid de his quae in hac carta continentur auferre aut minuire, aut disturbare scienter voluerint, autoritate domini omnipotentis patris & filii & spiritus sancti, & sanctorum apostolorum, & omnium sanctorum sit excommunicatus, anathematizatus, & a consortio domini & liminibus sanctae ecclesiae sequestratus, donec resipiscat, & regiae potestati xxx. libras auri perfolvat: Fiat. Fiat. Fiat. Amen. Amen. Amen.

It is the fairest hand and largest charter that ever I saw of that age, and the seal is yet hanging to it. And in a roll ^t of the benefactors of that monastery, very many are mentioned for their donors of tythes, or two parts, or third parts, of divers mannors.

Out of the cartae antiquae among the records of the tower of London.

When king Henry II. and pope Alexander III. dissolved ^t the number of the nuns of Ambresbury in Wiltshire, by reason of their unchastity, and filled the nunnery with others out of those of Font-Everard in Normandy, divers churches and parishes were annexed, by grant and confirmation, to the new company, and also tythes severally, as decima de Fortebiria, & de Wadhulla, &c. & manerium de Etona cum decima de dominio & medietate decimae rusticorum, & manerium de Cheltenham, cum decima ejusdem manerii, &c. & decimam de Ingafelot & de Godingeslot, cum omni jure parochiali & decima de Hamsteda, cum omni jure parochiali. And divers others such.

Henry II. grants and confirms to the monks of Thetford in Norfolk, ^u decimam de Bradleia, decimam de Offitona, decimam de Florendona, decimam de Moledona, and many other such, without mention of churches or chapels with them; yet in the same charter, divers churches of other places are by themselves conveyed or confirmed.

William the first gives to the church of ^x Westminster, decimam de Wic de eadem parte quae ad me pertinebat, atque iterum reddidi eandem partem eis injuste ablatam quam r. Edwardus antea dederat. Then severally follow divers appropriations of churches. This was in the second of his reign.

Henry II. gives to the church of Sarum, ^y divers churches with tythes, and among them,

Ecclesiam de Durneforda cum terris & decimis quas Walterus filius Richardi & Isabella de Toeni & reliqui advocati ejusdem ecclesiae ei dederunt: & omnes decimas & de nova foresta, & de Panetot, & de Bucholt, & de Andevera, & de Husburna, & omnibus forestis meis de Wiltshire & de Dorseta, & de Berkhire; de omnibus rebus scilicet de firma, de pascuagio, de herbagio, de vaccis, de caseis, de porcis, de equibus; & omnes decimas de omni venatione praedictarum forestarum, excepta decima illius venationis quae capta fuerit cum stabiliis in fo-

^t In biblioth. Cotton.

^u Vide G. G. 7. & F. 1. & B. 8. & part. 1. cart. 1. Johann. membr. 20. chart. 117.

^x C. C. 3.

^y Ibid. 3. in dorset.

^u G. G. 1. & 2.

resta de Windleshora &c. What the bishop had yearly, by reason of this grant, may be seen in *rot. claus. 5 Hen. III. membran. 14.* And for grants from the kings of the tythe of venison, other examples are obvious; as of the forests of *Essex* to the bishop of ² *London*, by king *John*, and of others antiently, of the * tythe of the venison taken in the forests in *Northamptonshire*, to the abbot of *Bury*; to omit that of *Henry* the first, his grant of the tythe of all his venison taken in *Yorkshire*, to the abbot of *York*, which occurs in the ² *eyre* of the forest of *Pickering*.

In a charter of *Henry* the first, many tythes are granted and confirmed to the priory of *Mountague* ^b in *Somersetshire*, as *duae partes decimarum de Atford, decima de Crimoc, & medietas decimarum de Cifelberg, de Clafford, de Northon juxta Taunton, & decimae domini de Merston, & de Hetecumb, de Candel, de Torp, de Cernel, item de Cernel, & de tertio Cernel, &c.*

Henry the first granted ^c to the canons of *Cambridge*, *decimas de dominio meo de Canteburgia, & ecclesiam S. Egidii &c.*

About 3 *Hen. I. Manasses Arsic* ^d renewed his charter to the abbey of *Fischamp* in *Normandy*, and gave them *apud Sobrinton de suo dominio duas garbas decimae suae*, and so in divers other manners. *Dedit & decimas de cunctis denariis suis & de pullis equarum suarum, de vitulis, de ovibus, de caseis, de lana, & decimas de omnibus rebus suis, & decimas de omnibus hominibus supradictarum villarum.* All which was confirmed by the king. It seems, that in *decimas de omnibus rebus* the corn was excepted, according to the first limitation of his grant.

II. TO these might be added more out of the rolls, ^e especially of exemplifications or confirmations. But the store is large that is already delivered. And to conclude it, observe this most notable testimony in a writ of the register and in *Fitzherbert*, that had reference to the common use of those arbitrary grants out of demesne lands at the owner's pleasure, without understanding of which use, I shall doubt no man thoroughly understands the writ, nor the true ground of any writ *de advocacione decimarum*. It is a singular example, and, as I remember, not seconded or especially noted elsewhere in our law books; and therefore I transcribe it whole.

Rex ^f tali judici salutem. Monstravit nobis venerabilis pater *H. Lincolnienfis* episcopus, quod cum *J. praecentor ecclesiae beatae Mariae Lincoln.* teneat de dono suo omnes decimas dominicarum terrarum suarum, vel dominici sui, de *N.* quas idem episcopus & praedecessores sui episcopi loci praedicti libere conferre consueverunt: prior beatae *Katherineae* extra *Lincoln.* clamans decimas illas pertinere ad ecclesiam suam de *B.* trahit eum inde in placitum &c. Et quia placitum praedictum tangit coronam & dignita-

tem nostram; praesertim cum collatio earundem decimarum ad nos possit devolvi ratione custodiae vel efcaetae, quia etiam confimiles decimas conferimus in quibusdam dominicis; & similiter quamplures magnates regni nostri in dominicis suis, vobis prohibemus ne placitum illud teneatis in curia christianitatis, nec aliquid quod in derogationem regiae dignitatis nostrae cedere valeat, in hac parte attentetis, seu per alios attentari faciatis quovismodo. Telle &c.

What can the intent of this be, other than that the bishop, the king, and many other grantees of the kingdom, did usually grant or collate the tythes of their demesnes? Which, because they were so grantable at the owner's will; were, by the meaning of this writ, exempted from the spiritual jurisdiction. But thereof more anon. Perhaps the writ is immediately to be understood of tythes collated in like sort as a church; so that he which collated them, had *advocationem decimarum*, which appears also in the register, as any other conferring a church, had *ecclesiae advocacionem*. If not so, whence could the collation of these tythes have original, saving only from the making them severally a kind of benefice (under the name of *decimae separatae*, that is, annexed to no church, as the marginal note in the register well calls them) by arbitrary grant at first of the owner, no otherwise than a church was made a benefice to be bestowed, by the arbitrary ordinance of the patron, at the foundation? Clearly, had not the use of conveyance of tythes severally by grant, preceded in practice, it could not have been; that *quamplures magnates regni*, as the writ says, might *decimas libere conferre in dominicis suis*. Tythes alone could never have been collated like a benefice, had they not been first founded or created as a benefice. And the writ might seem indeed to bear even the character of the time wherein that use of arbitrary grants of tythes was known, as of common practice; which I understand to be about king *John's* time; and that, before the pope's decretals, or other authority, had taken away the laymens challenged liberty of granting tythes severally, according to the former example. And the rather might that conjecture hold, because also the scribe expressing the bishop's name, is *H.* which by all likelihood denotes *Hugh* archdeacon of *Wells*; being lord chancellor to king *John*, and bishop of *Lincoln*. But it may be also, that it was had of later time, and at the suit of *Henry* of *Lexinton*; made bishop of *Lincoln* in 38 *Hen. III.* and that, after parochial right was more settled. For notwithstanding the settling of it, and making tythes then payable *de jure communi* to the parish-rector, yet it is certain, that the former grants (what through general confirmations from *Rome*, what through the laymens standing upon their patronages of tythes, and upon the grantees acknowledgment of their first devotions in such consecrations) still continued, and were subject

^a Rot. chart. 6. Joh. r. ch. 107. membr. 12. & rot. 11 Hen. III. part. 1. membr. 5.

& claus. 17 Hen. III. membran. 4. &c.

^b K. in dorf. 36.

^c K. in dorf. 36.

^d S. 8.

^e Regist. orig. fol. 36. b. & Fitz. n. b. 40. N.

^f Claus. 4 Hen. III. part. 1. membr. 2.

^a Fleetwood, in Commentar. de jure forestarum.

^b Cart. antiq. ff. ff. 2.

^c Vide rot. cart. 5. r. Joh. membr. 8. cart. 61. & cart. antiq. U. & E. 7. & in fasciculo

(in case the *advocatio decimarum* might come in question) to such a prohibition, until some alteration was therein made, as anon shall be shewed, where we speak of the antient use of the writ of *indicavit*. But of what time soever the writ was, it is plain, that the ground of it must come from that use of arbitrary consecrations of tythes, which severally also (as in it is supposed) made sometimes a kind of benefices that might be collated at the will of those who were owners of the land whence the tythes were payable. How could tythes severally be collated by any grantees, but from such original examples as are already copiously delivered? A like^b precedent of a prohibition I have seen 7 *Ed. I.* which, because it so confirms the antient purpose of that in the register, shall be here at large delivered.

Edwardus &c. archidiacono Wilteshyr. & ejus commissariis salutem. Cum dilecti nobis in Christo abbas & conventus de Osney ex collatione progenitorum nostrorum regum Angliae percipiant & percipi debeant, & ipsi & praedecessores a tempore collationis illius semper hucusque percipere consueverint duas partes decimae garbarum provenientium de dominicis terris Edmundi comitis Cornubiae in Harewell, & quorundam tenentium suorum ejusdem villae in subventionem sustentationis capellanorum & clericorum in libera capella nostra S. Georgii in castro nostro Oxoniae ministrantium, Rogerus de Draytona persona ecclesiae praedictae villae de Harewell, clamans praedictas duas partes ad eandem ecclesiam suam pertinere, trahit ipsos abbates, & conventum inde in placitum coram vobis in curia christianitatis, sicut ex relatu plurium accepimus. Quia vero praedictum placitum tangit nos & coronam nostram & dignitatem, maxime cum consimiles decimas in pluribus dominicis nostris conferamus, & etiam plures magnates regni nostri consimiles decimas, quarum collatio ad nos ratione custodiae devolvi solet, similiter conferant in dominicis suis; & etiam quia cognitio super jure patronatus hujusmodi decimarum ad curiam nostram pertinet, tibi vel vobis prohibemus ne placitum illud teneatis in curia christianitatis. T. meipso apud Wodestoke octavo die Febr. anno regni nostri septimo.

Here are plainly understood whole benefices of only tythes, to be collated by the king and divers of his baronage; as the tythes of the king's garden in *Windfor* are in^h record, collated by *Henry* the third; and other like sometimes occur. Neither is that canon of the council of *Westminster* held under *Hubert* archbishop of *Canterbury*, in 2 *Joban. r.* from any other original to be interpreted, then from those common conveyances and grants of tythes and church-livings generally by laymen to monasteries. The words are, ⁱ *Lateranensis concilii* ^k *tenore perpenso decernimus ne fratres templi, vel hospitalis, sive quicunque alii religiosi ecclesias vel decimas, vel alia beneficia ecclesia-*

stica, sine episcopali autoritate de manu laica recipiant, dimissis etiam quas contra tenorem istum moderno tempore receperant &c. For, however, that in the council of *Lateran*, be interpreted, I enquire not how well, of tythes infeodated into^l lay-hands; yet in this kingdom, where those infeodations were not, or were very rare (whereof anon more) how can it be well understood but of new grants or arbitrary consecrations of tythes as well not before in esse, as of others conveyed by investiture of churches. But touching those conveyances of tythes by laymen, see more in the XIII chapter where we speak of infeodations.

III. OUT of those examples of conveyances and arbitrary consecrations of tythes (being but a few, and as an essay only of the multitude of them, which might be found in the lieger-books of other monasteries) may easily be collected, the truth of those assertions in the old year-books, which have, without desert, been taken for falsehoods grounded only upon ignorance. By the practised law, clearly every man gave the perpetual right of his tythes to what church he would, although the canon law were against it; whereof also notice, it seems, is sometimes taken in those conveyances which have the words of *quae decimari debent*, as if they had said, tythes of all things which by the canon law ought to be tythed, or, *quae decimari debent more catholico*, as the words are in a charter^m of about *Henry* the second's time, of *Gilbert* one of the earls of *Hertford*, to the priory of *S. Mary Overies* in *Southwark*, of the tythes of *Capefeld*. And it is like enough, that according to the recitals of those decretals noted in the former chapter, in some places devotion had bred an obedience to the canons in this point; but, that it was general through the kingdom, is most false; and whatever the pope wrote from *Rome*, we know the truth by a cloud of home-bred witnesses. But also those words, *decimari debent* or *solent*, so often occurring, may be understood of such things as used to be tythed when tythes were arbitrarily paid, as among the Gentiles, or Christians; he that offers *de iis quae offerri solent*, intimates not so much any necessary duty acknowledged by him, as a custom of offering such things, when offerings were arbitrarily made. And although in the book of *Domesday* it be specially found of one *Stori* an ancestor of *Walter* of *Aincurt*, that he might *sine alicujus licentia facere ecclesiam* (in *Darby* and *Nottinghamshire*) *in sua terra & in sua soca, & suam decimam mittere quo vellet*, as if it had been his singular prerogative, in his possessions of *Graneby*, *Mortune*, *Pimnesleg*, and other manors; yet was that liberty or prerogative as well of building churches as arbitrary conveyance of tythes not already consecrated either by deed or prescription, common, it seems, to all lords of manors or large territo-

^b In codice ms. coenobii Osneien. in bibl. Cotton.

² fol. 460. b.

^k Vide extr. tit. de preb. c. in Lateranensi

plene tantummodo extat in editione Romana & postrema Bini.

^m In armario Cottoniano.

^h Pat. 16 Hen. III. membr. 7.

ⁱ Roger. de Hoveden. part.

³¹ & tit. de privileg. c. 3. cum plantare, & in concil. ipso quod

^l Extr. tit. de his quae fiunt a prael. c. 7. cum apostolica.

ries, until about the time of king *John*. For that of tythes; the examples and authorities before cited justify it. For the building of churches (which considered with the arbitrary endowments of them with new tythes, especially belongs also to this disquisition) it was affirmed for a common liberty of the baronage in letters of king *John* to *Innocent* the third, as you may see in the pope's answer to the king. ⁿ *Quod enim de consuetudine regni Anglorum* (says the pope to him) *procedere regia serenitas per suas literas intimavit, ut liceat tam episcopis quam comitibus & baronibus ecclesias in feudo suo fundare; laicis quidem principibus id licere nullatenus denegamus, dummodo dioecesani episcopi eis suffragetur assensus, & per novam struatur veterum ecclesiarum justitia non laedatur.* It was challenged without licence; but the pope allows it to the laity, so that they had licence from the bishop of the diocese, and without that the new foundations bereaved not ancient churches of their assigned endowments. But after the time of king *John*, few or none of those arbitrary consecrations are found: yet in *Henry* the third's time some were, as you may see in those of fines taken out of the chartulary of *Gisburne*; but remember also they were in the province of *York*. Neither were those grants disallowed by either common or canon law here then practised. And in those cases of tythes that occur among the epistles of *John* of *Salisbury*, who lived in time of *Henry* the second, no title is made merely by parochial right; but prescription or consecration are the grounds whereupon they are demanded: and whereas in the case of *Robert Wnegot* before *Adehelm* archdeacon of *Dorchester*, the question was there, *super quibusdam parochianis & decimis*, and the actor produced testimony that he had formerly recovered *jus parochiale quod petebat cum decimis*; it is clear that the tythes were not recovered *jure communi* as they are at this day belonging to the parish-rector, but by special title of consecration or prescription, and the *jus parochiale* there, was the right of having the cure and offerings of the parishioners, which had not necessarily annexed to it the right of tythes by the practice of that time. Whence it came that *parochiani & decimae* are both there mentioned as several demands in the actor's libel; and hereof see more anon in the corollary of the ancient jurisdiction of tythes in *England*; and that admonition of *Theobald* archbishop of *Canterbury* (before-cited) to *Ala* countess of *Warren*, is observable. Is it not apparent that he allows not only the arbitrary consecrations made by the earls, but also reprehends her sharply for not performing what they had therein vowed? But in the ensuing times, after that the canon law had here gained greater strength, which happened soon upon *Innocent* the third his thundering out his interdict against this kingdom, his excommunication against the king, and frightening the subjects with his bulls stuffed with commination, and that against this

very point of arbitrary conveyances of tythes; it soon came to be a received law, that all lands regularly were to pay tythes to the parish or mother church according to the provision of the canons: and therefore upon delegation made by pope *Innocent* the fourth in 49 *Hen. III.* to the priors of *S. Trinity*, and *S. Bartholomew* in *London*, and the archdeacon of *Westminster* for the deciding of a controversy betwixt the abbess and nuns of *Chartris* by *Ely*, and *Robert Passelew* archdeacon of *Lewes*, about some tythes of the possession of the nunnery in *Barington*, it appears that in *Passelew's* libel, no other title is made, but that the land lies *infra limites parochiae suae de Barenton, unde petit dictam abbatissam compelli integre ad solutionem dictarum decimarum cum damnis & interesse &c.* and some others like are of that time according to the law that to this day continues, as may especially be found in the books of ^p *Pipewell* and *Osney*. That example is in the chartulary of that nunnery, composed by the cost and pains of *Agnes Aschefeld* abbess there, and *Henry Bukworth* bachelor of the canon-law, about the time of *Henry* the sixth. You may add to the confirmation of this ending of the antient course of arbitrary consecrations, and the later establishing of parochial right in tythes, that of the *English* ^q monks before cited touching the general council of *Lyons*, held in 2 *Ed. II.* I doubt not but that parochial right was long before for the most part settled; but it is not likely that they had so confidently affirmed such a continuing liberty of conveyance of tythes at the owner's will, had they not known that until about the preceding ages at least, it had been in common practice both of fact and positive law, especially in this kingdom where they lived. Whether this petition in parliament ^r of 6 *Ed. I.* may give any light to that assertion of theirs, I know not. *Nicholas* of *Craanford*, parson of *Gilingham*, complained to the king, *Quod cum foresta domini regis, ibidem sita, sit infra parochiam suam, quod dominus rex decimarum foeni, venationis, pannagii, & aliorum proventuum ipsius forestae de gratia & pro salute animae suae, & animarum praedecessorum suorum, ecclesiae suae cui de jure communi debentur plene solvi praecipiat, secundum formam supplicationis & exhortationis apostolicae porrectam domino r. apud Gilingham quando fuit ibi ad natale.* What was that *supplicatio* or *exhortatio apostolica*? Did not some such thing, coming from *Rome* about the time of the council of *Lyons*, make the monks think it a thing agreed upon in that council? It seems here too, that in the king's case, parochial right of tythes was not yet every where settled, although the tythes were increasing in a parish.

IV. After this establishment of parochial right, new arbitrary conveyances out of lands lying in any parish, were not permitted, but ancient consecrations were still retained, and had confirmation either from prescription or papal privilege,

ⁿ *Innocent, III. epist. decretal. lib. 1. pag. 238.*

^o *Epist. 21. & 84.*

^p *Ms. in biblioth. Cottoniana.*

^q *Supra*

cap. VII. § 1. ^r *Inter fascic. pet. parl. 6 Ed. I. in arce Londini.*

which were, by the canons, sufficient titles to be pleaded against the common right claimed by parish-rectors. And when this innovation grew in parochial right, then also the jurisdiction which the common or secular law had formerly challenged and exercised in detaining the right of tythes, between the parish and parishioner, grew out of use; and the legal proceeding became to be regularly according to the canons, which brought the practice to be as since it hath continued. But of the ancient jurisdiction more anon. So was it now come to that pass, that no new arbitrary consecrations might be made of the tythes of lands lying in any parish. But yet for such lands as were not parochially limited, the ancient liberty was retained; and although by the canon law the bishop is to have all tythes growing in lands not assigned to any parish within his diocese; yet in the monuments of the common laws, such tythes growing in lands of the crown, are at the arbitrary disposition of the king: such places have been, and, I think, are in divers forests. And hereof says *Thorpe* in 22 *Affis. pl. 75. Il soleit estre ley quant il aver certane place qui fuit hors de chescun paroche come en Englewode, & hujusmodi, en tel case le roy ad & doit aver les dismes de cest place (Et nient l'evêque de lieu) a grantier a que luy plect*: And relates further, that the archbishop that year made suit to the council, to have had such tythes. But, under favour, this was understood only of the king's granting the tythes of his demesnes occupied by his bailiffs, according as in ancient time every man else did. For whatever the words seem to import, *Thorpe* speaks only of such lands of the possession of the crown; in which case, it must not perhaps be understood so much a part of the royal prerogative, as a right due to the king by common law, in regard of his possession of lands not limited to any parish. Neither doth he affirm that tythes of such places are due to be paid to the crown, but that they are in the king to grant at his pleasure, if growing in his demesnes. But to this purpose is a notable case in the parliament rolls of 18 *Ed. I.* where *Ralph* bishop of *Carlisle* *petit versus ecclesie priorem de Karliel decimas duarum placearum terrae*, of the new assarts in the forest of *Inglewood*, whereof the one is called *Linthwait*, the other *Kirkthwait*, *quae sunt infra limites parochiae ecclesiae suae de Aspaterike, &c.* and *lays by prescription in his predecessors the tythes of the pannage there, before the assarting or culture*. *Henry* of *Burton* also, parson of *Thoresby*, claimed in parliament the same tythes as belonging to his church, and *infra limites parochiae suae*. And the prior comes and says, that *Henricus rex vetus (Henry the first, it seems) concessit Deo & ecclesiae suae beatae Mariae Karliel omnes decimas de omnibus terris quas in cultum redigeret infra forestam, & inde eos feoffavit per quoddam cornu eburneum quod dedit ecclesiae suae praedictae &c.* Whereupon the king's attorney, di-

cit, quod decimae praedictae pertinent ad regem & non ad alium, quia sunt infra bundas forestae de Inglewood, & quod rex in foresta sua praedicta potest villas aedificare, ecclesias construere, terras assartare, & ecclesias illas cum decimis terrarum illarum pro voluntate sua cui-cunque voluerit conferre, eo quod foresta illa non est infra limites alicujus parochiae &c. Et petit quod decimae illae domino regi remaneant prout de jure debent ratione praedicta &c. Et quia dominus rex super praemissis vult certiorari, ut unicuique tribuatur quod suum est. *William* of *Vest*, justice of the forest beyond *Trent*, and *Thomas* of *Normanvill*, his escheator for those parts (for so was the division anciently of escheatorships) were assigned commissioners to enquire of the truth, & certify the regem ad proximum parliamentum &c. So are the words of the record. Where the attorney challenges not the right by prerogative, but only in regard that the place being the demesne land of the crown, and not assigned to any parish, the tythes are grantable by the king, as owner, at his pleasure. And so it well agrees both with that liberty challenged by king *John* in the name of his baronage, that they might found new churches at their pleasure in their own fees, before the establishment of parochial right in tythes, as also with the more ancient practice of the kingdom, whereby tythes might not be parochially exacted, nor were so reputed due, but by the owners arbitrarily conveyed in perpetual right. And whereas *Herle*, in 7 *Ed. III. fol. 5. a.* says generally, *That no man might arbitrarily give his tythes that are not within parochial limits, but that the bishop of the diocese should have them*. It seems, he spake suddenly, as out of the canon law, and not according to the law of *England*. And he adds, that it is against reason, *que home ne purra my grantier ses almoignes a que il voudra*. And but two years before that of *Herle*, it was adjudged in the king's bench, *Quod de decimis grossis priori de Carleol & praedecessoribus suis de dominicis domini regis infra forestam de Inglewood provenientibus & extra quaruncunque parochiarum limites existentibus per cartam progenitorum domini regis nunc concessis, & per cartam ipsius d. r. nunc confirmatis, &c.* a prohibition should be granted against the bishop of *Carlisle*, that claimed them. It was upon a record sent thither out of the parliament, as in the roll appears largely. And *Edward* the first gave such tythes of the forest of *Dene*, as increased not within any parish, to the bishop of *Landaff*, by which title the bishop afterwards claimed them; and no question was of that point. But for common or waste ground, the parish whereof is not known, the statute of 2 *Ed. VI.* hath given the tythe cattle therein depasturing, to the church within whose parish the owner dwelleth.

^f Extr. tit. de decimis c. 13. quoniam.

cod. vet. apud V. C. J. Borough regiorum in arce Lond. scriniorum praefectum.

Cumbria. ^R Rot. parl. 8 Ed. II. rot. 17. in dorf.

^e 14 Hen. IV. fol. 17. b. & Brook, tit. dismes 10.

^u In recept. scaccarii, & in

^x Mich. 5 Ed. III. coram rege rot. 168.

C H A P. XII.

- I. Appropriations and collations of tythes with churches. The corporations to which the appropriations were made, presented, for the most part, vicars. Thence the most of perpetual vicarages.
- II. How churches and tythes by appropriation were antiently conveyed from lay patrons. The use of investitures, practised by lay patrons.
- III. Grants of rents or annuities by patrons only, out of their churches. Of the bishops assent. More of investitures. A writ to the archdeacon antiently sometime sent upon recovery of a presentment.
- IV. Of hereditary succession in churches.
- V. Lapse upon default of presentation grounded upon the general council of Lateran, held in 25 Hen. II. What *praesentare ad ecclesiam* is originally. *Donatio ecclesiae*.

I. AS by consecrations severally, so, with churches, in appropriations, tythes were frequently conveyed, and by express name. As *ecclesia de N. cum decimis*, or the like, are usually given *monachis, monialibus*, &c. *ibidem Deo servientibus*, &c. according to what is before noted of other countries. But this mention of tythes, with churches in appropriations, was rare, or not at all, till after the *Normans*. In the *Saxon* times, many appropriated churches are found, and that from between D.CC. and D.CCC. years since, till the *Normans*. But the charters that conveyed or confirmed them, have usually nothing but *ecclesias* and so many carves or yard lands, or so much rent annexed to them, not speaking at all of any tythes transferred with them. For special examples of such antient appropriations, you may see the recitals of the charters of king *Bertulph*, king *Beored*, and king *Edred*, made to the abbey of *Crowland*, and inserted in *Ingulphus*. But after the *Normans*, in appropriations, most commonly, the church is expressed, *una cum decima* (that is, the tythe annexed or consecrated to it) *in annona*, or in other kind, and the places sometimes are named where the increase of the tythe grew. Such examples are very obvious, especially in the chartularies of *Abington* and *Rocheſter*. And, as is before noted, the most common intent (allowed also by canonical confirmation, which sometimes but rarely was added in those elder ages) was, that the corporation whereto the appropriation was made, should put clerks or vicars in the churches so conveyed to them, which were to answer to them for all temporal

profits, as tythes and other revenues (although the churches were distant many hundred miles sometimes from the monasteries; for a church in one kingdom also was often appropriated to a monastery of another) and to the ordinary for spiritual function. The general confirmations that are sometimes found of that time, make it manifest, and for the two provinces, it is not amiss to add here these two examples of it. In 17 Will. I. *Thomas* archbishop of *York* makes a general confirmation^a to the priory of *Durham* of all churches either then appropriated to them, or thereafter to be appropriated, and grants and commands, *ut omnes ecclesias suas in manu sua teneant, & quiete eas possideant, & vicarios suos in eis libere ponant, qui mihi & successoribus meis de cura tantum intendant animarum, ipsis vero de omnibus caeteris elemosynis & beneficiis*. So, under *Henry II.* pope *Lucius III.* writes to all the monks in the province^b of *Canterbury*, and bids them, that in all churches, *in quibus praesentationem habetis, cum vacaverint, dioecesanis episcopis clericos idoneos praesentetis, qui illis de spiritualibus, vobis de temporalibus debeant respondere*. Where, that *in quibus praesentationem habetis*, can be understood only of churches appropriated (which they enjoyed not *pleno jure*, that is, ^c in which they were bound to allow some competent revenue to a vicar or curate, and had not exempt jurisdiction, nor the power of institution of vicars, without presentation to the bishop) as is plainly known from what follows touching the answering for the temporalities to the monasteries. And in those times, as is already delivered, it was most frequent, to have presentations made by monasteries to their appropriated churches; and the vicar-incumbents or presentees had no more of the profits, notwithstanding the institution, than the monasteries would arbitrarily allow them. Neither followed any disappropriation upon such presentation, however the later law be taken otherwise. Nor was there any perpetual certainty of profits or revenues to their presentees, until such time as the monks, by composition with the ordinaries, or by their own ordinance, which prescription after confirmed, appointed some yearly salary in tythes, or glebe, or rent, severally for the perpetual maintenance of the cure; which salaries became afterward perpetual vicarages. And to these testimonies touching appropriated churches in those antient times, and presentation to them, you may also add that canon^d of the council of *Westminster*, held in the second of king *John* by *Hubert* archbishop of *Canterbury*, to the same purpose; wherewith is agreeing also one of *Othobon's* legatine constitutions, touching filling of appropriations, and making of vicarages; as also the two statutes of 15 Rich. II. cap. 6. and 4 Hen. IV. cap. 12. touching the point of which statute, a bill in the next parliament was again put in, but answered with^e *ſoient les ſtatuts ent faitez & gardez*.

^a Rog. de Hoveden, part. 1. fol. 263. b.

^b Append. ad concil. Lat. part. 16.

^c Roger. Hoved. annal. 2. fol. 460. b.

^d Rot. parl. 5. Hen. IV. art. 74.

^e Panormitan. ad tit. de reſtit. in integ. cap. auditis.

II. In those elder appropriations, it appears that the church and the tythes, and what else was joined with it as part of the assigned revenue, by the practice of the time passed in point of interest from the patron by his gift (which oftentimes was by livery of a book or a knife on the altar) not otherwise than freehold conveyed by his deed and livery. Neither was confirmation or assent of the ordinanry, as it seems, necessary as of later time. Observe this one example of the church of *Waldren* appropriated to the priory of *Lewes* in *Sussex*, by *Robert* of *Dene*, wherein he, as patron, appoints also the conditions to which the presentee or vicar incumbent of the priory should be subject. *Ego Robertus de Dena*, says the ¹ deed, & *uxor mea Sibilia pro animabus antecessorum nostrorum, & pro salute nostra, & successorum nostrorum, concedimus Deo & S. Pancratio Latifauensis ecclesiam de Waldrena cum terris & decimis, & omnibus ad eam pertinentibus, & cum duabus partibus decimae bladorum de Calvindona, ita videlicet ut sacerdos de Waldrena, de his omnibus soluat S. Pancratii singulis annis dimidiam marcam argenti. Ipse autem sacerdos per manum prioris S. Pancratii ecclesiam de Waldrena tenebit, quamdiu caste & religiose vixerit. Quod si crimen incurrerit, iudicio prioris Latifauensis corrigetur aut expelletur.* This, about the time of *Henry II.* was made coram duobus hundredis apud *Hundestuph*. Very many other are extant so made, as well by common persons as the king, in the Saxon times of churches, and since, of churches and tythes without any confirmations; saving sometimes that those of common persons are ratified by the king ² as supreme lord, as also they are too by other lords. For it was not unusual for tenants to have their lords confirm their alienations of all kind of possessions. I know what is said in the later law of the king's power as supreme ordinary for the part of jurisdiction, and I acknowledge it, as all ought; but in those elder times, that was not the matter which made appropriations good, where his confirmation had place, and none was from the bishop; at least it cannot at all be proved that his supreme jurisdiction spiritual was so much thought of in them, although otherwise apparent testimony be of the exercise of such jurisdiction, and of the right of it in the elder ages in this kingdom. But the reason of appropriations so practised by lay patrons only, was the challenged right which in those times they most commonly used in disposition of their churches, as if they had been all donatives by collation, without presentation, that is by investiture from their own hands only, which gave their incumbents real possession of the tythe of the church and all the revenues, no less than presentation, institution, and induction do at this day. For however, not only the decrees both of the pope and general councils, were antiently against that kind of in-

vestiture; but also the provincial or national synods here held, had like canons forbidding it; as in 3 *Hen. I.* the^h council of *Westminster* held under *Anselm* archbishop of *Canterbury*, and *Girard* of *Tork*, ordains, *ne monachi ecclesias nisi per episcopos accipiant*; and in 25 *Hen. I.* at the same place in the national synod, held by cardinal *John de Crema*, the pope's legate, it was constituted, that ¹ *nullus abbas, nullus prior, nullus omnino monachus, vel clericus ecclesiam sive decimam seu quaelibet beneficia ecclesiastica de dono laici sine proprii episcopi auctoritate & assensu suscipiat, quod si praesumptum fuerit, irrita erit donatio hujusmodi, &c.* And some allowance was given to these canons by the king; Yet it is most certain that the practice was for divers years afterward otherwise, and that churches with tythes were most commonly given by lay patrons, without the bishop's assent or institution, and that as well by filling them with incumbents, as appropriating them to monasteries, chapters, or otherwise. Beside the examples that might enough prove it, and are obvious in old chartularies, the preamble of a decretal of *Alexander III.* sent under *Henry II.* to all the bishops of ^k the province of *Canterbury*, is herein full testimony. *Ex frequentibus querelis*, says he, *didicimus in partibus vestris consuetudinem pravam a multis retro actis temporibus invaluisse, quod clerici ecclesiastica beneficia sine consensu episcopi diocesis, vel officialium suorum (qui hoc de jure possunt) recipiunt minus quam deceat, solliciti cogitantes, quomodo id a patrum sanctorum est institutionibus alienum, & ecclesiasticae contrarium honestati. Unde cum tu frater, &c.* Where you see plainly that course of investiture or donation by the patron without presentation, was *consuetudo quae a multis retro actis temporibus invaluerat*, which shews it to have been then a part of the secular law; though the judgment of the bishops and the pope titles it *prava*. Agreeing to this, are other testimonies in ¹ *Gregory's* decretals, and that in epistles to all the bishops of *England* to forbid it; And it is specially observable, how ill the baronage of *England* took it, when *Anselm* under *Henry I.* would have, through papal canons, inhibited the practice of investitures, used by the king and other lay patrons, which is recorded in an epistle^m of that *Anselm*, directed to pope *Paschal II.* thus speaking.

Domino reverendo & patri diligendo *Paschali* summo pontifici, *Anselmus* servus ecclesiae *Cantuariensis*, debitam subjectionem & orationem assidue. Postquam revocatus ad episcopatum redii in Angliam, ostendi decreta apostolica quae in Romano concilio praefens audivi, ne scilicet aliquis de manu regis aut alicujus laici ecclesiarum investituras acciperet, ut pro hoc ejus homo fieret; nec aliquis haec transgredientem consecrare praesumeret. Quod audientes rex & principes ejus ipsi etiam episcopi, & alii minoris ordinis, tam graviter acceperunt, ut

^f In the sauro Cottoniano.

Argentine.

^g Guil. Malmesb. de gest. pontific. lib. 1. vide *Anselm*, lib. 3. epist. 45.

^h Extr. de instit. c. 3. ex frequentibus, qui canon plenius habetur in appendice ad concil. Lateran. part. 28. cap. 11.

ⁱ Tit. de jure patr. c. 10. cum laici, c. 11. cura pastoralis, & c. 21. relatum, vide *Roger*, de Hoveden. annal. fol. 208. a. J. Sarisbur. polycrat. lib. 7. cap. 21. & app. ad concil. Lat. part. 15. cap. 2.

^m Epist. *Anselm*. ml. 195. in bibl. Cottoniana.

asserent se nullo modo huic rei assensum præbituros, & me de regno potius, quam hoc servarent, expulsuros, & a Romana ecclesia se discessuros; unde reverende pater vestrum petii, per epistolam nostram, consilium, &c.

This is in the ms. volume of epistles of *Anselm*, fairly written by *John de Grandisono* bishop of *Exeter*, in the year M.CCC.LXIV. in which are above c. more than are published in his printed works. They menaced the archbishop with banishment, and the pope with revolt from his see, only for their withstanding that practice of investiture; whereof, for so much as concerns abbeyes, priories, or bishopricks, in giving them by the ring and baston, much testimony is in the story of about that age. And the kings remission of the investitures of those great dignities is frequent; but, for parish churches, of which we here chiefly speak; the common occurrences of investitures mention them but little. But for the use of them known also by the name of institution; see the fine anon transcribed of 33 *Hen. II.* as also specially a commission sent by pope *Alexander. III.* to the ⁿ dean of *Chichester*, touching a parson that was *legitime institutus a Wilhelmo nobili viro*, and had resigned *personarum capellano domini*. But this course of investiture by lay men, after *Anselm's* time, began to be of less use; and some, obeying the canons, presented, others still collated by investiture till about *Richard I.* and king *John's* time, whereof more in the next paragraph. To the lay patrons challenged right of such investiture of churches and tythes, belongs specially the granting of rents and such like out of rectories by the patrons only, and the sons or others succession in parish churches after the death of their ancestors, of both which, little known vulgarly, antient warrant is yet remaining.

III. For the first; In the chartulary of the priory of *S. Neots* in *Huntingdonshire*, one *Robert Fitz-walter*, about king *John's* time, gives to the priory six marks of silver, *nomine certi beneficii in ecclesia de Wimblisse annuatim percipiendas per manum personae ejusdem ecclesiae. Quare volo*, says he, *ut quicumque in præfata ecclesia de Wimblisse ad præsentationem meam vel haeredum meorum persona instituta fuerit, prænominatis monachis S. Neoti de supradicto beneficio vi marcarum fidelitatem faciat, salvo mihi & haeredibus meis jure advocacionis & præsentationis &c.* and divers others such like are. Neither have I met with a precedent of those times wherein the incumbent was grantor, as at this day by the common law, the church being full, I think he must. But most usually a provision by the patron was inserted to this purpose, that the several incumbents should by oath bind themselves to the true payment. Nor was it so necessary to have the ordinary's assent, when that, which the ordinary, by the practice of the later law is to do in his institution, was in frequent practice supplied by the patron's investiture. Out of which may be the better

understood that part of the new canon in the synod of *Westminster*, held under ^o *Richard* archbishop of *Canterbury*, in 21 *Hen. II.* *Nulli liceat ecclesiam nomine dotalitij ad aliquem transferre*, that is, *that no patron should give his church*, as it were, *in frankmarriage*, or make of it a *donatio propter nuptias*, as the civilians call it, to remain with the husband of his daughter or kinswoman, during his life. How could such a gift have at all been made by presentation, as of later time it is understood, institution or induction? And a most observable example of this matter is in a fine of 33 *Hen. II.* in these words:

Haec est finalis concordia facta in curia domini regis apud Cantuariam anno regni regis Henrici secundi xxxiii. die Veneris proxima post festum Sancti Johannis Baptistae, coram Radulpho archidiacono Colecestriae, & Rogero filio Reinfri, & Roberto de Witefeld, & Michaele Belet, justiciariis domini regis, & aliis fidelibus domini regis ibidem tunc praesentibus, inter priorem de Lewes & monachis ejusdem loci, & Willielmum filium Artburi, quem Richardus de Budegintun posuit loco suo ad lucrandum vel pendendum de advocacione ecclesiae de Budeketun, unde placitum erat inter eos in curia regis, scilicet quod prior & monachi remiserunt & quietum clamaverunt eidem Richardo & haeredibus suis advocacionem praedictae ecclesiae, ita quod persona quae per ipsum Richardum vel haeredes ejus in eadem ecclesia instituetur, reddet singulis annis ecclesiae de Lewes IV. solidos, scilicet ad festum sancti Michaelis, & ille qui in eadem ecclesia per ipsum Richardum vel haeredes suos instituetur persona, post institutionem suam, coram episcopo fidelitatem praestabit quod praedictam pensionem praedicto termino ecclesiae de Lewes persolveret, & postea in capitulo de Lewes eandem fidelitatem innovabit.

Here it appears, it seems, by the judgment of the king's justices, that the patron had such interest in those times, that he might alone without grant of the incumbent, who came in by his institution and investiture, or confirmation of the bishop, charge the church with a pension. And this, being in a fine, is of authority beyond exception for that age. But the like is in *rot. fin. 7 Rich. I. Lancast.* in a fine levied between *Theobald Fitzwalter*, demandant in a writ of right of advowson against the abbot of *Shrewsbury*, of the church of *Kirkham*, where xii mark rent is reserved to the abbot, with a like clause for the incumbent's fealty for true payment: The like in *fin. 4 Rich. I. divers. comit.* touching the church of *Dacheworth*; Yet also, in that age, the assent of the parson and bishop was sometime had; as in *rot. fin. 7 Rich. I. Staff.* where, upon right of advowson by the prior and canons of *Stanes* against *Alice Hopton*, for the church of *Chekelegh*, *Alice & Robertus filius & haeres suus per assensum & voluntatem H. Coventrensis episcopi in cujus dioecesi ecclesia illa sita est, & Osberti personae*

ⁿ In append. concil. Lat. part. 8. cap. 14. tit. de testibus cogendis.

^o Roger. Hoved. annal. fol. 310.

ejusdem ecclesiae tunc ibidem praesentium, concesserunt praefatis priori & canonicis xx s. de eadem ecclesia de Cheklegh annuatim percipiendos, sine omni contradictione imperpetuum de clerico eandem ecclesiam possidente quicumque ille fuerit, ad duos terminos, videlicet ad Pascha x s. & ad festum S. Michaelis x s. &c. Here the assent of the parson and bishop being both present in court, is inserted in the fine; yet enough examples shew, that it was not, as may be strongly conjectured, thought altogether necessary. But indeed however the right of investitures had been then much exercised by laypatrons, yet in case of clergy patrons, if the church were not of exempted jurisdiction, the bishops more usually instituted: and therefore was their assent the sooner admitted sometimes into the fine; and doubtless also some laypatrons, willing enough herein to obey the canons, after *Anselm* and perhaps before arbitrarily filled their churches by presentation to the bishop. This may be collected especially out of that of the grant of the ^p privilege of institution in churches, made by *Turstan* archbishop of *Tork*, under *Henry* the first, to the archdeacon of *Richmond*, as also out of two decretals from *Rome*, sent by pope ^q *Lucius* the third, under *Henry* the second to the bishop of *Norwich*. And in some other^r authority both in our year-books, and in the fine-rolls also of the beginning of king *John*, the bishop's assent in such grants of that time is sometimes found. And in that commonly, but without sufficient ground, attributed to *Randal* of ^t *Glarvill* chief justice of *England* to *Henry* the second, the bishops institution is spoken of as a thing of not unknown right upon a recovery in *darrein presentment*, according as the canons require. And in an epistle^u of *Giraldus Cambrensis* (written in those times to *Hugh* bishop of *Lincoln* about his parsonage of *Cestretton*, which he challenged upon presentation of himself made by *Gerard* of *Camvill*, a gentleman of great worth in *Lincolnshire*) the bishops institution is spoken of as clearly necessary, according to the canons, and noted with *episcopus solus honores dare potest*; which, you must remember, was written by one that was fervent for the canons, and had also written against the *avirae consuetudines* or common laws of that time. But these testimonies must be warily understood, and compared with the former and frequent practice of the contrary, which about that time, especially under *Richard* the first and king *John*, it seems, much altered. Neither till about that time can it be found, that the more common practice of laymens investitures ceased. Nor was the bishop's institution presently and uniformly thence used, as of later ages. The authority of the clergy had by that time taken away the use of laymens investitures. Yet was it not clear, it seems, upon the practice that here followed, what dignity of the

clergy should then exercise the institution: For you shall find it sometimes done by the archdeacon, as it was also before king *John*, in some cases where any layman omitted his investiture; as may be gathered out of a decretal, sent^v hither from pope *Alexander* the third, to forbid the archdeacon of *Ely*, *curam animarum sine mandato episcopi committere*. And afterward also, in *Pasch.* & *Trin.* 9, & 10 reg. *Joh.* a writ is awarded to the archdeacon, as now it ought to the bishop, upon recovery of a presentment. The entry is thus. *Recordatum est per G. filium Petri & Simonem de Pateshull quod Simon filius Richardi, tempore regis Richardi, recuperavit, coram eis & sociis eorum versus Johannem de Kalceto, seisinam advocatioris ecclesiae de Buckworth (in Huntingdonshire) per assisam de ultima praesentatione, ita quod habuit breve quod archidiaconus admitteret personam ad ecclesiam illam ad praesentationem eidem; & ipse Johannes impedivit eum ita quod implacavit eum per breve papae, & dominus rex prohibuit placitum, & Simon venit & impetravit a rege quod loquela procederet, & quod haberet breve ad archidiaconum de clerico suo admittendo & habuit. T. domino G. filio Petri & Will. de Briwere.* Here twice was the writ of admission or institution sent to the archdeacon, not to the bishop. Perhaps indeed it happened in the vacancy of the see; for the time so falls, that we cannot be sure of the contrary. But admit it were so. Plainly, the archdeacon neither by canon nor common law had any more right of institution, by reason of a vacancy of the bishoprick. And certainly, during the vacancy, the writ should^w go to the guardians of the spirituality, which by the canon laws, are the^x dean and chapter, but by the law of *England*^y, the archbishops in their several provinces, and the deans and chapters only, in case where the archbishopricks are void. And in other places, somewhat afterward also I have seen institutions often^z by the archdeacon of *Leicester*, while the bishoprick of *Lincoln* was void; which shews, that those times were the infancy of the exact course of episcopal institutions, as they are at this day used. Neither had these any privilege of institution, as the archdeacon of *Richmond* had anciently given^a him, or the like. At this day, and from long time before, the archdeacon only inducts, as the books and common practice shew. But thereof thus much by the way.

IV. FOR that other, of succession in the benefices of the ancestors; Doubtless, that was often when the father, or other ancestor was incumbent and patron, and by that challenged right, of the time, of investiture and sole disposition of the church, would either in his life-time convey the benefice to his son, or heir, by grant, which, by the practice of the time, supplied, it

^p Extr. de instit. c. 6, cum venissent edit. Gregoriana.

^q 16 Ed. III. tit. annuitus 23. & rot. fin. 1 Joh. Huntingdon.

^r Extr. de offic. archidiacon. c. 4. cum satis & cap. 5. archidiacono.

^s Tit. de supplend. praelat. neglig. c. 3. & 36 Hen. VIII. tit. administratores, 46.

^t Vide 17 Ed. II. tit. briefe 822. 17 Ed. IV. 14. a. regist. orig. f. 65. a. & 141. a. 17 Ed. III. fol. 22. b. &c.

^u 5 Hen. III. in matricul. eccles. in archidiacon. Leic. in biblioth. Cottoniana.

^v 465. & 468. & seq.

^w Extr. tit. de jure jurando, c. 11. tua nos, & de jure patr. c. 24. cui autem.

^x Lib. 3. cap. 20.

^y In symbol.

^z Arg. 15 Ed. III.

^a Vide extr. tit. de instit. c. 6. & Rog. de Hoveden

seems, as well a resignation, as presentation, institution, and induction; or would so leave the advowson to descend to his heir, that he, being in orders, might retain the church in his own hands, according as the law then, it seems, permitted. Against this, was a canon made in the national synod at *Westminster* in 3 *Hen. I.* *Ut filii presbyterorum non sint haeredes ecclesiarum patrum suorum.* And another in 25 *Hen. I.* held under the pope's legate: *Sancimus* (as the words are) *ne quis ecclesiam sibi sive praebendam paternam vendicet haereditate, aut successorem sibi in aliquo ecclesiastico constituat beneficium.* Without that challenged right of investiture supposed in the incumbent, having also the patronage, which supplied all that the patron, bishop, and archdeacon at this day do in filling a church, how could any parson make to himself a successor or an heir, to have colour to claim the incumbency from his ancestor? To this purpose may be well remembered a passage in a verdict found in *rot. placit.* 6 *Rich. I. rot. 1.* of such a kind of conveyance of S. Peter's church in *Cambridge*. The words are; *Juratores bene sciunt quod quidam Langlinus qui tenuit ecclesiam illam, & qui fuit persona illius ecclesiae, dedit ecclesiam illam, secundum quod tunc fuit mos civitatis Cantebri-giae, cuidam parenti suo Segario nomine, qui illam tenuit per 1x annos & plus, & fuit persona illius ecclesiae, & ipse postea dedit ecclesiam illam Henrico filio suo, qui illam tenuit per 1x annos, & ipse in ligea potestate sua dedit illam hospitali Cantebri-giae per cartam suam, & idem hospitale habet ecclesiam illam.* They discreetly find the custom of the city to maintain the conveyance, supposing, it seems, that the custom would help the last grantor's title, although the common law, which had by that time received some change herein, by force of the papal decrees, should not have allowed it. I know, in the canons another thing is also understood in this matter of succession, that is, the irregularity of the son of a clerk; but that can extend only to the matter of illegitimation upon marriage forbidden to the clergy. For which point alone, the bishop's refusal had been the best help, but that indeed the other kind of disposition of churches by investiture, prevented his refusal when presentation was not made to him.

V. But after such time as the decretals and the increasing authority of the canons, about the year m.cc. had settled the universal course here of filling of churches by presentation to the bishop, or, as it seems sometimes it was, to the archdeacon, or to the vicar of the bishop, or guardian of the spiritualties; that use of investitures of churches and tythes severally or together, practised by laymen, was left off, and a division of ecclesiastical and secular right from

thence hath continued in practice. Neither did the king afterward, much less common persons, fill their common parochial churches without such presentments from bishops. Parochial churches; for of special donative chapels we here speak not; Neither were appropriations of churches and tythes afterward allowed, that had not confirmation from the ordinary immediate or supreme. And in the same age also came in the law of the lapse, whereby the bishop is to collate after six months upon the patron's default, it being before at his liberty to fill his church at his pleasure; neither was he confined to any time. That time of lapse was, according as the use of presentation grew by degrees settled, received into the laws of *England* out of the general council of *Lateran*, held in 25 *Hen. II.* under *Alexander III.* to which, four bishops, according to the ancient use of this kingdom, that is, *Hugh* bishop of *Durham*, *John* bishop of *Norwich*, *Robert* bishop of *Hereford*, and *Reynold* bishop of *Bath*, were sent as agents for the church of *England*. By that council, after vacancy of six months, the chapter is to bestow those churches, which the bishop, being patron, had left so long void; and upon their default, the metropolitan. But no word is of lay patrons in it. Yet by reason of the authority of that council, and of a decretal of the same pope, which speaks of like time upon default of lay patrons, it hath been since taken here generally, that after vacancy of six months, the next ordinary is regularly to collate by lapse. Which perhaps was received for a law, to continue as it hath done, in the council or convocation at *Pipewell*, held in the first of *Richard I.* and some ten years after that general council of *Lateran*. For in that of *Pipewell*, the principal thing in hand was the providing for churches upon death of their pastors. *Habitus est*, saith *Ralf de Diceto*, dean of *Pauls* under king *John*, *generalis conventus juxta dispositionem regis & archiepiscopi xvi. kal. Octobris apud Pipewell, ut de consilio vacantium per Angliam ecclesiarum haberetur tractatus.* I know it was for many churches then void. But it is like enough, that according to the general council, this law was then here received: But that's only a roving conjecture, and so I leave it. And as in the canon law the council of *Lateran*, which must be understood that of *Alexander III.* is commonly affirmed for the authority of the original of the right of this lapse in the case of bishops specially and chapters; so is it, in ancient monuments of our laws, also in the case of lay patrons. *Ante concilium Lateranense*, says *Bracton*, *nullum currebat tempus contra praesentantes.* And in *placit. de banco Mich. 3 Ed. I. rot. 105. Staff.* the bishop of *Coventry* and *Litchfield*, pleads a collation by lapse *autoritate concilii*, against the prior of *Landa*, to

^b Vide *extr. tit. de jure patron. c. 15. consulti. &c.* & *tit. de filiis presbyt. passim.* & *tit. de pactis c. 5. accepimus.* & *tit. de testibus c. 7. ex parte.* & *append. concil. Lat. part. 8. cap. 22.* Hereford. *episcopo & abbati de Forde. Nec omittas ejusdem appendicis, part. 15. cap. 15. & part. 19. cap. 1. & part. 28. cap. 4. & 8. part. 49. cap. 14. & part. 50. cap. 60.* ^c Vide *rot. par. 9 Joh. r. membr. 1.* alibi saepe in archivis, quae ad illius tempora spectant. ^d 2 *Ed. III. 23 b. 3 Ed. III. fol. 11. b. 10 Ed. III. fol. 50. a.* ^e *Extr. de jure patronat. c. 22.* ^f *Extr. tit. de suppl. prael. negl. c. 3 & 4. de conc. praeb. c. 5. &c.* ^g *Lib. 4. tr. de assis. ult. pract. cap. 6. §. 3.* ^h *Vide, si placet, Roger. de Hoveden, part. 2. annal. fol. 430. b. & extr. tit. de officio judicis ordinarii c. 4. cum vos.* Ante concilium papa *Alex. III.* illud ni fallor rescriptit, & lucem huc adfert.

the church of *Patingham*. And in the same plea rolls of *Pasch.* 5 *Ed. I. rot.* 100. *Linc.* in a *quare non admittit*, by *Eleanor*, the queen mother, against the bishop of *Lincoln*, for the church of *Orkeflow*, the six months and the computation of them (which is there adjudged according to that in ⁱ *Catesby's* case) is referred to *concilium apostolicum*, which can be no other than that of *Lateran*, however the printed copy of that which we commonly call *Breton*,^k talks of the council of *Lions* for the director of the lapse, whereas indeed the mss. have for *de Lions*, *de Laur.* which is doubtless for *de Lateran*; Yet also in the rolls of the common pleas of *Pasch.* 9 *Ed. I. rot.* 58. *Suthampt.* the archbishop of *Canterbury* defendant in a *darrein presentment*, against the abbot of *Lyra*, pleads that the church of *Godebush*, *est plena ex collatione ipsius archiepiscopi ratione concilii Lugdunensis*, and being demanded by what article of the council, would not thereto answer, whereupon, after long deliberation, judgment is given for the abbot. But in the same plea the law and custom of *England* for the six months time of lapse (which they call there *consuetudo regni Angliae*) is referred to a council; but none is specially named saving that of *Lions*. But although from canonical authority the lapse was thus received into our laws, yet it hath been no otherwise than the baronage of *England* would permit it. For the canons otherwise, as at this day they are, give but fourⁱ months to a lay patron, and six to an ecclesiastic, which difference, the law of *England* would never permit; as also neither that of the right of collation which the chapter is to have upon default of the bishop, however the pope would have put it here in execution according to the words of the council, which you may see in the authorities before noted out of the text of the canon law. And therefore the law of lapse is well referred rather to ^m *consuetudo regni Angliae* (by which title, other parts of ourⁿ laws were often named that were of later beginning) than to the council, although thence doubtless, as is shewed, it had its original. But although now, what through the decretals and other canons against laymens investitures, what by reason of the law of lapse, the patrons former interest or challenged right, was much diminished in the church, and the disposition of the revenues of it (for it followed also that the ordinary's assent was requisite) yet the *formulae* or precedents used from antient time in the recovery of presentations still retain, to this day, characters in them of that investiture. As the *quare impedit*, that is, *Praecepit A. quod iuste, &c. permittat B. praesentare idoneam personam ad ecclesiam de N. quae vacat & ad suam spectat donationem, &c.* Where *donatio* still favours of the antient right of investiture; agreeing whereto, is that of *ecclesiam* ^o *concedere*, used elsewhere in our law, and attri-

buted to the lay patron. Neither doth *praesentare ad ecclesiam* originally denote otherwise than the patron's sending or placing an incumbent into the church, and is made only of *repraesentare*, which, in that council of *Lateran* and^p elsewhere, occurs also for *praesentare*. *Repraesentare* is properly to restore, give back, or repay, as *reddo* or *repraeslo*, whence *praesentare* taken in the barbarous times denoted as *dare* or *donare*; So that *idoneam personam ad ecclesiam praesentare* was all one with *idoneam personam ad ecclesiam dare* or *donare*, or in *ecclesia constituitur*, or καθίσταται, as^q the apostle's word is to *Titus*, where he bids him καταστήσεις κατὰ πλὴν καθίσταται, that is, *appoint*, or *constitute*, or indeed *present priests* or incumbents in every city. For he that there should turn it by *present*, might so keep the property of the word in both tongues, though not as *present* is now restrained. This is justified out of an old glossary that turns *repraesento* by ἀποκαθίσταμι: for then clearly καθίσταμι is *praesento*; While *praesentare* so signified also in practice, that is in the time of the use of lay investitures, all churches so given were properly donatives, which attribute hath been since restrained, chiefly to such free chappels as the ordinary hath no interest in, but are collated or given by the act only of the patron. And this interpretation of *praesentare* is justified also^r out of the *quare impedit* upon a right of collation, which is but a donation, by the bishop, wherein the words are also, *quod permittat praesentare ad ecclesiam, &c.* Donation, which is merely as investiture in regard of the bishop, is there called presentation. So also is the law in the king's case and of common persons, being disturbed to collate by letters patents to their free chapels or donatives. The writ in those cases is only *praesentare*, which confirms that it denotes donation or investiture. But in the counts upon such writs, the special matter must be discovered. The like law is in the case of him that hath the nomination of the clerk. His writ is also *praesentare*, although another have the right of that which is now known by the bare name of presentation. Nomination indeed, or ἐνομαζεν, being the true and eldest name found in the laws belonging to the^t church, that denote filling or presenting to a church, in that sense as presenting is taken for giving or investing. For, in the primitive times, when the patron had founded his church, he nominated whom he would have received into orders for the serving of that cure; and then if the nominated were found worthy, he was received into orders for that purpose, which ordination turned afterward into episcopal institution, as is before declared. That nomination was indeed as investiture or giving the church. So is the word used in the laws; and agreeing to them is the purer time of *Latin*, wherein *nominatio*^u is for giving a palace or office that is void. And

ⁱ Coke report, part. 6, fol. 62.^m R. egist. orig. fol. 42. b. inter prohibitions.ⁿ Glanvil. lib. 6, cap. 17. alibi item scilicet in archivis quae vetustiora Richardi I. aut initii Johannis tempora spectant, & vide Roger, de Hoveden. fol. 425. b. & pat. 3 Hen. III. part. 2, membr. 2.^o Extr. tit. de censibus c. 11. cum clericis & tit. de praeb. & dig. c. 31. In Lateranens. §. 2. & tit. de privileg. c. 3. & Hostiens. summ. tit. de capellis monachorum & saepius.^p cap. 1. common. §.^{ad Brut.} 7.^k Chap. 62. des exceptions fol. 225. 2.^q Vide 19 Ed. II. tit. briefe 842. 18 Ed. III. fol. 55. b. regist. orig. fol. 98. 2.^r Extr. tit. de censibus c. 11. cum clericis & tit. de praeb. & dig. c. 31.^s Extr. tit. de censibus c. 11. cum clericis & tit. de praeb. & dig. c. 31.^t Διδάζ. Neap. 827.^u Cicero epist.

as these phrases of the writs taste of the antient right challenged by the patron, so do some assertions in our year books of later time; As that of entring^u into an advowson by entring into the church; of passing an^v advowson by livery of seisin at the church door; of the patron's entring into the place^x of foundation if the church cease to remain hallowed, and the like. And to like original may you refer those of the kings presentations, which have *dedimus* & *concessimus* in them yet retained, although the force of the words by the later law, make but only a^z presentation. But the law is now settled. Neither with us hath the patron alone now any prerogative or direct interest in the church or the revenues, besides his right of advowson or presentation to the bishop, by whose institution and the archdeacon's induction, every church regularly is to be filled. Neither, for ought I have heard, hath he in our law any of those *droits honorifiques*, which the French allow him in precedence, seats, and the like. These particulars of benefices and advowsons had here their place, both because in the antient conveyance of them either by investiture, to an incumbent, or by appropriation, the revenue that was in tythes passed by express words, and that in point of interest from the patron; as also in regard that, at this day, the patron of a parson prohibited by *indicavit*, to sue in the spiritual court for the fourth part of the tythes of a church, may have his *droit d'avowson de dimes*. It was requisite therefore to add these not vulgar or obvious notes of the advowsons, in this discovery of the antient conveyance and interest of tythes.

CHAP. XIII.

- I. Infeodations here into lay hands since the statutes of dissolutions. Of infeodations before that time in England. Somewhat more of the original of laymens practice in arbitrary consecrations or infeodations.
- II. Exemptions or discharges of payment originally by privileges, prescriptions, unity, grants or compositions, and by the statutes of dissolutions.

FROM those arbitrary consecrations, and frequent appropriations of tythes (whereof we have hitherto made mention) to monasteries or other religious places, as colleges of regulars, chantries and free chapels, came the present and common infeodations of them into lay hands, which began in the age of our fathers. For, the portions of tythes conveyed to them out of closes, parts of manors, and whole demesnes, by the owners, together with the tythes granted and possessed with appropriated churches, were first by the statute of dissolution

of monasteries in 31 Hen. VIII. and by that other of 1 Ed. VI. given to the crown, and from thence granted to laymen, whose posterity or assigns to this day hold them with like limitation of estate, as they do other inheritances of lands or rents. And, for them, have like remedy by the statute of 32 Hen. VIII. cap. 7. by real action, as *assise*, *dower*, or other originals, as for lands, rents, or other lay possessions, by the common law they might have. But although in other states these infeodations or conveyances of the perpetual right of tythes to laymen, be very antient and frequent also; yet no such certain or obvious testimony of their antiquity, is in the monuments of England, as can enough assure us, that they were before the statute of dissolutions in any common use here. But some were, and, for ought appears in the practice of the time, many more might equally have been. And what scruple was there, but that long before the general dissolution of monasteries, Henry V. might, by the law of the kingdom, have made infeodations into lay hands, as Henry VIII. did, of all tythes belonging^a to the priors aliens, whose possessions were given to him by parliament: he had them settled in the crown in fee, and afterward disposed of them to other ecclesiastick corporations^b at his pleasure, no otherwise than of other lay possessions. By the way, we understand, in these infeodations, by the name of laymen, only such as were not either in orders or professed in religion; for otherwise all the possessions of tythes enjoyed by nuns and the like, that were indeed lay (though not commonly called so) might be comprehended under the name of infeodations. But that some were here; observe that of Odo bishop of Bayeux and earl of Kent, which is before cited out of the lives of the abbots of St. Augustines in Canterbury. The words are *decimas aliquas quas mei fideles habebant*, &c. What can that be, according to the words, other than tythes that were in the hands of some of his tenants? You may add that of Robert S. John, cited before out of the book of Bosgrave, where he had, by the gift of his brother William, certain tythes, which he gave to the priory, for maintenance of a fourteenth monk. And observe the rest of the deed there. So out of the book of Osney it appears before, that *decimatio Nicholai de Stodeham quam Fromundus capellanus tenebat*, is granted by D'Oily. Had not D'Oily this from Stodeham? Or was Stodeham here one of his bailiffs or farmers, whose tythe he granted as lord or according to covenant with the lessee? Other such occur sometimes. And perhaps, *decimae hominum meorum*, and the like granted, may suppose a title possessed in the tythes by the lay grantor. And in the same book of Osney, in a passage written in a hand of about Hen. V. touching the conveyances of tythes by laymen to monasteries, it is related, that he that wrote it, saw

^u 18 Ed. III. fol. 16. a.
pedit. 60.
Cottoniana.

^x 43 Ed. III. fol. 1. b.
^a Rot. parl. 2 Hen. V. part. 2. art. 9.

^z 5 Hen. VII. fol. 37. a.

^b Vide cart. 2, Hen. V. part. 1. num. 3. c.

^c Vide 19 Ed. III. tit. Quare im.
In biblioth.

quendam Rogerum D'Oily, dominum cujusdam partis de Bampton in episcopatu Lincolnensi, suis decimis ita uti, ut nunc uni nunc alteri de suis valettis ipsas conferret annuatim, qui sibi in diversis officiis ministrabant, until afterward he erected a chantry with them in the church of *Bampton*. These grants to his valets, plainly were as infeodations. And what else was in that known case of *Herne* and ^d *Pigot* in *Mich.* 39 & 40 *Eliz.* but an antient kind of infeodation, at least an inheritance of tythes from immemorial time in a layman? That, and other like to it, might begin upon real compositions, and so the tythes be derived out of the church. But regularly, I think, at this day no kind of infeodation is here allowable in lay mens making title to a perpetual right of tythes (except only by the later statutes of dissolutions) unless it either be derived from some old grant of discharge from the parson, patron, and ordinary, in which case, he to whom the infeodation should be made, could have it only as a lay profit issuing out of the discharged land, or joined with a consideration to be given for maintenance to the parson, by him that receives them; and this either from time immemorial, or by antient composition. So I take the meaning of our reverend judges to have been touching this point. In sum then, we may affirm, that some such antient infeodations have been in *England* as in other states; but, that of later time none are allowable (if derived from ^e other antient original, than from the statutes of dissolutions) unless they be antiently derived out of the church first by discharge, or appear to be but as a reward given in pernancy, or as consideration for a pension, or other competent maintenance, yearly payable to the parson. Which withal well stands with the common opinion of the original of such infeodations; whereof we have already ^f spoken. And whereas it hath been resolved, that without these reasons, a layman was not here capable, at the common law, of tythes by pernancy; it well agrees with a decretal of ^g *Alexander III.* which forbids one that married a parson's sister, to enjoy a tythe given him by the parson, as for the marriage portion, although the parson were still living. But also, that we may not defraud you of any testimony of former times, that may seem observable touching these infeodations, whereof so few examples, and so little mention is in the monuments of *England*, take this special disquisition, written in a hand of about *Henry V.* in the book of ^h *Osney*, which would as well give light to the course of arbitrary consecrations, before largely opened, as to these infeodations, if it were of sufficient credit. But you shall first have it compendiously delivered, and then judge of it. This title is put to it; *Qualiter laici ad id privilegium pervenerint quod locis religiosis illas (decimas) conferre possint*. Then says he that writes it; he had heard from a good civil and canon lawyer, that had been present at the dis-

putation of the point, in a case happening between a religious house and a parson, for tythes in the parson's parish, who claimed them *jure communi*, that the advocate for the religious house, being put to make a special title against the parson's common right, told the court a long story of eastern holy wars about *Pipin's* time; and interposed somewhat of *Charles Martell*; and concluded, that the pope and the church every where granted, in reward to the christian princes, for their barons, knights, and gentlemen, that spent their bloods, labours, and estates in those wars, the privilege of arbitrary disposition of the tythes of their lands; by reason of which grant, they afterward made not only arbitrary consecrations of them; but also infeodations into lay hands; according as the common opinion among the canonists is too confidently received at this day. Then he tells us that before remembered, of the tythes in *Bampton*, and cites some texts out of the decretals, that touch infeodations. Next he relates, that among the princes of the holy war, about *Martell* and *Pipin's* time, the duke of *Normandy* was a special one, whence he had also that privilege touching tythes, *pro se ac suis*, as the words are. And lastly, to bring it into *England*, he thus concludes; *Et cum dux Normanniae Willielmus ad conquestionem Angliae venisset, quidam miles ejus Robertus d'Oylle nomine mallens suas decimas Deo commendare quam contra naturalem ecclesiae consuetudinem ipsis uti, eas ecclesiae S. Georgii, quam in castris Oxenford construxit, contulit, et postea ad monasterium Osney per diocesenum & capitulum Lincoln. ac etiam per advocatum canonice devenerunt*. But it all tastes of nothing but ignorance. For what touches *Martell* and his time generally, enough already is said. And see but what a bold ignorance here was, to tell us, that the duke of *Normandy* was one of the greatest (*personis regum exceptis*, as his language is) that were in the holy war, in succursum ecclesiae Romanae; in those times of *Pipin* and *Martell*? I would he durst have told us also who had then been duke of *Normandy*. Neither that title of dignity, nor that name of the country, were, till about *CL.* years after *Martell*, at all known. The territory being then under the *French* kings, who long after gave it to the *Normans*, and erected it into a dukedom. Indeed the duke of *Normandy* had good place in the later holy wars, about *M.C.XV.* But did not that make this advocate say, that the duke of *Normandy* was a special prince in the other also of *Martell's* time? Such of the later middle times stand not much upon the mingling of stories, that differ in themselves even many whole ages. Besides, he tells us of strange princes names of the east, that made the war against the church. Plainly, the most pretended cause of the rest that err herein as much as he doth, is the *Saracenical* war in *Martell's* time, and that out of *Spain*, not from the east.

^d Report 2. fol. 45. a.^e Vide in d. commentario, ibid;^f Cap. 6. §. 4.^g Extr. tit. de arbitris c. 3. pervenit ad nos^h In biblioth. Cottoniana.

And had it been so under *Martell's* time, as it is usually affirmed; what had that been to *England*? But you see his providence for that matter, where he derives it from the duke of *Normandy*. But what though there had been some such duke of *Normandy*, whose successor had afterward either conquered or inherited *England*? Had therefore the old supposed privilege of retaining or disposing of tythes, been thence communicated to his subjects of *England*? And that to the loss of the church here, that never could have gotten good by the supposed cause of the privilege? All the canon and civil law that the advocate had, could never have proved such a consequent. It will still remain most probable, if not clear, that what infeodations were in *England*, had their original as well out of the right of arbitrary disposition of tythes challenged by the laity, without the grant of the pope or church, as out of compositions or conveyances from the clergy; according as in other states. For no sufficient story, no credible monument, no passage, or testimony of worth, can justify that general right of retainer or disposition to have given by the clergy, or pope, upon any cause whatsoever; though the canonists and others that follow them, cry against it, *usque ad revim*. The use of infeodations, before those latter holy wars, we have already shewed. And that no use of them could be about *Martell's* time, is not less apparent, by what is also before delivered. But beside this blind testimony of the ground of consecrations or infeodations; for *England* especially, you may take that, as it is, also of ¹ *Lindwood*, who thus speaks touching the portions which religious houses had. *Hae portiones* (saith he) *potuerunt pervenisse ad locum religiosum de concessione etiam laici, cum solius diocesani consensu, de decimis, vel proventibus quas laicus talis ab ecclesia alia habuit in feudum ab antiquo*, according to that in *rit. de his quae fiunt a praelatis sine ass. cap. c. cum apostolica*. And he adds, that this is only true, if those tythes were infeodated before that council of *Lateran* of M.C.LXXIX. And then concludes with, *Nam ante illud concilium bene potuerunt laici decimas in feudum retinere, & eas alteri ecclesiae vel monasterio dare. Non tamen post tempus dicti concilii*. For his interpretation of the council, enough before, towards the ends of the VI. and X. chapters. But doth not *Lindwood* here suppose ancient infeodations of tythes, at least created by churchmen, in *England*? Doth he not thence fetch the original of portions belonging to religious houses in *England*? Commonly, though he wrote as a canonist, yet he adds the special custom of *England* if he speak of any canon law, which he thinks had not place here. But he excepts not *England* in this, but implies it; Therefore doubtless, he supposed a common use of ancient infeodations among our ancestors; But I doubt he had not better ground for it, than what he found in others of his profession, that had remembered the frequent use of infeodations in

other states before that council: and he so applied it equally to his own country, and with them takes the infeodations to have had original only from the grants of churchmen. Therefore I value his testimony here but as of a common canonist, and not sufficient to satisfy us touching our own country: neither in his age were the particulars of practice of the time before that *Lateran* council, or of the time of creation of infeodations in other places, enough known among lawyers. I add only one note out of *Bracton*, that may touch tythes infeodated or turned antiently here into lay-fee, and conclude this matter. He ^k speaking of land demised and recovered by the legatary, tells us some opinion was of his time, that such land after the recovery, *iterum incipit esse laicum feudum & non ante; quod non erit de decimis, cum semel efficiantur laicum feudum; nunquam reincipient esse decimae, & haec vera sunt secundum R. & alios*. Did not he here suppose lay infeodations of tythes in *England*? Let the reader judge. By the way, I note, that passage is corrupted in the print: the beginning is *item* for *iterum*, and that *R. & alios* (which I think stands for *Roger de Thurkelby* a great judge of that time) is *biastos*; but according to my ms. *Bracton*, I have thus altered it. You may consider also if some infeodations came not out of laymens enjoying of whole churches with their possessions about the *Norman* conquest. It is frequent in *Domesday*, to find that such a layman *tenet ecclesiam* of such a place, and sold it to such a one: and in the claims of *Torkshire* there, the entry is *super ecclesiam S. Mariae de Moselege habet rex medietatem elemosynae festorum S. Mariae quae jacet ad Wackefeld*. *Omne aliud habet Ilbertus & presbyter qui ecclesiae servit &c*. Where tythes were in that time annexed by continuance of payment or consecration to churches, perhaps they might in like manner as these offerings or whole churches, come into the lay hands. But I leave this to the judgment of my reader. And hereof thus much.

II. NOW for exemptions, or discharge from payment; We have antiently had them here, and still retain some of them in the practised law; and that originally either by privileges, prescription, or grants, and compositions, and unity of possession. The privileges have been either such as were especially allowed and limited to the orders of the *Templars*, *Hospitalers*, and *Cistercians*, by the general council of *Lateran*, held in the seventeenth of king *John*, of which more particular narration is before made; or by new bulls for the discharge of this or that monastery or order, at the pope's pleasure. By reason of the first kind of privilege, those three orders held their lands discharged of payment, so long as they manured them in their own occupation; at least all such lands as they had purchased before the general council. And by the second kind sometimes whole orders were dis-

¹ Tit. de locato & conducto c. licet bona verb. portiones,

^k Lib. 5. tract. de exceptionibus. cap. 12. fol. 409. b.

charged: As for example, that bull to the ¹*Praemonstratenses* in general, given by pope Innocent the third, grants them that of their own culture or other improvements they should pay none. Sometimes special monasteries; as in that of the same pope to the ^mabbey of *Chertsey*. *De novis quae propriis manibus aut sumptibus colitis, aut de vestrorum animalium nutrimentis, sive de hortis & virgultis, aut piscationibus vestris, nullus a vobis decimas exigere, vel extorquere praesumat, sed eas elemosinae aut pauperibus monasterii vestri, juxta quod tu fili abbas postulasti a nobis, praecepimus assignari.* What force by the common laws of this kingdom, such a papal privilege in antient time alone had, I abstain here to dispute: and although other examples enough might out of originals be brought of the like; yet I touch not any of them neither, lest unawares I might give occasion of some private controversy. But they had their force in the canon law here, and being so allowed in allegations against tithes for tythes, were strengthened also at length (especially those which were of the antientest) with prescription of time; insomuch, that from them originally divers lands of dissolved monasteries remain to this day discharged of payment. But in ²*Hen. IV. cap. 4.* an act of parliament is made against those of the *Cistercians* here, which purchased bulls of exemption for their demised lands. And those of the order, and others, putting such bulls in execution, are made thereby subject to the punishment contained in the statute of ¹³*Rich. II. of praemunire*. Discharges by immemorial prescription of paying no tythes (of things commonly and of their nature tithable) nor any thing in lieu of them, are by the later common law, since their parochial right established about the time of king *John*, allowed only ⁿto spiritual persons, but to no layman. The laity being since that time held incapable of tythes both by pernaney (saying in such a special case, where continual consideration was given to the church, as in that case before of *Herne* and *Pigot*) in their own right, as also by discharge upon bare prescription alone, saying only in cases within the statutes of dissolution of ³¹*Hen. VIII.* and ¹*Ed. VI.* and the statute of ³²*Hen. VIII.* that warrants common infeodations of them. And so is the practised law of this day. For, by those statutes, lay-patentees of lands or tythes have like privilege of discharge and title as the spiritual persons, whose corporations were by them dissolved, before the dissolution enjoyed. Of the *Hospitalers* dissolved in ³²*Hen. VIII.* I purposely abstain to speak. To this of prescription, may be added that of unity of possession. For if any religious house dissolved in ³¹*Hen. VIII.* held the rectory of *Dale* and lands in the parish immemorially, paying no tythes, this unity discharges also the patentees at this day, in such sort as the monasteries were discharged. But by compositions and grants every man, as well lay as spiritual,

by the common law (before the statute of ¹³ of *Elizabeth*, made against leases and grants of parsons) might be discharged of tythes; as if the parson, patron, and ordinary, joined in it to the parishioner either for consideration continuing, as in real^o composition, or for other arbitrary causes not appearing to posterity, as in grants by all three, or rather in grants by the parson, and confirmations by the patron and ordinary. And it is provided by the statute of ²*Ed. VI. cap. 13.* *That no person shall be sued or otherwise compelled to yield, give, or pay, any manner of tythes for any manors, lands, tenements, or hereditaments, which by the laws and statutes of this realm, or by any privilege or prescription are not chargeable with the payment of any such tythes, or that be discharged by any composition real.* But although a layman may not be discharged of all payment by meer prescription (unless he begin the prescription in a spiritual person) yet for diminishing the *quota* in payment only of a less than the tenth, he may ^pprescribe, that is, *de modo decimandi*; and to that purpose an immemorial custom of a whole town or manor holds place at this day. So was the law ^qantiently also. Beside these discharges, some may here expect that part of our laws, which with us (as the *Philippine* in *France*, and the *Caroline* in *Spain*) discharge some things from payment of tythes, and seem to permit some customs *de non decimando*. But for that matter, so much as upon consideration was thought fit to be sparingly said of it, is referred to the passages in the next chapter, that touch antient prohibitions *de non decimando*. Neither indeed doth that part of our *English* customs belong to the title of exemption or discharge. For exemption and discharge are properly singular rights to this or that person or land, and against the current of the practised law. But those things touching which any such prohibitions *de non* &c. by our law should be granted, are supposed generally, according to the reasons and practice of the laws of *England*, of their own nature, not tithable. So that not so much a discharge is found in that course, as a prevention of an unlawful charge, which the canons would lay upon that, which the laws of the kingdom account not at all, in its own nature, chargeable. But thereof somewhat more anon.

C H A P. XIV.

- I. *The jurisdiction of ecclesiastick causes, in the Saxon times, exercised by the sheriff and the bishop in the county court; and among them that of tythes also was then to have been there determined. The bishop's consistory severed from the county court by William the first.*
- II. *After the Normans, original suits for tythes, were as well in the temporal courts as*

¹ Innoc. III. in epist. decret. lib. 1. pag. 202. rep. part. 2. fol. 44. & Fitzh. nat. br. fol. 41. G. prohibition. §. 6. & rep. 2. part. fol. 44.

^m Ibid. lib. 2. pag. 410. Videffs extr. tit. de decimis. c. 3. ex multiplici.

ⁿ Regist. orig. fol. 38. b. Fitzh. ubi supra.

^q 3 Ed. IV. fol. 14.

^p Vide lib. intrat. nov. tit.

in the spiritual; and that continued till Henry the second, or about king John.

III. Of the time since about king John or Henry the second. Of the indicavit, and the writ of right of advowson of tythes. What the law was in an indicavit before that statute of Westm. 2. A touch of antient prohibitions, de non decimando.

IV. Writs of Scire facias for tythes. Inquests taken upon commission to enquire of the right of tythes.

V. Fines levied of tythes (in the time of Richard the first, of king John, and Henry the third) upon writs of right of advowson.

VI. Scire facias by the patentees against the perror of tythes granted by the king.

VII. Command of payment by the king's writ. And of tythes in forests. Trial of the right of tythes incident in some issues.

AS a corollary to the former parts that directly concern the payment or consecration of tythes, we thought fit to add here in the conclusion of the treatise, the history also (but only the history) of the jurisdiction of tythes in this kingdom. It is clear by the practised common law, both of this day as also of the antientest times that we have in our year books, that regularly the jurisdiction of spiritual tythes (that is, of the direct and original question of their right) belongs, I think, as in all other states of christendom, properly to the ecclesiastical court; and the later statutes that have given remedy for tythes infeodated from the crown after the dissolution, leave also the antient right of jurisdiction of tythes to the ecclesiastical courts. But how the difference of ages hath herein been amongst us, is little enough known even to them which see more than vulgarly. In declaration thereof, we shall aptly divide the time tripartitely; into that of the Saxons; that from the Normans till about Henry the second; and what intercedes from thence till this day.

I. IN the Saxon times a jurisdiction of ecclesiastick causes (among which you may reckon that of tythes, although not much sign of it, in exacting payment of them, appears in the monuments of that age) was exercised jointly by the bishop of the diocese, and by the sheriff or alderman of the *sciregemot*, or hundred; or county court, where they both sat, the one to give *gobei right*, the other for *populber right*, that is, the one to judge according to the laws of the kingdom, the other to direct according to divinity. And in the laws made for tythes by king Edgar and king Knout, you see, upon default of payment, it is ordained, that the bishop and the king's bailiff, or sheriff, with the

bailiff of the lord of the land, should see that just restitution should be made. Particulars of the exercise of this kind of jurisdiction, I have not seen: but at the Norman conquest, this kind of holding ecclesiastick pleas in the hundred, or county court, was taken away. Remember that, as at this day, most of the pleas ecclesiastick are in the ordinary's court within the diocese, so most suits in the secular or common law were *viscontiel*, and held in the county or hundred court of the sheriff in those antienter times, which may best be observed out of one of the books of Ely,¹ the most special monument that is extant, for the holding of pleas in the Saxon times. That alteration at the Norman conquest, was by a law made by the conqueror, and directed to all tenants in the diocese of Remy, that was first bishop of Lincoln, whither his see was then translated from Dorchester. And although it be sent in the direction by name to them only, yet, it seems, it grew afterward to be a general law; no otherwise than the statute of *circumspecte agatis*, that hath special reference only to the bishop of Norwich. The words of it,² as they are recorded, are; *Sciatis vos omnes & caeteri mei fideles, qui in Anglia manent, quod episcopales leges, quae non bene secundum sanctorum canonum praecepta, usque ad mea tempora in regno Anglorum fuerunt, communi consilio archiepiscoporum meorum, & caeterorum episcoporum & abbatum, & omnium principum regni mei emendandas judicavi. Propterea mando, & regia autoritate praecipio, ut nullus episcopus vel archidiaconus de legibus episcopalibus amplius in hundred placita teneant, nec causam quae ad regimen animarum pertinet, ad judicium secularium hominum adducant; Sed quicumque secundum episcopales leges, de quacunque causa, vel culpa interpellatus fuerit, ad locum quem ad hoc episcopus elegerit & nominaverit, veniat, ibique de causa sua respondeat, & non secundum hundred, sed secundum canones & episcopales leges rectum Deo, & episcopo suo faciat.* Which I the rather transcribe here, because also it seems to give the original of the bishops consistory, as it fits with us, divided from the hundred or county court, wherewith, in the Saxon time, it was joined. And in the same law of his, is further added, *Hoc etiam defendo ut nullus laicus homo de legibus, quae ad episcopum pertinent, se intromittat &c.*

II. Afterward, under the succeeding princes, till about Henry the second, it seems, that the jurisdiction of tythes was exercised in both courts, as well secular as spiritual, and that by original suit; not only in the one by the first instance, (as regularly the later common law would have it) and in the other by prohibition only. I know, little proof will serve most men to justify, that the spiritual court had then a jurisdiction of them: but also some testimony I have seen of a particular recovery of tythes in the bishop's court in that age. The monks of Northampton,

¹ Videfis leg. Ethelstani apud Fox. in eccles. hist. lib. 3. pag. 135. col. 1. Hinc debent episcopi &c.

² In biblioth. Cottoniana.

³ In rot. insex. chart. 2 Rich. II. pro dec. & cap. Lincoln. mcmbran. 12. Idem est quod habetur Anglice apud Foxum hist. eccles. Anglic. lib. 4. pag. 154. col. 2.

under ^a king *Stephen*, recovered two parts of the tythes of the demesnes of *Wullaveston* against *Anselm de Cochis*, before *Robert* bishop of *Lincoln*, as ordinary. In plenaria synodo coram Roberto *Lincolniensi* episcopo disfrationaverunt, as the words are in a sealed charter of *Simon* the second, earl of *Northampton*, then living; wherein he testifies both the recovery, as also *Anselm's* confirmation of the same two parts, according to the recovery, and adds also of his own, volo & praecepto ut illam eleemosynam habeant & teneant liberam & quietam. And to this you may add, the appeals to *Rome* from the audience of the archbishop of *Canterbury*, and other ecclesiastick cognizance touching * tythes, that are (as the antientest precedents of any such ecclesiastick proceeding in *England*) remaining among the epistles of *John* of *Salisbury*, a great favourite of *Thomas Becket* archbishop of *Canterbury*, in the beginning of *Henry* the second. In one of them it is observable by the ^y way, that one *Richard*, the tenant of land lying within the parish of *Lenham*, being sued in the audience by *Andrew* the rector for his tythes, alleges in court, sibi a nobili viro *Willielmo fratre regis, domino suo, esse prohibitum, ne, eo absente, super decimis de quibus agebatur, causam ingrederetur*. Yet the court ceased not therefore to proceed; but sentence being ready to be given for the rector, the cause was sent to *Rome*, upon the defendant's appeal. And although the title ^z were only upon the grant of him that arbitrarily consecrated, yet was it some time determined in the spiritual court. But also that in this elder age, before about the time of *Henry* the second, the king's secular courts of justice originally held plea of the right of tythes, is as plain by infallible proof of antient monuments. To begin with the eldest times of this part of our division; There remains ^a yet recorded a plea held apud *Fulcardi montem*, under *William* the second, between the monks of *Salmur* and *Philip de Braiosa*; wherein the monks claiming against him and the abbey of *Fischamp* (in *Normandy*) parochiam quae ad sanctum *Cuthmannum* pertinet de castello de *Staninges* (these are in *England*, I think, in *Sussex*) de *Bedingas*, & de *Bedelingtona*; by the testimony of *Robert* earl of *Mellent*, a judgment of the Conqueror's time is cited, by which the abbey of *Fischamp* had the parish of *S. Cuthmann* adjudged to it in the king's court. And thereupon, it being denied by none, it was now again adjudged, that the monks of *Salmur* should restore whatsoever they had taken, post mortem regis in decimis & sepulturis & offensis &c. to the church of *Fischamp*. And while some delay was in the execution, the king sent his writ ad justiciarios suos de *Anglia*, that is, to *Ralf* bishop of *Chichester*, *Randal* his chaplain, *Hamon* his sewer, and *Urso* de *Abetot*, whereby he commanded, ut sacerent ecclesiam *S. Trinitatis* (that is, of *Fischamp*) habere totam parochiam *S. Cuthmanni*, & decimas & cor-

pore & omnes custumas tam de vivis quam de mortuis, sicut pertinebant ad praedictam ecclesiam *S. Cuthmanni*, antequam *Willielmus* de *Braiosa* haberet castellum de *Bembra* (*Bramber* castle, in *Sussex*, given by *William* the first to *William* de *Braiosa*) & quicquid de supradictis custumis monachi de *Salmur* ceperint reddi. The right of tythes and offerings appears here plainly to have been determined in the temporal court by two judgments, the one under the conqueror, the other under his son *William*. And it is found upon record, that about ^b 10 *Hen. I.* a writ was sent to *Manasses Arsc*, out of whose lands, divers tythes were conveyed into the monastery of *Fischamp*, commanding him, Quatenus decimas a parentibus suis inviolabili jure concessas & datas *Fiscamen* ecclesiae, monachos suos apud *Coges* degentes omnes in pace & quiete habere faciat; si non, justitiae regis facerent. Whereupon he sends his precept to all his tenants of such lands, commanding them to make payment. Si quis autem aliter (saith he) facere praesumpserit, regis irae & nostrae poenae sine dubio patietur. So among the liberties of saint *John* of *Beverley*; this writ is found of *Henry* the first. *Henricus rex Anglorum*, *Osberto vicecomiti* de *Eboraco* & *Geraldo* de *Bridefala* salutem. Praecipio vobis, ut faciatis habere ecclesiae sancti *Johannis* de *Beverlaco*, decimas suas, sicut unquam melius habuit, in tempore regis *Edwardi* & patris mei, de illis videlicet terris omnibus de quibus homines comitatus *Eboraci* testimonium portabant quod eas habere debent. Et quicumque detinuerit, sciatis quod ego volo ut rectum faciat *Deo* & *S. Johanni* & mihi. *T. Ran. cancellario*, & comite de *Mellet*, apud *Londonias*, &c. What is this else than a kind of justicies to the sheriff of *Torkshire*, for the right of tythes determinable by the country? Doth not homines comitatus *Eboraci* denote as much? Of the same time also, in a ^d volume of constitutions and other things belonging to the church of *Tork*: *Henricus rex Anglorum*, *Osberto vicecomiti* de *Eboraco* salutem. Mando tibi & praecipio ut archiepiscopum *Girardum* permittas & facias honorifice tenere ecclesias mediorum propriorum maneriorum, quas *S. Petro* & eidem dedi, cum omnibus capellis suis, & cum omnibus decimis suis, & cum omnibus terris suis, videlicet ecclesiam de *Bokelinton*, & de *Driffeld*, & de *Killum*, & de *Pickering*, & de *Burgo*. *Waltero* *Euremaro* ministris de *Driffeld* praecipio ut decimas de hoc praeterito *Augusto*, quas non reddiderunt, plenarie reddant, sicut ecclesia eas juste habere debet, & sicut unquam eas melius habuit tempore patris mei sive meo, antequam eas dedissem *S. Petro*, & videant ne amplius inde clamorem audiam. Si quis inde injuriam fecerit archiepiscopo, tibi, *Osberte*, vicecomes, praecipio, ut plenariam restitutionem inde facias. Teste *Rogero* episcopo *Sarisburien* apud *Westmonasterium* in natali Domini. And another is there, in these words: *Henricus rex*

^a Charta *Simonis* comitis *North*, in thesaur. Cotton.
^z Append. ad concil. Lateran. part. 47. cap. 5.
^c Ms. in biblioth. Cottoniana

^x *J. Sarisbur.* epist. 21. 84. 92. 109. & 133.

^y Chart. antiq. EE. 1. in arce *Londo*.

^d In bibl. autoris.

^y Idem. epist. 109.

^b Chart. antiq. ib. S. 7. vide sup.

Anglorum Ansch. vicecomiti & omnibus praepositis & ministris suis de Driffeild, & de Pokenlinton, & de Killum, & de Piking, & de Burt, salutem. Volo & praecipio quod faciatis habere Hugoni decano & clericis suis bene & plenarie, omnes rectas decimas de dominiis meis in omnibus rebus per haec praedicta maneria mea, & de omnibus parochianis, qui ad ecclesias horum praedictorum maneriorum meorum pertinent. Similiter facite ei habere bene & plenarie & decimas & omnia jura praedictarum ecclesiarum in terris & capellis. Quia pro salute animae meae & omnium antecessorum meorum beato Petro eas concessi in elemosynam. Nolo autem quod pro recti penuria quicquam perdant quod juste habere debent. T. apud Eborum. And about 6 Hen. II. when Turstin Fitz-Simon usurped the tythes of Mercham, belonging to the abbey of Abingdon, one of the monks was sent over to the king into France, ut per ejus justitiam & autoritatem, as my^e author says, rectum suum ecclesiae suae restitueretur. Quod & ita factum est. Rediens enim frater qui missus fuerat, breve a rege transmissum in haec verba reportavit. Then the writ follows, directed from Tours to the sheriff of Berkshire. Henricus rex Angliae & dux Normanniae & Aquitaniae & comes Andegaviae, vicecomiti suo & ministris suis de Berchesira salutem. Si ecclesia de Abbendona habuit decimam de Mercham ad luminare ecclesiae tempore Henrici regis avi mei & anno & die quo fuit mortuus & vivus & post, & inde sit disseisita injuste & sine iudicio, tunc praecipio quod sine dilatione inde eam resaiatis; & ita bene & in pace & libere & juste tenere faciatis, sicut melius & liberius tenuit tempore Henrici regis avi mei. Et praecipio quod quando Turstinus filius Simonis redierit in Anglia, quod abbas Abbendonae plenum rectum habeat de terra quam praedictus Turstinus filius S. tenet de feudo abbatiae. Et si abbas poterit disrationare quod non defecerit de recto praedicto T. in curia sua, abbas inde ei in curia sua rectum teneat. T. magistro Joanne de Oxenford apud Turonem. The sheriff, by virtue of this writ, upon inquiry of the point of it in his county court, restored the abbey to the possession of those tythes. The words of the book are; Cum vero perfectum esset regis breve in pleno comitatu, & manifeste compertum totius comitatus testimonio; quoniam praefata decima ad luminare altaris S. Mariae pertineret, & quod eam Turstinus injuste tenebat, vicecomes ex parte regis illum disaiavit, & eam altari cui adiacebat restituit. What can be plainer, than that in those times (if these examples have credit, as indeed they cannot justly be impeached) the temporal courts held jurisdiction of tythes in point of right; and not only the spiritual; and to confirm it, we add also the authority of Johnⁿ of Salisbury,² that then lived. He, in an epistle to the bishop of Exeter, relating some of those positions of the common laws, or the avitae consuetudines

(as they called them) which Thomas archbishop of Canterbury, about 12 of Hen. II. so much withstood, mentions one to be, quod laici, sive rex, sive alius, causas de ecclesiis & decimis tractent, which well agrees with the authorities before cited. But this was utterly disallowed then by the pontifical laws, as, beside the authority of the common canons, may be seen in an epistle of Alexander III. to the^h bishop of Exeter, and the dean of Chichester, wherein it appears, that one William a clerk of Chichester, had appealed to the pope about tythes, the suit being betwixt him and the parson of Curket; and the parson had on the other side, appealed ad audientiam domini regis; whereupon says the pope, quoniam nemini liceat super rebus spiritualibus ad secularem judicem appellare, they should inquire of the matter, deprive the parson, and send him to Rome.

III. The frequency of such original suits for tythes, in the temporal courts (through the canons and the power of the pope increasing, and growing more dreadful to Henry II. and king John) became about their times to be, it seems, more out of use, and possessed rather by ecclesiastick jurisdiction. Nevertheless in the sundry ages since, the determination of the right and payment of tythes hath been subject to the temporal courts, by divers kinds of original proceeding, which for order's sake, may be all comprehended in these five. 1. By prohibitions touching the modus or customs of tything, or other matter concerning the king's¹ right, triable only in his own court, or the like. 2. By the writ of right of advowson of tythes, whereto you must annex the writ of indicavit, that is but a special prohibition making way for the writ of right of advowson. 3. By scire facias. 4. By bare process of command of payment. 5. By the actions upon the late statutes of 32 Hen. VIII. and 2 Ed. VI. For the first and last of these; because they are now both in common practice, and thence known enough in general to every man, I abstain purposely to speak more of them; saving only that for the first; out of the more ancient ages, I observe somewhat by the way, which may belong to the use of the present. In 21 Hen. III. when all the clergy of England, in the national synod held at London, under Otho the pope's legate, made supplication to have redress from the king, of some grievances,³ one was; Quod iudices seculares non decident causas ecclesiasticas in foro seculari, &c. & utrum dandae sint decimae de lapidinis, vel sylvestribus, vel herbagis, vel pasturis, vel de aliis decimis non consuetis; Which shews, that the temporal courts also in those elder times, determined what was tytheable or not, and so made prohibitions de non decimando, according to the processes in France upon their Phillipine, and in Spain upon the Caroline, and according to that note in the¹ register, and^m Fitzherbert, touching the justices determination of what is tytheable. Agreeing to this, is a case of

^c Codicis Abindonenensis ms. bibl. Cotton.cap. 26. ¹ Vide Fitzh. nat. br. fol. 40. n.¹ Fol. 54. b.^m N. B. fol. 53.^f L. quod.^e Epist. 159.² Anaal. Burton, monast. in bibl. v. cl. Tho. Allen Oxon. sub ann. 1237.^h App. ad concil. Lateran. part. 10.

8 Hen. III. ^o wherein a prohibition was granted against a parson that sued for the tythes of rent. But you shall have it as it is in the record. *Warwick. Magister Eustachius de Cestreton attachiatus fuit ad respondendum Hugoni de Lege, quare contra prohibitionem, &c. trahit eum in placitum in curiam christianitatis de laico feodo ipsius Hugonis in Cestreton; unde idem Hugo queritur quod ipse exigit ab eo in curia christianitatis de certa pecunia pro decimis molen-dinorum, & certum pratum, scilicet tres acras prati, & praeterea de wareto suo; & de terris incultis si illas locaverit ipse petit decimum denarium, &c. Et magister Eustachius venit & defendit contra eum & contra sectam suam, quod nunquam traxit eum in placitum de aliqua re certa, nisi tantum de decimis feni & molen-dinorum, sicut decimae inde dari debent, nec aliquam acram prati petit, nec denarios de molen-dinis, nec aliquid de wareto vel terra nisi tantum garbas; & ideo praeceptum est eidem Eustachio, quod de nullo placito de caetero sequatur in curia christianitatis, nec de aliquo laico feodo, nec de aliquo quod sit contra coronam domini regis.* But, to leave this, and to go to the 2d and 3d and 4th courses of proceeding for tythes in temporal courts, which are not so obviously known; For the 2d touching the writ of right of advowson of tythes, and the *indicavit*; It hath been clear ever since the statute of *Westminster 2 cap. 5.* and of *circumspecte agatis*, both made in 13 Ed. I. (this as well as the other long since being received into practice by the name of a statute, and so called in acts of parliament; although it were antiently reputed rather as an ordinance made ^o by the king and prelates) that if *A.* parson of *Sale*, for example sake, libel against *B.* parson of *Dale* in the spiritual court, for so much tythes and offerings, possessed by *B.* as amount to the fourth or a greater part of the value of the church of *Dale*, *B.* may have him prohibited by an *indicavit* directed to him and the spiritual judge, after which the patron of *A.* hath no other remedy for himself or his incumbent, what right soever they have, than to bring a writ of right in the common pleas, of the advowson of that fourth part, against the patron of *B.* in which writ, the right of those tythes must be tried by the common law. And herewith expressly agrees the statute of *articuli cleri*. And the reason is, because that if the determination of this plea should be allowed to the spiritual court, then might the patron's advowson of such a part be there lost by judgment according to the canons, whereas the right of advowson and patronage of churches, or tythes, only belongs, by our antient laws and at this day, to the secular court. Neither is the writ so much of the tythes as of the advowson of the tythes; *Præcipe A.* (so are the words) *quod reddat B. advocacionem decimarum ter-*

tiae vel quartae partis ecclesiae de C. &c. And however by the canon law the right of tythes be merely spiritual, and so not due to the rector so much by reason of his presentation from the patron, as of the common right challenged by the ministry (whereupon also ^p *Lindwood*, like a canonist, thinks it not prejudicial to the patron, which way soever the tythes alone be determined of, in regard that all the patron's interest is, he says, originally in the foundation, building, or endowing of the church with manse, glebe, or rent, and hath no relation to the tythes, which by common right are received without his dotation) yet by reason it seems both of our antient practised law of dotation of churches by arbitrary conveyances of tythes, at the owner's pleasure, in which doubtless, patrons very frequently ^q increased the revenues of foundations with the tythes of their demesnes; as also of that other antient use of investiture, wherein the very interest of all the glebe, tythes annexed, and other revenues, was transferred into the incumbent by the patron; it was thought fit that the advowson of the tythes alone should be equally reputed, for what concerned the patron, with any other part of the churches revenue. And the law hath been clear thus, and so still practised ^r since the statutes before cited; they permit not the spiritual court to hold plea of tythes of the value of the fourth part, where the patronage is questionable; but will have the advowson thereof tried always by the common law after the prohibition of *indicavit*, which (being purchased as well at the suit of the patron as of the parson) recites that the parson, defendant in the spiritual court, *tenet ^s medietatem* or *quartam partem omnium decimarum provenientium de, &c. de advocacione* of the patron, &c. And then, *quia manifestum est quod praedictus the patron jacturam advocacionis decimarum praedictarum incurreret si praedictus rector in causa illa*, that is, the parson plaintiff, *obteneret, vobis prohibemus ne placitum illud teneatis in curia christianitatis, donec discussum fuerit ad quem illorum pertinet earundem decimarum advocatio.* And then according as the right shall afterward be tried in the writ of right, the spiritual judge is to give ^t sentence. The same statutes allow, to the spiritual jurisdiction, cognizance of a fifth, and of all parts less than a fourth, of the value of the church in tythes controverted betwixt two parsons. And no *indicavit* ^u is grantable to forbid the suit of one of them, commenced for any less part, in respect of the patron's right only. Neither upon them, by consequence, hath any writ of right of any part of tythes that ^x appears not to be a fourth part of the churches value, been allowable. But, for this point; how the law was before those statutes of 13 Ed. I. is a great question in our year books, and divers are the opinions

ⁿ Placit. & inquisit. 8 Hen. III. in arce London.

& rot. parl. 25 Ed. III. artic. 62.

^p Confut. provin. tit. de foro competent. c. circumspecte verb. quarta pars.

^q 7 Ed. III. fol. 42. b. 8 Ed. III. fol. 50. a. regist. orig. fol. 29. b. 38 Ed. III. fol. 13.

^r 16 Ed. III. tit. Quare impedit 147. 38 Hen. VI. fol. 20. a. Fitzh. N. B. fol. 30. e. Seigerman. fol. 108.

^s 14. b. & Bract. lib. 5. tract. de exceptionibus cap. 4. fol. 403. a. & vide Fitzh. nat. br. fol. 45. d.

^t Artic. cleri, cap. 2.

^u 18 Ed. II. tit. brief. 825. & regist. orig. fol. 29. b. Vide Fitzh. nat. br. 45. d.

^x 31 Hen. VI. fol.

^y Westm. 2. cap. 5

touching it. Some ^y think that before the statute of *West. 2. cap. 5.* (out of which, joined with *circumspecte agatis*, they limit the *indicavit* to the fourth part) no writ of right of advowson of any tythes lay by the common law. Others guess that before that time, a prohibition or *indicavit* lay upon every suit in the spiritual court ^z for tythes, and that the patron might have had his writ of ^a right upon such prohibition against the suit of his incumbent, either of a fifth or sixth part, and that these statutes restrained him to the value of the fourth part at least. Others have herein other fancies. But, it is plain first, that long before those statutes, tythes were demandable, of the owner detaining them, of their own nature, and pleadable, in the spiritual court. And that affirmed in *Fleta*, was regularly before true. *Decimae* ^b in quantum decimae, in suits against the parishioners, debent in foro ecclesiastico intentari; wherewith *Bracton*, ^c living in the time of *Henry III.* also agrees. But it is as plain, that before those statutes, if the rectors of two churches of several avowries, had controverted the right or more of a fourth part, or of the value of either of their churches, in tythes, by suit commenced in the spiritual court, the patron of the rector defendant might have had an *indicavit*, to prohibit the prosecution and holding of the plea. *Bracton* teaches us that; and hath the form of the writ to the same purpose, and gives his reason, *quia posset patronus iacturam suae advocacionis incurrere*. But somewhat doubtfully he limits the quantity of the tythes to the sixth part at the least, beyond which denomination, the *indicavit*, he thinks, lay not for any part. His words are; *Si contentio fuerit inter rectores de aliquibus decimis quae aestimari possunt usque ad quartam, quintam, vel sextam partem advocacionis, ultra quam partem non extenditur prohibitio ut videtur, tunc fiat iudicium* (ecclesiasticis) *prohibitio in hac forma. Rex talibus iudicibus salutem. Indicavit mihi &c.* But he mentions no writ of right of advowson of tythes that should follow. He says indeed, that upon the *indicavit*, by consent only of the patrons, there may be an inquest taken (the jury being returned into court by *venire facias*, or *disstringas*, had by petition of them so consenting) *tanquam de advocacione*, to find *utrum talis praesentatus a tali patrono recenter fuerit in seissina de talibus decimis, tanquam spectantibus ad ecclesiam suam, quam tenet de praesentatione talis patroni sui, vel si talis alia persona inde fuit in seissina tali tempore, ut de decimis spectantibus ad ecclesiam suam talem, quam tenet de advocacione talis patroni sui*. But however *Bracton*'s own opinion, yet doubtfully, be, that the *indicavit* might be brought for the sixth part, and for no less, yet, it seems, the practice of the age was otherwise; and that no determination was in his time, nor before *13 Edw. I.* of any certainty therein; Which is expressly delivered in the

grievances comprehended in the national ^d council of London in *21 Hen. III.* where all the clergy intreated *Ordo* the pope's legate, that he would persuade the king to alter and correct certain proceedings, *quae fuerunt in regno Angliae in praedictum libertatis ecclesiasticae*; Among which, one is, *Item ne currat prohibitio* (you must understand the *indicavit*) *ne iudices ecclesiastici cognoscant de jure patronatus, quominus clerici possunt petere decimas, tanquam de jure communi, ad ecclesias suas pertinentes. Quia patroni ecclesiarum vel capellarum, quae decimas petitas possident, dicunt per talem petitionem jure patronatus sui derogari, & nolunt iusticiarii domini regis judicare quota pars decimarum peti possit vel debeat coram iudice ecclesiastico*. And another, *Item ne currat prohibitio domini regis, ne rector parochialis ecclesiae impetret eos qui percipiunt decimas infra limites parochiae suae*. By both which, compared with the ancient books, it appears, that the king's prohibition lay commonly, if the advowson of the tythes were between two persons questioned, and that also (for ought occurs to the contrary, except *Bracton*'s conjecture) if any part of the tythes or the advowson, which in such a suit were reputed as one, had been controverted. To these testimonies, may be added this, in the epistles of the most learned ^e *Robert Grossetest* bishop of *Lincoln* under *Henry III.* whereby the course of *indicavit* is proved, and also taxed for injustice against the liberty of the church. Thus it is spoken of among other grievances of the clergy. *Item in ecclesiae libertatem non mediocriter delinquitur, cum iudices ecclesiastici, ne causas, quas notum est pure esse ecclesiasticas, in foro discendant ecclesiastico, a domino rege prohibentur. Ut per literas regias inhibetur, ne iudex ecclesiasticus judicialiter cognoscat, utrum ecclesia vel capella talis loci sit capella matricis ecclesiae alicujus alterius loci, & utrum decimae talis terrae ad hanc vel ad illam pertineant ecclesiam, eo quod si actor in hujusmodi causa evincat possessionem ecclesiae rei, contingeret imminui ac per consequens, ut aiunt, jus patronatus ejusdem ecclesiae deteriorari, ecclesia, ad quam patronus praesentabat, effecta minus pingui. Accideret namque ratione consimili, omnem causam super possessionem, vel quasi possessionem ecclesiasticam, inter duos rectores duarum ecclesiarum diversorum patronatum emergentem, ne ventilaretur coram iudicibus ecclesiasticis a domino rege debere prohiberi; eo quod actore in hujusmodi causa evincente, contingeret semper ecclesiam rei imminui, ac per hoc, secundum quod dicunt, patronatum ejusdem deteriorari. Consequetur autem & sic quod hujusmodi causae ecclesiasticae nunquam discendantur. A seculari enim iudice discindi non poterunt, neque ab ecclesiastico iudice, obstante regia prohibitionem. Forte autem nec consequitur quod in hujusmodi casu, evincente actore, imminuetur patronatus alte-*

^y Moile 38 Hen. VI. 20. Fortesc. 31 Hen. VI. 14. a. Seingerm. fol. 108. & voyez 38 Ed. III. 19. a. 16 Ed. III. tit. Quare impedit. 147.
^z Markham 38 Hen. VI. fol. 20. a. & Parn. 4 Ed. III. fol. 27. b.
^a Fortesc. 38 Hen. VI. fol. 20. a. ^b Fleta, lib. 6. cap. 37.
^c Lib. 5. de exceptionibus, cap. 4. fol. 403. & cap. 10.
^d Annal. Burton. in biblioth. v. c. Thomas Allen, Oxon.
^e In epist. Rob. Linc. mss. in biblioth.

rius ecclesiae. Non enim minus est patronus, qui minoris ecclesiae est patronus, sed nec minus est pater qui minoris hominis est pater. Patronatus enim, seu jus patronatus non intenditur vel remittitur ex majoritate vel minoritate rei cuius est patronatus. Praeterea sed tubera, & ea quae contra naturam excrescunt in carne hominis, non augent ipsum hominem, & medicinalis abscissio innaturalium hujusmodi excrementorum ipsum hominem non imminuit, sed potius pulcrificat & sanat. Ita injustae possessiones, & quasi possessiones, ecclesias ipsas non augent sed deturpant, & earum abscissio per justum judicium non est ecclesiarum imminutio, sed potius pulcrificatio quaedam & sanatio; unde & patronatus, seu jus patronatus, per hujusmodi abscissionem nullo modo potest imminui vel deteriorari, sed multo amplius emendari. I faithfully relate it, and censure not the arguments. You may do that, reader, while you smile at the *magis* and *minus* in it. But also, although the *indicavit* prohibited the spiritual court, yet it seems the temporal, before the statute of *Westminster* 2. and after the time of *Henry* the second, or thereabouts, held no plea of right of advowson of tythes, except only upon inquest taken by consent of both patrons. Something, as you see, might be tried in it. May we not conclude then, that the same statute, in those words, *habeat patronus rectoris sic impediti breve ad petendum advocacionem decimarum petiturum*, was the first author (at least after the change about the time of *Henry* the second) of the writ of right of advowson of tythes? Which also is well justified by the pleading of the abbot of *Selby*'s case, within six years after the statute, wherein the parties (according to the fashion of argument in pleading of that time) agree, ¹ *Quod breve de quarta parte decimarum primo locum habere caepit a tempore statuti regis nunc apud Westmonasterium inde editi* &c. Neither rests any scruple, touching the fourth part, why the prohibition in the *indicavit* and the writ of right, should be of the fourth part only, or of a greater, although the statute of *Westminster* 2. speaks of no certain part. For that of *circumspecte agatis* ordains, That no prohibition or *indicavit* should lie, where the part controverted is less than a fourth, (it being before grantable upon such suit for a sixth part, by *Brañton*'s opinion; and it seems indeed, upon suit for any part) and the statute of *West.* 2. gives the writ of right only where the *indicavit* is first sued. And for this matter of *indicavit* (which concerns properly suit between rector and rector, not between the rector and the parishioner) take as a note, by the way, the advice of the bishops among themselves in 41 *Hen.* III. against the temporal courts. In the annals of *Burton* it is extant, and thus speaks. *Concilium archiepiscopi & omnium episcoporum super articulis propositis apud London. Petit persona ecclesiastica decimas coram iudice ecclesiastico. Judicanti & petenti porrigitur regia prohibitio nomine patroni ecclesiae cuius rector convenitur, ne super advocacione seu patronatu eccle-*

siae iudex ille cognoscat; si actor prosequatur & judicantis officium^s assumat, uterque attachiatur, & attachiati veniunt. Consilium tale est, quod si iusticiarii causam decimarum sub colore querelae advocacionis ecclesiarum ad se trahere velint, & de non prosequendo ulterius causam decimarum in foro ecclesiastico & iudice sine a parte securitatem exigunt, in nullo eis caveatur. Et si propter hoc aresentur, per loci diocesanum requirantur sive per episcopum proprium. Et si libere non tradantur ecclesiae, competenti monitione praemissa excommunicentur judicantes & detentores. Et si queratur a iudice quota pars vel quanta petatur, non respondeatur. But this advice of theirs was to little purpose, nor durst they, questionleis, have put it in execution. The statutes of *Westminster* 2. and *circumspecte agatis* gave them some remedy; whereof enough already.

IV. OF writs of *scire facias*, granted to call men to answer in the chancery for tythes, sufficient testimony is in the statute made for the clergy in 18 *Ed.* III. chap. 7. *Item que per la ou briefs* (so are the words) *de scire facias eient este grantez a garnir prelates, religieuses, & autres clerks a respondre des dismes en nostre chancellerie, & a monstre s'ils eient riens pur eux, ou sachent riens dire pur quoy tielx dismes a les demandants ne devient estre restituees, & a responder auxibien a nous come a la partie de tielx dismes* &c. By this it appears, that some use was to grant such writs for tythes. Whence also *Fitzherbert* well infers, that the right of tythes was determinable in the king's court. But we have not in our year-books any case of further declaration of that use before the statute. But out of good ground you may conjecture, that in these three special cases, writs of *scire facias* were grantable antiently for tythes, and that in those times, before the statute; either upon the title of the demandant, first found by inquest, to the tythes, or returned by the the sheriff; or out of fines, it seems, levied of tythes; or upon patents of tythes legally granted by the king, when, against the grant, any clergyman by the canon law took them from the patentee. Of all these, there is fair proof enough. But the third (it seems) hath principal reference to that statute, as shall anon be shewed. For the course of taking an inquest by commission, which being returned, might be sufficient ground for a *scire facias*; It appears in *escaet.* 8 *Ed.* I. numer. 67. that a commission was sent to *Adam* of *Everingham*, steward of the forest of *Shirewood*, to enquire by oath of the foresters and verderors, whether the priors of *Lenton* had used to have all tythes of the king's venison, taken in the county of *Nottingham*, which they claimed *per cartas quorundam praedecessorum* &c. And in the inquisition returned, it is found, that they had used to have it, and that first by the grant of ^h king *John*. And in the same bundle, num. 72. a commission is to *Nicholas* of *Stapleton*, commanding him to enquire, whether the prior of *Wyke* ought to have the

¹ Placit de banco Pasch. 19 Ed. I. rot. 45.

^s f. iudex.

^h Videfis rot. claus. 21 Hen. III. membran. 3.

tythes of all profits of the manor of *Gringeley*; *nobis super jure prioris in hac parte & facto contrario* (that is, the subtraction of them by *Henry de Alemannia*, against whom the prior complained) *certiorari volentibus &c.* Whereupon the commissioner returns, that the priory had right by prescription, and that *Henry de Alemannia* had subtracted them. What could be more proper, than to have a *scire facias* upon the inquisition, according to the intent of that preamble of 18 *Ed. III.* in which *scire facias*, the right might be tried between the parties, and so judgment be given? To these may be added, that in *inquis. ad quod damnum* 8 *Ed. II. num. 79.* Where, *per petitionem* ¹ *in consilio*, the abbess of *Godestow* hath a writ directed *custodi equitij sui de Woodstock &c.* which relates that, *ex parte dilectae nobis in Christo abbatissae de Godestow, per petitionem suam coram nobis in consilio nostro exhibitam, nobis est ostensum, quod cum per cartas* ² *progenitorum nostrorum quorundam regum Angliae concessum sit ei, quod ipsam decimam omnem in manerio nostro de Wodestoke, & parco nostro ibidem per annum renovantium percipiat & habeat, praetextu cujus* the abbess and her predecessors had enjoyed it; and that the bailiff kept from her the tythe of the coltsbred in the same park; wherefore it commands him to restore them if they be so due; Which supposes, I think, that he should return an inquest or some discovery of the truth or falshood of the plaintiff's pretence, although indeed this example may serve also for that part of our division of this kind of proceeding which touches patents. But to that writ is annexed the return, that is, the bailiff's acknowledgment in *French* of her right, his name is *William Beaumays*. So in *escaet.* 7 *Ed. III. num. 83* a commission is sent out to enquire of the right of the tythes of the demesnes of the king's castle of *Tikbull*, which the prior of *S. Oswold* claimed; the inquest was taken of it at *Le faure Okes*, in the confines of *Yorkshire* and *Nottingham*; and in it the particulars of the right are returned. And what should want, that upon such returns, writs of *scire facias* might not have been granted? We omit that before cited out of the parliament rolls of 18 *Ed. I.* And light also to this practice in the temporal courts of that elder time, may be had from other commissions or process in the rolls; As from that ¹ sent by *Henry III.* into *Ireland*, to the archbishop of *Cashel*, the bishop of *Ferne*, and the bishop of *Lismore*, commanding them, that, taking with them *Jeffrey de Marisco* then justice, or lord deputy, of *Ireland*, or some other whom he should appoint, they should inquire by the oaths of both lay and clergymen, whether *Bartholomew de Camera* parson of the chapel of *Limerick*, or *William of Caerdiff* treasurer there, had seisin of the tythes, *de piscaria & molendinis de Limerick, tempore Joannis regis patris nostri ante guerram motam inter ipsum & barones &c.* But it may be also, that these inquests or returns made of the title to tythes by the sheriff, were only

in case where the tythes increased out of the king's demesnes, or perhaps immediate tenancies. The examples seem not to go further, and in ^m 6 *Ed. I.* a petition was exhibited in parliament by one *Piers* a chaplain of the earl of *Savoy*, against the prior and convent of *Lewes*, for a tythe given him by the prior and convent in the parish of *Weston*, in the diocese of *Ely*, whereof another grant had been afterward made by them to one *Richard de Meuton*; and *Piers* beseeches the king to send his writ to the sheriff of *Cambridge*, to put him in possession; but this answer is indorsed. *Rex non intromittit se de hiis quae taliter spectant ad forum ecclesiasticum; sed prosequatur jus suum versus clericum qui tenet ecclesiam, coram ordinario.* Here was an express exclusion of the temporal jurisdiction in such a case, where an original writ or commission was demanded to settle or inquire of the right of tythes, that touched only common persons. But whenever through such means the title appeared upon record, I understand not why a *scire facias* might not as well be issuable (although I have not met with an express example of that kind) as in the last course, that is, upon the title appearing in patents of the king or his ancestors.

V. FOR that second ground of writs of *scire facias*, which we suppose to be fines, levied of tythes; Why was it not as likely that upon such fines levied, writs of *scire facias* should lie as upon any others of lands or rents? And that fines of the right of tythes were in the king's courts antiently levied, is manifest. Not as I remember upon writs of covenant, which yet may (for ought I know) at this day be brought, in the temporal court, for spiritual ⁿ tythes, in regard no tythes but damages are only to be recovered; but chiefly in writs of right of advowson. For example, *In fin. Trinit. 10 r. Johannis Wilt. apud Windlesore coram ipso rege, Simone de Patelhulle, Jacobo de Poterna, Henrico de Audemero justiciariis & aliis domini regis fidelibus tunc ibidem praesentibus.* Upon a writ of right of advowson brought by *Ascelina* abbess of *Wilton*, against *Henry of Abeney*, for the patronage of the chapel of the greater *Wicheford*; the concord is, that the abbess grants it to him in fee, saving a pension of two shillings yearly to the church of *Neweton*, being a prebend of *Wilton*. *Et pro hac recognitione & quieta clamazione & fine & concordia idem Henricus remisit & quietum clamavit de se, & haeredibus suis praedictae abbatissae & ecclesiae sanctae Edithae virginis in Wilton, & ejusdem loci conventui*, all his right in certain lands, & recognovit & concessit omnes decimas de *dominico suo in majori Wicheford, esse pertinentes ad praedictam ecclesiam de Neweton, quae est praebenda de Wilton, sicut eas habere solet, excepta decima bladi proveniente ex viginti acris terrae, quas persona praedictae capellae elegerit de dominico ipsius Henrici; quam decimam persona per Henricum praedictum, vel haeredes suos ad*

¹ Vide *fis rot. parl.* 8 *Ed. II. rot. 23.*

part. 2. memb. 3.

² Vide, si placet, *rot. claus.*

³ Hen. III. membr. 19.

⁴ 38 *Ed. III. fol. 8. & regist. orig. fol. 105.*

⁵ Pat. 9 Hen. III.

praedictam

praediſtam capellam de Wichefeld praefentata, & admiſſa per viſum perſonae quae praediſtam praebendam de Neweton habuit, vel per viſum ballivi ejus debet recipere in autumno, ſicut ab antiquo recipere conſuevit. The record is worthy of ſpecial obſervation. And in the ledger-book of the priory of Merton in Surrey, a fine is of *Pafch. 12 r. Job.* before the king and the ſame juſtices, between *William de Cantelupo* defendant, and *Walter* prior of Merton, upon the right of advowſon of the church of *Eyton*, wherein it is agreed, that the chaplain of the demandants in *Eyton*, ſhall not take a *parochianis ejusdem eccleſiae nec in decimis, nec in oblationibus, nec in confeſſionibus &c.* but leave them all to the pariſh church of *Eyton*. And in this, we may, as in the other, note the pretended intereſt of the patron, in diſpoſition of any of the revenues of the church; which antiently claimed, while inveſtitures continued, was not as yet omitted in theſe legal proceedings or inſtruments, that is, fines; which are of greateſt curioſity. And according hereto is a fine of 7 *Rich. I.* levied between the prior of *Stanes* and *Alice Hop-ton*, of the advowſon of the church of *Chek-legh* in *Staffordſhire*, where *Alice*, as patroness, grants to the priory, among other things, *omnes decimas villae de Northmankote in perpetuum quae eſt de eadem parochia*, that is of *Chek-legh*. And in the ° chartulary of *Giſburne* in a fine of 23 *Hen. III.* between *Peter de Bruis* plaintiff, and *John* prior of *Giſburne* (in the province of *Tork*) defendant, *in droit d'avowſon*, *Peter* grants, *ut juſ ſuum, omnes decimas ſuperſcriptas quas &c.* The like alſo doth he in a fine of 26 *Hen. III.* there tranſcribed; and in 30 *Hen. III.* alſo, of which more particular mention is before made.

VI. BUT for writs of *ſcire facias* brought upon the third ground, that is, in caſe where the title appears upon record in patents made of the tythes from the king or his predeceſſors; take this ſpecial example of 17 *Ed. III.* A writ was directed to the ſheriff of *Effex*, relating that *Maud*, quondam regina Angliae, granted to the dean and canons of the king's free chapel of *S. Martin's* in *London*, the churches of *Witteham* and *Cherſinges*, cum capellis & decimis &c. and that they were thereof, and of the tythes of *Witteham* and *Cherſinges*, ſeized till 16 *Ed. II.* and that ſince the abbot of *Saint John's* of *Colcheſter* took from them two parts of the tythes &c.

Et quia nos omnia & ſingula jura liberae capellae noſtrae ſupradictae manutenere volumus & tenemur, & ea quae ſubſtracta fuerint ſive injuſte occupata revocare, tibi praecipimus quod ſcire facias nunc abbati, quod ſit in cancellaria noſtra in quindenam S. Johannis Baptiſtae prox. futur. ubicunque tunc fuerit, ad reſpondendum tam nobis quam praefatis decano & capitulo, de uſurpationibus, occupatione, & detentione, dictarum duarum partium decimarum praediſtarum, & ad oſtendendum ſi quid pro ſe habeat, vel

dicere ſciat, quare dictae duae partes decimarum earundem eiſdem decano & capitulo adjudicari non debeant, & ad faciendum & ad recipiendum ulterius quod curia noſtra conſideravit &c. Teſte &c. apud Weſtmonaſt. 17 Junii anno regni noſtri 17. Per Regem & conſilium.

This writ was returned with *ſcire feci* by *H. Gernet* ſheriff of *Effex*, and by conſent of the parties it is referred to *Michaelmas* term following in ſtatu quo nunc. The writ is both in part 1. and 3. of that year, but to that in part 3. which is of *Trinity* term, a plea of the abbot's is annexed in theſe words.

Et praediſtus abbas per atturnatum ſuum dicit, quod praediſti decanus & capitulum per breve ſuum non ſupponunt, quod eccleſiae de *Witteham* & *Cherſinges* ſunt de fundatione dictae liberae capellae domini regis, ſed quod illas eccleſias tenent de dono *Matildae* quondam reginae Angliae poſt fundationem dictae liberae capellae; & dicit, quod tempore doni, praediſtae eccleſiae fuerunt in juriſdictione ordinaria, videlicet episcopi *Lond.* & continue poſt donum hucusque fuerunt, & adhuc ſunt, in praefenti in juriſdictione ordinaria. Et dicit, quod praediſtae eccleſiae fuerunt viſitabiles & viſitatae per episcopos *Lond.* in viſitationibus ſuis, a tempore a quo memoria non extat; Et praediſti decanus & capitulum per breve ſuum petunt decimas, quas ſupponunt eſſe parcelлам earum eccleſiarum, quae ſunt in juriſdictione ordinaria, in forma praediſta, & ſic decimae illae ſunt mere ſpiritualia & non placitabilia niſi in curia chriſtianitatis; per quod non intendit quod curia iſta in hoc caſu cognitionem habere debeat.

Here it appears, that the counſel of the abbot of *Colcheſter* defendant, ſuppoſed that the cognizance of the tythes was ſpiritual only, unleſs they were originally part of the king's free chapel. How the caſe was determined, appears not: But in the next parliament following, was a petition exhibited by the clergy in thoſe words before cited §. IV. complaining of the granting of ſuch writs of *ſcire facias*, and upon that petition the king answered, *Que tielx breifs deſore navant ne ſoient grantes, & que les proces pendant ſur tielx breifs ſoient anentes, & que les parties ſoient diſmiſſes devant ſecular judges de tielx manner de ples, ſalve a nous noſtre droit tiel come nous & noſtre anceſtors avoient ewe & ſoloient aver de reſon.* I think we need not doubt, but that this very caſe of the abbot of *Colcheſter* was no ſmall cauſe of that petition of the clergy, and you fee mention is, in the answer, of ſome writs hanging, whereof this is moſt likely to have been one. But however the petition was answered, and although out of this petition and answer that act of 18 *Ed. III.* hath been received among our ſtatutes, and commonly goes for one, yet might it deſerve further conſideration than I will here ſeem to take of it. Only I admoniſh, that within four years after, a *ſcire facias* was brought by a patentee of tythes in the foreſt of *Inglewood*, and that againſt a prior being pernor of them; and by

° In bibl. Cotton.

P Faſcicul. brev. de 17 *Ed. III.* part. 1. & 3. in arce London.

P 22 Aſſiſ. pl. 75.

judgment the writ was allowed without mention or the least regard had of that act. Why that was so, or what force the act hath, let others examine; I purposely abstain.

VII. BUT for process of bare command. of payment of tythes, or the like; When the title was by patent clearly supposed true, the sheriff, or other officer, was sometimes commanded by writ to take order that the demandant might enjoy his tythes. As in *claus. 7 Hen. III. part. 1. membran. 6.* the king directs his writ to *Brian de Insula* keeper of the forest of *Shirewood*; telling him, that *pro salute animae domini Joannis regis patris nostri concessimus monachis de Basingwerce, quod percipiant hac vice usque ad festum S. Michaelis anno regni nostri VII. decimas de bladis seminatis in defenso nostro inter Blakebroc & Glossop, & ideo vobis mandamus quod ipsos monachos hac vice sine impedimento permittatis decimas praedictas percipere. T. Sc.* And such more sometimes occur. But this, and the most of that age that are of this matter, indeed appear to have been of tythes in a forest also, as that of 22 *Ed. III.* is in the book of *assises*, (which happened after the statute of 18 *Ed. III.*) and you may remember those before cited out of 6 *Ed. I.* and 18 *Ed. I.* in chapter XI. §. III. and the example of 8 *Ed. II.* before remembered touching *Woodstock* park. So in *rot. claus. 5 Hen. III. part. 2. membr. 14.* the bishop of *Salisbury* hath his fifty shillings yearly *nomine decimae*, out of *New-Forest*, (which ¹ *Henry* the second had granted to his church by the name of *omnes decimae de Nova Foresta Sc.*) and other like out of other, paid him by writ to the sheriff; And in *rot. pat. 11 Hen. III. memb. 5. part. 1.* *Eustace* bishop of *London* hath the tythe of the king's venison, taken in the forest of *Essex*, (according to king ¹ *John's* grant) by writ directed to the foresters and bailiffs of that county. Neither would they, it seems, in that age permit any suit for the tenths of venison or beasts of the forest in the spiritual court, although those tenths were most commonly settled in one church or another by grant; As may be seen in ¹ *Mich. 9 & 10 Hen. III. rot. 15.* where *John Fitz-Robert*, in an attachment upon a prohibition against *Philip* of *Ardern* clerk, in the pleading allows, that for tythe of hay and mills, the prosecution in the spiritual court was lawful; but he further says, that *de decima bestia forestae eum implacitavit contra prohibitionem Sc.* And herewith may be considered also the king's ^u command, sent to the constable of *Windsor* castle, that the church of *S. John* in *Windsor* should have *decimas gardini regis de Windleshores*. But out of

these all (as out of the examples before brought of commissions to be returned) it may perhaps be collected, that only the tythes of the king's lands, or belonging to his churches, were to be ordered or commanded to be paid by these kind of processes. I confess I have not seen enough to persuade me otherwise, for the time after about king *John*, or his near predecessors. Yet, that as I leave the judgment of all, which historically I relate, to the able reader, so I may not defraud him of what in any kind may give light; here I offer him also this writ of 24 *Hen. III.* that seems to touch the temporal courts determination of the right of such tythes, as for ought appears, belonged neither to the king's churches, nor were increasing in his demesnes or immediate tenancies. *Henricus Dei gratia rex * Angliae & vicecomiti Hertford. salutem. Licet alias tibi significaverimus quod non permitteres ecclesiam de Hame-lmstede spoliari decimis ad ipsam pertinentibus, & quod ecclesiam ipsam manuteneres, & defenderes in eo statu in quo fuit tempore Sylvij quondam rectoris ejusdem ecclesiae, non tamen fuit intentionis nostrae quod occasione illius praecepti aliqua alia ecclesia decimis suis spoliaretur. Et ideo praecipimus quod occasione illius praecepti nullam violentiam inferas vel inferri permittas monachis S. Albani super decimis spectantibus ad ecclesiam suam de Redburne, quas per xx annos hactenus pacifice possiderunt. T. meipso apud Westm. 1. die Septembris an. r. n. xxiv.* And in like form was a writ sent to the constable of *Berkhamsted*. But this kind of process, and all other such writs of *scire facias*, either upon commissions returned, fines, or patents, or otherwise, for ought I could yet learn, have long since ceased, by reason especially of that received act of 18 *Ed. III.* Neither since that one case of 22 *Ed. III.* as *Iguess*, hath any use been of an original suit for tythes in the temporal courts, saving only upon prohibitions and the statutes of 32 *Hen. VIII.* & 2 *Ed. VI.* I say, original suit, for otherwise, the question of the right of tythes, incident in an issue at the king's ^v suit, hath since been triable in the temporal court; and between ² common persons also; especially if the right of tythes, upon the issue, were but indirectly or inclusively in question. And although it were directly the very issue, yet also it hath sometimes been tried in an action of trespass in the king's bench, as you may see in *Mich. 12 Ed. II. rot. 66.* between *Philip de Say* parson of *Hodenet* in *Shropshire*, and *Geffrey* of *Wolsele* parson of *Chedleton*, for tythes in *Marchumle*. But of these things hitherto; and enough.

² Cart. antiq. CC. in dorf. 10. in arce Lond.

^u Pat. 16 Hen. III. membr. 7.

& 22 Ed. IV. fol. 24. a.

² In codice abbat. S. Albani ms.

¹ Rot. chart. 6. r. Joh. membr. 12. ch. 107.

² 38 Affis. pl. 20.

^{*} In arce Londini.

² Vide 50 Ed. III. fol. 29.

A

R E V I E W.

After some few copies, thus half printed and half written, were dispersed; and since the various censure of unequal readers, (some of them cavilling at such passages in it, as the author at first thought, and not without cause, had been enough cleared) this short Review is now added; wherein, beside some other confirming and declaring authorities, by the way also, and opportunely enough, occur some admonitions briefly offered, that may somewhat direct in the use of this historical truth. The printed sheets could not be increased, or altered. Neither was it so fit, after many hands had the whole, that additions inserted, should make any variance from the written part. And plainly, that of the admonitions, for direction in the use, of its own nature rather required a several place, than was fit to have been mixed in the body of the history. In the name therefore of goodness and learning, I earnestly beseech every one, that hereafter shall get it either copied or printed, to join also, if he may, this Review with it.

Of the I. chapter.

IN the I. §. touching that of *Abraham's* tythes being of the spoils of war only; I know many think otherwise. And beside the general name of *tythes of all*, reasons are drawn for their side out of those words of the patriarch to the king of Sodom; *I will not take of all that is thine, so much as a thread, &c.* I neither profess to dispute it, nor find I any such consequent out of that text. And the ^a answer to the objection is not difficult. But I add here to those testimonies, both of *Jews* and antient fathers which I have cited (for I was willing to make their testimonies my warrant, not to gloss the text with my own interpretation, or with the fancies of petty names) that *S. Ambrose* and *Eucherius* bishop of *Lyons* call those tythes also, ^b *decimas praedae & victoriae*. And in one passage, *Eucherius* having a plain regard to the epistle to the *Hebrews*, which in the vulgar are expressed by *decimas de praecipuis* (for the *Greek* δεκάτης ἐκ τῶν ἀποβίων) says, *de praecipuis praedis Abraham patriarcha decimas legitur obtulisse*, directing himself still in the conceit of the word *all* in *Genesis*, according to that ἀποβίων in the holy epistle, which both in translations enough, and in the *Greek* ^c proverb before remembered, denotes spoils of war. Yet

also the same father soon after calls them *decimas omnis substantiae suae* generally; but plainly shewing in his former words, that he took *omnis substantiae* here for nothing but *victoriae praedam*. Which, it seems, *Philo* the Jew also understands, where in his anagogical course of contemplation, he says, that *Abraham* being the tenth degree from *Sem*, ^d τῷ Θεῷ τὰς δεκάτας χαριστήρια τῆς νίκης ἀνατίθει, that is, *consecrated tenths to the almighty, as a thanksgiving for his victory*. And *Primasius*, an old *African* bishop, interprets *de praecipuis*, in the *Latin* text, by *de melioribus spoliis*. But some have cavilled at my relating, according to *S. Jerom*, that were it not for the holy authority of the epistle to the *Hebrews*, it might stand indifferent whether *Abraham* gave tythes of the spoils to *Melchisedech* as to a priest, or *Melchisedech* the tenth of his estate to *Abraham*, as a portion to one of his posterity. If there be a fault in that assertion (I confess I find none) let them be so bold then as to tax those learned fathers for it, *S. Jerom* and ^e *Eucherius*, beside *Freculphus* ^f bishop of *Lisieux*, and other antient writers, that in the same syllables affirm it with *S. Jerom*, from whom indeed *Eucherius* transcribed the best part of his more notable passages. Some-

^a Vide Fran. Junium in analysi Genes. cap. 14.

epist. ad Hebraeos, cap. 7.

ἐπὶ τῆς εἰς τὴν προαιδευμένης συνόδου.

^b Consulat Eucherium Ludg. in Genes. lib. 2. cap. 17. & 18. & D. Ambros. in

Ad ejus interpretationem etiam consule, si placet, Eustathium ad Odys. 7.

^c Lib. 2. in Genes. cap. 25. & 27.

^f Tom. 1. hist. lib. 1. cap. 42.

^d In lib.

what may be here fitly remembered concerning two adjuncts that belong to this story of *Abraham's* thing, that is, who *Melchisedech* was; and where the place of his kingdom, or *Salem*, was. For the first; Such of the fathers⁵ as out of the *Hebrew* text had the true notes of supputation of time, take him to be *Sem*, according as the opinion also was generally received among the old^h *Samaritan Hebrews*, and divers *Jews*ⁱ also, especially of later ages; However some *Jews* have been long since of another opinion, in their idle and rash fancies, supposing him to be a bastard, which they took to be the cause why his descent is not spoken of with his name. Others of them, with the *Hieracites*, making him^k more than a man. But also both the *Hierosolymitan Targum*, and that other called *Ben-Uziel's*, expressly tell us, he was *Sem* the son of *Noah*; which some of late time also have in works purposely written to that end, laboured to make manifest. And doubtless, at the time of the victory, *Sem* was the chiefest of the family there, and either a first born also, or else had in him the right of a first born, or priesthood, by translation from his elder brother; which I add, because the^l rabbins and divers others of the learned will have it, that *Japhet* was the elder brother. But how that stands so well with *Melchisedech* his being *Sem*, if according to that old tradition, both among rabbins and christians, the priesthood were an incident to the first born male? Unless the right of primogeniture were transferred from *Japhet* to *Sem* in *Noah's*^m blessing, as it was to *Jacob* from *Esau*, and from *Cain*, it seems, toⁿ *Abel*; which must be thought on also in the taking their side, who suppose *Abraham* not to be the eldest of *Terah's* sons. For regularly the antients give the priesthood, before the law, to the first born. And whereas *Moses* is said to have^o sent young men that offered burnt offerings, the *Chaldee* paraphrases have for נערי את-נערי, i. e. *young men*: ית-בוכרי *jath-bocri*, i. e. *of the first-born*; These *S. Chrysostom*^p elegantly styles ἑαυτοῦ ἀποχρηστούμενοι, that is, *priests of themselves*, or, *made without other ordination or suffrages*. To which office also (thus had either by birth, or blessing, that equalled the birth) a kind of^q imperial and patriarchick dignity was annexed. That precedence of birth given to *Japhet*, is of no late invention; but many hundred years antienter than the *Talmud*, or any work extant of any rabbin. For the *septuagint* expressly^r affirm it, ὅτι τὸ Σημ ἐγεννήθη καὶ αὐτὸς πατριάρχων τῶν τῶν ἑβραίων Ἐβερ ἀδελφὸς τῷ Ἰαφὲθ τῷ μέγιστος, that is, *and sons were born to Sem, being father of all the sons of Eber, and brother of Japhet, being the elder*: which in the *Hebrew* is not so plain on either side, for the words being אחי יפת *achi japhet bagadol*, by rea-

son of the want of terminations of cases, may be alone as well turned *elder brother of Japhet, as brother of Japhet being the elder*; which in the last *English* translation is brought nearest to the original, thus: *Unto Shem, &c. the brother of Japhet the elder, even to him were children born*. And beside such interpretation of the context, the chronological part of the holy story affords much to prove, that *Sem* was not the first born in time. For *Noah* was^s *d* years old, and got *Sem*, *Ham*, and *Japhet*. *Sem*^t *two* years after the flood, being *c* years old, got *Arphaxad*, that is, (as is most probable, if not plain) in the *D.C.II.* year of^u *Noah*, *Sem's* age was only *c* years. Then at *Sem's* birth, *Noah* was *D.II.* years old. Whoever therefore was born when he was but *D* years of age, must be *CU* years old, when *Sem* had seen only one *c* years. If any of them were born in *Noah's* *D* years, as the text seems to teach, it must then be one of the other two, and not *Sem*. This argument, used by the *Jews* and others which follow them here, joined with what is in the *septuagint* for *Japhet*, makes so much against *Sem's* being the first born, that however the great *Joseph Scaliger* be^x most confident, that he was first in birth, as his name is expressed in enumeration, and gives his answers to the chronology objected against it; yet you may with more probability take the more common and antient opinion, that makes *Japhet* the elder. Some will have *Ham*. But I leave that matter; supposing clearly that *Sem* being *Melchisedech*, (for that one man should be denoted by several names, is no novelty in scripture) was either the first born or had the right of it transferred into him by special blessing, and so was ὁ μέγας ἀρχιερεὺς τῷ μεγίστῳ Θεῷ, as *Philo*^y calls him, that is, *the great high-priest of the greatest God*. For the place of his kingdom, *Salem*; It is taken by^z *S. Jerom* (as he learned from some *Jews*) and from him by^a *S. Ambrose*, *Eucherius*, *Primasius*, and others, that this *Salem* is that which seated on this side of *Jordan*, is some *LXXX.* miles distant from the plain of *Mamre* where *Abraham* lived, and retains its name in the story^b of *John's* baptism. And they say that the relicks of *Melchisedech's* palace were there to be then seen. But the more common opinion of christians in *S. Jerom's* time, was as now also of greatest divines, that *Salem* here and *Jerusalem* were the same. *Salem nostri omnes*, saith he and others of that age that follow him, *arbitrantur esse Jerusalem*; but himself was not of that mind, having, as he saith, learned the contrary. But also, with those old christians, *Josephus* and some later^c *Jews* expressly agree; and a good character of the truth of their opinion is in the holy text. For, there the *king's dale*, whence the king of *Sodom* came out to meet

⁵ Hieronym. tom. 4. in epist. ad Evagr. & Eucher. loco citato &c.
^h Midras Hagadah apud rab. Jarchi in Genes. 14. & alii ibid. item Midras in psalm. 76. apud Galatin de Arcanis, lib. 3. c. 9. quem & vide lib. 10. cap. 6.
^k D. Ambr. lib. 3. de fide cap. 5. Hieronym. & Epiphani. ubi supr. & haeres. 67.
^l rabbinorum sententiam notat D. Kimchi in rad. ית-בוכרי ita & Jarchi ad Genes. 10. 21.
^m Vide Philonem τῶν ἑβραίων Ἐβερ ἀδελφὸς τῷ Ἰαφὲθ τῷ μέγιστος.
ⁿ In Gen. 25. 26. videbis Eucherium in Genes. lib. 2. c. 25. & 27.
^o Exod. cap. 24. comm. 5. & vide Numer. cap. 3. comm. 12.
^p In Gen. 25. 26. videbis Eucherium in Genes. lib. 2. c. 25. & 27.
^q Ibid. xi. 10.
^r Vide ibid. c. vii. 6.
^s In lib. τῶν Ἀρκανίων.
^t Epist. ad Evagr. tom. 4.
^u In epist. ad Heb. cap. vii. 2.
^x In Elench. orat. chronolog. Dav. Paracleti.
^y Johan.
^z Vide Midras Tehillim, apud Galatin. de Arcanis, lib. 3. cap. 9.
^a Au torum.
^b quem & vide lib. 10. cap. 6.
^c Eam esse arbitrantur esse Jerusalem.

Abraham, in his return is ^d remembered, as if it were close by where *Melchisedech* was. Now it is thought certainly that the place of *Abraham's* pillar, that is, the king's dale spoken of in ^e *Samuel*, is no other then a valley, which being hard by *Jerusalem*, is known to our age from *Abraham's* name; Where yet, they ^f say, he hath a monument, and such as pass by, use to cast stones at it in detestation of his disobedience; And also the very place where *Melchisedech* gave *Abraham* the bread and wine, is, they say, yet known on mount ^g *Calvary*. But hitherto briefly of these two adjuncts of *Abraham's* tything: Neither supposed I, but that many which think of it for argument either way, would desire some satisfaction in them.

Of the II. chapter.

Hitherto could I never see any christian that hath fully taught what was considerable in the general payment of tythes among the *Jews*. The noble and most learned *Jos. Scaliger*, did not every way enough accurately teach it, although in a single treatise he purposely undertook it. How sufficiently among us, others do, that slothfully and ignorantly (without his help) while yet their end is to write of tythes, talk of a *third tythe* here, and a fourth tythe, and indeed they know not what tythe, let him judge that shall hence know their error. This last spring mart in the title page of *Drusus's* observations upon *Joshua*, and some other parts of the old testament, a new discourse, *De decimis Mosaicis*, written by *Sixtinus ab Amama*, professor of *Hebrew* in *Franker*, was promised; but I could never yet see any such thing joined with that of *Drusus*, or otherwise published. What we have of them is, as the great doctors of the *Jews* have delivered in the *Talmud*, and their later comments; which are testimonies beyond exception, for the practice or historical part. For that in §. VI. of ἀποδείκνυν τὸ δεκάτωσον, out of *Epiphanius*; I rather think indeed, that it denotes only a paying of tythe, not a tything of what was already tythed. It is well known that the language of the *Greek* fathers, especially of about his time, is frequently mixed with phrases of the *septuagint*. Now they ^h have ἀποδεχάμεν τὸ ἐπὶ δεκάτῳ &c δεκάτωσον, for nothing but to pay a tythe, which agrees somewhat with the *Hebrew* fashion of expression. And as they, so *Epiphanius* without doubt understood it; however some of great names are of another mind. But to what is there touched for the forwardness of payment of first fruits among them, I here add out of ⁱ *Philo* (who lived under the time of the second temple, and spake of his own knowledge) that they were paid in such abundance, ὥς καὶ τὸ ἀπορώτατον τὸ ἱερὸν ἐνεκα περισίας τροφῶν ἐυπορώτατον δοκεῖν εἶναι, that is, that even from the abundance only of first fruits, heavenly offerings, or *therumabs*, which were paid by the

owner immediately to the priests, there was not a priest in the twenty four courses of them (so the priests or posterity of *Eleazar* and *Ithamar* were divided ^k by king *David*) but might be accounted a very rich or largely furnished man. And he tells us further, that the *Jews* were so ready in paying them, that τὰς ἀντάνας θηανούτες, τοὺς προθεσμίας ἐπιτέμνοντες, λαμβάνειν ἀλλ' ἢ διδόναι νομίζοντες, μετ' εὐφημίας καὶ εὐχαριστίας καθ' ἑκάστου τῶν ἐπιποίων ὁρῶν ποιεῖναι τὰς ἐσφορὰς ἄνδρες ὁμῶς καὶ γυναῖκες, αὐτοκελεύσας προθυμίας καὶ σπεύς ἢ πάντος λόγου κρείττον, that is, they prevented the officers demanding them, paid them before they were due by law, and as if they had rather taken a benefit then given any, both sexes of their own most forward readiness, in every first fruit season, brought them in with such courtesy and thanksgiving as is beyond all expression. All which is spoken only of first fruits and *therumabs*, not of tythes, as it is falsely in the *Latin* translation; where ἀπαρχισθαῖ alone is ignorantly understood for tythes paid by the laity to the priests; the truth being, that the laity paid only first fruits, not tythes, immediately to the priests, but only to the *Levites*, that is, those which were, as *Philo* says, ἐν δευτέρᾳ τάξει, that is, in the second rank, and νεώκοποι, or as wardens, ushers, fingers, and other such ministers. And the *Levites* paid the tythe of their tythe to their priests, who so through the *Levites* received tythes out of the possessions of the laity; as also the holy author to the *Hebrews* is interpreted, where he says, That those of the sons of *Levi* that had received the priesthood, had a commandment to take tythes of the people according to the law. For the posterity of *Aaron* that had the priesthood, received none from the people, but immediately and through the *Levites*. In the same holy epistle, their continuance of payment of tythes (which as long as their priesthood *de facto*, and the politick form of government, instituted by the Almighty, continued, was even *ex conscientia* to be performed, as some ^l teach) is also manifested after *Philo's* time. The *Jews* are told in it, that here men that die receive tythes, but there be of whom it is witnessed that he liveth. That here, being plainly referred to the use of the *Jews* (to whom the epistle was sent) under the second temple. So *Primasius*, an old *African* father, interprets it. *Hic inquit*, saith he, *hoc est in praesenti seculo, vel in templo quod adhuc stabat, morientes homines, filii videlicet Levi, qui mortales ac moribundi sunt, decimas accipiunt*. But about this time also, it appears in story, that tythes were still paid by the *Levites* to the priests, which supposes the people's payment to the *Levites*. Remember that of *Fl. Josephus* ^m where he tells, that when *Foelix* was lieutenant of *Judea*, such a tumult and sedition happened betwixt the high priests (ἀρχιερεῖς) and the rest of the priests, and the chiefest of the laity; that the high priests to satisfy their malice upon the rest of the priests, violently took away the

^d Genes. xiv. 17.

liv. 2. chap. 12. &c 19.

^e 2 Sam. xviii. 18.

^f Genes. xxviii. ult. Deut. xxvi. 12.

^g Bredembach, in peregr. 14. Julii.

^h Lib. στρεῖ τὸ τίνα γέρεα ἱερῶν.

ⁱ Villamont des voyages

^k 1 Paralip. 24. 4.

^l Videtis Suarez de legibus, lib. 9. cap. 19. §. 16.

^m Archaeolog. lib. 20. cap. 6.

tythes that were kept in granges and barns for their maintenance, and in so much wronged them, that some of the poorest of them even died for want. This was about the beginning of Nero; and ⁿ Eusebius and ^o Nicephorus relating it from Josephus, refer it to him; although Rufinus, in his translation of Eusebius, rather places it under Claudius. But under both, Foelix was lieutenant. By the way, you may note that in Nero's time, divers of the priests were grown much poorer than they had been lately before, if Philo be to be credited, who lived also but little before Nero's empire. It was very hard with some of them, it seems, that the taking away their tythes only should starve them. Those high priests here spoken of, are such as were the chiefest of the xxiv orders; for ^p so also were the priests divided. There was never but one high priest properly, and that according to the first institution. But others that had a supremacy among those orders, were also called so, as both here, and in ^q holy writ: and they were, to the high priest, as the *συνεργοι* ^r in the eastern patriarchats, which are as suffragans to exercise the patriarch's office in his absence; or as the bishop-cardinals in Rome. And the first and chiefest of these high priests in the plural number, was as a designed successor to him that properly bare that name, and was his prime vicar, chief suffragan, or the second priest, as ^s Zephaniah was to Seraiah, and as Annas to Caiphas. For so the most learned understand that of them two, being high priests together in the gospel. But this by the way. Yet who knows it not, may soon stumble at the story; and, if not admonished, trouble himself with as good a disquisition about it, as that abbot ^t Paschasius long since fell into about what follows out of St. Matthew, in the seventh section, where the strict payment of tythes used among the Scribes and Pharisees is spoken of. He being too ignorant of the particulars of the Jewish state, doubted much how the Scribes and Pharisees should so pay their tythes, *cum ipsi* (as his words are) *sacerdotes erant & Levitae qui magis accipiebant decimas a populo quam darent*. But I wonder what made him so much as dream so; indeed he answers himself also. But plainly the Scribes and Pharisees, as known by that name only, had no more reference to the tribe of Levi, than to any other of the twelve. Children in the holy text, or the Jewish story, know it.

That general rule of their lawyers in the same section, taken out of *rabbi Ben-Maimon*, is first in their ^u *talmud*, where also the *gemara*, that is, the following opinions of their doctors, hath many especial cases of this or that fruit or increase of the earth; but often little to the purpose. One thing their *misnah*, or text, adds further to that rule; that is, whatsoever fruit or herb is fit to be eaten, both while it is young or new, as also when it is at full growth, must pay tythe

as well when it is young, as at full growth: but if while it be young, it be not fit to be eaten, *אין חיוב עד שיעשה אוכל* that is, *it is not subject to tythe until it be come fit to be eaten*. That in sect. VIII. of them that take the profits of land among the Samaritans, or in Aram, that is, Syria, must be understood of a Jew dwelling among them, and tilling the land there. For regularly if the fruits of lands in Syria were taken by a Jew, residing still in own country, he was to pay ^x tythe of them.

Touching their tything after the second temple destroyed; Although for want of a temple and a priesthood at this day, they tythe not legally, yet among their aphorisms both divine and moral, they ^y tell us, that as the *masoreth* is the defence of the law, so *לעשר מן העשרות* *maigh-sheereth seag laigsher*, that is, *tythes paid are the defence of riches*. Whereupon one notes, that at this day, *qui religiosiores sunt inter Judaeos, loco decimarum, eleemosynam pendunt de omnibus lucris; decem aureos de centum, centum de mille &c.* But however the devouter of them may give such alms, it is plain that their legal tything hath now no place among them, for want of a sufficient priesthood and temple or tabernacle. Yet, without doubt, most of them have long since expected a ^z third temple; otherwise why were they so careful to have their laws and especial cases of first fruits and tything, so copiously delivered in five whole *massacheths* of their *talmud*, or body of their civil and canon law, which was, many years after the destruction of the second temple, made for the direction of the dispersed of their nation?

Now, methinks, he that argues for tythes, from the *Mosaical* laws of tything, had need more especially, than any I have yet seen hath near done, examine which of the two kinds are due in the evangelical priesthood. Why not the second as well as the first? And further consider also, how the payment of tythes from the laity to the priests of the gospel, succeeds to the payment from the *Levites* to the sons of Aaron. But these considerations can only be, where the knowledge of fact precedes. For without exact distinction of their several tythes, any argument drawn from them, may soon be found a gross fallacy, that may both deceive him which makes it, and those whom he teaches. Let the ingenuous reader think of it.

But one thing more here by the way. So much either ignorance or neglect in the disquisition of what belongs to the tythes of the Jews, hath possessed some great names, that, touching the proportion of the tythes and the receivers, they have rested fairly satisfied in this; that the *Levites* being one of the twelve tribes, had the tenths as a competent maintenance to themselves, being near the tenth, that is, being the twelfth part of the people; as if arithmetically the people and the revenues had been so divided. But others have long since easily shewed

ⁿ Eccles. hist. lib. 2. cap. 20. ^o Lib. 2. eccles. hist. cap. 26. ^p 1. Paralip. xxiv. 4. 5. ^q Vide D. Matth. xxvi. 57. & 59. ^r Videtis Scalig. in prolegom. ad chronic. Eusebii. ^s 2 Reg. xxv. 18. ^t Paschas. Rabbert. abbas Corbient. in Matth. lib. 10. pag. 591. ^u Seder Zeraim mallee, maighsh. perek. 1. §. 1. ^x Talmud, dict. Seder. maif. demai perek. 6. & mallee, maighsh. perek. 5. §. 5. ^y Pirki Aboth. cap. 3. & notae adjectae. ^z Videtis Galatin. de Arcan. lib. 5. cap. 10.

the slightness and falshood also of this fancy. And clearly, had such a near proportion of persons and the name of tenth held; yet examine all that was paid to the priests and *Levites* in first fruits and the several predial tenths only, and it will be near a fifth. And we here omit also the cities and suburbs assigned to them, and their other many profits out of sacrifices, ransoms of first-born, and the like. But for that proportion of number betwixt the tribes, we have sufficient testimony in holy * writ, that it was far otherwise. The able men for arms of the eleven tribes were numbered to 603550. and these all of xx years old at least: the males of the *Levites* from a month old were severally found to be but 22273; for so are the particulars of the families of *Gerſhon*, *Koath*, and *Merari*. Here then the *Levites* reckoned, with advantage of all their male children of above a month old, make not a $\frac{1}{7}$ of the rest of the tribes. Had the rest been accounted also with all their males of like age, it is probable enough that the male *Levites* would not have equalled a fiftieth or sixtieth part. As in the one sex of them, the conjecture may also be in the other. And afterwards likewise ^a in *David's* numbering, we see the *Levites* of thirty years old were less than $\frac{1}{7}$ part of the rest of *Israel* and *Juda*, that were able to bear arms. Where then is any thing towards proportion betwixt the number of the priests and *Levites*, and the denomination of the tythe? Neither is it to any purpose or consequent to look after any such thing. I rest in this; that it pleased the Almighty so to enrich that tribe, which was reserved only for the holy service in the temple. Why he did so, or with what proportion, let them, for me, examine, who dare put their prophane fancies to play with his holy text, and so most impudently and wickedly offer to square the one by the other.

Of the III chapter.

IN it, largely out of original authors of *Greece* and *Rome*, is shewed the use of tything among the *Gentiles*: far more largely than by any that hath yet touched it. The truth also, wherein too many are either obstinately or ignorantly blind, touching that of their supposed general payment, collected out of a corrupted place in *Festus*, or rather in *Paulus Diaconus*, is declared and brought to its own limits. Neither will any judicious reader doubt of the corruption of *Festus* in that place: whosoever knows but the fashion of his writing (which must be observed in that of his own, after the xi book, partly yet remaining in his very words) cannot at all think that, *decima quaeque veteres Diis suis offerebant*, should be delivered by him. He is in all other things more curious. He would not have talked of *Diis* generally, or *quaeque*. But it was no such wonder that *Paulus Diaconus*,

who ignorantly abridged him under *Charles the great*, should say so; being, as the learned acknowledge him, no small enemy to posterity, in so cutting and maiming him. He was (says the noble ^b Scaliger) *homo meo judicio confidentissimus ac, uti res ipsa docet, ineptissimus*. Had he dealt with *Festus*, as *Festus* did before with *Verrius Flaccus*, it had been tolerable. Though by *Festus* perhaps we have lost much of *Flaccus*, yet he appears judicious enough and careful in what he delivers from him. But this *Paul* (being, I confess, otherwise a man of great reading and knowledge for the time he lived in) hath not only here by conjecture, but in other places most plainly to expressed things of this nature, that is, touching the theology or rites of the *Gentiles*, that, had we not found some pieces of *Festus* himself, posterity might have been perpetually blinded by him. No man will deny it, that observes but his words, *malevoli, nixi Diis, praeclamitatores, navia*, and divers others, which, compared with what is left of *Festus* whence he had them, appear to be either mistaken or falsely delivered. But for the *Gentiles*; it is true, they were very devout in giving of their yearly increase to the honour of their Deities, according as the *Attick* law received, as is thought, from *Triptolemus*, and seconded by ^c *Draco*, commanded, that is, *Θεοῖς καρποὺς ἀνιδμεν*, that is, *to honour the Gods with their fruits*. Witness enough of the *Grecians* is found in their *thalysia*, that was the feast immediately after harvest, wherein they ^d spent much of their fruits in honour of *Ceres*; in their *haloa* about the same time, which was ^e the like devotion to her and to *Bacchus*, and in their several *dionysia*. All which spent no small part of their yearly fruits of wine and corn; that we may omit their other feasts of less note that are to this purpose. And among the *Romans*, was a like forwardness to consecrate part of their corn and wine to the Gods; as we see in their *sacrima*,^f that is, the first of their must, spent in the honour of *Bacchus*; their *calpar*, or the first and best of their wine, as it was when they first began to draw it, sacred to *Jupiter dapalis*; their *praemessum* or *praemetium* before harvest; their *florifestum* after harvest, both bestowed in honour of *Ceres*, and the like more to her and to *Jupiter*, *Janus*, and *Bacchus*; that we may omit their *robigalia*, *solitaurilia*, and the rest of such kind. But all these plainly were at the liberty of the owners. And so was it expressly denoted in the ritual words of sacrificing of their new wines: as ^g *matte*, or *mattus* *Jupiter hoc vino inferio esto*, as if they had said, *be honoured Jupiter with this wine, which is as much as I can spare thee*. For so much is in substance denoted by *inferio*, that is, *vino quod inferitur*: and therefore was that word ^h added, because all the rest might be free from religion after these were so severally sacrificed. For until the sacrifice, all the wine remained so sacred

* Numer, cap. j. & iiij.

^a Vide 1 Sam. xxiv. 9. ¹ Paralipom. xxij. 3. & 27.

^c Hermippus apud Porphyrium *de libris sacris* lib. 4.

^d Theocritus Idyll. 5. & ibid. Scholiaffes.

^e Eustath. ad Iliad. 2.

^f Festus in hñce voc. ad quem vide Jos. Scalig. & in conject. ad Varronis, de L. L. lib. 5.

^g Cato de re rustica, cap. 132.

^h Trebatius apud Arnobium adversus gentes, lib. 7.

that it might not lawfully be meddled with for common use. But the owner might by such arbitrary giving his *inferium*, discharge it of being any more sacred; and thereupon says *Arnobius*, jesting at their ceremonies, *Maſtus hoc vino inferio eſto, quid eſt aliud quam dicere, tantum eſto maſtus quantum volo; tantum amplificatus quantum jubeo; tantum honoris aſſumito quantum te habere decerno, & verborum circumſcriptione deſinio? O Deorum ſublimitas praeſtans, &c. quae per unius formidinem verbi ab immodicis vini cupiditatibus arceſtur!* Among all theſe feaſts, not any mention is of a tenth or any certain part. But the tenth came ſometimes, only at the will of him that had good fortune, or, *poſt rem bene geſtam*, as *Servius* his words are. So *Herſennius*, who had been a piper all his youth, and doubting the ſucceſs of that trade, ſell thence to be a merchant, and then, *re bene geſta decimam Herculi dicavit*. That conſecrating uſe to *Hercules*, was moſt uſually made with ſolemnity at that *ara maxima*, near the *forum boarium*, or the ox-market; upon which, ſome^k ſay, but fabuloſly enough (as the reſt of theſe particulars are delivered) that *Hercules* himſelf firſt ſpent the tenth of what he took from *Cacus*, in a jolly feaſt, with *Evander* and the reſt that honored him for it. And upon that altar, ſays *Halicarnaſſeus*, δεκακατένσεις χρημάτων γίνονται συχνάι κατ' ἐυχάς, that is, *tythes are there frequently offered by vow*. But the payment of that vow was commonly in feaſts made in honour of him; and thoſe feaſts were, it ſeems, in antienter time, until the vow was performed, celebrated within every ten days by ſuch as were ſo religious to him. And in that diviſion of time, for the more convenience of entertainment, his tythe was merrily ſpent; and the gueſts always ſent home crowned with bays in honour of him. So I underſtand that of *Varro*^l when he tells us, *majores ſolitos decimam Herculi vivere, nec decem dies intermittere, quin polluerent, ac populum ἀσύμελον cum corona laurea dimitterent cubitum*. And of this kind of feaſts were thoſe dinners of *Oreſtes*, ſpoken of in *Cicero*. *Oreſti nuper prandia in ſemitis decumae nomine magno honori fuerunt*. It ſeems, their vow both of gain and of ſpoils of war, was made to him chiefly as he was their god of war or of defence. For it is clear, not only in the old *Roman* divinity or mythology, that *Hercules* ſpecially was accounted *Mars* (as is plain by their monuments, which ſhew that the inſtitution of the *sacra ſaliaria* were indifferent to *Hercules* or *Mars*, and made to one deity under thoſe two names) but alſo by the old *aſtronomy*, wherein the planet *Mars* was likewiſe calledⁿ *Hercules*, and that not only by the *Chaldaean*s (as *Macrobius* too raſhly affirms) but alſo by the *Egyptians*, from whom the knowledge of the heavens came into *Europe*. For howſoever it be noted out of an old gloſſary, at the end of

that moſt learned work of the noble *Scaliger* upon *Manilius*, that *Mars* was called among the *Egyptians* Πυρρῆς (ſuppoſe the northern *Egyptians*, about *Alexandria*, where they ſpake Greek before the *Roman* empire and after-ward) and although^o ſome other old teſtimony, ſay they, ſtiled him Ἀπρῆς (not Ἀπρῆς) yet *Achilles Statius*, that was *Poſſian Egyptian*, ſays expreſſly, that *Pyrois* is the Greek name of *Mars*, and that in *Egypt*, he was called the ſtar of *Hercules*. So the author of that περί κόσμου, attributed to *Ariſtotle*; ὁ Πυρρῆς ὁ Ἡρακλέους τε καὶ Ἀπρῆς προσαγορευόμενος, that is, *Pyrois being called both Hercules and Mars*; which *Apuleius*, becauſe *Hercules* was not ſo common a name for it, thus turns, *quem multi Herculis, plures Martis ſtellam vocant*. And his common titles in old inſcriptions juſtify the ſame. *Invicto, victori, deſenſori, pollenti*, and ſuch more are frequently his additions, being proper to *Mars*; and under ſome ſuch title was he worſhipped, almoſt in every city of *Italy*. And I would *Varro* had rather here ſought the cauſe of his title of *victor*, than in that ridiculous reaſon which he brings, *quod omne genus animalium decies vicerit*. Had he ſaid, that therefore alſo his tythe was given him, becauſe of *decies*, he had ſpoken as probably and as wiſely. Indeed it is a wonder to ſee a man of that abſtruſe learning and great abilities, that *togatorum doctiſſimus*, to be ſo childiſh as he often is, in unhappily troubling himſelf about derivations. But of *Hercules*, enough. Beſide that of the maritime *Pelaſgi*, in §. 1. the other of them that ſeated themſelves further into the land in *Umbria*, being oppreſſed with a ſterile year, vowed the tenth, δεκάτας τῶν προσγενησάμενων ἀπάντων, that is, *the tythe of all that ſhould increaſe to them, to Jupiter, Apollo, and the Cabiri*; and this they paid alſo; but they were admoniſhed by *Apollo* his oracle, that their vow was not performed, until they had ſacrificed alſo the tythe of their children, which was done alſo. But now ſee (when you truly know the ancient tything among the *Gentiles*) how well they conclude here, that draw arguments from the general law of nature or nations, as if by that law any ſuch uſe of payment of tythes had been eſtabliſhed among them, as was continual or compulſory.

Of the IV. chapter.

THAT which ſucceeds, is only of *chriſtian* practice, laws, and opinion. Which any man, that ſees but the courſe of our diviſion, may eaſily know; though he were as perverſe as he was, that to confute me in aſſertion here, *of no proof of payment of tythes, till towards the end of the firſt eccc years*, confidently brought that text of the holy author to the *Hebrews*, *here men that die, receive tythes*; and was ready to ſing, *decidit in caſſes, &c.* as

ⁱ Ad Aeneid. 8. commate 30.

^k Halicarnaſſi. Πρωμ. αρχαιολ. α.

^l Apud Macrobius Saturnal. lib. 3. cap. 11.

^m De officiis, lib. 2.

ⁿ Plin. hiſt. lib. 2. cap. 8.

^o Vettius Valens Antioch. lib. 6.

^p Antholog. mſs. ſed verba ejus repetiuntur in ſyntagm.

^q In Arati Phaenomena.

^r Halicarnaſſi. Πρωμ. αρχαιολ. α.

^s Apud

^t Servium ad Aeneid. 8. comm. 30

^u Myſtilus Leſbius apud Halicarnaſſi. Πρωμ. αρχαιολ. α. citatur hiſtoria etiam apud Eusebium in

λογ. τριακοταστήτητος.

^v Ad Ebraeos, cap. 7. 8.

if that had proved a payment in the apostles time. Indeed it proves a payment among the *Hebrews* or *Jews* then, and also is seconded by other authority before touched. But any reference there had to a *christian* practice of tything, I suppose no man will affirm that is of a sound brain, and uses holy writ with due reverence. But my application of some passages in *S. Cyprian* in §. 1. here are found fault withal; in that I understand not his mention of the word *decimae* to be a note of payment of tythes in his age. Indeed I did not think that any man which understood *Cyprian*, with the use of his time in making up the ecclesiastick treasure, would have therein taxed me. Neither have I given his words alone and then my own gloss (as many have done too often, and that in things of the nature of this subject, and so have deceived their credulous readers) but I have carefully and shortly expressed also the occasion of his passages; and so, that an understanding reader may collect as much out of them as he might do, if he had the whole context of *Cyprian* by him. If I have erred in the interpretation, it is but my single error and theirs that dare give authority here to my judgment. Whoever can think otherwise by *Cyprian's* words, if he saw him, may equally do so by my relation. However then, I impose not on any reader. But for that second place of his out of his *De unitate ecclesiae*, observe his words more fully. Thus they are. *Domos tunc & fundos venundabant, & thesauros sibi in coelo reponentes, distribuenda in usus indigentium pretia apostolis offerebant. At nunc de patrimonio nec decimas damus; & cum vendere jubet dominus, emimus potius & augemus.* So far is this from denoting any payment of tenths of annual increase, (which is the tythe we inquire after) that indeed no such tenth seems here to be understood in the mention of *decimae*. He speaks of them which sold their whole estates in the apostles times; but now, saith he, *we give not the tenths of our patrimonies*, that is we give not the tenth part of what devout christians then did, but instead of selling for devotion, we buy and increase our estates. What other tenth is here spoken of, than the tenth part of every mans patrimony or estate? And what hath that to do with the tenth of annual increase only? And, for any use of payment in this time; I was not so bold to make the negative, that, *no tythes were paid*, but that *it could not be proved that any were*. He that can shew me ought omitted that might prove it, shall deserve and have thanks of me. In the mean time, further to justify what I affirm, take this of *Epiphanius* bishop of *Constance* in *Cyprus*, that about the year CCC.LXXX. wrote against the heresies of the primitive times; when he " tells us of the *Tessaresdecatitae*, or those which thought the holy *Easter* must be kept on the fourteenth moon, according to the law given to the *Jews* for their passover, and that because they apprehended, that the keeping it

otherwise, was subject to the curse of the law; he says, that πάντα ἔχουσιν ὡς ἡ ἐκκλησία, that is, they do all things or agree generally with the church, saving that they were too much herein addicted to the *Jewish* custom. And in his argument against them, he shews, that the curse hath not reference only to the passover, but also to circumcision, to tythes (περί δεκατώσεως) to offerings. Wherefore (as he goes on) if they escape one course, by keeping their *Easter* according to the law of the passover, they thrust themselves into many other. For (saith he) they shall find them also cursed that are not circumcised, and them cursed that pay not tythes, and them cursed that offer not at *Jerusalem*. Let any man now consider if this bishop that was least unacquainted with the customs of the christian church, understood not clearly that no necessary or known use of payment, was among christians in his time, of tythes, no more than of circumcision, or offering at *Jerusalem*. Doth he not plainly reckon it as a thing not only not in christian use, but even equals it with what was certainly abrogated? Is not his objection shortly thus? Why do you not observe circumcision and tything, and offerings also at *Jerusalem*, which are all subject to the like curse? And because some kind of offerings indeed were in use among christians, therefore in the objection he providently ties them to *Jerusalem*. But of tything he speaks as generally as of circumcision. Observe his own context, which I here give, that the able reader's judgment may be free. Ὡς ἐν εἰ μίαν κατάρην περὶ ἑαυτῶν, εἰς πόλλας αὐτοὺς ἐνέπειραν. Ἐυρεθίσουνται γὰρ ἐπικατάρατοι μὴ περιτεμνόμενοι, ἐπικατάρατοι μὴ ἀποδεχάμενοι, καὶ ἐπικατάρατοι γίνονται μὴ εἰς Ἱερουσαλὴμ προσφέροντες. that is, *So that if they avoid one curse, they fall under many other. For such shall be also found accursed as are uncircumcised, such accursed as tythe not; and they are also accursed (in the old law) that offer not at Jerusalem.* I confess, this may perhaps seem not to extend to the *African* church (wherein *S. Cyprian* and *S. Augustine* lived) that was far remote from *Epiphanius*, being of the *Greek* eastern church, and so not to sufficiently prove that in those times, no payment was in use there. The like perhaps may be obviously thought of in referring it to the western church of *Europe*. But it seems that the *African*, *European*, and eastern *Greek* churches of those times, had little or no difference betwixt them in the settled policy for their maintenance. And for the *African*; However out of *S. Augustine's* sermons it may be collected, that a payment soon afterward was there in use, yet herein both the *Greek* eastern, and the *African* churches are specially so like each other, that neither in the councils or canons of the one or the other of them, any law at all is found for payment or ordaining any thing touching tythes; nor as I remember, doth the name of tythes once occur in them, or in *Photius* his *nomocanon*, or in *Zonaras*, or *Balsamon*, the chief canonists

" Herefi. 50.

that writ on the eastern canons. I mean here the canons of the *Greek* church of credit; not including those called the apostles constitutions equally belonging to all churches (if under that name to any) of which more presently. But it had been little to the purpose indeed to have had tythes of annual increase paid, while that most bountiful devotion of good christians continued in frequent offerings, both of lands and goods to such large value, as you see expressed in that of the governor of *Rome* to *S. Lawrence* (being archdeacon to pope *Xistus II.*) in the ninth persecution under *Decius*. He tells him * that the common fame was that the christians did often

*Offerre, fundis venditis,
Sestertiorum millia.*

And, that,

*Addicta avorum praeda
Foedis sub auctionibus,
Successor exhaeres gemit
Sanctis egens parentibus.*

*Et summa pietas creditur,
Nudare dulces liberos.*

No doubt can be but that the governor is here made to speak somewhat beyond the truth; but alló questionless, the liberal devotion of the time was very exceeding in offerings.

But, for constitutions of this age; least we should seem to omit any thing that bears the name of one, although merely supposititious, we shall here add more to that cited in the 4. §. out of the old *Clementines* attributed to the apostles; but all will be of equal credit; and were it not for the inequality of readers, none of it indeed deserved a place here. In those *Clementines*, a further command is, to give ^v all thy tythe to the orphan, to the widow, to the poor, and to the stranger. And afterward some constitutions, attributed to *S. Matthew*, are inserted; wherein first is ordained the formal consecration of oil and water, that may have power to heal sick men, to cast out devils, and the like, with *ἐγὼ Ματθαῖος διατάσσομαι*, that is, *I Matthew ordain*. And then, *ἐπὶ προσέως πᾶσων ἀπαρχῶν προσκομίζεσθαι τῷ ἐπισκόπῳ καὶ τοῖς πρεσβυτέροις καὶ τοῖς διακόνις εἰς διατροφὴν αὐτῶν, &c.* πᾶσαν δὲ δεκάτην προσφέρεισθαι εἰς διατροφὴν τῶν λοιπῶν κληρικῶν καὶ τῶν παρθενῶν καὶ τῶν ἐν πενίᾳ ἐξεταζομένων; that is, *I further ordain, that all first fruits be brought to the bishop, and to the priests, and to the deacons for their maintenance; and that all tythes be offered for the maintenance of the rest of the clergy, and of virgins, and of widows, and of poor people*. But here is no command of tythes to be given to the priests for their use; but only for maintenance of the less orders of the clergy and of the poor. And therein these constitutions still agree with themselves. But, for the authority of them; take the judgment

of our church, and I think you shall have a general consent in this, that they are not of near the apostle's time, but counterfeits of a far later age; and great men in the church of *Rome* account them no otherwise, howsoever *Turrian* (that first published them in *Greek* out of three old copies, as he says) would needs persuade the world that they are genuine, apostolick, and collected by pope *Clement I.* But I would then he had also persuaded us that the apostles had taught, that the birth of our saviour or *Christmas* day, was to be celebrated on the xxvth day of *December*, as in this supposititious ^a *Clement* is affirmed. The learned know, that until about cccc. years after *Christ*, that is still *S. Chrysostom's* time, that day ^a was not settled, but variously observed in the eastern church, which should have had special notice of the apostolick canons. And *S. Chrysostom* then learned the time of the xxvth of *December* (which yet, most think not to be the exact time) from the western or *Latin* church. Is it likely that till then, the apostles constitutions had slept? Besides, we see, that *Dionysius*, that great patriarch of *Alexandria*, although those of his see and himself, were most curious in the determinations of ecclesiastick times, could not find whence clearly to resolve that question to *Basilides* bishop of *Pentapolis*, ^b καθ' ὥραν ἀπονη-ίζεσθαι δεῖ τιμὴ τῷ Πάσχα ἡμέραν, that is, *at what hour after the last Saturday of Lent, they should leave off that strictness^c of fasting, in joy of the resurrection; or at what just hour Easter day, or the feast of the resurrection, should begin*. *Basilides* tells him, some think at the cock's crowing towards the morning; some at the *Saturday* evening. And *Dionysius* acknowledges that difference in use. But to set a certain hour of it, he answers him, *καὶ δύσκολον καὶ σαφερὲν*, that is, *both hard and without sufficient ground*; and then falls to examine it by the holy history of the time of the resurrection. But had these constitutions been then in authority, clearly *Dionysius* might soon have resolved the question; for in them it ^d is determined, that this strict fasting should be kept, *μέχρις ἀλεκτρυονίας*, that is, *until the time of cock crowing*. This learned patriarch, (his *Greek* epistle never yet published in *Greek*, with *Balsamon* upon him, was communicated to me by that most learned and courteous Mr. *Patrick Young*, in the rest of *Balsamon's* ms.) lived about cc years after the supposed time of the collection of these constitutions, and surely had used them if they had then at all been, and deserved credit. And who would have made a controversy about the holding of *Easter*, that had in those elder times found it so established, as it is, in those constitutions? But it is not difficult to conjecture out of what kind of shop they came, if you but note the supremacy of all power^e so arrogated in them to the clergy. The authors of them command, that priests be honoured as kings, and have tribute paid them as kings, and are so bold

* Apud Prudentium περὶ σταφύλων, hymn. 2.

^f Διατάγαι τῶν ἀποστόλων. *Εἰβλ. Ζ. λα. & v. καν. λ.*

^a Vide Clement. Alex. Strom. a. Epiphani. haeref. 51. & D. Chrysostom. ἐπὶ τῶν γ. νηστ. ἡμερῶν.

in bibl. Patricii Junii. ^c Videfis (si hanc rem obiter velis explicatorem) synod. 6. in Trullo canon. 99. & ibid. & ad hanc Dionysii epistolam, Theodorum Balsamonem, & Euseb. lib. 5. eccl. hist. c. 23. &c.

^b Lib. c. canon. 13.

^d Apud Th. Balsamon mss.

^e Lib. 2.

as to apply that in ^f *Samuel*, touching what a king would do in taking from his subjects, to the power of bishops, as if they should do so; and they affirm it, as much more reasonable, that bishops should do so; and ordain also with διατασσέμεθα, that is, *we constitute*, the like wholly περι ἐπισκόπων, that is, *touching bishops*, as there, they say, is ordained περι βασιλέων, that is, *touching kings*; Which well agrees also with their reckoning up of the ten commandments, and making the tenth to be ^g μὴ ὄρης παρὰ τοῖς ἱερεῶσι κενός, that is, *thou shalt not appear empty before the priest*. He that made these words to fill the place of one of the ten commandments, seems not to talk like one of the apostles. A thousand things more might be found to disprove the authority that some attribute to these canons. And the answer to *Turrian's* reasons for maintenance of them, are obvious enough. For my part, I think confidently that most of them, if not all, are hardly *14* years old; and therefore no sufficient cause is, why they should have place of credit in any part of our division; as they bear the name of canons or constitutions. For if they were in truth made so long after those whose names give them all their authority, they are all one, for constitutions to be relied on, as if they had been but of yesterday. I only touched part of them in this first *1000* years, as they were in the *Latin*; the *Greek* being neither then by me, nor much material; although some passages in other translations and to this purpose, if not examined by the *Greek*, may soon deceive a reader of too ready a faith. For one of those other canons attributed also to the apostles as authors, and to this *Clement* as collector, is translated, ^h *aliorum decimae primitiae fructuum omnium mittantur episcopo ac presbyteris, & non super altare*; the *Greek* that is turned and set by the *Latin* in the same volume, having not a syllable of tythes, but speaks only thus. Η' ἄλλη πᾶσα ὡπώρα εἰς οἶκον ἀποστέλλεσθαι ἀπαρχὴ τῷ ἐπισκόπῳ καὶ τοῖς πρεσβυτέροις, ἀλλὰ μὴ πρὸς τὸ θυσιαστήριον, that is, *let all other fruit (being first fruits) be sent home to the bishop and to the priests, but not brought to the altar*; the meaning being that only first fruits of new grapes before vintage time, or of young herbs fit to be eaten, or such like (comprehended under the words νέων χυδίων, in the next canon before) should be brought to the church; and so are the expositions of *Zonaras* and *Theodore Balsamon*, two great canonists of the eastern church,

Of the V. chapter.

Those abbots spoken of in the I. §. were not of the ministering clergy properly taken; but only principal governors of such as had chosen a separated and single life; such as

are in good number found in *Palladius his Lausiac History*, *Cassianus*, and the like more. For that of giving tythes to the use of the poor, it seems it must be understood, that they were most commonly given into the hands of those abbots, or some of the clergy, for their use, and that they dispensed them. Which may be collected out of the testimonies of that age, wherein the goods and treasure of the church is accounted but as the poor's chiefly, in property. Beside those attributes of tythes, and other things consecrated, as *tributa egentium animarum*, and *patrimonia pauperum*, and the like, an observable admonition is, to this purpose, found in *Isidore Pelusiota* (that lived about the beginning of these *1000* years) made to one *Maro* a priest (whom he often reprehends) but specially ⁱ for not leaving the goods of the church and of the poor (that is, what was offered in tythes, rents, and other bounties) to be kept only by the *oeconomos*, or dispenser, or steward (who in those times received them for the bishop, and dispensed them by direction of him and his clergy) but carried them home to his own house. Παύσαι τῶν σου (says he) τῆς ἀσεβείας. Οὐδὲν ἔστιν ὁμοίον γὰρ εἶρηται παρὰ τὸ δικαία αὐτῶν ἔμεν τοῖς πένησιν. Οὐκ εἶτα δὲ αὐτῶν ἐκτός· πρὸ ἐκκλησιαστικῆς; that is, *Leave off this wicked course. For the dispenser hath his name from his dispensing to the poor what is theirs; as the goods of the church are properly*. So *S. Basil* ^k styles the goods and revenue of the church, ἡ κτήσις τῶν πτωχῶν, and the *Greek* lawyers call them generally ^l πτωχικά or *provision for the poor*. And hence is it, that divers schoolmen to and fro dispute that question, whether the dominion or property of the revenue of the church be in the clergy; and whether what they give to the poor be due *debito justitiae*, or *debito charitatis*.

I supposed enough had been said in §. III. to convince the common error of them, which derive feudal tythes from the clergy of the time of *Charles Martell*, or affirm any common payment of them then in practice. But it is a hard task to reach obstinate ignorance. Let that of *Eucherius* his vision be as it will (which yet cannot stand with the time of his death, calculated according to the story that remains of him; however indeed, ¹ very antient authors help to justify it) it still rests certain, that the constitutions of his time, which have reference to the many sacrileges committed by him and others, upon monasteries, bishopricks, and the rest of the demesnes of the clergy, never spake a word of tythes; And with that which is there noted in the margin, observe the several transcripts of that law of restitution, made in the synod, or diet, at *Ratisbon*, held under *Carolo-man* in *DCC. XLII.* as it is in ^m *Melchior Goldastus*. In his first volume, he gives it thus, *decimas, bona ecclesiastica occupata a prophanis restitimus*; as indeed both ⁿ *Aventin* and the

^f 1 Sam. cap. viii.

vide ibid. 425, de hac re anonymum de recuperat. terrae sanctae cap. 34. in vol. gesta Dei per Francos dicto. S. Benedicti cap. 14. & Flooard. Rhem. hist. lib. 2. cap. 12. & capitular. exhibit. Ludovic. II. imper. post canonem 59. c. 10. q. 1. edit. Gregoriana.

^g Lib. 2. can. 36.

^h In epist. 229. edit. nuper a v. cl. R. Montacutio.

ⁱ In Zonara edito a I. Quintino can. 4.

^k Balsamon & Zonaras ad can. apost. 59. & vide

^l Vide Adrevald. lib. 1. de mirac.

^m Confit. imperial. tom. 1. pag. 15.

ⁿ Annal. Boiorum lib. 3. pag. 179. edit. Bas. a. d. 1615.

Centuries have it also literally before him; both out of corrupted copies. But afterward the diligent Goldastus, finding a better copy, entirely again publishes the laws of that synod nearer the original: and this one ^P thus: *Fraudatas pecunias ecclesiarum ecclesiis restitimus*. Some other copies having *fundatas*; but none, of any authority, *decimas*, *pecunia* being only their wealth or estate in lands; as in more antient time, *pecunia* denoted chiefly estate in cattel; and then money, as now it doth. I know also, it had a signification that included offerings ^Q of fruits and corn, and so might be drawn to denote tythes offered; but that signification was of rare use, and only among the *Gentiles*. Neither (as I think with some confidence) can any man shew me such use of the word in any christian author of the antients. And the very decree of *Thierry* king of *France*, and that *Charles Martell* the *maire du maison*, of the year ^R dcc. xxx. touching the taking from the clergy their possessions, *ut subveniatur necessitatibus publicis & solatiis militum pro Dei ecclesia, & bono statu reipub. & uniuscujusque propria pace pugnantium*, as the words of it are; and that of *Caroloman* ^T in dcc. xliii. speak not a word of tythes, but only of *terrae* & *casatae* (which were the *ecclesiastical pecunia*) and the small rents to be reserved to the church upon leases made of them, which is, it seems, understood in the more common giving of them into lay hands, so much spoken of by *Flodoard*. That is, laymen had the benefit of them by having leases of them at small rents without fines. Neither is any other thing spoken of in the ^U capitulary exhibited by the bishops of the provinces of *Rheims* and *Rhose*, to the emperor *Lewis II.* When I see any testimony near *Martell's* time, that so may justify the received tale of his prophaning of tythes, as I may change my mind. But seeing so much of his sacrileges left in the story of near his age, and that not a syllable touching such tythes as we here inquire after, nor any thing else that hath reference to the common payment of them, is found in the laws made under him, I still remain confident in what I have admonished; and, I think, so will every man else, that hath an impartial eye of judgment. But, for that which I have here noted touching *casata*; perhaps *casata* should rather have been interpreted a *messuage*, or *dwelling house*. For it appears in that capitulary exhibited to the emperor *Lewis*, and in some other testimony of that ^V time, that the reservations *ad restaurationem terrarum* (which may be satisfaction given by the lessees of the clergy, in rents of land) were *nonae* & *decimae* (where *decimae* have not to do with payment of tythes out of meer lay fees, but only were received by reservation) and out of every *casata* xii d. So it may be, that *casata* is no quantity of land

there, as I have conjectured, but a house only. If it be, you see whence I was deceived: pardon me; perhaps it was an error. I willingly acknowledge so much upon this review. I acknowledge it, if that capitulary of the bishops and the other testimony be therein authentick. I somewhat doubt them, because the most known and certain laws of *Martell's* time, speak only of xii d. to be reserved out of every *casata*, and the *nonae* and *decimae* grow not elsewhere into use till after the beginning of the *French* empire; and if nothing but *casatae* were spoken of, there were reason enough why they should be taken for land. But the *nonae* and *decimae* in those authorities, are referred to land, and the xii d. only to *casatae*.

That in the IV. §. of the tythe of time in *Lent* out of *S. Gregory*, is not easily perhaps apprehended by every reader without a little more explication. The *Sundays* as they were exempt out of the number of days, so were they from the fasting of *Lent*. Thence comes his conceit of the tythe of time in xxxvi days, which is $\frac{2}{3}$ of ccc. lxxv. so fractions be omitted: and to make up forty which is expressed in *quadragesima*, the known name for *Lent*; the four days preceding *quadragesima Sunday*, are to be added: this was the intent of that fancy. But how slight; and nothing to the purpose, that observation of the tenth of time is, (however the canonists, as sworn to their text, make of it) is easily seen, not only in the abused liberty of calculation of it, but also by the customs and laws of both churches, the west and east, in their various limits of this time of fasting. Pope *Telephorus*, they say, ^X made it vii weeks: and other diversities hath it had in the western church: and the eastern church exempted ^Y both *Saturdays* and *Sundays* from fasting through all *Lent*, except only the *Saturday* that next preceded *Easter Sunday*; as also they fasted not on the day of the *Annunciation*. What regard had they then, think you, to the tythe of time?

Of the VI. chapter.

THE practice of payment in the third cccc years, was parochially observed in ^Z some places, but especially by clergymen to clergymen, who (with such as were reputed among them) subjected themselves more to their canons, than the laity could be brought to do. But it seems somewhat plain by the many examples of arbitrary consecrations to monasteries and other churches, related in §. II. (whereto join also the *English* practice in the XI. chapter, and the ^A charter of *Henry* the eighth, duke of *Baviera*, of the tythes of *Ranneshofen*, given to a church of *S. Pancras*) that the payment of them parochially performed by laymen,

^Q Centur. 8. cap. 7. & 9.

^P Tom. 3. pag. 117.

pag. 648. ^R Idem tom. eod. pag. 118.

pag. 648. ^S Anastasius in vii. ejus. & vide Baronium sub ann. 154. & Polydor. de invent. rer. lib. 6. cap. 3.

nod. 6. in Trull. can. 55. & videtis etiam confit. apostolorum dictas, lib. 5. can. 13. 15. & 18. & consule Euseb. eccles. hist. lib. 5. cap. 26. & Socratem hist. eccles. lib. 5. cap. 27.

^T Praeter ea quae ad hanc rem, §. 1, 2, & 3. habemus, videtis Hincmarum in opere;

capitulum 55. ad Laud. episcop. cap. 1. & Rabanum apud centuriatores, cent. 9. cap. 7. de jurejurando quod exigebatur nonnunquam

de decimis rite solutis.

^U Apud Aventin. annal. Boiorum lib. 6. pag. 379. edit. Bas. 1615.

^V Festus Paul. in pecunia & ib. Scalig.

^W Post. c. 59. c. 16. q. 1. edit. Gregor.

^X Goldast. tom. 3.

^Y Vide Goldast. tom. 3.

^Z Sy-

was yet frequently omitted or continued at their own wills. Whence otherwise could the founders and benefactors of monasteries have made tythes part of their endowments? It was not, in these elder times, so much by giving them churches (as the most that speak of this, ignorantly think, telling us that all tythes came into monasteries by appropriating of parish-churches) as by conveying to them divers tythes alone and newly created; and after those gifts, consecrations, or new creations, no other tythes were paid upon any other right, out of that land which was so charged with them. But most of those consecrations were at one time or another at length confirmed by popes and bishops, and so clearly after enjoyed; which plainly also supposed a former strength in them. For regularly, *confirmatio ex proprio significatu denotat firmitatem actus confirmati*, as ^b *Panormitan* and other canonists say, and *nihil^c juris novi tribuit, sed tantum vetus confirmat*. But it is plain, that after parochial right established, that is since about M.CC. when the canons grew more powerful, and obedience to them became more ready, such confirmations by bishops and popes, and such consecrations, creations, or new grants by laymen, of tythes, have been taken and declared clearly void; as you may see in a decree of ^d pope *Innocent III.* touching tythes, so granted by a knight of *Berry* in *France*, and confirmed by the archbishop, and ^e in another of his about tythes so given or created to a church by the king and queen of *Hungary*, and after confirmed by a pope or two. And who can doubt now, but that all such grants (in regard of prevention of the parson's right) be not only void by the practised canon law of this day, but also by the secular or common laws of most states, if not of all, where tythes are paid, in christendom? For admit at this day, that *Titius* grant *decimas suas* of such an acre to the parson, abbot, or bishop, of such a church, and this be confirmed by whom you will; the tythe due from him parochially is not touched by it. Why? Because they are settled *jure communi* (as the law is practised) in the parish rector; But in those elder times, such an arbitrary grant vested the tythe in the church, to which it was given, and no other afterward was paid. Why? Because then, notwithstanding the canons, no *jus commune*, no parochial right of tythes was settled or admitted in the practice of the laity. And for those antienter grants; Be not deceived by such as tell you they were always of tythes formerly infeodated from the church; that hath no ground to justify it. Neither can any man at all prove any common course of such infeodation of tythes from the church into lay hands, to have been in any state till the later times of reformation of religion in some places, and dissolution of monasteries: and those two examples which are in pope *Innocent's* decrees are expressly of new creations, at least not of infeodated tythes, as every canonist will acknowledge. But clear-

ly, they both were in themselves according to the many other, but they had not the fortune to be confirmed in such time as the pope or clergy usually gave way to the former practice of arbitrary consecration. And doubtless also, after such time as the clergy saw that the canons, made for parochial right of tythes, had gotten force, and that the former creations or grants of tythes by laymen (which were indeed practised against many canons both papal and synodal) were, by that name of laymens grants, creations or consecrations, declared utterly void by the pope and his canon law, although confirmed by whomsoever; such of them as had originally no other true titles to tythes so commonly consecrated by laymen, subtilly enough in the next four hundred years, left off the pretence of their lay grantor's bounty, (especially if the grantor had been a common person) and betook themselves only to prescription ^f of XL years, and to what other times might be allowed to settle a right to them upon a possession of tythes; and by that way, retained safely what otherwise, if they had held themselves to the deeds of their lay grantors and to confirmations, had been in danger enough of being recovered from them by parish rectors. So that, when the prescription was good in regard of time and possession; although the original title itself were naught; yet because any other just title might be pretended to ground the prescription on (which also was ^g not of necessity to be proved in incorporeal things) it was not difficult to have a fair course to maintain their possessions and right of such consecrated tythes, as had been possessed so forty years before they were questioned by parsons, which claimed them *jure communi*. For against them, such a prescription by any other church, abbey, or bishoprick, or such like, is a good title. Remember also their erecting of parochial chapels within the larger territories, out of which they had portions. Plainly, the erecting of such chapels for parish churches (the cure being there served by some monk or vicar, instituted upon the presentation of them which had the granted portions) made those portions at length also in many places be reputed for parochial tythes, due in regard of those parochial chapels. But what course soever they took; it seems certain, that the titles derived from lay consecrations were after this third cccc years carefully concealed by the possessors in such publick records of their revenues, as were of more common and open use in their legal proceedings at the canon law, however they remained still in their antienter and more secret chartularies; and with us I have very rarely, scarce at all, seen an instrument of them in their leiger-books, or otherwise, written in a hand that is later than *John's* time. The most are before him. But I have seen catalogues of the time of *Henry* the third and *Edward* the first, of many large portions of tythes, that doubtless came first from arbitrary consecrations, and that through most

^b Ad tit. de dec. c. dudum, num. 11.

^c Innocent. ad dict. loc. & tit. de confirm. ut. & inutil. c. cum dilectæ 4.

de his quæ f. a prael. sine &c. c. 7. cum apostolica.

^e Tit. de dec. c. dudum 31.

^f Vide Innocent. IV. ad tit. de præscript. c. si diligentia, & ad tit. de decim. c. dudum &c.

^g Extr. tit. de præscript. c. 6. & 8.

of the dioceses of *England*, wherein the least mention is of any grantor, only possession is remembered; and that, by prescription, was to be justified. Some titles also I have seen made to tythes in libels of the time of *Henry III.* especially in the leidger books of *Reading, Osney,* and *Piperwell*; but in none of them ever any derived from consecrations. Neither indeed, in that antientest formulary of the canon law (I mean *Durand*, that lived about ccc.l. years since) is any other libel for tythes, than such as make the title canonical. None that touches lay consecrations; which divers years before his time became as much concealed in legal proceedings of the canon law, as they had been in the more antient times desired and hunted after by such as were enriched by them. This of arbitrary consecrations, I presume, is like strange doctrine to most men. It may well be. For the truth of it, I think, was never before so much as pointed at by any that hath written of any part of our subject. But I doubt not, but every understanding reader will think these things here, now shortly noted on them, to deserve his consideration, which I desire him also to refer to the xi chapter. And also let him apply to them the admonitions touched presently in appropriations.

For appropriations which are in the III. §. they consisted (as you see there and in the xii chapter) for the purpose, either in conveying parish churches appropriated with tythes settled in them, sometimes by a continuance of payment, sometimes by consecrations, or by both; or of churches that were then appropriated when (according to the use of the time) none or few tythes were paid to them, yet, afterward in the hands of the monks, or such like, when the canons for payment of tythes came into force, got parochial payment to be made to them; or thirdly, in passing of tythes formerly created, and in *esse*. So that as by consecrations, tythes newly created, were settled in monasteries and the like; so, by appropriations, churches with tythes in *esse*, or with the pretended right to them, and tythes alone (but formerly in *esse*) were conveyed to them. The whole appropriation of tythes, with churches or churches alone, we shew, in that antienter time was made by the patron. The churches with tythes (by the name of *ecclesia cum decimis*, when tythes were paid to it) was in point of interest given by him; and many more churches have been so appropriated, than by the later and more known course. Neither, I think, have many new appropriations been since made; not many in regard of the number of the other. But deserves not this then, another kind of consideration than is commonly dreamed on, among them, which make tythes due by the divine moral law to the evangelical priesthood? If they be so; what had the patron, as patron (were he either temporal or spiritual) to do with them in conveying them to monks, friers, nuns, poor people in hospitals? None of these, by that name, are of the priesthood. And that way, they were so equally due to the ministring priesthood before the patron's title to the church,

that whatever he could do after he were patron (although also his act were confirmed by whom you will) could not at all, it seems, touch them, or convey them from him that should afterward exercise the spiritual function of the church. Consider tythes so due; and how could any monastery derive to itself any title to that self same tythe that was so due to the priesthood? And if it had not the self same tythe, but by prescription, or other civil title, having the glebe of a church, had also a profit by the name of tythe, as annexed to the church, no otherwise than other lay endowments; For no man can doubt but that any kind of persons may enjoy a profit under the name of tythe or tenth, as well as a rent of the ninth part or of the eleventh; Who then is it that now detains the tythe due by the divine moral law, in cases of appropriations? Doth the monastery, or those which have such appropriated tythes by conveyance from it? Or rather doth not the parishioner, that is bound to whatsoever is by that law due, although he pay never so many other tenths due only by some civil title? Or by that opinion, is not he that receives the appropriated tythes bound to pay a tenth of it to the minister, and the parishioner a tenth of his nine parts? I affirm nothing here; It is no place for me to do it. But let these things be first considerable to every one that talks of appropriations, and concludes tythes due *jure divino morali*. And, for laymen right to the appropriated tythes (that is, such as did either vest in the monasteries by appropriations, or at least have been enjoyed by reason of them) let him examine it rather thus; May that which either grant or prescription, or other civil title once settled and so even consecrated to God and holy uses; although abused; be afterward profaned to lay hands? But it is a gross error to make it clear, as many do, that if tythes be not due to the priesthood *jure divino morali*, then appropriated tythes may be still possessed with good conscience by laymen; and that if otherwise, then they may not. For though they be not due so; yet is the consecration of them in the appropriation, nothing? For if they be not due so, then it will be clear, I think; to all, that they might pass in the appropriation, as other things, subject to the titles of humane and positive law. The many execrations annexed to the deeds of conveyance of them, and poured forth against such as should divert them to profane uses, should be also thought on; and let them remember also, who says, that ^h it is a destruction for a man to devour what is consecrated.

To what we have here of episcopal right pretended to tythes, especially in *Germany*, and of tythes appropriated by bishops, you may add the examples of *Thiermar*, bishop of *Werden* in *Saxony*, that ⁱ about M.C.XL. *contulit ecclesiae suae undecim decimas; & contulit fratribus decimam in Esse*. As also his successor *Herman*, *contulit ecclesiae suae mediam decimam de Hasefwerder, & integram in Rakefede, & Tunderling*. And *Luder*, bishop there, about

^h Proverb. xx. 25.

ⁱ Krantz. metropol. lib. 6. cap. 19. & cap. 29. & lib. 7. cap. 48.

M.CC.XXX. *contulit ecclesiae decimam in Eme-
lendorp cum advocatia, and ordinavit scolaribus
decimam in Mendorp.* It seems, this their
giving of tythes to their church, was an assign-
ment of them to the increafe of their prebends,
or such like. For it cannot, I think, be under-
stood of tythes given to the bishoprick by them-
selves, who, as bishops possessed or pretended
right to tythes generally in their diocese. But
also, with that noted here touching *Gerold*
bishop of *Oldenbourg* (or *Lubeck*) his urging
them of the delerts of *Wagria* to pay; observe
the words of his perswasive letter sent to them
to get their tythes. *Deo, faith he, ^kgratias
ago, quod multarum in vobis parent virtutum
insignia, quod videlicet hospitalitati & aliis mi-
sericordiae operibus propter Deum insistitis,
quod in verbo Dei promptissimi, & in constru-
endis ecclesiis solliciti estis; In legitimis quo-
que, ut Deo placitum est, castam ducitis vitam;
Quae omnia tamen observata nil proderunt, si
caetera mandata negligitis, quia sicut scriptum
est, qui in uno offendit omnium reus est. Dei
enim praeceptum est, decimas ex omnibus dabis
mihi, ut bene sit tibi & longo vivas tempore,
cui obedierunt patriarchae, Abraham scilicet
Isaac & Jacob, & omnes qui secundum fidem
facti sunt filii Abrahae, per quod laudem etiam
& praemia aeterna consecuti sunt. Apostoli
quoque & apostolici viri hoc ipsum ex ore Dei
mandaverunt, & sub anathematis vinculo poste-
ris servandum tradiderunt. Cum ergo Dei
omnipotentis proculdubio hoc constet esse prae-
ceptum, & sanctorum patrum sit auctoritate fir-
matum, nobis id incumbit negotii, ut quod
vestrae salutis deest, nostro in vobis opere per
Dei gratiam suppleatur. Monemus ergo &
obsecramus omnes vos in Domino, ut mihi, cui
paterna in vos cura commissa est, animo volenti,
quasi filii obedientiae, acquiescatis, & decimas
prout Deus instituit, & apostolica banno firma-
vit autoritas, ad ampliandum Dei cultum, &
ad gerendum pauperum curam ecclesiae detis,
ne si Deo quae ipsi debentur subtraxeritis, &
substantiam simul & animam in interitum mit-
tatis aeternum, Valet.* It seems, he was in
some confidence, that because he was a bishop,
he might make them believe any thing of the
patriarchs and the apostles. And you may see
he loved the profit of the tythes so well, that
he would not stand upon an unlucky venturing
his credit in divinity, or upon offering a plain
fallhood, in writing for them. For though they
were due generally as he would have them, yet
how would he have proved that all the patri-
archs, and all that were by faith as the sons of
Abraham, paid them? Or that thereby they
had all gained *praemia aeterna*? And whence
could he have justified it, that the apostles or-
dained that they should be paid? It may be
therein, he meant the constitutions of the
apostles, of which enough before. If he did,
how could he have strengthened their authority?
But they to whom he sent, remained still as far
from obedience, as the historical part of his let-

ter was from truth. And the truth was, he
could by no means get any tythes of them.
But for that (in this §.) of episcopal right, or
the right of the evangelical priesthood, so much
pretended against tythes enjoyed by monks,
that were indeed laymen, however reputed as a
kind of part of the clergy; It seems, that in
those days, the bishops and priests often stood
so much on it, and so much and so often laboured
against consecrated and appropriated tythes,
possessed by the monks (for they knew it was to
no purpose to urge the lay owners, who after
they had given one tythe by consecration,
would give no more to any of them) that the
most common place which in their synods and
sermons they dealt on, was the right of tythes,
as due to the priesthood. And in so much also,
and so untimely was that common place used,
that there talking of it was become a proverb to
denote their frequent going from the matter, as
if most usually they fell into that, when they
should have talked of something else. This is
justified by a passage of the monk *Aimonius*, in
the life of *Abbo* abbot of *Floriacum*, where he
speaks of a synod held under *Robert* king of
France, about the year M. (when *Aimonius*
lived) in the abbey of *S. Denis*. Very many
bishops, faith he, were present at it, ¹ qui cum
de fidei puritate & de corrigendis tam suis quam
subditorum pravis moribus sermocinari debuiss-
sent, juxta vulgare proverbium, cunctum suum
sermonem ad decimas verterunt ecclesiarum,
quas laicis ac Deo servientibus monachis au-
ferre moliti, resistente eis in hac re hoc v. Dei
cultore *Abbone*, promiscuam in se vulgi concita-
vere manum. And such danger did the bishops,
in urging it, draw on themselves, that they
were driven all to dissolve the synod by running
away. You see here *sermonem ad decimas
vertere*, was as a proverb to go from the mat-
ter; and for those words, *laicis ac Deo servi-
entibus monachis*; I think they are not to be
interpreted *laymen and monks*, but *monks that
were lay, and spent their time in the service
of God*. For there is no doubt but the bishops
and priests objected the name of *laici* to the
monks here; and so was it fit, in the relation,
to name them; and it was no wonder that the
common people (whose bounty in bestowing of
tythes on monks, should thus have turned to
nothing) so fiercely opposed them. If you un-
derstand *laicis* by it self here, then it may de-
note the arbitrary detaining or disposing of
tythes by meer laymen, which, I must confess,
Abbo and his monks, and all other monks what-
soever had some reason to withstand; for they
gained much by it. But, I doubt, it cannot have
reference to lay infeodations. For as yet I
could never see the least testimony of an infe-
odation of tythes until many years after *Abbo*'s
time; it might perhaps denote them also; but I
dare not clearly affirm or deny here.

The IV. §. is of antient infeodations of tythes.
What is in old testimony of them, is there de-
livered; but for time; we neither fetch them

from *Charles Martell*, nor from the holy war of between M.XCV. and M.C. as others do; plainly both those opinions are false. And it is as certain that they are false, as it is difficult to find the true beginning of infeodations. Neither, I think, did any man ever refer them to *Charles Martell*, before *Martinus Polonus*, archbishop of *Cosenza*, and penitentiary to the pope, who wrote about M.CC.LXXX. *Ecclesias* (saith he of him) *spoliati, decimas militibus conferendo*; and this being through many hands received, hath to this hour abused many mens credulity. But thereof, enough already. They are as far out, that derive them all from gifts made by churches, or impositions by princes: Yet that most common opinion, that they all came first out of churches, is elder than the other, and as antient at least as *Frederick Barbarossa*. For in the controversy betwixt him and pope *Urban III.* about investitures, *Scimus* (are the words) *decimas & oblationes a Deo sacerdotibus & Levitis primitias deputatas, sed cum tempore christianitatis, ab adversariis infestarentur ecclesiae, easdem decimas praepotentes & nobiles viri ab ecclesiis in beneficio stabili acceperunt, ut ipsi defensores ecclesiarum fierent, quae per se obtinere non valerent*. There is no question but this opinion had soon authors enough among the clergy. For, the pretence of it was like enough a great persuasion to some laymen to give in their infeodated tythes to the church; and this the canonists, for the most part, and generally the lawyers of most states, take for a clear truth; which I much wonder at, seeing that while they take it so, yet they interpret that canon *prohibemus* (which is the principal provision against feudal tythes, and was made by a council, that best knew the practice of the near former times, against such as were created by laymen to laymen) to have been the stay only of further infeodations into lay hands; that is, every lay infeodation that hath force, they suppose to be of before the time of that canon, as if the infeodations from lay to lay, there forbidden, were those, from which such (for the most part) as continue, had their original; and therein doubtless they are right. And the later canonists, that would apply it to all infeodations then in *esse*, are grossly deceived, or wittingly strive to deceive. For in that respect, the canon is in no state in force. Neither was it antiently so interpreted by the canonists. But in the other, that is, touching new creations of feudal tythes (in prejudice of the church) by laymen to laymen, it hath been ever admitted, and is in practice both in *France* and *Spain*. And what better interpretation of it can be than the continual practice upon it since the making of it? And so how can it then be supposed, but that laymen before, were chiefly the original authors of them? But some lawyers here to justify their received opinion, bring this argument. Had they not come from the church, they say, then had the tythes themselves,

which are now possessed by laymen through infeodations, paid tythes also to the church, by reason of the many canons made for payment out of all yearly increase. But this reason clearly moves nothing; for the self same might have been objected against the known beginning of tythes created and consecrated to monasteries by laymen; Plainly by the canons, notwithstanding such consecration, the parochial right to the evangelical priesthood could not be diminished; and by them also, as well a tythe out of the tythe consecrated, as out of the nine parts of the parishioner, might, for ought can be proved against it, be demanded by the parish rector. But we see clearly both the original of those consecrations to have been from laymen; and also that no tythe was, or is paid either out of them, or out of the rest of the profits of the nine parts. How then can the other argument touching infeodations better conclude here? Beside, it insists upon canons, and would conclude practice from law; which course of proof, used by most men that write of these things, is gross and ridiculous. For whoever but indifferently observes the story of the elder time, together with the laws, shall soon find that in the canon law especially, an argument from *debere fieri* to *factum esse*, is scarce so found, as that so hissed at among children, a *posse ad esse*. The truth seems to be, that both in consecrations, and infeodations, and appropriations of tythes, there was not any other thing thought on, than the name of tythe, and the right of tythes generally due to the church; as if every thing being the tenth, and by that name as it were specified, were presently the clergy's; so that whatsoever was by that name given away to meer laymen, or to monasteries by new creation, in either consecrations or infeodations, was, it seems, taken always to be the self same individual tythe, which was supposed due to the clergy; Which also, doubtless, was a cause why many infeodations having original only from laymen, were falsely supposed to have first come from the church. For how easy was it, that that, which out of its own name only of *decima* was presently taken as to be due to the church, should be titled an ecclesiastick right, and then in the passages of them which would have had it so, be reckoned among such things as the church had a title to by a former possession? And clearly, many of the laity also could not but be very inclinable to that opinion. For so long as that held, it is likely they resolved they needed not to pay any more to the church. For when the church would not keep the feudal tythes, when it had them (they thought it once had them all) they conceived doubtless there was no reason why should pay it any more or other tythes. Thus perhaps upon divers grounds and causes, both the laity and clergy deceived themselves, in thinking of the original of these infeodations. But herein, that which we have touched before, to be considered in consecrations and appropria-

^m Apud Melchior. Goldast. constit. imper. tom. 2. pag. 50, conf. Brit. tit. des appropriances art. 266. pag. 1110.

ⁿ Et vide cap. 7. §. 3. ad finem.

^o Bertrand d' Argentre in

tions is also considerable. For what could such infeodations by laymen to laymen, hurt the right of tythes which was in the priesthood? Especially if due either *jure divino morali*, or by any positive law antienter than the infeodation. But we have not affirmed, that no infeodations came originally from the church. Questionless some did, and beside the examples already noted, you may see that of *Racherius* ^P who *ecclesiae de Hauchis* (in *France*, about the year m.c.xx.) *decimam laicali usurpatione tenebat*, as *Ivo's* words are; and he gave the church to an abbey of *S. Martins*, and *minutas in praesentiarum monachis dimittendo concessit decimas, & decimam de culturis monachorum eis concessit habendam post sui decessum*. Here it seems, he had inheritance in the tythes. For that other conjecture; that they came first from impositions made by princes; I doubt it hath no kind of probability. Indeed it appears, that antiently in *Turingia*, the people were driven, before their christianity, ⁹ to pay tythes to the kings of *Hungary*, both of their annual increase, and of their children also; And in the government of the king that was declared by *Samuel*, it is said, *he will take the tenth of your vineyards and give it to his chief servants, and to his officers*. But where shall you find the least mention of infeodations made of such kind of tenths? Or any touch of them in the complaints of the clergy against infeodations? And withal, nothing hath been of less practice than giving away in perpetual right, any such revenue due to any crown or state, only by special right of supreme majesty. But admit, these had their original this way or any other as you will; unless they can be proved to have been made of the very self same tythe which is due to the ministering priesthood (which can never be done; saving only where the infeodated tythe was at first received and possessed by the church by force of the law of tything, not by arbitrary consecration; in which case also it is considerable whether a layman could be at all capable of the *fructus* only of them, if due by an immediate express law of God.) I see not how they should more prevent parochial payment to the ministering priest, than the payment of rents in ¹ *terrages*, or quantities in corn, under the name of tythes to landlords, should diminish the right of the spiritual tythe. Which way had either such a fifth, as was *Pharaohs*, or the tenth spoken of by *Samuel*, to be taken by the king, touched the tythe due by a superior or former law, to the *Levitical* priesthood? Both might well have stood together. Might not so, nay, should not so, tythes remain payable from the possessors of the nine parts to the evangelical priesthood, notwithstanding infeodations or any reservations whatsoever, if they be due by a superior or former law, especially if due by the moral law? And that law should be urged rather against the tenants of the land, than a-

gainst the perners of the feudal tythes. And that common distinction of the canonists, of *jus percipiendi*, & *fructus decimarum* here, is a mere shift, and nothing satisfies, unless they could also teach us, how the *fructus* were the very self same always in infeodations, and that they were derived from a *jus percipiendi* in some clergyman. Perhaps too much of these things; which are little or nothing applicable to *England*, where we have scarce any example of a tythe, that was in its nature feudal; other than in such as were taken from monasteries, by the statutes of dissolution, and may still be called, as originally, by the name of consecrated or appropriated tythes, although now infeodated. But thereof see the XIII chapter.

To the V. §. that speaks of exemptions; for matter of story may be added that of the *Hospitalers*. After their exemptions given them with the two other orders; about the year mclx. in the eastern parts they, *tam domino patriarchae quam caeteris ecclesiarum praelatis multas tam super parochiali jure, quam super jure decimationum, coeperunt inferre molestias, &c.* and received such as were excommunicated for nonpayment of them. *De praediis autem suis & universis redditibus, quocunque jure ad eos devolutis, omnino decimas negabant*. Where, by the way, note, that in this eastern church (which, after *Jerusalem* was recovered, and made a kingdom subject to western princes, should have been fashioned according to the canons of the western church) tythes were now appointed payable, although no authentick law of that old eastern church, once mentions them. But both in this and other things, the people of that church were still (notwithstanding the new kingdom of *Jerusalem* possessed by *Europeans*, and the pope's authority extended to them) most ¹¹ obstinate and refractory against the policy and institutions offered them, either in command or example from the western.

After the opinions of the age in the VI. §. the laws both imperial, provincial, and pontifical, follow in the VII. Upon which, let it be considered, whether a consecration of tythes were so made by the power, and law of the church or commonwealth, or both, in several territories, according as the laws extended, that no prophana- tion or detaining them or any part of them, might afterwards be lawful; and the like should be carefully thought on in the I. §. of the viith chapter, and in the viiith chapter which hath the laws of *England*, for the same purpose. The force of the words of all those laws; the authority that made them; and the territories to which they were extended, are especially to be observed by every one that here looks after humane positive law. For many talk and write of that, and tell us here of *jus ecclesiasticum* (at least if they fail in their arguments from *jus divinum*) but whence that *jus ecclesiasticum* is, and where or when made, they little

^P Ivo epist. 289. editione secunda, primae deest.

⁹ Centur. Magdeburg. 8. cap. 8.

¹ Sam. cap. viii.

¹ Eiusdem

generis, sub *decimae* etiam nomine, proventus dominis solvuntur in Galliis, in Germania, alibi, videlicet Bertran. d' Argentre, * conf. Brit. art. 266. pag. 1109. & specul. Saxon. lib. 2. artic. 58. §. 2. &c.

¹¹ Will. Tyrius de bello sacro lib. 18. cap. 3.

¹ Quod

constat ex Marini Sanuti Torfelli secret. fidelium lib. 3. part. 8. & epist. 8. & anonym. de recuperat. Terrae Sanctae cap. 18.

enough

enough know. For what hath a provincial council of one nation to do with another? What hath the imperials of the old *French* empire to do with *England*? Nay, what hath the pope's decrees to do here? But because there was a time when their authority was more largely acknowledged; their decrees, that bred much of what now justly continues in some states (which also justly now deny their authority) remain most observable. And we have given them in their places.

Of the VII chapter.

IN the last cccc years, beside the establishment of parochial right in tythes, and the various opinions touching the immediate law whereby they are due; the practice of most christian nations, as it might be had out of their laws and lawyers, is faithfully related. And to what is there brought, add that of the law of *France*, where by the right of the tythe of all mines is claimed by * the king, as a *droit de souverainete*, according as it is declared by two edicts published of *Charles IX.* and verified also by the parliament of *Paris*; according also, the old imperial law was. But through all here, you may see that the customs, statutes, and common laws, especially of *France, Italy, and Spain*, and of most other, if not all states, permit not, so favourably for the clergy, and exaction of them, or suit to be so generally brought for them, as the laws of *England* did before the statutes of dissolution of monasteries, and still do, if you exempt those cases which are founded only upon those statutes. What statute or practice is in this kingdom, that equals, the *Carolines* of *Spain*, or the *Philipine* of *France*, which are general laws for customs (*quatenus* customs) *de non decimando*? And whereas *England*, until the dissolution, had scarce a continuing infeodation into lay hands (of which see the XIII chapter) nor could a lay man by the common law, before the dissolution, make any title to tythes as to lay inheritances; in other nations tythes infeodated have been from above 10 almost 20 years frequent in use, and still continue legally in lay hands, and are subject wholly to secular jurisdiction; as also other tythes paid to the church are, wherefore any such suit is commenced for them in their spiritual courts, as stand not with their liberty challenged from their secular or common laws. For every christian state hath its own common laws, as this kingdom hath. And the canon law every where, in such things as are not merely spiritual, is always governed and limited (as with us) by those common laws. For by that name are they to be called, as they are distinguished from the canon law, which hath properly persons and things sacred only and spiritual for its object in practice, as the common laws deal with things and persons, as they have reference to a common, not sacred, use or society established in a commonwealth. Who

knows any thing in holy writ, knows the use of the word, common, to be so distinguished from sacred. Indeed it hath other notions there also, and it is otherwise understood in *jus commune*, frequently among canonists and civilians. But these nothing at all hurt the convenience of this denomination. For by them, *jus commune* is used as it is opposed to *municipale*, or *consuetudinarium*. But here, and in the denomination of the *English* laws, as it is distinguished from sacred or spiritual; and so in this sense the allowance of customs, and parliamentary statutes as they ought, fall under the name of common law with us. Here I doubt not, but it will be an obvious objection, that I should rather call the supreme and governing law of every other christian state (saving *England* and *Ireland*) the civil law; that is, the old *Roman* imperial law of *Justinian*. For such a reigning, but most gross ignorance, is every where almost to be met, withal in *England*, that you shall have it affirmed for clear that, *all other states are governed only by the civil law*. Indeed, if they, which say so, understood civil for that which is the *jus civile* of every singular state, it were but the same to talk of civil and common law. For the common law of *England* also is the *jus civile Anglorum*. But it is even with one mouth pretended usually, that the body of the imperials, read and professed in the universities, is the civil law, that governs (as they say) all other states. But this, howsoever received through lazy ignorance, is so far from truth, that indeed no nation in the world is governed by them. For wheresoever they are supposed to govern (let the brief-clearing of so common an error, get pardon for the digression) it must be taken, that they either govern by their own original authority, as they are imperials, or from their being received for laws into other states, which are not in that first way subject to them. According to that first way, only the empire, and perhaps a good part of *Italy*, should be ruled by them. But it is plain, that for the most part, the disposition of inheritances, punishing of crimes, course of proceedings, dowers, testaments, and such other, which are of greatest moment under the legal rule, are even in those states, where, by reason of their first institution, they retain a kind of authority, ordered by most various customs and new statutes of several provinces and cities, so differing from those old imperials, that the whole face and course of them is exceedingly changed in practice. This is plain to every one, that observes but the divers customs and ordinances of the states subject to the empire; the *Jus camerale* collected by *Petrus Denaissius*; the *Nemesis Karulina*, as it is set forth by *Georgius Romus*; and the many published decisions, or reports both of the imperial chamber, and the *rota's* of *Rome, Naples, Piedmont, Mantua, Genoa, Bologna*, and other parts of the territory of *Italy*. You shall find those decisions, in matters of greatest moment, most commonly grounded on customary law, or

* Ordonances de France liv 2. tom. 2. de mines & mineres

later constitutions. So, that to affirm, that in these places, the old imperials, or that civil law (as they call it) governs, is as if (for example) an equal ignorance should tell us, that *Spain* was governed only by *Alfonso's partidas*, and *Scotland* only by *Malcolm's laws*, or the *quoniam attachamenta*; or, that in the time of the old emperors, the *Roman* state had been always governed only by the *xii tables*; or, that *England* were legally ruled only by the grand charter, or by the two volumes of old statutes. Like accession and alteration as any of these have had, is found in the empire and in *Italy*; where the imperials have, through the power of the emperors and ^v popes, any now continuing authority. Now, for other christian states, which acknowledge no superior, nor any subjection to the empire (except *Portugal*, where the *Roman* civil law is authorized, by an ^z ordinance of state, in cases which are not literally comprehended in the customs or constitutions of the kingdom) as *France*, *Spain*, *Scotland*, *Denmark*, *Poland*, the city of *Venice*, and what also in *Germany* hath made itself free from the empire; what colour is there, that the imperial civil law should govern in them? Indeed in all of them, I think, the reason of it brought into method, is used and applied commonly to argument, when any of their customs or statutes (which are especially in *France* and *Spain*, very voluminous) come in question, because the practisers studied it in the universities, and had thence their degrees given them; which yet they had not, till about some cccc years since, neither before about that time, was a doctor or professor of them known on this side the *Alps*. But as it is law, it neither binds nor rules with them, no more than the old stories of *Herodotus*, *Thucydides*, *Diodore*, *Polybius*, *Josephus*, *Livy*, *Tacitus*, and the like, or *Cicero* and *Demosthenes*, or *Plato's* laws, and other of that kind; which are equally sometimes used for reason or example, specially by the practisers of *France*. And so the old imperial civil law *valet pro ratione* (as *Bertrand d'Argentre*, president of the parliament of *Rennes* ^a says) *non pro inducto jure*; & *pro ratione* only *quantum reges, dynastiae, & reipublicae intra potestatis suae fines valere patiuntur*. And in *France* and *Spain*, laws ^b were some ccc years since expressly made, that the imperials should have no force in them. And, in *Scotland* it is ordained, that no laws have force there, but the king's laws ^c and statutes of the realm; and that it should be governed by the common ^d laws of the realm, and by none other laws. Doubtless, custom hath made some parts of the imperials to be received for law in all places where they have been studied; as even in *England* also, in marine causes, and matter of personal legacies. But is *England* therefore governed by them?

It were as good a consequent to conclude so, as to affirm, that any of the other states were, because some petty things are ordered according to some imperial text received and established by custom. But this may seem no fit place to speak more (perhaps not so much) to clear this gross error of such as yet pretend to know more than vulgarly, but can make no difference betwixt the use of laws in study or argument (which might equally happen to the laws of *Utopia*) and the governing authority of them. If any desire to search further here, beside the authorities cited in the ^e margin, let him especially see *J. Baptista a Villalobos* his *Antinomia juris regni Hispaniarum ac civilis*, and note especially, *La conference du droit Francois avec le droit Romain*, composed by *Bernard Automne*, and observe both the volumes of statutes and ordinances of *Spain*, *France*, *Scotland*, *Poland*, and of other countries, together with the various provincial customs, especially in *France*, with the arrests, decisions, and *playdoies*, of that kingdom, and he shall soon be confirmed in that which a great civilian of *Italy*, is ingenuous enough to tell us; *Hispania, Anglia, Scotia, Balia, Hibernia, Alemania, Dacia, Suetia, Ungaria, Boemia, Polonia, Bulgaria, non utuntur legibus seu jure civili, sed specialibus consuetudinibus & statutis*, that is, *they are all governed by their own common laws*. And that most learned friar ^f *Bacon*, of his time; *Omne regnum habet sua jura quibus laici reguntur, ut jura Angliae & Franciae, & ita fit justitia in aliis regnis per constitutiones quas habent, sicut in Italia per suas*. This was then, and is now true. And the interpretation of those common laws in most places, save *England* and *Ireland*, hath of late time been much directed by the reason of the imperials, and only by the reason of them (not by their authority) and that also in case when they are not opposite at all to the common laws, but seem to agree with the law of nations or common reason. And this use of them, at the furthest, began in its youngest infancy, not c.d.lx. years since. For before that, even from *Justinian's* time, they lay wholly out of use; saving only that some pieces of them, with the interpolations of *Alaricus* and his chancellor *Anian*, together with *Lombardine* additions and interpretations, had their power in some parts of *Italy* and the empire. But for about d.c. years together, that is, from *Justinian* till *Frederick Barbarossa*, no profession was of them in any university, no doctorship, no other degree taken in them. But after that time, they grew into a common profession in this western world (although by their own authority they are confined to *Rome*, *Constantinople*, and *Berytus*) and even here in *England*, were, about *Henry* the third's time, often applied to the common

^y Videfis diff. 10. c. 12, & 13. & extr. de novi operis nuntiatione c. 1.

^z Ad consuet. Brit. tit. 22. de successioneibus, ad rubricam.

^a Philip. 11. in pragmatica ante collect. legum regni.

^b Vide extr. tit. de privileg. c. 28. super specula, & ibid. Hostiens. J. Andr. Anton. de Butrio.

^c Par. 3. Jacobi I. cap. 48.

^d Par. 6. Jacobi IV. cap. 79.

^e Vide extr. tit. de privileg. c. 28. super specula, & ibid. Hostiens. J. Andr. Anton. de Butrio.

^f Hieronym. Giga. tract. de crim. laesae majest. lib. 3. quæst. 23. §. 18, & 19.

^g In compend. theol. citatur in notis ad Fortific. pag. 43.

^z Videfis Suarez de legibus lib. 3. cap. 8. §. 3.

^a Vide Choppin. du domaine, &c. liv. 2. tit. 15. §. 5. Bodin de rep.

^b Par. 3. Jacobi I. cap. 48.

^c Par. 6. Jacobi IV. cap. 79.

^d Vide extr. tit. de privileg. c. 28. super specula, & ibid. Hostiens. J. Andr. Anton. de Butrio.

^e Par. 3. Jacobi I. cap. 48.

^f Hieronym. Giga. tract. de crim. laesae majest. lib. 3. quæst. 23. §. 18, & 19.

^g In compend. theol. citatur in notis ad Fortific. pag. 43.

law in discourse and argument, as you may see in *Bracton* his frequent quotations of them. And heretofore some texts of them have been in our courts cited; not only as at this day sometimes is done (when the words only of some of the *regulae juris* is brought into an argument) but the title and law, after the civilians fashion, hath been remembered at the bar, and so afterward expressed in the report, as I have seen in an example or two in the mss. years of *Edward* the ^b second. Yet, notwithstanding that, it is clear, that *England* was never governed by the civil (or imperial) law, as it was also affirmed by the upper house of parliament in 11 *Rich. II.* where the king and lords protested also, that their meaning was, it never should be governed by it.

Of the VIII. chapter.

OUT of this fullness of laws that were made for tythes in *England*, let it be considered, by such as enquire here *de jure*, what interest was of right settled in the clergy by them (howsoever they were little obeyed) and by what authority made, (we have carefully added still what might help to a judgment in that also) and how extensive, in regard of persons and territory, they were, and some such other; and how far the tythes might be, after such laws detained, or made subject to customs, or possessed as things of common use. The laws of before, as well as of after, the *Norman* conquest, as it is vulgarly called, are here gathered, and are perhaps equally observable, as the rest, in the consequent of a general consecration of tythes to the church in *England*. For neither were the laws formerly made, abolished by that conquest, although, by law of ⁱ war, regularly all rights and laws of the place conquered, be wholly subject to the conqueror's will. For in this of the *Norman*, not only the conqueror's will was not declared, that the former laws should be abrogated (and until such declaration, laws remain in force, by the opinion of ^k some, in all conquests of christians against christians) but also the ancient and former laws of the kingdom were confirmed by him. For in his fourth year, by the advice of his baronage, he summoned to *London*, *omnes nobiles sapientes & lege sua eruditos, ut eorum leges & consuetudines audiret*, as the words are of the book of *Litchfield*, and afterward confirmed them, as is further also related in ^l *Roger of Hoveden*. Those *lege sua eruditi* were common lawyers of that time, as *Godric* and *Alwin* were then also, who are spoken of in the book of ^m *Abingdon*, to be *legibus patriae optime instituti, quibus tanta secularium facundia & praeteritorum memoria eventorum inerat, ut caeteri circumquaque facile eorum sententiam, ratam fuisse, quam edicerent, approbarent*. And these two, and divers other

common lawyers, then lived in the abbey of *Abingdon*, *quorum collationi nemo sapiens, lays the author, refragabatur, quibus rem ecclesiae publicam tuentibus ejus oblocutores elingues fiebant*. You must know, that in those days, every monk here in *England*, that would, might remain so secular, that he might get money for himself, purchase, or receive by descent to his own use. And therefore it was fit enough for practising lawyers to live in monasteries. But what had those *praeteritorum memoria eventorum* (that is, reports and adjudged cases of the *Saxon* times) availed in their skill, if the former laws had not continued? More obvious testimonies to this purpose are had out of ⁿ *Ger-vase of Tilbury*, *Ingulphus*, and others, and we here omit them. But also, indeed, it was not to be reputed a conquest, or an acquisition by right of war (which might have destroyed the former laws) so much as a violent recovering of the kingdom out of the hands of rebels, which withstood the duke's pretence of a lawful title, claimed by the Confessor's adoption, or designation of him for his successor; his nearness of blood on the mother's side not a little also aiding such a pretence to a crown. For the Confessor's mother *Emma*, was sister to *Richard* the second, duke of *Normandy*, to whom, *William* was grandchild and heir. But these were only specious titles, and perhaps, examined curiously, neither of them were at that time enough. And howsoever his conscience so moved him at his death, that he professed he had got ^o *England* only by blood and the sword, yet also by express declaration in some of his patents, he before pretended his right from the Confessor's gift. ^p *In ore gladii, saith he, regnum adeptus sum Anglorum, devicto Haraldo rege, cum suis complicitibus, qui mihi regnum cum providentia Dei destinatum & beneficio concessionis Domini & cognati mei gloriosi regis Edwardi concessum conati sunt auferre &c.* And the stories commonly tell us, that the Confessor *successionem Angliae ei dedit*. And although *Harold* also pretended a devise of the kingdom to himself, made by the Confessor *in extremis*, and urged also that the custom of *England* had been, from the time of *Augustine's* coming hither, ^q *donationem quam in ultimo sine quis fecerit, eam ratam haberi*; and that the former gift to the *Norman* and his own oath for establishment of it were not of force, because they were made ^r *absque generali senatus & populi conventu & edicto*; yet for his own part he was driven to put all upon the fortune of the field, and so lost it. And the *Norman* with his sword and pretence of the sufficiency and precedence of the gift made to himself, got the crown, as if he had been a lawful successor to the Confessor, and not an universal conqueror. All this is plain out of the stories, and justified infallibly by that of the titles of many common persons made to their

^b In biblioth. inter. Templi.
Hotomae, illust. quaest. 5.

in bibl. Cotton.

mensis.

^p Chart. eccles. Westm. in inflex. part. 7.

^q Hist. Pictav. five quis alius sit. in bibl. Cotton.

Paris in Hen. III, pag. 1257. edit. London.

ⁱ Vide Quintilian, lib. 5. institution. cap. 10. Alberic. Gentil. de jure belli, lib. 3. cap. 5. & Calvin's case, fol. 17. b.

^k In Hen. II, pag. 347.

^l Videsis Coke praefat. ad Relat. 3. & 8. & si placet not. ad Forster, pag. 7. & 8.

^m Ms. lib. 2. pag. 33. & 36.

ⁿ In Hen. II, pag. 347.

^o Hist. Pictav. five quis alius sit. in bibl. Cotton.

^p Chart. eccles. Westm. in inflex. part. 7.

^q Hist. Pictav. five quis alius sit. in bibl. Cotton.

^r Malmesb. lib. 3. de gest. regum, pag. 56. a. alii in Will. I. & videsis Marth.

possessions in *England* after his kingdom settled, upon the possession of themselves or their ancestors in time of the *Saxon* kings, especially of the Confessor. But this was always in case where they, by whose possession the title was made, had not incurred forfeiture by rebellion: Many such titles are clearly allowed in the book of *Domesday*, written in the Conqueror's time. One especially is noted by the most learned *Camden* in his *Norfolk*: that, as I remember, is touched in *Domesday* also, but enough others are dispersed there which agree with it. How could such titles have held if he had made an absolute conquest of *England*, wherein an universal acquisition of all had been to the conqueror, and no title could have been derived but only from or under him? More might be brought to clear this; but we add here only the judicious assertion of a great lawyer of *Edward* the third's time. *Le conquerour* (saith he) *ne vient pas pur ouster eux que avoient droiturell possession mes de ouster eux que de leur tort avoient occupie ascun terre en desheritance del roy & son corone*. It was spoken upon an objection made in a *quo warranto*, against the abbot of *Peterborough*, touching a charter of king *Edgar*, which the king's counsel would have had void, because, by the conquest, all franchises, they said, were devolved to the crown. But, by the way, for that of his nearness of blood, which could not but aid his other pretended title; let it not seem merely vain, in regard of his being a bastard. There was good pretence for the help of that defect also. For, although the laws of this kingdom, and, I think, of all other civil states at this day, exclude bastards, without a subsequent legitimation, from inheritance; yet by the old laws used by his ancestors and countrymen, that is, by those of *Norway*, a prince's son gotten on a concubine, bond or free, was equally inheritable as any other born in wedlock; which was, I believe, no small reason why he stood at first so much for the laws of *Norway* to have been generally received in this kingdom. And some stories also, which make mention of duke *Robert* his getting *William* on that *Arlet* or *Arlec*, as she is sometimes written, say, that she was to him a good while *vice uxoris*. So *Henry* of *Knighthon* abbot of *Leicester*: *Transiens*, saith he, *Robertus aliquando per Phaleriam urbem Normannie, vidit puellam Arlec nomine, pelli-parii filiam inter caeteras in chorea tripudiantem, nocte sequente illam sibi conjunxit, quam vice uxoris aliquandiu tenens Willielmum ex ea generavit*. And he tells us also, the common tale of tearing her smock. If she were so his concubine or *viceconjux* (between whom and a wife even the old imperials make no other difference but honour and dignity; and by them also some kind of inheritance is allowed to such bastards as are *naturales liberi*; that is, gotten on concubines) it was much more reasonable

that her son should be reputed as legitimate, than that the son of every single woman bond or free, whether concubine or no, should be so, as those laws of *Norway* allow. And when he had inherited his dukedom, he made, doubtless, no question but that his blood was as good in regard of all other inheritances that might by any colour be derived through it; and therefore *William* of *Malmesbury* well styles him *proxime consanguineus* also to the Confessor, as he was indeed on the mother's side; and those of the posterity of *Edward* son to *Ironside*, were then so excluded or neglected that their nearness on the father's side could not prevent him. You may see the common stories of them. But whereas that excellent lawyer *Littleton* says, that *William the conqueror was called a bastard because he was before marriage had between his father and mother, and that after he was born they were married*; (which indeed by the imperials, and by the general law of *France*, would have made him wholly legitimate) I doubt he had but little or no ground to justify it. Had he been so legitimate, it is not likely he should have been styled so commonly and antiently *bastardus*, which name even in his own charters he sometimes used with *cognomento*, as also the bastards of the old *Philip* duke of *Burgundy* were wont to do; although of later time it be reputed as a name of dishonour; and the *actio injuriarum*, or an action upon the case, lies wherever it be falsely objected, as some will have it. But these things prove enough that this *William* seized the crown of *England*, not as conquered, but by pretence of gift or adoption, aided and confirmed by nearness of blood; and so the *Saxon* laws, formerly in force, could not but continue. And such of them as are now abrogated, were not at all abrogated by his conquest, but either by the parliament or ordinances of his time, and of his successors, or else by non-usage or contrary custom.

The laws that are here gathered are for the most part *Latin*, *Saxon*, or *French*. The *Saxon* is interpreted by the old *Latin*, but the *Latin* and *French* are left only in their own words. I presume, scarce any man that with the least care studies the subject, will confess he understands not the context of such *Latin*. And the *French* translated not, especially because it is but the same which is in our old year-books and statutes, and may indeed even as soon be understood by any fit reader of the rest, as I could have translated it. And I think the judicious searcher desires rather the original tongue, whatever it be, than a translation. Therefore I suppose (if he have not studied the laws, or otherwise know it) he will rather take some minutes pains than blame me for not turning it; And howsoever to divers peevish ignorants, out of their dainty stomachs, and pretence of nothing but the more polished literature, it may here seem barbarous and distastful; the truth is, it was the plain and ge-

^f Sharde in cas. in itin. temp. Ed. III. fol. 143. b.

Cotton. ^g ff. de legat. 3. l. item legat. 49. §. 4.

de gest. reg. lib. 2. fol. 52.

^h 18 Ed. IV. fol. 50. a.

de domaine du Fr. traict du bastardise, chap. 9. &c.

de liberis natural. cap. 12.

ⁱ Vide Roger de Hoved. in Rich. I. fol. 425. & 347.

^j Authent. 89. c. 12. discretis igitur, &c.

^k C. tit. de nat. lib. c. cum 10. &c.

^l Apud Camden. in Richmond a.

^m In bibl.

ⁿ Videffis Malmesb.

^o Videffis Bacquet.

^p Videffis Pont, Heuterum

nuine *French* of elder time spoken in the *English* court, and now loathed only by such as know not at all how to judge of it, nor understand the original whence it came to be, and remain so with us. I remember that, old ^f father Gregory of *Neocaesarea*, whom they call *Thaumaturgus*, speaking of the old imperials of *Rome*, as they were in their *Latin* (which both then was, and now is a most accurate and polite phrase) commends them, for that they were indeed in an admirable and stately language, and in such a one as fitted an imperial greatness, *ἡσυχία δὲ ἔμους ἐπὶ*, saith he, yet to me it is crabbed and troublesome. And so he says, he was ever driven to think of it; yet in his youth he was put to study them at *Berytus*, and was taught *Latin* to that purpose. If to so great a man that curious language could seem no pleasanter, when he studied it, it is the less wonder that the law *French* (which doth as truly and fully deliver the matter in our laws, as the *Latin* in the imperials; though indeed far from polite expression) should be so contemptible among the many petty ignorants, which usually despise whatever their lazy course of studies hath not furnished them withal, and most indifferently censure things only as they see them present, without regard to the cause or original of them, which made them that they were first inevitable, and afterward remained, not without exceeding difficulty, if at all, alterable. But this by the way.

Of the IX. X. XI. XII. XIII. and XIV. chapters.

UPON the discovery of the original of our parish, of the antient and late practice of tything here, of arbitrary consecrations of tythes made by the laity, of the first settling of parochial right to tythes in *England*, of appropriations, of exemptions, of infeodations, and the antient jurisdiction of tythes (all which take up these vi chapters) no fit reader can be so blind as not to see necessary and new assertions, and consequents to be made out of them in every inquiry, that tends to a full knowledge of the true and original nature of tythes, as they are possessed or detained by either lay or clergyman, in respect only of any humane positive law or civil title. But we should here briefly admonish somewhat of our appropriated or consecrated tythes, and conclude all with a touch of the canon laws antient authority, which in practice made such alteration in *England*, as is shewed, about the year mcc.

To the matter of consecrations and appropriations here, apply what is admonished touching them in the review of the vi chapter. And let every man first carefully look, that he know the course of old appropriations, and the way how the monasteries and colleges came by them, before he conclude rashly of the tythes that are possessed through them. Tythes consecrated and appropriated, were purposely de-

icated to the Almighty and his service, although not without mixture of superstition; that we are sure of. But although a tythe generally were due to the evangelical priest *jure divino*, without any civil title, yet we are nothing sure that all or the most appropriated or consecrated tythes are the self same tythes so due; which is yet supposed as clear, and never further thought on by such as have troubled themselves and their readers with arguments for the church, in the point of appropriations. Let him that shall now write of them, see here the way how to consider them; and let him that that detains them, and believes them not due *jure divino*, think of the antient dedications of them made to holy uses; and however they were abused to superstition, as the other large endowments of the church, before the reformation; yet follows it not, without further consideration, that therefore, although so dedicated, they might be prophaned to common uses and lay hands. Consult herein with divines. But I doubt not, but that every good man wishes that at our dissolution of monasteries, both the lands and impropriated tythes and churches possessed by them (that is, things sacred to the service of God, although abused by such as had them) had been bestowed rather for the advancement of the church, to a better maintenance of the labouring and deserving ministry, to the fostering of good arts, relief of the poor, and other such good uses, as might retain in them, for the benefit of the church or commonwealth, a character of the wishes of those who first with devotion dedicated them (as in some other countries^b upon the reformation was religiously done) than conferred with such a prodigal dispensation, as it happened, on those who stood ready to devour what was sanctified, and have (in no small number) since found such inheritances thence derived to them, but as *Sejus* his horse, or the gold of *Tbolouse*. But I abstain from censure, and add here by the way, a complaint made to the parliament not long after the dissolution, touching the abuse that followed in the church, through laymens possessing of appropriated churches and tythes. It deserves to be seriously thought on by every layman that now enjoys any of them, especially where divine service is not carefully provided for. *Ye that be lords and burgeses of parliament house* (so are^h words of it) *I require of you in the name of all my poor brethren that are English men, and members of Christs body, that ye consider well (as ye will answer before the face of almighty God in the day of judgment) this abuse, and see it amended. Whanas antichrist of Rome, durst openly without any vizer walk up and down thorow out England, he had so great favor ther, and his children had such crafty wits (for the children of this world are wiser in their generation than the children of light) that they had not only almost gotten all the best lands of England into their hands, but also the most part of all the best benefices both of parsonages*

^f In panegyric. ad Originem.

^g Christoph. Binder. de bonis ecclesiae in ducat. Wittenberg. pag. 94. &c.

^h Ex libello

dicto, the complaint of Roderik Mors, sometime a grey friar, &c. olim impress. Geneva.

and vicarages, which were for the most part all impropred to them (the impropriations held by them were much more than one third of all the parish churches in England divided into three parts) and when they had the giftes of any not impropred, they gave them into their friends, of the which alwaies some were learned, for the monks found of their friends children at schole. And though they were not learned, yet they kept hospitality, and helped their poor friendes. And if the parsonage were impropred, the monks were bound to deal almesse to to the pore, and to keepe hospitalitie, as the writings of the gifts of such parsonages and lands do plainly declare in these words, in putram elemosynam. And as touching the almesse that they delt, and the hospitalitie that they kept, every man knoweth, that many thousands were well received of them, and might have been better, if they had not had so many grete mens horse to fede, and had not bene overcharged with such idle gentlemen, as were never out of the abbaies. And if they had any vicarage in their hands, they set in sometime some sufficient vicar (though it were but seldom) to preach and to teach. But now that all the abbaies, with their lands, goods, and impropred parsonages, be in temporal mens hands; I do not here tell that one half penie worth of almes or any other profit cometh unto the people of those parishes. Your pretence of putting down abbeyes, was to amend that was amiss in them. It was farr amiss, that a great part of the lands of the abbeyes (which were given to bring up learned men that might be preachers, to keep hospitalitie, and to give almesse to the poore) should be spent upon a few superstitious monks, which gave not xl pound in almesse, when they should have given cc. It was amisse, that the monks should have parsonages in their hands, and deal but the xx part thereof to the poor, and preached but ones in a yeer to them that paid the tythes of the parsonages. It was amiss, that they scarcely among xx set not one sufficient vicar to preach, for the tythes that they received. But se now how it that was amisse is amended, for all the godly pretence. It is amended even as the devil amended his dames legge (as it is in the proverb) when he should have set it right, he bracke it quite in pieces. The monks gave to little almesse, and set unable persons many times in their benefices. But now, where xx pound was geven yerely to the poore, in more than in c places in Ingeland, is not one meales meat given. This is a * feare amendement; Where they had always one or other vicar, that either preached, or hyred some to preach, now is there no vicar at all; but the fermer is vicar and parson altogether; and onely an old cast away monk or frere, which can scarcely say his matins, is hyred for xx or xxx shillings, meat and drink, yea in some places for meat and drink alone, without any wages. I know, and not I alone, but xx. M. moo know more than vicarages and parsonages

thus well and gospelly served, after the new gospell of Ingland. And so the author goes on with sharp admonitions to the laymen, that fed themselves fat with the tythes of such churches, while the souls of the parishioners suffered great famine for want of a fit pastor; that is, for want of fit maintenance for him, for without that, he is scarce to be hoped for.

But we conclude with that of the canon laws getting such force, and making such alteration in matter of tythes about the year m.cc. when through it, parochial payment became first to be performed here, or elsewhere, generally, and as of common right (where other titles prevented it not) and through it only; not through the antienter secular laws made here for tythes. For the suits for them in the spiritual courts either were all grounded upon the canons; or the common right of tythes was now supposed in the libel, as a known duty to the clergy, without secular law. It may soon be apprehended, that it was much less difficult about that time, than any other, for the popes and their canon laws to gain more obedience among subjects, and execute more authority over lay possessions, when also they so easily usurped power over supreme princes, which yielded to them. For no time ever was, wherein any of them more insolently bare themselves in the empire, never near so insolently in England, as in the continuing times next before and near about this change. And to all states the church of Rome now grew most formidable. Remember but the excommunication and correction suffered by Frederick Barbarossa, Henry VI. and other princes of the empire; and by our Henry II. and king John; the stories of them are obvious. And our Richard I. between those two, to gratify the clergy here for their exceeding liberality, in contribution to his ransom from captivity, with great favour gave them an indulgent charter¹ of their liberties; which being joined with those other prone and yielding admissions of the ecclesiastick government over the crown (so were the times) doubtless gave no small authority to the exercise of the canon law in those things, which before about that time were diversly otherwise. Neither was that part of the canon law, which would have a general and parochial payment of tythes, not only second to any, in regard of the clergy's profit; but also none other, doubtless, was so great as it, in gaining the clergy a direct and certain revenue. Therefore it was not without reason on their side, at such time as they saw the power of Rome, that is, the authority of decretals and of the canons, grow most dreadful to prince and subject, that they should urge this on to a continuing practice, and that with execution of the reigning censures of the church. Hence have the canons, in this point, hitherto here continued, and have been and are binding ecclesiastick laws, saving wherein the later express laws of the kingdom cross them. And thus out of the quality of the time, with regard to

* Fair.

¹ Apud Innocent. III. epist. decretal. lib. 2. pag. 242. edia Colon.

the practised insolency of the pope and his clergy, in putting their canons and decretals in execution, that received general practice of parochial payment (near almost according to the canons) and other such alterations, that suddenly varied from former use, and from the liberty of the lay subject, must have its original; not from any want of the canons of the church of *Rome*, as if they had not been here at all had, or read, before about that time. For doubtless, the canon laws were here used and practised as far forth, as the clergy could make the laity subject to them. For, above 5 years before this alteration, good testimony is of the publick and solemn receiving of the *codex canonum vetus ecclesiæ Romanæ* (mentioned by old popes¹ for the eldest and most authentick body of the canon law of the western church) and that in a national synod held in D.C.LXX. under *Theodore* and *Wilfrid* archbishops; where, with one voice, the clergy answered *Theodore*; *Optime^k omnibus placet quæcunque definierunt sanctorum canones patrum, nos quoque omnes alacri animo libentissime servare; Quibus statim* (says *Theodore*) *protuli eundem librum canonum, &c.* But at that time there was no law for tythes, or mention of them in the known canon law of the church of *Rome*, or in any other provincial canons, saying in that of the second synod of *Mafcon*. Afterward also, we find the *leges episcopales*,¹ which were severd by *William I.* from the hundred, and confined to the bishops consistory; that we may omit the national or provincial constitutions of this kingdom, made in those elder times, according to the old canons of the church of *Rome*. And x years before *Gratian's* decree written, it is certain, that the canons of the church, generally by the name of *canones* and *canonum decreta* (for divers collections were of them, and some also confirmed by papal authority, beside the *codex vetus*, before that of *Gratian*) were familiarly talked of and urged in that great^m controversy in the synod of *Winchester*, in the fourth year of king *Stephen*, touching the castles of *Newark*, *Salisbury*, and the *Vies*; where the king denied utterly, *cenfuram canonum pati*; that is, to have it determined by them, whether or no, the two bishops, *Roger* of *Salisbury*, and *Alexander* of *Lincoln*, might lawfully keep their castles that they had fortified. But while the rest of the bishops stood so much upon their canons, and even in the face of majesty professed a rebellion, the king, and the lay subjects, it seems, grew so exasperated against them, that by publick command, for preservation of the liberty of the crown and laity, they were forbidden to be of any more use in the kingdom. For so perhaps is that to be understood (as we have elsewhereⁿ noted) in *John* of *Chartres*,^o where he says, that, *tempore, regis Stephani a regno jussæ sunt leges Romanæ, quas in Britanniam domus venerabilis patris Theobaldi Britanniarum primatis asciverat. Ne quis etiam libros retineret, edito regio*

prohibitum est. What he calls *leges Romanæ*, the most learned friar *Bacon*, mentioning the same story, styles *leges Italiæ*, and takes them for the *Roman* imperials, and not for the canon law. I confess, I see not enough clearly here to judge (upon the words of *John* of *Chartres*) whether it were the canons^p or the imperials. On the one side, if we say, he meant that *Theobald* or his clergy, brought the *Roman* canon law; it might so seem, as if it had not been here before in the hands of the clergy, nor partly practised by them. Which doubtless is otherwise. If, on the other side, we understand the imperials (copies of which indeed might well be at that very time brought as a novelty hither; for they were then newly found; and plainly in *Henry II.*'s time, they were here in the hands of the more curious scholars, as you may see by *John* of *Chartres* his citing of them) how then is that true, which he presently after says, of the increasing power and force of those *leges Romanæ*? *Sed*, saith he, *Deo faciente eo, magis virtus legis invaluit, quo eam amplius nitebatur impietas infirmare.* What force or power at all had the imperials here afterward? Where is any sign of it? But the objection, against that which might prove them not to have been the canon laws, may not difficultly perhaps be answered. It is true, that the canons of *Rome* were here before, and read, and partly practised in the church. But divers collections were of them about this age of king *Stephen*, and perhaps some later and larger collection might be brought hither by archbishop *Theobald*, or some of his clergy, which are understood, I think, in that *domus venerabilis patris Theobaldi*. He himself perhaps might bring *Ivo's* decree (when he came from *Rome* in 3 of king *Stephen*) and endeavour the strict practice of it here; (which the king and the lay subject had reason enough to dislike) or some of his clergy might perhaps afterward bring in *Gratian's* decree, that was both compiled by *Gratian*, and confirmed by pope *Eugenius III.* about ten years before *Theobald's* death, that is, about 16 of king *Stephen*: and this way those words of *legis virtus invaluit*, may have their truth. For however that opposition against the canon law were, it is most certain that this first part of the body of it (the decree) was presently, upon the first publication of it, in use in *England*, and familiarly cited by such divines as talked of what had reference to it. Witness especially^p *Giraldus Cambrensis* in his epistles, and the practice of the canon law here, for the time of *Henry II.* is seen in the epistles of that *John* of *Chartres*; which yet remain and are, I think, the antientest examples of proceedings in our spiritual courts. But notwithstanding that first part of the body of the canon law, which expressly commanded tythes to be generally paid, were here soon received among the clergy; yet about 1 years after that, the former course of arbitrary consecrations of them continued. And both that and the rest of those courses in dispo-

¹ Dist. 19. c. 1. si Romanorum, dist. 20. c. de libellis.

^m G. Malmesb. hist. novell. lib. 2. pag. 103. b.

^o De nugis curialium, lib. 8. cap. 22.

^k Beda hist. eccles. lib. 4. cap. 5.

¹ Vide cap. 14. § 1.

ⁿ Jan. Ang. lib. 2. §. 43. vide, si placet, not. ad Fortesc. pag. 43. & 44.

^p In symbol. elect. inf. in bibl. Cot.

sition of church revenues, which so differ from the canons, and from the practice of this day, was not fully altered till some decretals came hither with more powerful and dreadful authority (as the times were) of some of the following popes, especially of *Alexander III.* and *Innocent III.* which two alone, I think, sent as many commanding decretals into every province, as all their predecessors had before done; and especially into *England*, as is already shewed, they sent divers (only for the matter of tythes) which were all first of papal authority, for the particular ends for which they were sent, and so were obeyed as canon law, although none of them became parts of the general canon law, until *Gregory IX.* put some of them into his decretals, authorized by him in the year MCC.XXX. about which time, perhaps, and divers years before, the canon law of *Rome* was not only read here privately among the clergy, but professed also in schools appropriated

to it; So I guess is that close writ of 19. *Hen. III.* to be understood, which prohibited the holding of *scholae legum* in *London*. It was directed to the mayor and sheriffs, commanding them, ^a *Quod per totam civitatem London clamari faciant & firmiter prohiberi, ne aliquis scholas regens de legibus in eadem civitate, de caetero ibidem leges doceat. Et si aliquis ibidem fuerit hujusmodi scholas regens, ipsum sine dilatione cessare faciat. T. rege apud Basing. xi die Decembris.* This was five years after the decretals published; and, it seems, most probable, that these *leges* were canon laws, perhaps mixed (as usually they were) in the profession also with the imperials (for both of them were, it seems, studied here under *Henry III.* by the clergy, more than other part of learning) and therefore were forbidden, as being both, in regard of their own authority, against the supreme majesty and independency of the crown of *England*.

^a Clauf. 19. Hen. III. membr. 22.

^r Videfis 39 Hen. III. apud Matth. Paris hist. major. a. d. 1255.



A N
ADMONITION

T O T H E

Reader of Sir *James Sempil's* APPENDIX.

T O T H E R E A D E R O F Sir James Sempil's A P P E N D I X,

For so much as concerns *Scaliger* and *Selden*.

IF I must call it by a name, it shall be an *admonition*; for had Sir *James* but in *words* answered any thing I had objected, I would have called it a *reply*; or if he had to the purpose objected against what I had written, I had named it an *answer*; he doing neither, I could use neither of these names.

Whence I have so ill deserved, *reader*, of this Sir *James*, a man, that (till this occasion) I never had heard of, that he should thus chuse my name, to oppose it; I as little know, as how I have so well deserved of him, that he should say so little, or indeed nothing at all against me. For so far clear is he from *proving* any thing against those two or three pages of mine, which he meddlerh with, that I dare confidently justify (as I presently shew) that he hath scarce at all barely *spoken* what so much as *verbally* crosses any part of them. And indeed, you see in his own conclusion of his *appendix*, after he hath spent some leaves in offering at what he found in my *history*, he yet becomes so judicious, as to tell you; that my *history*, and his *simple judgment* (as his words are) *de jure, may stand together*. But why then doth he promise in his *title*, the *answering of objections found in Scaliger and me*, unless because the Stationers and their *boys*, for vent of the book, might thence assure their customers, that the *History of Tythes*, is now utterly confuted? But the sum of all that Sir *James* would prove, is, that *tythes should have been paid otherwise, than I, out of infallible testimony, have delivered that they were paid*. What if he could prove that they *should have been paid otherwise*? What is *that to me*, or *Scaliger*? Neither of us ever made *that* our question; we have both related what was in *practice*. Neither of us (being both *laymen*)

were so bold, as to instruct the *clergy*, what should be done in a matter of *divinity*. My *title* is *history* only, so are the three *parts* of it, so is every *line* of the whole. Now to offer to disprove any thing in my *history*, must be either by shewing, that I have *false* quotations, or that I *falsely* relate the *words*, or *sense*, of my authors, or that I have omitted *testimonies* for other sides, that are of *better* credit. But Sir *James* ventures not on any of these, and he abstains warily; for I know, as well as I know my own name, that though the most learned that lives, search me, and that with the curiousest censure, yet he shall not find the least offence that way committed by me. I know so, and am secure of it, however *detraction* may wrong me; and I would gladly, that they which speak contrary of me to others, should but put on the ability to design out to my self any such offence through the whole work.

I shall willingly learn, if they teach me, and can as easily neglect them, while their whisperings injure me. But they are few enough that can judge here; and for Sir *James*, he hath ingenuously shewed himself a man not at all conversant in those who should furnish him to judge of what he offers to find fault with. For all that he *seems* to oppose me in, (for he only *seems* to do so) is, either about the *tythes* of *Abraham*, or of the *Jews*. He that talks of *Abraham's* tything, without aid of the *antients*, must trust only to his own, and new fancies. I tell my *readers*, what the *fathers*, and *rabbins* have of it, but Sir *James* deals not with *them*, where he speaks of *it*; and he that will teach the *practice* of the *Jews* in *tything* (let the *right* be what it will) without the authority of the *body* of the *Jewish* canon law (that is, the

^a Append. p. 54.

talmud) and of the *Jewish doctors* or *rabbins*, is in meer darkness. For holy scripture hath not left memory enough of *practice*, but of *precept* only; and to prefer a bare *conjecture* of what the *Jews* did in *Jewry*, before their own exprels *testimony*, is, as if we should believe, that the *Jews* in *Germany* did, as Sir *James* at *London* might only fancy them to do, rather than as they themselves should thence relate to us. But he hath made new *interpretations* of scripture, and thence would he prove, that the *Jews* did this or that, because forsooth (as he thinketh) they *should have* done so. What logic is this? It *should have been* so, *ergo* it was. I could so prove, that sir *James* hath not written the greatest part of his *appendix*. Thus should my argument be. Sir *James* should have abstained from meddling with the divine *Scaliger* and me, (I know that is granted by enough already, and by them that loved him) *ergo* he did abstain. Strange things might be thus proved. Nay, thus it is plain also, that there is no sacrilege, and so his whole *treatise* falls to be against *nothing*, for, to keep the form of argument, there ought to be no sacrilege, *ergo*, there is none.

The sum of all that Sir *James* would offer against me, is included in *this* kind of argument, saying, where he charges me with such passages, as I never wrote or dreamed of, as you shall see in the particulars. To be brief, Sir *James* hath written what he *thinks*, and I what I *know*; he what *should have been*, and what now *should be*, and as he *thinks* too; I what *hath been* in use and practice, and that as I *know* too, as well as the choicest *testimonies* of *Jews*, *Gentiles*, and *Christians* for all ages could instruct me. But perpetual shame be to *them* (if any such there be) that have abused any part of my discovered and constant *truth* to a *sacrilegious* end. We come to the *appendix*, where he begins with me and *Scaliger* in *pag. 20*.

§. I. He finds fault with *Scaliger*, because he saith, that *tythes* are only considered, as they are paid by the labourers, or husbandmen, not as paid by the *Levites* to the priests. And then he tell us, that *Scaliger* should have altered his *title* (which is general, ^b of *tythes* in the law of God) and made it, ^c of *tythes* paid by the labourer, because in the law of God, there is a *tythe* of a *tythe*, paid also by the *Levite*.

I would not willingly have been in his case, that in *Scaliger's* lifetime, thus should have offered to correct him, and I owe that great name so much in that I have learned from his incomparable works, that being thus joined with me, I ought to justify him.

Who sees not, that what the ^d *Levites* paid, was an *hundred* part, not a *tenth* or *tythe* (which is all one word) of the *yearly* increase? And what doth the words of *tythe* of a *tythe* denote, other than an *hundredth* part? Why then is *Scaliger's* *title* faulty? He perfectly knew

(as every man must, that can but number) that a *tythe*, as a *tenth* part only, of that whence it was originally divided, was paid only by the husbandman. He clearly knew it, and therefore he wrote it.

§. II. He tells you that *Scaliger* will have the *poor man's tythe*, all one with the *first*, and that I will have it all one with the *second*. No such matter, Sir *James*. I (of my self) will have it neither the one, nor the other. I only tell my reader, what the *Jewish practice* was in *this poor man's tythe*; and that I confirm by the exprels testimonies of the body of the *Jewish canon law*, and those three most eminent rabbins, *Jarchi*, *Ben Maimon*, and *Mikotzi*; which all agree in this particular, that the *poor man's tythe*, and the *second tythe*, differ in the years and place only of payment, not at all in substance, and that in the year when the *poor man's tythe* was paid, no *second tythe* was at all paid. The testimonies of these *Jewish* monuments furnished me with all that I have delivered, and there was never any learned man that yet doubted but they were most certain and infallible in relating to us the practice of that nation, however they be full of toys and ridiculous fancies for matter of divinity. For I take it not to be a question of divinity, whether *tythes* were paid thus or thus.

§. III. But, saith he, as I have herein Selden against *Scaliger*, so (I hope) scripture against both. Not a word of scripture against either I assure you. What piece of scripture hath he offered? What can he offer to prove the practice otherwise than I have faithfully related? But in his *treatise* he bringeth scripture, and by new interpretations of his own, would prove, that it should have been otherwise. Here again is the logic I told you of. It should have been otherwise, *ergo*, it was otherwise. And methinks, he that had so critically found fault with *Scaliger's* title, should have been wary to have here observed also mine, that is prefixed to my chapter of the *Jews* tythes, which he speaketh of. The words of it are. *How among the Jews tythes were paid, or thought due*. And all my title is convertible with that chapter, as my whole book is with the name of history. Now unless Sir *James* conclude one of these two; either that they were not thus paid, as I relate, or that they were not held thus due amongst the *Jews*; he talks only of me, but nothing at all against me. No man that hath sense, but sees this. And for *Scaliger's* differing from me, I confess, the words of his published copy differ herein from me; and that published copy hath deceived others, that are very learned, while they transcribed it. But I dare swear, however it fell from his pen, it was no more possible, that it could come from his judgment, than that so divine and learned a brain, should understand them in Hebrew to signify the *first*; For he took that diatribe of his, from the *Jewish* lawyers, and from the fame that I

^b De decimis in lege Dei.

^c Bulling. ca. diatrib. 3. alii.

^d De decimis a solo colono pendendis.

^e It should be thenith, in Hebrew, second.

^f Num. xviii. 6. 26.

^g Pag. ead.

^h Pag. ead.

used, and he professeth as much in the beginning; and in them, the *poor man's tythe* is always instead of the *second*, and questionless such an error or oversight only, had not escaped, if he himself had published it; But we know it was not printed till after his death, and that carelessly at *Frankfort* first; neither is it without divers faults of the print, especially in the *Hebrew* words; And in another place it is plain too, that *secunda* is for *prima*, as ¹ Sir *James* hath well observed. Neither durst I call it an error in *Scaliger*, ² I only said, that *by his leave* it could not be so; And every one of the learned, that are able to look in the *Jewish* doctors, will I know agree with me, unless they will also deny they saw this light. So clear is all that I have therein spoken; and for what should have been, or for interpretation of *scripture*, my title had no more to do with them, than Sir *James* hath indeed to do with me.

§. IV. He saith, ¹ that *Scaliger*, in citing of *Tobit* j. 7. is against his own grounds. Why? Because the *tythes* there spoken of, are paid to the *priests*, or the sons of *Aaron*. Before he can prove that this is at all against *Scaliger's* own grounds, he must shew that *Scaliger* did take that to be the true reading of *Tobit*; but plainly *Scaliger* did take the best reading there to be, the sons of *Levi*, as the best edition of *Rome*, and the best *Hebrew* copies have it expressly; neither doth the old *Latin Tobit*, *St. Jerom* turned out of *Chaldee*, speak here of *Aaron*. And where then is Sir *James's* exception against *Scaliger*? See the next section.

§. V. He correcteth *Scaliger* and *Selden*, because they ^m will not (as his words are) have the *priests* to receive any *tythes* immediately from the *laicks*. We never told him that we would not have them do so, but we are sure that they did not receive any from *laicks*. But let him that will, believe Sir *James* here. He offers *Tobit* against us; if we deny him that word, *Aaron*, there his argument is at an end, and at the best he uses here his own fancy and conjecture only, against the express testimony of the *Jewish* canon law, which was received by their doctors from certain tradition, much antienter than Sir *James* can prove that *Tobit* was written. Beside, for the *Greek Tobit*, I refer you both to *Bellarmino* and *Reynolds*, where you shall see it by both valued as of the least authority: Neither do the *Jews* acknowledge that book for any authority amongst them; and the *Latin Tobit* (as I have admonished) which *St. Jerom* turned out of *Chaldee*, hath not a Word here to help Sir *James*; and this satisfies that he strives to wring by meer conjecture, upon uncertainties out of *Tobit*, against our infallible testimonies of known credit. For the rest that Sir *James* uses out of the ⁿ chronicles here, I refer it to your judgment, reader, look upon the place first.

§. VI. ^o He finds fault with *Scaliger* for quoting those texts of *Deuteronomy* and *Leviticus*

to such purpose as he hath done. *Scaliger* took all (as ^p is already told you) from the *Jewish* doctors, and for his particulars cites these parts also of the *old testament*, as those doctors do, thence came it that he gave these quotations; as every man, that is able, may soon see in *Ben-Maimon* especially, and in *Mikotzi*, if he search these places which I have cited out of them. *Scaliger* was not so bold as to innovate former interpretations, but he faithfully delivered what he found in their commentaries, as his purpose was. Neither doth Sir *James* here find fault with *Scaliger*, but with the *synagogues* of the *Jews*, and teacheth them a new way to interpret. What is that to *Scaliger*?

§. VII. He ^u sees no coherence, or analogy from *scripture* for what I cite out of *Jarchi*. It is all one to me, whether he do or no; his quarrel is here with *Jarchi*, then not with me, for I cited it to let you know, that *Jarchi* (that is, the author of the ordinary gloss in *Hebrew*) said so, not to interpret *scripture* my self, which is no part my history.

§. VIII. ^r He denies that the first tythe was carried to *Jerusalem*, because it was without precept, and impossible. Indeed for the impossibility it were a good proof against us; if it were impossible, then certainly it was not in practice; and if you believe, reader, that Sir *James* hath proved it impossible, you may at your pleasure agree to the consequent. But *Scaliger* and I know, that the *Jews* (who should somewhat better know their own practice than Sir *James*) agree in it, that it was carried all to *Jerusalem*, and thence dispensed. Let who that will, dispute with them about the impossibility of it; it is plain that it was possible, but for being without precept, what is that to *Scaliger*, or me? Must we so often remember that we talk of practice not of precept?

§. IX. At the end of this ^t page, he saith, we hold that the first tythe was only due to the inferior Levites. Where did either of us speak of their being due so? We say only it was thus and thus paid, and that we are sure of; and for the duty, I preserve my opinion till I be asked.

§. X. ^s If, saith he, *Selden's* meaning be, wholly to frustrate the *priests* of any portion in *tythes* inheritance; then, consider what was said of this, part. 7. cap. 5. §. 2. I pray, reader, consider it well, and see what will come out of it. I know not why Sir *James* doubts here of my meaning; one meaning only I had, to tell that truth which I saw none had collected, and I had no quarrel to frustrate them of *tythes* inheritance, as he calls it, a name that I thank him for. Never till now did I ever hear of a *Jewish* tythe distinguished by that name, but for the matter see before, §. 4. 5. & 7.

§. XI. ^u Out of *Numbers*, c. xvij. and *Josephus*, he would prove again, that *Aaron* and the *priests* had of that tythe inheritance, that is, of the first tythe. For the text out of *Numbers*, because it meddles not with the practice,

¹ Append. p. 21. ^k Hist. of tythes, cap. 2. §. 3. ^l Append. p. 21. ^m Append. ibid. ⁿ Append. p. 22, 23. ^o Append. p. 24. ^p Supra, §. 3. ^q Append. p. 22. ^r Append. ibid. ^s Append. ibid. ^t Append. ibid. ^u Append. cod. 2.

but only shews the *precept*, I warily say nothing to it, though it were small difficulty to answer his *objections* taken from it; but I touch nothing here but *practice*; and for that in *Josephus*, clearly it was spoken of the *tythe of the tythe*; But he thinks not, why so? For three reasons; First, because *Josephus was not then at Jerusalem*. Secondly, because *he was no high priest*. And thirdly, because *he never read that name of tythes alone, for the tythe of tythe*. For the first reason; What was that to the matter, though *Josephus* was not then at *Jerusalem*? No man doubts but that the twenty four courses of the priests, and their families, lived variously dispersed, yet the *tythes of the tythes* were communicated to them from *Jerusalem*, as by others also, besides *Josephus* in his life, it appears they were. For the second reason. I never heard before that the *high priest* had the *tythes of the tythes*. Plainly *Josephus* was a *priest*, and that was enough, but more of that presently in the thirteenth section. And for the third reason, *that he never read the word tythes for tythes of tythes*. I make no question but that was spoken with this resolution, that wherever the word *tythe* alone did occur, it should be interpreted for some other *tythe*, and not for the *tythe of tythe*, and so long as *Sir James* is in this opinion, he may reasonable securely say, that the word is *never used so*. But what makes that to the matter, when all he saith is but his own *conjecture*? On the other side, *that I have delivered*, is from such *clear and express testimonies*, as plainly tell us what *Josephus* meant, while they so reach us the *practice*; and clearly in regard of the *priest's* receiving the *tythe* from the *Levites* without reference to the *husbandman*; it is a *tythe* only and properly to be so called, though it be one hundred in regard of the *husbandman*, as in §. vi. But did the *priests* receive a *tythe*, and pay also a *tythe* of it to themselves?

§. XII. * Yet master Selden would prove, from this same place of Paul, that *priests were not partners in these first tythes*. Not I, I assure you, I never went about to prove any such thing, I only tell you in the place *Sir James* quoteth, that from the certainty of the husbandman's not paying any immediately to the priests, that holy passage is interpreted, and that by the most learned *Drusus* in his *praeterita*; he knew from the *Hebrew* doctors, and thence interpreted it.

§. XIII. ² But what if this *decima decimarum*, saith *Sir James*, were not properly, and primo due to the priests, as Mr. Selden seemeth to avouch; but to the high priest. It is strange I should be so often charged with what I not so much as once talked of. Where do I talk of their being due, or not being due? But I am sure it was paid to them in general, and not only to the high priests; that is clear both by the *Hebrew* doctors which I have cited; and ² *Philo* and *Josephus*, being both *Jews*, expressly tell us, that the *Levites* gave the tenth of their *tythe* to the *priests* generally. I wonder still

that *Sir James* will offer his *new conjectures* against such *infallible certainties*, that are with one consent of antient writers agreed upon. For indeed in this he offers a proof, but to no purpose, that it was otherwise than I had noted in the eleventh section.

§. XIV. What I offered out of *fathers* and *rabbins*, touching *Abraham's* being a *priest*, ^b *Sir James* acknowledgeth, but minces it with a distinction. Let him talk as he pleaseth, I would fain know what *Jew*, or antient father he could shew me, that expresth any kind of *priesthood* before the law, that was noted with the privilege of *primogeniture*; And for his distinction, I confess I no more understand it, than I do why he should tell us, ^c that *Abraham* was no priest in *privilegiis primogeniturae*. What privilege of *primogeniture* wanted *Abraham*? But all this page, I will wonder at it, and in courtesy leave it.

§. XV. For that of ^d *Tobit*, remember that *Scaliger* and I bring not *Tobit* for our proof; But *Tobit's* text, at the best being doubtful, we clear all by the *talmud*, and the *Hebrew* doctors, and thence interpret *Tobit* by them. And for the authority of *Tobit* against us, remember what I said in the fourth and fifth sections. But why doth *Sir James* conceive here, that the *Tobit* translated out of *Chaldee* by St. *Jerom*, telleth us expressly, that he gave the *poor man's tythe* only *tertio anno*, and there is no such matter as a *third tythe*. Here then is the question, whether *Sir James's* fancy alone upon an uncertain text, that may be as easily interpreted literally against him, or the general express consent of the *Hebrew* doctors, that best knew their own practice, shall be preferred? And for his offering to prove that it should have been otherwise, that is nothing to *Scaliger* and me; we dispute no such question.

§. XVI. Against *Joseph* and *Tobit*, ^e saith he, Selden bringeth but *targum* and *talmud*: Major uter? *Targum* & *talmud*! Where do I against *Joseph* and *Tobit* once mention the *targum* and the *talmud*, both which *Sir James* stileth as if they were writers names. But let that pass. I never doubted but that *Josephus* and *Tobit* agreed in sense, though not in so plain words with the *talmud*; and for the text cited out of *Josephus*, I deny it, that it should be translated by joined to these, but by beside these. So that *Josephus* in the form of his division made this *tythe* a third kind (which was a fault in the fashion of division only) but never understood that the other two were paid that *third year* also. The clear and express testimonies which we have brought for it, make it manifest; And for that major uter, who is the greater? Why, who think you is the greater for the certainty of the practised law in *England*? Are our *year-books*, or *Hollingshead*, or *Polydore Virgil*? It is the same question. Ask somebody that you dare credit, and that can judge of the *talmud*, and see if they say not so. I wonder how that came into *Sir James's* mind here. But for the *targum*. The *targum* was never mentioned by

* Append. p. 26.
Append. p. 27.

² I. 8. p. 337.
⁴ Append. p. 28.

² Append. p. 26.
^c Append. p. 29.

^a Lib. de hon. sacerdot.

^b Append. p. 27. & 39.

me, or thought on to this purpose; and this clearly satisfieth for all that he hath further here, touching this so plainly, miscalled *third tythe*; which howsoever Sir *James* hoped, he hath fully justified against *Scaliger* and me, he must yet know, that until he confutes the *Hebrew* doctors, and the text of the *talmud*, what I have said, remains firm and unshaken.

§. XVII. He deals with me alone, and would ^f prove that *the second and third are not one*. I have only thus related them to be *one*, that is, whenever the *one* was paid, the *other* was not, and the *poor man's*, or *third tythe* (as some have called it) was paid instead of the *second*. The same authority, which I have spoken of so often, gave me this too, and he that will believe Sir *James's* arguments against them, shall rest so instructed without my envy.

§. XVIII. ^g He talks as if I had used his papers, or seen them. I vow by this greatest name that witnesseth all truth, I never 'till within these few days, heard either of his name, or ever heard or read of any thing that he hath written, nor did I ever see a line of his, 'till at the time of the imprinting.

§. XIX. ^h But whereas Selden, saith he, *taxeth all of ignorance that have not used Scaliger's help*. Is it possible Sir *James* should thus charge me, when some ten lines before, himself cites my words which are thus. ⁱ *How sufficiently among us others do, that slothfully and ignorantly, without his help, &c.* Is this a *taxing* of all of *ignorance*? If it be, I understand not *English*.

§. XX. If we, ^k said he, *had all used Scaliger's help, we had been all still in ignorance*. If we had relied indeed upon what only slipped from the pen of that divine wit, we had *still been in ignorance*, as is noted in the third section; but plainly he that useth *Scaliger's* help, shall be by him directed. His words are, that the chief reason why writers erred in expressing the *practice* of *tything* among the *Jews*; was, *quod veteres juris Judaici interpretes in consilium non adhibuerunt*. Had Sir *James* from thence took advice, and learned from the *Hebrew* lawyers, he had not questionless offered thus at *Scaliger* and me.

§. XXI. ^l Now we are to hear Mr. Selden's opinion in disposing of this *third tythe*. Sir *James* never heard or read any opinion of mine, touching this matter, unless he will call an *historical narration* upon other men's credits, an *opinion*. And for what he hath here of *Tobit* and *Josephus* is before satisfied in §. XVI. And though he say it ten thousand times over, that *Tobit* and *Josephus*, are *contrary*, I deny it utterly; and though they were, that were nothing against the *talmud*, and the consent of so many *Hebrew* doctors. I appeal to the learned here.

§. XXII. Surely ^m saith he, *I cannot well construe this section, in course of true divinity*. Perhaps he cannot, and why should he go about it? It was not written by me for *divinity*, but

for *history*; therefore if he had said he could not *construe* it in *physick* neither, I had agreed with him. But for the *serving* and *starving* at *once*; why, the *first tythe* that was paid *every* year would keep them from *starving* I trust, so there is no such fear.

§. XXIII. ⁿ But if Selden mean, saith he, *that the feasts ceased also each third year*. I wonder he should doubt whether I mean so or no, I could mean nothing else; so he understood those *feasts* at *Jerusalem*, wherein the *second tythe* was spent.

§. XXIV. What is here meant by *division*, I know not, ^o saith Sir *James*. Why then I am ready to tell him what I meant by it. As the *second tythe* was divided from the *annual increase*, next after the *first* in two years, so was the *poor man's tythe* in the third year; and in that example which I shew to explain the *practice*, it is plain, that in the *division* of the *second tythe*, and of the *poor man's tythe*, the same number, that is, 531 is the divided part. This is meant by *division* there, and I wonder that any man should not apprehend it.

§. XXV. The persons differ in both *tythes*, ^p saith he. Did I say, that all the persons that eat of the *one*, eat also of the *other*? I only tell you, that the *Levites* were partakers of both, and therein they agree in the persons, and that plainly justified my words.

§. XXVI. And is not that, ^q saith he, *enough*? That is, the *place*. I did never think that the *place* only was *enough* to make a real or essential difference; but however, my saying they were *one*, is but (as I express it also) that the *one* always being paid, according to the variety of years, the *other* ceased. That is as clear as the sun's light is not clearer, I appeal to all those rabbins, and the canon laws, the received *practice* of the *Jews*.

§. XXVII. May not *Tobit*, half a bible book, ^r saith he, as well, yea better justify my *division* agreeing with all the *Hebrew texts* that we have, as the *septuagints*, a contrary, who are held but translators even of *Tobit*? No doubtless, Sir. Of that testimony out of *Tobit*, enough has been said in §. IV. and V. and for your *Hebrew* text or *Tobit* either, I deny still, that any of them prove the *practice* to differ from what I have delivered. But are the *septuagints* held the translators of *Tobit*? First, they that hold so, must prove that *Tobit* was a book among the *Jews* in the time of the *septuagint*. Clearly that they cannot do, neither doth any antient authority discover any such fancy; and when all is done, the *septuagint* were *Hebrews*, and have express words there, that agree with the other *Hebrew* doctors, and therefore confirm them.

§. XXVIII. But how shall we know this, ^s saith he, that their *Hebrew* copies did bear the words so? We must either know so, or else we must say we know that they did not understand *Hebrew*. And the learned know, that in many

^f Append. p. 30.

^g Append. ibid.

^h Append. ibid.

ⁱ Append. p. 30, & 31.

^j Append. p. 31.

^k Append. p. 33.

^l Append. p. 31.

^m Append. p. 32.

ⁿ Append. ibid.

^o Review c. 2.

^p Append. ibid.

^q Append. p. 31.

^r Append. ibid.

passages their copies clearly were sometimes otherwise than are received texts. Any man that reads St. *Jerom*, shall find it so.

§. XXIX. *Shall we rely rather, ^c faith he, upon their unknown copies, than the authentic received text?* By no means; I rely not upon them; but when I see such a number of old infallible testimonies, agreeing with what they there have varying from the true original, I cannot but think, that their translation is as great a light for farther confirmation, as those testimonies are for the sense, though not for the words, of their translation. He that judgeth here, must know the nature of that translation, and frequent variance, and easy change of Hebrew characters. Who knows not those things must be silent. By the way, I note here that that place is so turned in the antient Arabick translation of the *Pentateuch*, that it exactly agrees with the Hebrew, as we now have it. That translation, with the most part of the old testament, besides very many good Arabick manuscripts, is in the hands of that most truly noble lord, and ever to be by me honoured, the earl of *Arundel*; Neither did I ever doubt of the truth of the text; I was not so bold with holy writ.

§. XXX. *Why did they not also either conform Tobit's text to it in reading, or reconcile them by commenting?* I will tell you why. Because, they never saw *Tobit*, for ought can by any probability be proved; neither was that book (as I have already told you) ever received by the Jews as authenticall, and the *septuagint* were Jews. Why then should they, nay how then could they, conform it?

§. XXXI. *The frequency should have been shewed, ^x faith he, by some few, specially in the very word in question.* Indeed, I had shewn examples, if I had thought any man would have questioned so known a truth of grammar. He that searcheth *Gen. xxiv. 14, 16, and Gen. xlix. 20. and Exod. xxii. 31. and Habbakuk i. 16.* shall see examples of this masculine joined with a feminine, and divers other are obvious. And for the word *hamaigsher*, what is that to the purpose, though there be no examples of that very word, so it be a property of the tongue.

§. XXXII. He ^y tells you, *that I intend to judge nothing.* Yes indeed did I intend to judge, that is, to judge of my testimonies for history, and those I have so judged of, that I cannot find them at all subject to his reprehension.

§. XXXIII. Mr. *Selden*, ^z faith he, hath given us *historiam*, as he found it recorded yet, *haec ipsa historia non est vera.* Are we now agreed then? I have given you a true history, as I have found it, but that that was recorded (so he means I think) is not true. That is only proved by Sir *James's* word, but I think that he confirms all that I say, to be truly related. I desire no more, neither was my part other than that.

§. XXXIV. *Consilii inimica tuis, historia, fallax.*

I confess now indeed, that *historia*, is fallax; for *historia* hath here so deceived Sir *James*, that he hath made a false verse by it; could no body that saw it, admonish him of that unlucky prosody.

§. XXXV. ^b Mr. *Selden*, faith he, *will here have nothing tythed but spoils.* I never said so, or wrote so, I only tell you who said so.

§. XXXVI. ^c He talks of two authorities only, brought for the tythes of spoils only. I am sure I have related no less than seven, and those of note and antient; and for Sir *James's* interpretation, I have nothing to do to examine that. And methinks he might as well let me alone in delivering other men's interpretations; I left room enough for his howsoever.

XXXVII. ^d *To tythe only spoils with Mr. Selden.* Not with me, Sir, but with the fathers; I have given you the testimonies both ways; that only was my part.

§. XXXVIII. *But it seemeth, faith Selden well, (^e so are Sir James's words) that for this payment of herbs, the Pharisees were of the truer side, from Luke and Matthew allowed by Christ.* A strange fortune, that Sir *James* should pick out this one passage to commend me for, which another (who I hear hath mountains of paper that are with child against me) takes to be a character of my want of christianity; as if I had qualified an express testimony of our Saviour, with, *it seemeth*; I hope Sir *James* will help to defend me here: But I would have that other know (who in excepting against me, either discovers that he understands not English, or else is led by meer malice) that I inserted these two words, *it seemeth*, upon most wary considerations, and out of reverence to holy writ. The paragraph where that is, is short, and the sum of it is, that the Jews generally held that *leeks* were not tythable by the precept; yet did the Pharisees tythe the *leeks*, as understanding that they ought to do so by the precept, or that it was by a settled custom only, or tradition in their sect, that expressly appears not. Our Saviour says, *they ought not omit it*, I make no question, because he said so, but that they ought not. But whether he said they ought not, in regard of the precept, or in regard only of their custom or tradition, I durst not be so bold as to judge. Therefore I said only, *it seemeth they were of the truer side*, which must needs have reference to what goes before; that is, the true or false understanding of the precept, not at all to that, whether they ought to do it, or no. Nay, the words are so far from being too qualified, that admit our Saviour had reference only to a custom or tradition among the Pharisees, then they were not indeed of the truer side in their interpretation of the precept; and so on that very text in St. *Matthew*, faith the most learned *Drusius*, *hoc faciebant ex traditione, sive ex disciplina majorum, non ex lege.* If that were clear, then were it as clear, that the Pharisees were not of the truer side; and until now, I never heard

^x Append. p. 33.
^y Append. p. 35.

^z Append. p. 33.
^a Append. p. 36.

^b Append. p. 34.
^c Append. p. 36.

^d Append. p. 34.
^e Append. p. 37.

^f Append. p. 40.
^g Append. p. 34.

that a reverend abstaining from too bold interpretation of holy writ, was thought to be a character of want of *christianity*. But doubt not but the *mountains* of his will bring forth more such *mice*.

§. XXXIX. ^f Here now is proved our historical fallax, by Mr. Selden's own consent. Why so I wonder? The sum of his reasons is in these words a little after. *It is, faith he, no sure course of arguing the true intent of precept, by the sinister extent of practice.*

Who doth argue so? It is his *logick* that argues, not my *history*; and I have not argued any thing, for what I know; I tell you plainly, the *practice* of the *Jews*. Do I once infer by argument this or that of *practice*, out of that *practice*? And why doth he say, *the proofs from the talmud are held erroneous*, because the *precept* should have been understood otherwise? Here is the *logick* I told you of, again.

§. XL. ^g *History of all times confirmeth this, for bay, &c. have been subject to tything, as Selden hath observed.* Not I, Sir, I never observed any thing from *history of all times*. Why do you tell me so, or where do you find it in me? Neither do I know any such *history*.

§. XLI. ^h He comes to opinions which I have related, but in speaking of them, he deals only with the *authors of those opinions*. Again, unless he can shew, that I have not *faithfully* related those *opinions*, he toucheth not me, and that he doth not offer to do, neither finds he me of any of these *opinions*.

§. XLII. ⁱ *How kingdoms are by their own laws positive, settled in tythes, is one thing; and how they should be, another thing.* I marry Sir. Had Sir *James* seriously thought of this in time, he had been thence instructed, that it was to no purpose to impugn me or *Scaliger*. Here he tells himself how we write one thing, and he using our names, writes against another. We write of what *was* in use *settled*, he what (*he thinks*) *should have been*. Why could he not have done so, and let us alone?

§. XLIII. ^k *No man ever durst offer a proof for it.* Yes indeed, some *durst*; Besides the disputations of the question of *tythes*, in the *schoolmen*, you may see for that, *Armachanus's defensoria curatorium*.

§. XLIV. ^l *I am sorry Mr. Selden did not as amply historify the reasons drawn from it, as he hath done for the first ground, being but weak; and that he gave not also his own verdict of it.* He hath little reason to be sorry for it. The *reasons* were common and accurately handled in whole treatises every where to be had. Should I have stuffed my *history* with other men's large disputations of *divinity*? I was summarily to relate, not to discuss opinions; And for my own *verdict*, I have not yet learned that it is the part of him that writes an *history*, to give his *verdict* of what he relates. And so that passage of *Adam's tything*, I refer it to you, *reader*; believe that *Adam* paid *tythes*, if you will. I

gave it only to shew *historically* the *practice* of the *professors* touching **tything*; and I did never look to hear that any judgment would have thought it to have been of better credit, than I there suppose it to be.

§. XLV. He ^m says, my judgment was *suspected*, touching the *right* of *tythes*. Alas! What is my judgment in such a point of *divinity*? Or why should it be *suspected*? Perhaps I was never sufficiently satisfied in that point but doubted only as many do. When I have cause, I will tell what I think of it, but not in an *history*.

§. XLVI. ⁿ He says, that *Adam's* and *Abel's* *tything* is *very probable*. He shews you also his reasons; if you think they hold, believe him, I will not dissuade you; But for my observation out of *Tertullian*, and the *septuagint* touching *Cain's* dividing, what is that to *tythes*? Or who hath interpreted this place so amongst the *antients*?

§. XLVII. ^o Here he takes *advice* of me out of the *review*. But all that he answers to my question is nothing to me. I only *advise* there by the way, that this were fit to be thought on, and I see that he thinks on it.

§. XLVIII. *The Levites*, ^p he saith, *paid only to Aaron, not to Aaron's sons, as we have proved.* Whether that be *proved* or no, see §. V. and VIII.

§. XLIX. ^q *For who will think that the truth of divine precept must rely upon knowledge of fact?* Have I said that I think so? I only admonish that it must be known to him that considers of the *precept*, and that also it must be sought for from the interpreters, or former times. Whether it be fit to seek rather in a man's own brain for it, I refer it to you, *reader*.

§. L. ^r *But to bring in talmud, targum, and gemara, to teach us, from what they say was done, what should have been done by the law, it is, (in my judgment) quite out of square.* It is indeed; but have I any where brought them to teach what *should have been* done? And where have I the least inference that way out of any of them? And for *gemara*, while he divides it a third with the other two, I know no other *gemara*, than that that is one part of the *talmud*, but he names them as if they were two authors. And for the credit of the *talmud* there in matter of *fact*, I refer it, and appeal to him that can judge of it. Without the *talmud*, how had we known the fashion or practice in the celebration of the *passover*? How should we apprehend many other things occurring in holy writ, which are thence opened also by the divine *Scaliger*, and the learned *Drusus*.

§. LI. ^s *Facts truly recorded, do not always argue laws truly executed, else the two high priests at Christ's time, must be good in law, because true in fact.* Again, have I ever said that they do? Nay, do I not often say the contrary in the *christian* times? And for the two *high priests*, I know learned men enough, that

^f Append. p. 40.

^g Append. p. 48.

^h Append. p. 52.

ⁱ Append. ibid.

^k Ex ms. Oxon.

^l Append. p. 53.

^m Append. p. 41.

ⁿ Append. p. 49.

^o Append. ibid.

^p Append. ibid.

^q Append. p. 49. & 50.

^r Append. p. 54.

^s Append. p. 42.

^t Append. p. 51.

understand the *lawfulness* of them to be nothing discordant to scripture, so it be *rightfully* conceived how they were *high priests*. But that is not to our purpose.

§. LIII. *Least* [†] saith he, *the incurious reader, by too hot hunting the wild history, might defraud Jacob, that is, the promises, and gospel, of their due primogeniture in the right of tythes.* Perpetual shame be on that man whoever he be, that by meddling with my *unfortunate history of tythes*, takes any occasion to defraud the church of any right. But as Sir *James* hath written his *appendix*, as he says, *least the incurious reader might defraud Jacob*; so have I also offered this *admonition*, *least Jacob*, that is here, Sir *James* (for so he ^u saith, he proves to be *Jacob*) should defraud me of any reputation of faith in that which I collected. I stand for nothing else

here, neither have I, nor will I touch upon any argument of his made for the *jus divinum*, neither have I in this *admonition* given any occasion of any such argument; and it were a great error in me if I should, for it is a meer matter of *divinity*; And for the matter of ^x *twins* applied to him and me, here I confess it is a kind of expression as much beyond my fancy, as it is to conceive that my *history* hath a *beel*, or as it were, *a beel*, as his *elegancy* calls it. And plainly he *caught* it by the *head* rather, for all that he offers to speak against it, is only in two or three leaves in the first and second chapters. Why these should be more like a *beel* in my *history*, than they are to a whole *foot*, I understand not, but what a *wild history* is, I as little know, as what a *tame appendix* might be.

[†] Append. p. 54.

^u Ibid.

^x Ibid.



A
R E P L Y

T O

Dr. *Tillesley's* Animadversions upon the History
of TYTHES.

15 1 9 1 31

TO THE READER OF Dr. TILLESLEY'S ANIMADVERSIONS

On the History of Tythes.

Something doubtless you look for, reader, in reply to this hot and busy doctor: and something you have here that shortly satisfies all, but his unmannerly fits of language. Neither he, nor the rest of them that publickly rave at me, can infect me with that disease. Only thus much I learn of them; That all mad men are not in *Bedlam*; those that are there, I pity; some other that are not, I laugh at; and I know how to value barking at moonshine. But now to his *animadversions*.

His whole glory that he affects here, is grounded by him upon his telling you of an *acknowledgment* or *submission* made by me; of his *catalogue of authors*; of my *false quotations* (as he calls them); and of *ill-beseeming language*, beside his long and wrested *arguments*. For his *arguments*, (if they persuade you to any thing against me) I shall not envy your error. I dare trust you with them, reader, so you read my history with them, and be able to judge. Both for my own safety, and charity, I must not here at large rip up every particular of that which you know at first so offended. But through his whole book remember still but these two things: That *practice* is not to be proved out of *canons*. And withal, that you must distinguish the *times* which in his premises and conclusions he fraudulently every where confounds. And then you cannot but so be able to look through all his poor fallacies, that have the character of no more providence in them, than as if they expected to be read by faith only, and not by understanding. But to doubt that you need be admonished of other of his frequent cavils to deceive you; (as when he proves *tythes* were due or paid, out of

an authority that talks only of *first fruits*; or when he would prove against me, that there was a passage of the right of tythes in a *general council*, before that of *Lateran*, because there was so in the old *capitularies* confirmed by the pope; and a world of such more) to doubt of your judgment in this kind of merely nonsense arguments, were to think you like the doctor. In the name of fraud, did he believe or hope that his reader should be so much an ignorant, as to take the word *primitiae*, for *tythes*, or the *capitularies*, confirmed by popes, for *general councils*? But I should much anger the doctor without ill words, if I had but the same liberty to write and publish, as is allowed him. Yet for such things as are either expressly falsified by him in my text, or laid to my charge by him for falsifications, with some few other occurrents, I shall presently, according to the course of his work, admonish you.

For those other five things; the *acknowledgment*, I mean, the *discovery of my authorities*, the *catalogue*, and the *quotations*, and *language*, (which for the most part are personal betwixt him and me) briefly thus. For the first;

^a He tells you, *I made a submission in the court of high commission*. That I ever was present in that court, or called thither (as I live) it is more than I know. But I wonder not that the doctor should begin with playing false with you. It is common with him through the whole. I confess that I did most willingly acknowledge, not only before some *lords of the high commission* (not in the *high commission court*) but also to the lords of his majesty's privy council, that I was most sorry for the

^a Pref. pag. ult.

publishing of that history, because it had offended; and his majesty's most gracious favour towards me received that for satisfaction of the fault in so untimely printing it. And I profess still to all the world that I am sorry for it, and so should I have been, if I had published a most orthodox catechism, that had offended. But what is that to the *doctrinal consequences of it*, which the doctor talketh of? Is there a syllable in it of less truth, because I was sorry for the publishing of it? Indeed perhaps by the doctor's logick there is. And just so might he prove that there is the more truth in his *animadversions*, because he was so glad of the printing of them. And besides, he hopes (as he ^c saith) *that my submission hath cleared my judgment, touching the right of tythes*. What dream made him hope so? There is not a word of tythes in that *submission*, more than the mentioning the title. Neither was my *judgment* at all in question, but my *publishing* it, and this the doctor knows too, as I am assured. For the *submission* he talks on, was through the favour of some of the lords (to whose noble regard towards me, I owe all service) given by me in writing in some six lines, left by misreport of some such as the doctor is, I might be injured by false relation of what I should speak only; and copies of it I dispersed into many hands; and I know that the doctor hath seen one. In sum, I was, and am sorry that I published it, and that I so gave occasion to others to abuse my history, by their false application of some arguments. But there is not a passage in it, but that I ever did think, and now do think, to be most constant truth, as I have there delivered it.

Now for ^d the *faithful discovery of my authorities*, which he dares talk of; I know not well, reader, what he means by *faithful discovery*. But what if it fall out now, that there were near 100 several volumes, out of which my chiefest testimonies were taken, any of which, or any copies of them, were never seen, inside or outside, by the doctor? Will you believe then that he hath *faithfully discovered* them? I durst venture no less pledge than my life on it, that I could make it manifest to be so. Nay, what if I used divers also, of which the doctor understands not one line at all? I doubt I could make that too manifest, for his credit also. Yet he tells you (as if he talks of ^e himself) *that there are that can trace my footsteps*. For ought he knows, there are; but, for so much as I know, he is none of them. And yet, charitably to have helped the doctor here, when I first heard of his book ready to be licensed, having never had any acquaintance with him, I wished one of his printer's men to tell him from me, that there was not a book either of my own, or of my friends, which I had used in that *history*, but should, at his pleasure, be ready for his use, that he might be the better furnished to strike home to me. I am not sure, whether the message were delivered or no; but

I protest from my heart, he should have had them, and I profess so much yet to any man, that hopes for a discovery of any false authority cited by me; so clearly secure am I of mine own faith, in what I have performed. For his *catalogue*, see but presently what I note to it, and then judge so he have there one other author that makes to his purpose, than such as I sufficiently had before either cited or designed to him. But for those few of my *quotations* that he says are *false*; I confess, that when I first read him, I was not so confident, but that some slip might have been in my hand, or in the printer's, especially when I saw a doctor tell me of *false quotations*. I spent therefore some half hour in a new search of them; the books being all by me. And if I may ever have any credit with you, reader, believe it, I found them all (which he saith are *false*) so exactly *true*, that unless somebody, (to abuse the doctor) had purposely torn out those places from the books, or blotted them, I cannot at all guess why he had not as well said, all through my history had been false, as any of those which he talks of. I have the authors by me, and he that can but find that I am not able to shew him every one of them, as I have noted them together to the sixth animadversion of the fourth chapter, and according as they are used in my history, shall have for his pains all the books in my study. I shall be glad to see the doctor, or any man else venture, so to get them of me.

For my *ill-beseeming language* (as he ^f calls it) which he musters up in four lines in his preface. I did not think it *ill-beseeming*, nor do I yet think it so. And I know there are, and ever were, some that deserved it. Yet if there were none such, when I wrote it, I see there may be one now to challenge it: and I begin to doubt that it was a prophecy for the doctor.

To conclude here, reader; However mine have offended, yet I beseech you but to think of this question seriously. Whether he that writes only a *story* to deduce out of former times any established *practice* of the whole church of christendom, according to what is exactly settled in our own state and laws; or he that dares thus to write volumes, to make *innovation* against the antient *positive* laws of our own state, and of all other states of christendom, be the greater offender? If I make it not appear, that I have done the *first*, and the doctor the *second*, I vow my self willingly to forfeit all opinion of faith and reputation.

On my preface his third animadversion.

He opposes my *acknowledgment of that noble ^g knight's directions, to my denying that it was stolen from other mens notes*. I appeal here to common sense and honesty. If taking directions be *stealing*, then hath the doctor *stolen* almost all his quotations from me. For I can plainly justify it, that he hath scarce a passage of moment, which he applies to his

^b Pref. pag. ult.

^c Epist. dedicat.

^d Ibid.

^e Pref. pag. ult.

^f Pref. pag. penult.

^g Sir Rob. Cotton.

end, that he hath not direction to (for matter of authority) in my margin.

In his sixth animadversion.

Whether the rabbins be needless here or no, I appeal to the learned. I wonder how the doctor could write that, especially for his own credit. And then he tells you, that from more skilful Hebricians I must be admonished that my quotations out of the rabbins are not all true. I would he himself would adventure to shew me which of them is false. Methinks, a doctor of divinity should either not have meddled with such a work, or should have ventured on the hardest part of it. I had thought so censorious a doctor could have advertised me himself of any thing, and not have turned it over to more skilful Hebricians. And he professes in the^h beginning of his book, that he had most intended to have placed his observations on those two chapters. If he had thought them within his strength, why had he not looked after those rabbins quotations? But why few of them of mine own observation? They were none of his, or of any man's like him, I warrant him. Indeed I have held acquaintance with some learned men which are that way very skilful; yet, I appeal to them all (for they all yet live) if there be one of them, from whom I received any of those observations. But whencesoever I had them, they are no meat, I fee, for the doctor. It seems for all his divinity, he will not meddle here with the language of the holy text. And whereas he concludes here: That it is more than he knows that any writers have so erred in the Hospitalers, that is his ignorance. I know them, but I am not so like him, that I strive to traduce mens names, but instruct only in matter: And though I be a man, and may err, (as he says) here, yet he that sufficiently shews me colour that I have erred, must be of another manner of brain and learning than this doctor.

In his seventh animadversion.

Here he would have the omitting of national customs, as before the omitting of the rabbins.

Judge whether he seeks truth, that wishes omission of any thing that makes to the subject. For the credit of the cause, he might well have omitted this. And whether my comparison there be towards what is profane, I refer it to common understanding. As also whether it be sense to make argument of practice from command of canons, which are never, nor ever were obeyed in any state for matter of possessions, but only as the lay power in practice gave way to them. And indeed do but deny him that argument (as you must) and then all he offers at me falls wholly to the ground.

In his eighth animadversion.

For his stir he keeps about the tythes in London, there is nothing he brings, that opposes what I affirm out of Linwood, save only a false translation of his own; for rather than he will not cozen his reader, he translates, *praediorum sive gardenorum decimas*, by *praedial*

tythes and of gardens. But here, he tells you, that I say in pag. 163. that *praedial and personal tythes are equally due*. I have no such matter there or elsewhere; I only speak of the general maintenance of the church, and according to the school-men; not a word of the tenth part, as he claims it.

In his tenth animadversion.

I write, that I would not wish my history should gain any strength of truth from my name alone, but from my authorities cited. The doctor wonders I should wish so, and says, it shall not thence gain any with him. Yet himself some six lines before saith, he will trust upon my relation for antient historians. It seems he wrote the one, when he had forgotten he had written the other. And that he said before, doubtless he inserted, when he found himself a most incompetent judge, or examiner, of my authorities.

In his twelfth animadversion.

I wonder he keeps such a stir here, and elsewhere, that I should acknowledge the jus divinum of tythes. Why, what is that to me in my subject? It may be, I am not persuaded to it. When he or any man else hath proved it to me, I will presently subscribe, and till then, under his favour, conceal my opinion.

In his thirteenth animadversion.

I did not conceive, but that not sufficient thinking of human laws, and the neglect of them might have denoted the same thing. This sure could not be written by him, but between sleeping and waking.

In his sixteenth animadversion.

He might very well have omitted his proofs, to make us believe that some archdeacons have been scholars, and so derive a fitness of writing to himself. This might have been better omitted than either rabbins or national customs in my history. It had equally been pertinent, if he brought us examples of some good scholars called Richard, that so he might have proved that it were possible for him to be one.

His catalogue.

For his catalogue of authors: Remember that I divide the christian times quadripartitely, with the latitude of twenty years, or thereabout, to every part of the division: And he takes into his catalogue the three parts of my four to make a great shew together, instead of substance. But I constantly affirm that he hath not one name of an author in his catalogue, that makes for my first 400 years, other than I have delivered; There is not colour in any, as he mentions them, but only in Irenaeus, which he most egregiously falsifies. The text of Irenaeus is expressly; *Dominus praecepit pro eo quod est decimare omnia quae sunt pauperibus dividere*; and so is decimare continued, and not divided, as he (to make imposture) hath offered it. Judge now, if this be fair dealing, and let common sense but judge, if that be not rather against tythes than for them; But clearly it proves nothing for the doctor,

neither shews it that I omitted any good testimony touching my subject. See the father himself, compare him with the doctor, and then wonder.

^k For the rest till St. *Austin* (who falls according to my division in the beginning of the second 400 years) he hath not named any other authors that have colourable words for the right, than I have done in my fourth and fifth chapter. But you may observe that he takes even all he could find, did but name the word *tythes*: And he follows the common example of them which have their brains converted into their chosen conclusions, and then think every thing they meet withal, proves what they dote on.

In the rest that follow after St. *Austin*, there is scarce one author mentioned in him, that I have not cited to his hand; and I first shewed him very many of them; for divers of them are written, where he yet never came. And such as in the latter times I omitted, I expressly comprehend under the general name of the *great* and *common opinion* of their being due, citing the most eminent, and neglecting the rest.

But when he hath done, he tells you that *out of his few books, and small reading he hath collected them*. Certainly he might have had many more within those years. But amongst his *few books* here, ask his own quotations, if mine had not a special and great place? Without mine, he had missed very many of his number, though I affected weight, but the doctor only number. And I could help him, I think, to as many more of that time, if such, as many of his are, will serve his palate.

On the third chapter.

Here he quarrels with the great ^m *Scaliger*, and me, about *Festus*, and he talks of *Scaliger*, just as a poor pigmy would have done of dead *Hercules*. I think confidently, as I did, still. And if he can shew me one antient and classick author to justify himself here, I will yield to him. Till then I regard not his roving fancies.

On the fourth chapter.

ⁿ *Origen* is here falsified by him against me. The words go on after *praestat, ad primogenita assert*. He durst not cite them to you for fear you should have presently answered, that this must of necessity be referred to the practice under the law. For did *Christians* use to offer their *first-born* to the clergy also? And I refer it to any able reader, whether it be not plain, that he hath not proved here otherwise than what I affirmed touching the use of payment of *tythes*. And what is it (I wonder) to the purpose that St. *Austin* ^o *was born in the year 350*? He preached notwithstanding about 400, and then *maiores* falls well, as in my division. ^p And his proof *out of first-fruits*, is but the old haunt of error.

^q The number of the canon is forsooth *corrected from 66 to 7*; but the doctor must learn

that it is noted with that number in the *Greek* code whence I took it. See but how careful he is to *correct*, when he knows not at all *why*. And then he cavils at the name of *elders and wardens*, as if I meant (as he says) ^r *puritan elders and church-wardens*. In the name of sense, why *puritan* here? as *puritan conceit* in another place of his book. Because *elder*, therefore *puritan elder*; and because *warden*, therefore *church-warden*? If I had talked of a *doctor*, must I have meant a *puritan doctor*? He did not, I hope, glance at me with his *puritan*. I was never yet (I trust) either mad enough, or foolish enough to deserve that name.

^r The *epistle of Pius* proves no more than *Urban's*; I am equally doubtful of both. Neither doth St. *Cyprian* help there at all against me, for I interpret him not to any such purpose as the doctor dreams I do. I have expressly supposed it of *personal substance*, that is, a *tenth* of such as the *all* was at the apostle's feet, that is of a *personal estate* or money taken for a fold patrimony, and so that father interprets himself too.

For the rest of his authorities; what have they to do with *Tertullian's* time, of which I speak? But it is one of the best cloaks that he useth, to confound times that are distinct.

^s He tells you, *those other quotations are unnecessary*. I am glad they were *true* though; and he that searches them, shall find them *necessary* enough for the *matter* to which I noted them, and not to the *word*. But this doctor hath such an itching humour to discredit my quotations, that he often ventures to tell you that which his own breast knows to be contrary, rather than he will lose the fame he had hoped for, through finding some false ones among them.

Seeing he makes it such a matter, and values it such a glory to tell you of *unnecessary* and *false quotations*; I could have wished I had had some such, that the doctor might not have lost his longing: I might have had enough *true*, to justify my *history*, and enough *false*, to have served the doctor's so affected *glory*. But he hopes you will believe him, that he hath found some to be *false*. And because here is the first meddling with my *quotations*, we will muster up his *exceptions* of that kind altogether; amongst which if any one be not blindly, and ignorantly, or else most falsely taken by him, I will give him all my books for his further instructions.

^t Next therefore he tells you, *there is no such matter as I cite the codex for*: yet the very express words are there, that speak what I have noted out of it. Either he knew not how to search the *codex*, or else he must out of necessity confess his purpose to abuse his reader. Ask any doctor at the commons, here, and then see what they will say of me or this doctor?

^u He says to my quotation of the council of *Toledo*; that *there is no such thing* there. I

^k P. 8.

^l P. 41.

^m P. 29.

ⁿ An. 6. p. 42.

^o P. 32.

^p Pag. 89. an. 24.

^q P. 39.

^r Pag. 91. an. 24.

^s Ibid.

^t P. 40.

^u P. 41.

^v Ibid.

have looked again, and I beseech you, reader, do you so, I find there expressly what he denies me.

He saith, *pag. 105, animad. 16. the quotation is wholly mistook, being for jurisdiction, not tythes.* I turned to it again, and wiped mine eyes, and found it (as before) expressly for *tythes*. Ask for this too, good reader, at the commons. I appeal to those learned men in any particular, that touches their profession, as this doth. Yet whoever desires to satisfy his own eyes with any of these kind of things noted by this doctor, shall, at his pleasure, see his fallhoods, by comparing the places in my little library.

He tells you, *p. 110. an. 22. no capitular is against any such challenge of offerings, yet oblata* are expressly spoken of in the same book, cap. 299, and to that sense which both he and I agree in. Yet see what an impudence concludes this? For here I can use no less word; *So that all my quotations in respect of tythes are false*, he tells you. First, those he speaks of there, have nothing to do with *tythes* at all. And next if this confident doctor that talks of *all my quotations* (and prints those words in another character) can prove but *one, any one* (that he thus meddles with) to be *false*, I am ready to forfeit him my liberty, or what else may be dearest to me; and there is not one he speaks of, that I am not most ready to shew or satisfy any man in, that desires to see them where originally they are. But the height of the doctor's ability herein is to confute compendiously (as he did of whom the tale goes) with *thou liest*. 'Tis short, I confess, and very easy.

He saith, *p. 113, an. 25. the quotation of Ivo is false.* I looked again in my *Ivo*, which is the first edition, and there I find it as I have quoted it, and that epistle is 95 in the second and last edition. Think you not, reader, that the doctor hath found a great fault here.

He saith, *p. 120, an. 36. that neither of the quotations mention or intend the claim of any spiritual patron.* But my passage there was quite out of his element. I speak of the use especially of *France*, which is known every where in their lawyers. And because those two first canons speak of *patrons*, I made the reference with *vide* only to them with the third, which expressly is of *spiritual patrons*. And yet my mannerly doctor will needs call it a *falsehood*. But why had he not searched the next quotation to that very place? There he might have found 10 for 17, and so he would certainly, but that he knew not how to find the book. If he had, here had been a triumph for him.

Because *pertinet* is by chance for *pertinent*, I am taxed again, *p. 139, an. 69. for falsifying Ivo*. But whether it be one or the other, it makes no matter at all; and the doctor might in charity have thought that a letter might have slipped me or my printer, as well as a whole word either him or his printer in this very place. For *ab* you see, is wanting in his animadversion, yet I will not tell him by and by, of a *falsehood*. I have no more reason to do so than he

had. But further to satisfy this waywardness of the cavilling doctor, in the first edition of *Ivo* and the fairest, it is expressly *pertinet*, and not *pertinent*, as in the second.

He tells you, *p. 169, an. 4. that there is nothing of division of tythes in my quotation there.* I know there is express mention (and he cites it too) of the *division* of the *tenth* from the nine parts. There is no necessity, but that kind of *division* may be understood in that of *Egbert's*. I restrain not my quotation to any *especial division*, but only that there is the first authority for *dividing before witnesses*. And clearly so it is, and those which the doctor brings here, have not a syllable of *tythes*.

P. 171. an. 5. Here is a quarrel poorly picked about *Ethekeverd*. I looked again in him, and I find still the beginning of king *Britbrick's* reign noted there. If that be not to my purpose, as I have used him, I know not common sense.

Pag. 204. an. 11. The quotation of *pope Innocent's decretals*, he saith, *is false*. If it be not exactly so in *Innocent*, as I have related it, or if there be a syllable in the barons claim touching *licence*, I will give the doctor, or any man else that shews it me, that whole volume of *Innocent*, which is not very common.

He dares tell you, *p. 228, an. 3. of two quotations being false.* But I am sure he quotes my words there most *falsely*. I talk not of *grants with confirmations*, as having reference together to *those quotations*. To the first I refer this, that the *grants of lay-men alone were disallowed*. To the second, that even *confirmations also after such grants became now of no strength*. I have looked those two most known canons over again, and if I have eyes, they are exactly as I have cited them. And I appeal here again to the professors of that law, or to any man, that can but read the text.

Besides these, I find not one false quotation imputed to me by the doctor. But what if *all* these had been *false*? I confess some negligence had been in me to have let them slipped so; yet nothing that I go to prove, had received any confutation by it, because I have abundance of other authorities to the same purpose.

In his seventh animadversion.

The doctor is rather deceived here, and with him *Pamelius*, and others, that so interpret *sportulantes* in *St. Cyprian*, though indeed there be liberty for a man to use his own fancy in a word that scarce any where else occurs. I am of my former mind still, and that *in honore sportulantium fratrurn*, is being honoured by the brethren that by offerings made up their stipends.

In his eighth animadversion.

If *sportula* of itself be a *bribe* in both those places, I would gladly know of the doctor, what *sportula contradicta* in the one is. Plainly *sportula* is a *bribe* no otherwise than *donum* or *munus*.

In his eleventh animadversion.

He tells you, *I forgot St. Ambrose*. I appointed him for my next chapter, and there I have related his own words. And here he falsi-

fies my words, as if I had said, *that no tythes of such things were then thought of*. I say only in that place, that *the lawmakers in making their laws, thought not of any*, which appears plainly : And then what (in the name of sense) is that to St. Ambrose ?

In his sixteenth animadversion.

For that of *Christmas* day, I refer it to any man, that can but read, whether St. Chrysostom do not expressly say, that he *learned it in the west*. If the doctor had told you, there had never been a St. Chrysostom, I could but have referred you to the books that mention him.

On the fifth chapter in his second animadversion.

For that of *Cassian* ; I expressly write that, *he received them as a treasurer for the poor* ; and the doctor also cites my words so, yet cavils that he did not do it as *abbot*. Why, good doctor, who says he did ? Could you not as well here, as in other places, falsify my words, that so you might the better have found fault with them.

In his fourth animadversion.

He had no *cause to doubt*, whether I took it at the second hand or no. I never did so in any thing, but where I acknowledged it, and let the place be looked on, and you shall easily see, that all the wit he hath, cannot make my words in the least kind vary from it, although he cackles here with an untruth, and a great oversight.

In his tenth animadversion.

He tells you that *what I say is false, yet true, changing the time*, and that to *Caroloman*. If I can spell *Caroloman*, I expressly refer it to him in my passage, and thence collect the use of the time.

^y If he have a syllable here for *infeodations of tythes* to be otherwise than I have related, I profess I cannot read. Yet to justify himself, he tells you, *I cross my self in that I cite an infeodation of tythes under Charles the bald* ; whereas I expressly have cited it, for the *infeodation of a church, and lands only*, and so are the words of it.

In his eleventh animadversion.

He quarrels because I say *some doubt of St. Austin's homily* ; he knows they do so, yet will not give me leave to say so. I tell him not, that *I doubt of it*, though I might well enough for ought he brings to justify it.

In his thirteenth animadversion.

Here he recites my words falsely, and then wrangles at them. Where do I say *they are no tythes* ? And judge, good reader, if he do more, than trifle, whilst he talks of St. Jerom.

In his fifteenth animadversion.

For that of *Agobard* ; unless he should persuade you that *sancti patres & synodi* cannot denote *provincial councils*, I confess, I understand not his cavil.

^z He tells you of my omitting *such authorities as he hath given you in his catalogue*. I have omitted *some* of them indeed, for I see not one that he brings there, which makes to his purpose, otherwise than such as I name. And I tell my reader in general, in this part of

my division, that it was the *common opinion* of the time. But he had omitted many (by his own confession) if I had not first published them for him.

In his sixteenth animadversion.

Here also he tells you, that *I affirm that no council of Toledo mentions tythes*. But this was, because he might tell you of one that he knew that mentioned them. The truth being, I have no such word any where in my history.

Then he tells you, that *I cite the same addition out of the council of Orleans*. Whereas, I cite no such thing, nor had I any cause to think of it there. Is there never a word among them which he hath mustered up out of my preface that will serve for him here ?

In his eighteenth animadversion.

He tells you that *I seem to confess that tythes were meant in the council of Gangra*. Whereas, I not only seem not to do so, but expressly have written the contrary.

In his nineteenth animadversion.

He quarrels at my difference betwixt *declaration by doctrine, and constitution by precept*. And unless he mean that every sermon he should preach upon the commandments, should be a constitution of his own, his words import no sense at all. And for that of *Agobardus*, I have cited the very words of him as he hath them.

In his twenty third animadversion.

He concludes, that *I could not bring a more important authority against my self*. It is a strange thing. I bring it to prove that tythes were paid in that church, and I express so, nay he affirms that too, yet this *authority, forsooth, is against my self*. Unless you think it unmanly to ask him, what he cannot tell you ; do so much as ask him, what he meant here ?

In his twenty seventh animadversion.

It is hard to please the doctor I see. For if I cite two quotations that he looks after, he commonly denies me one of them, and tells you there is *no such thing*, and, I pray you, believe him as he deserves. Now I cite here but one only, to shew you of what nature the subjection to the bishop was ; he will needs tell you of more. I could have given them, and divers more, but I thought them as unnecessary, as the doctor's are impertinent. But means he here that *disobedience to every provincial canon should be every where a terror* ? If he do, judge you farther of him.

On the sixth chapter in his ninth animadversion.

Is the *English of ea ratione*, upon that condition ? I had thought it had been *to that end or purpose*.

In his tenth animadversion.

See here he conjectures they were by consent of the bishops, and conjectures only because he sees not the chartularies. His lodging was near enough to those chartularies, and he might have seen them at his pleasure. But indeed, if he had seen them, he had spoiled his conjecture, therefore it was best to let them alone.

In his eighteenth animadversion.

I have not a word of churches erected only upon lands of bishopricks. But it is his fashion to make my text, and then to wrangle with it.

In his twenty seventh animadversion.

He was persuaded, he saith, that the common law had accounted an incumbent's estate to be fee simple. Then was he falsly persuaded. For though now it be as a fee simple, yet in those elder times it was not, and that I have taught, but the doctor will not learn it.

In his thirty third animadversion.

What means the doctor, to tell you, that the use is contrary by that canon, when I cite the very syllables of the canon, that affirms the use, and remedies it? But as he doth frequently, so here he deals most fraudulently with you, reader.

In his thirty fourth animadversion.

If the case, even as he relates it, be not for the purpose of the lay patrons claim in that time, and according to my intent, I understand not the words of it. I bring it not for coparcenary, but with the other quotation I bid the reader look that too. If I had not done so, the doctor I believe, would have been troubled to find it.

In his fifty fourth animadversion.

He tells you that I make inference, as if only laymen did make those infeodations. I expressly write, that both lay and clergy did so. And why, good doctor, should the word, kings, there, make me think more of Charles Martell, than that the meeting with the word, doctor, any where, should presently make me think of doctor Tillesley?

In his seventy second animadversion.

I wonder why he should think that I read not that epistle in the author himself; I am not so unfurnished, but I have both, and so noted both to him.

In his seventy fifth animadversion.

Here is a stir about Hector Boethius, as if any man that knows story, knows not also the world of fictions in that of his. And where do I expect, good doctor, that my book should gain strength from my name alone? Will you never leave this falsifying?

In his seventy ninth animadversion.

Where was the doctor's mind here? If that of the lepers be to this purpose, judge you? But is my conclusion false, touching general councils, because the capitulars were confirmed by popes? Are capitulars, confirmed by popes, general councils? Think again, doctor, some other thing. Look up all the doctor's logick here. On the tenth chapter in his tenth animadversion.

What I tell you, some antients report, he falsly tells you is my assertion; the truth being, that I both shew the report, and shew to be expressly false too. In regard of the council of Lyons, which they talk of; neither is any syllable of any such thing in that council, though the doctor patiently takes that relation of the monks for a certain truth.

In his twelfth animadversion.

See if this be sense; because I say few enough are of such an opinion, therefore, said he, I say, too few are of it.

In his seventeenth animadversion.

In the name of his own profession, what means he here? May we do any thing that is expressly against the divine moral law to avoid scandal? I would, he would interpret that doctrine.

In his twenty second and twenty fourth animadversion.

How well or ill my censure becomes me, who, with all reverence, acknowledge myself the son of that mother of learning, judge you, reader. And for that of Gisburne, he might have seen, and used the original, if he would but have asked for it, and then might have known that it was in the time of Edward I. but he had rather stay in a false conjecture; than take the pains to rectify himself with certainty.

On the eighth chapter.

^a What hath beatus Augustinus, in the laws of the Confessor, to do with Austin the monk? Plainly that is for St. Austin the father, who preached for tythes, as it is there expressed. And then what have we to do with Ethelbert, to be noted by the name of rex generally in the Confessor's laws? How bold the doctor is here to cozen his reader with equivocations of names!

In his second animadversion.

Is here any thing against my saying that in the eastern church, no laws do mention tythes? Doth the doctor produce any syllable against it? But for payment, there, I have expressly affirmed it.

In his fourth animadversion.

The doctor never saw those excerpts of Egbert, I know he never saw them. Yet he tells, I must take notice out of Bale, who it was that epitomized them. Because one epitomized some of Egbert's, therefore these. Is this your logick, doctor? We use no such in the inns of court.

In his sixth animadversion.

He tells you of Ethelbert, and his parliament; there is no such matter. But he deceives you, and himself too with the name of Austin again, taking St. Austin absurdly for Austin the monk, and (were it Austin the monk) what syllable is there to prove that Ethelbert is meant there? And what a wife admonition it is for a reason that king Ethelulph needed not to have asked the consent of his bishops, &c. He must be taught that in the antient charters of the grants of lands, and small gifts, that phrase is frequent. And for his fifth and sixth reasons; thinks he, that every old charter presently became a perpetual binding law in practice? Every man that knows the former state (which the doctor should have learned) knows the contrary.

For his notice that he gives me at the end of his chapter; I thank him for his courtesy. But what's that to the matter, because they are in Isidore? But he hath an itching humour to give me notice still of something. Indeed I have

given him notice of so much, that he never saw before, as I suppose, he thinks himself bound in charity to requite me as he can.

On the ninth chapter, in his first, second, and third animadversions.

He tells you of *France* here to oppose only what I say of *England*; and the *capitulars* that were for the old empire and *France*, are urged to it. You should have looked better about you, doctor, and remember that *France* is not *England*.

On the tenth chapter, in his third animadversion.

Again, he comes with *Austin the monk*, instead of *Austin the father*. And for that of *Boniface* which, he says, should not be omitted, the very words are cited by me, p. 66. and out of it he concludes, that *there was tything, not long after Austin's time*; 150 years are not long with him.

In his sixth animadversion.

All the doctor's learning cannot prove that *diocesis* and *province* are such distinct words, as that they may not denote the same thing. Then he tells you, that I persuade my self that the *parochial right began not till after the council of Lyons*. If his eyes had been open, he might have read there that I expressly say the contrary.

In his eighth animadversion.

Do I refer that to the council of *Lateran* under pope *Innocent III*? Read again, good doctor, and you shall see I do not. I question it whether it be to be referred to that of pope *Alexander*, or to the decretal of *Innocent*? And it may be to either, or to any thing else, for all your *example*, that belongs not to it. For what syllable have you in that *example*, that notes your council of *Lateran* to speak against arbitrary consecrations.

On the eleventh chapter, in his fourth animadversion.

Because perhaps once discharged, therefore faith he, not now newly created; as if after a discharge of rent, or other profit, the next grant were not a new creation. But here the subject is such a thing, that the doctor may be pardoned for talking he knows not what, in it.

Now for his records of *Rocheſter*; That of *Gundulphus* proves only, that in that church all the *tythes* there reckoned, which many laymen had given, were confirmed by him. But was it not so even in that charter of lands too? This sometimes was done, and I have expressly shewed him so much in my history. But what is this to the common practised secular laws? Let any man that hath eyes compare my examples, and he will easily see it disproves nothing, but stands wholly with them. And you must note still, that the lay-grantors never looked after these confirmations in those days. They and their counsel knew the practised law was such, as that there was no need of such confirmations 'till towards the end of the third part of my division of time. Nay, do not my examples largely shew, that the layman was the

sole grantor still? And for his telling you against me, that the patron gives them the bishop. What colour, what one syllable for colour is there for any such thing in his whole charter of *Gundulphus*? But he would have it so, and therefore he thought that every thing proved it so.

^b He tells you of a confirmation, which I suppose (as he says) the first. I neither say, nor suppose any such thing: I relate it as one, but I talk neither of first nor last. And with these very arguments he might as well have proved to you, that lands given to the churches must be confirmed by the bishops, for sometimes there came afterwards confirmation of lands also, as is obviously seen in publick records, *Innocent's* epistles, and elsewhere.

In his fifth animadversion.

He tells here of the quotation of the roll in the margin, to have reference to that writ. There is no such thing. The roll I quote in one place, and the writ in the register in another; neither have they any reference at all to each other.

In his twelfth and thirteenth animadversions.

As if *parochiani* and *decimae pertinentes ad ecclesiam* prove any such thing. There were *parochiani*, and *decimae pertinentes ad ecclesiam*, long before parochial right settled in tythes. And that I have sufficiently taught the doctor, but he will not learn it.

In his sixteenth animadversion.

Judge of my 14th chapter, if I shew not express examples of secular law: If the doctor can read, he may there find it.

In his eighteenth and nineteenth animadversions.

Here he plays a little, and then he asks what rule is there in the common law, concerning tythes, but it is taken from the ecclesiastical law? He forgot himself too much, when he asked this question. What are the allowances and customs, and such like, that divers prohibitions are grounded on, both in *England* and other states?

On the twelfth chapter, in his second animadversion.

What an egregious search for cavil is here? Because I cite two confirmations of the two archbishops, and (the confirmation of *York* being made long before that of *Canterbury*) I put for the order of time, that of *York* first, therefore he tells you, that *I will be against the known authorities of those prime sees*. He would have me put *Henry II.* before *William Rufus*, rather than let the name of *York* by chance be printed in the same leaf before *Canterbury*. What call you this now? Look among the words he hath collected out of my preface in his own, one or another of them will certainly serve.

In his third animadversion.

Who doubts but that they which held *pleno jure* might present, if they would, but were not bound to it? But the doctor is too far out of his element here.

In his fourth animadversion.

I have shewed you enough, that the common law in those times did give such power so to appropriate, though now it do not, and though

sometimes

sometimes *confirmations* were from bishops, yet they grew not common 'till about the end of the third four hundred years.

In the seventh animadversion.

He would shew me a *precedent*, where the *incumbent* was *granter* in those times. I will thank him if he do, and acknowledge his instruction: But I find no such thing in the records of *Rochester*, to which he refers you, unless I understand not what a *granter* is. And I speak also of *granting* of rents only, and to shew that, he instructs me with an example out of that appendix to the council, where the parson *releases* tythes. Is a *release* of tythes a *grant* of rent? Lord! what a stir the doctor would have kept, if I had said so.

In his sixteenth animadversion.

But then he is much troubled here with *nominare* in *Cicero*. Plainly the *nominating* of him that was to be consul, or other magistrate, was a *giving* of the office in him that *nominated*, however, (if the suffrages denied him) he that was so *nominated*, missed it.

For the other two chapters, there is nothing he hath of them, but what I dare trust the reader with, neither is my admonition further necessary.

To the Review.

^d For his making the first of these quotations to be a case of *infeodated tythes*; he should have learned that those words which are cited out of the end of the canon, are for the future interpretations of the council of *Lateran*, and not at all touching the particular case there in question. And for the other of being before due; who sees not that they were supposed due indeed by the canons? But what is that still against the story of practice in new creations?

^e Had he said those *chartularies*, he talks of, were of more common and open use in legal proceeding, he had told me of an example, whose like I had not seen. I my self know,

and so I have told him, that they were still kept in *chartularies*, and have given him large testimonies of it. But when he says, they were in all pleadings exhibited; 'till he shews me the pleadings with such instruments entered, I shall take leave not to believe him. I have seen as many pleadings as the doctor, I think, and I could not yet see one that had any such entry in it.

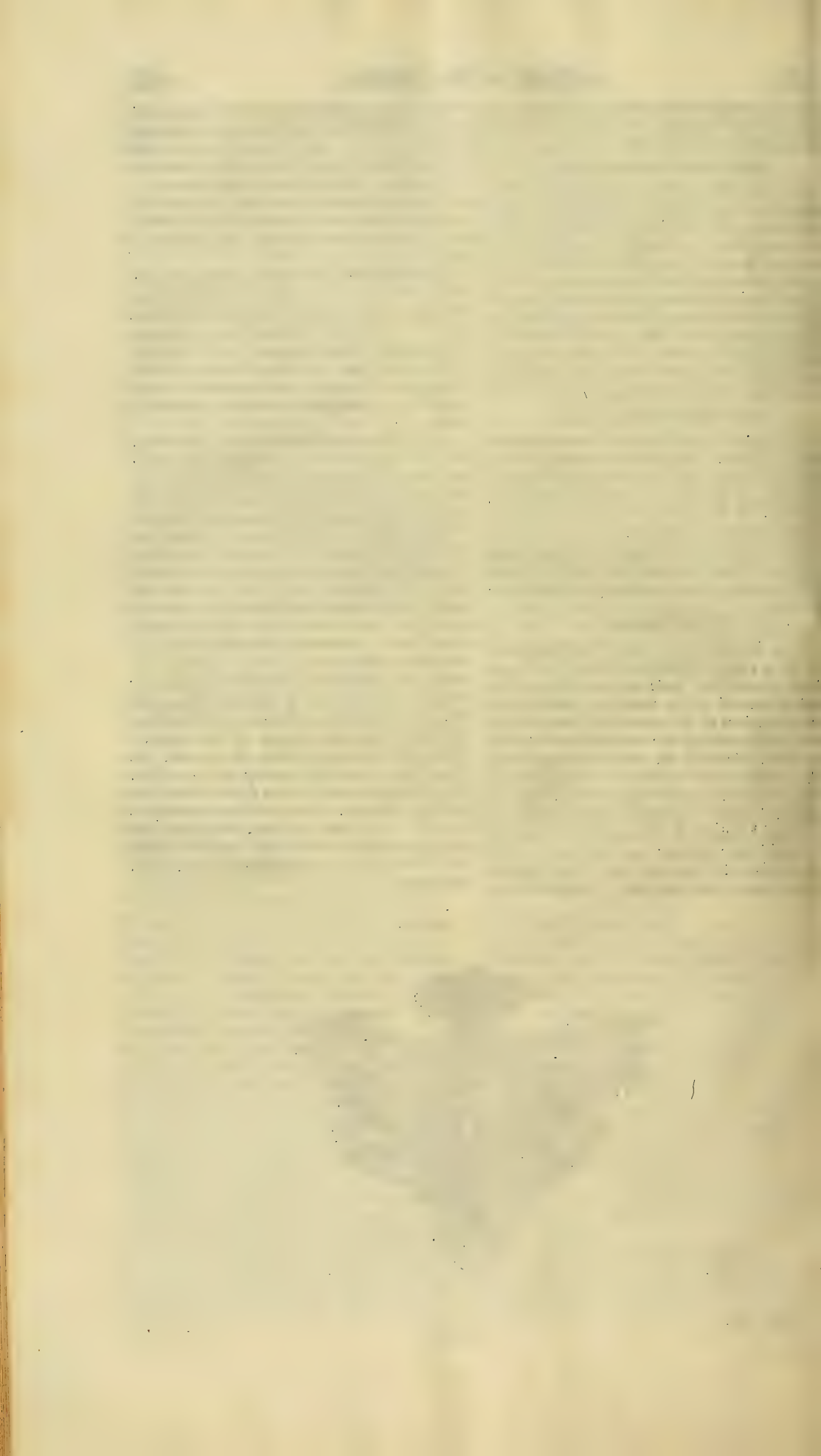
Thus much have I curiously noted upon such places chiefly, where either the doctor lays falsifying to my charge, or he himself falsifies my text. What else he hath, lies in my words of argument, such as they are. And I will not at all doubt, but that the able reader (with whom only I care for preservation of the opinion of my faith) knows how to deal with them.

But perhaps you look I should not let slip that piercing piece of wit, that he hath put on my name, by turning it backward. I am sorry for his sake, that my name backwards signifies nothing; but we guess at his meaning; he meant it for *needleless*. A sharp one, I assure you. Yet some, by virtue of a like way of wit, (that I confess, I will never make an example to mine) take it for *needles*, that have pricked the doctor, and to that indeed it is nearest in letters, though no more in sense, than what the doctor would have. I remember the school-boys had this trick, when I was a child, and we commonly so called each other with turning our names backward, and so the boys then called me. Is the doctor no farther yet? Would he but allow me such a piece of boy's play, I could give him a significant anagram of his own name; *I tell lies*, makes it up exactly. See whether that hath less to do with him, than *needleless* with me. I am not so unmannerly as to apply it to him; do you, reader, as you shall see cause in what I have noted to you; but I shew it only as an example of his childish adventures.

^d Pag. 228.

^e Pag. 229.





A
L E T T E R
T O T H E
Marquefs of Buckingham.

J. E. T. E. R.

March 10, 1861

A

LETTER

TO THE

Marquess of Buckingham.

My most honoured lord,

I beseech your most noble goodness to favour these lines; which I send, not to fave me a waiting; but that they might remain as a constant testimony both of my acknowledgment of your lordship's so great favour towards me, in taking me so far into your care; as also of the very thoughts of my heart, touching what it pleased your lordship at *Greenwich*, lately to permit me to have speech with you. Your lordship then seemed much to dislike my abstaining from the expression of my opinion touching the *divine right of tythes*. And I then had cause to fear also, that you conceived it to proceed more from wilfulness in me, than sufficient reason. To free my self from the continuance of that misfortune, of being so thought of by your lordship; I beseech your goodness to but take into your consideration the true reasons why I abstain from it. The question, my lord, is meerly of divinity; a study wherein I have been conversant, only to make me a good christian, and not to enable me to resolve school scruples, which are determined both ways (as this is) among the greatest scholars. And I beseech your lordship not to think it towards wilfulness in me to abstain from expressing my opinion in that, which is neither any question of the profession or studies which I have been bred in; neither have I ever studied it for a resolution; neither were I, perhaps, able to defend either side of it against such as, out of their professed studies, might dispute against me. I know, my lord, what other men in their published conclusions have affirmed or denied touching it, and that I declared at large in my history; But of their reasons of affirmation or denial, I never durst make my self such a judge, as to express a resolution either way amongst them. I leave that wholly to divines, to whom it properly belongs. But your lordship also moved me therefore to study the question, that I might so at length deliver my opinion. Alas! my lord, I know the way of study, at least, so far, that I dare not be-

lieve I am clearly and fully to be furnished to a resolution, in this or that so scrupulous question of divinity, unless I had first even wrought my self into the faculty, by a continual study of the body of it; And if I should be so rash, by studying it, as to resolve it either way, it must of necessity be that, when I had done, I should either resolve that they were due *jure divino* or not *jure divino*. And I trust your lordship doth not wish that I should chuse my side before I studied it, and were able also to defend it. If then, my lord, I should so upon study of it chance to conclude, through my own collection, that they were due *jure divino*, I should notwithstanding much doubt of my own judgment; when I find, that not only in the churches of *France, Spain, Italy, Germany*, and of all other foreign christian commonwealths, whose practice I have read of in their laws and decisions, but also in the laws and practice of this his majesty's great monarchy, that no tythes are at all, or have been for many ages since, paid or to be recovered as due *jure divino*, but only according as the secular laws made for tythes, or local customs, ordain or permit them. Good my lord, then think but what it would be for me, a private man, and bred in the studies of secular laws, to determine the question on this side, and so accuse both the whole state I live in, and all other churches of christendom, of an universally established practice against the law of God. And although, by my study, I should perhaps find reason that might persuade me this way, yet should I rest dissident still of my own judgment; not so much out of that more known reason, because so many subtil schoolmen are against it, as for finding the general practice of christendom to cross it; Nay, I should, my lord, as I ought, so reverence alone this church and state of *England*, that seeing both the antient and present practice of tything in it, is only according to the permission of the positive laws of his majesty and his progenitors, that whatever my own weakness might (if I

meddled with the question) perswade me to, I should not yet dare to affirm, (as some do, and that daily in print) that the practice of the church and laws of the kingdom daily exercised, are contrary to God's law; especially also when as, not only in books publicly here commended to the people, often reprinted, and, at this instant, kept to be read in most, if not all, parish churches through *England*, there be discourses and arguments expressly and at large inserted, to prove that tythes are not *due jure divino*: (as I noted in my late declaration of my purpose, exhibited to his most excellent majesty) but also in a book written in behalf of all the clergy, especially of the bishops, (by the name of *an admonition to the people*) and printed by publick authority, and by the late queen *Elizabeth's* printer, in the thirty second year of her reign, it is expressly affirmed, That it is an error of the *Papists* to hold that tenths and offerings are in the church *jure divino*; and it is further reckoned there also amongst their *greatest* (I recite but the words) *and grossest errors*. Alas, my lord, with what can your lordship suppose I were able to defend, either my opinion, my discretion, or my manners, if I should, upon study, dare to express a resolution of mine own against such testimonies of the state and church. On the other side, my lord, if I should perhaps after studying the question, resolve to myself that they were not *due jure divino*, but only by the positive law of the church or state; I know my expression of so much, would but add to the displeasure hitherto conceived against me. Therefore, good my lord, think it not wilfulness, when I desire so to abstain also from studying the question for expression of my opinion, in a matter, in the resolving whereof on the one side, I should tax both the state where I live, and also all christendom, for committing every where, by execution of their established laws, against God's laws; and in resolving (as it might happen) on the other side, I could gain nothing but increase of displeasure against myself. Therefore I would not willingly strive to work myself vainly into an expression of either side of the question. But leave it as I have ever done wholly to greater judgments. But, my lord, you spoke also of the great prejudice that the clergy hath suffered, through the publishing of that book. I doubt not but that both his majesty and your lordship have been moved only by information, to speak of any such prejudice. I would to God, your lordship

would be pleased to but ask of them which give the information, for some particular example wherein any clergyman hath been, or indeed can be, barred, through it, of one penny profit of such tythes as his majesty's laws command, or allow to be demanded; I dare venture the loss of my life if any such example can be manifested, whatsoever their information be. For indeed also, my lord, if it had been so, that my whole treatise had been written in express terms, and to no other purpose but to prove, that tythes had not been *due jure divino*, (which is the worst that I am charged with) and although, my lord, so much had been also proved, yet could not any man of the clergy have lost the least part of his tythes, which are paid, and ever have been recovered through *England*, as in all other kingdoms of christendom, according only as the king's positive laws command, or allow the demand of them. And although there had been such prejudice to them; alas! my lord, what were my opinion for a remedy? There are enough that have and do write, at their pleasure, for the affirmative opinion. All, that will, have liberty (and some use it) to write here and preach what they will against me, to abuse my name, my person, my profession, with as many falsehoods as they please; and my hands are tied: I must not so much as answer their calumnies. I am so far from writing more of it, that I scarce dare (for my own safety) so much as say they abuse me, though I know it. What prejudice then soever there were, the expression of my opinion, I conceive, could add nothing to the remedy, especially when for so much as lies in opinion or persuasion of the people, is wholly in their hands who so pretend their own prejudice. Take these things, I beseech your good lordship, into your consideration, and I trust they will so clear me with your lordship of all imputation of wilfulness, that your lordship shall not have cause to lessen your most noble regard towards me, in intercession to his majesty for my standing right in his favour; to whom as I owe all the humblest and most ready service of a subject; so would I gladly ever abstain from frowardly shewing any such weakness, as might justly note me for one unworthy any way to serve him. But I trouble your lordship, yet, that I might thus far do so, I was confident, out of your lordship's so free and known goodness, to which I shall ever rest

MAY V. CIO.DCCX.
from the Temple.

most devoted

J. SELDEN.

THREE
TRACTS

Written by Order of

King JAMES.

THE

STORY

OF

THE

T O T H E K I N G.

MOST humbly I offer this to your majesty's so excelling *goodness* and *learning*; both which have bred it. The first by your *gracious admonitions*, the second by such *directions* as might even provoke me to wish myself so *convented* again, that I might in something else be so fully directed. For in that unimitable *sweetness of your nature*, and the *admirable and ready store* of your *knowledge*, I found even a most gracious licence to put off all fear of the majesty of so great a king, and to hear and speak to you only as to the *best man* and *greatest scholar*. Whatsoever I have performed in it with all other my labours, I most humbly submit to the *most able censure* of your majesty; with whom, if it find favour, I am happy, and shall, I doubt not, rest secure enough against all such further *calumnies* and *imputations*, as have hitherto, by disturbing the quiet of my studies, prevented the dispatch of that other *treatise*, whereunto your majesty was also graciously pleased to encourage me. I shall now go on in that essay of my vowed service.

Your majesty's

most humble subject,

J. SELDEN.

WHEN his majesty was lately pleased to call me before him, and question me about my writing the history of tythes. He then also most graciously vouchsafed to have speech with me (as the time permitted) of divers parts of learning, which either offered themselves out of the consideration of that book, or obviously fell into his so searching a discourse; and this twice at Theobald's, and once at Whitehall; and at every of those times (besides the exceeding sweetness of this nature, which I being converted before so great a majesty largely tasted of) I saw, with wonder, the characters of such a fraught of learning, of such a readiness of memory, of such a piercing fancy joined with so absolute a judgment in him, as if his greatness in all these abilities, had been no less than in his hereditary titles. But among the many passages, touching which I had the happiness to receive both instruction and admonition from the clear light of so great a master of learning; three particulars occurred, which (as it pleased him graciously to shew me) might give some scandal in the church, if not more clearly either rectified or explained by me. And upon my humble petition, it pleased him graciously to permit that I might so rectify or explain them. Two of them are passages by the way inserted in that book, of which the one is the mention of Calvin's judgment on the revelation of St. John, and of the number of 666 therein spoken of, which I touch obviously in the first chapter; the other, touching the just time of the celebration of our Saviour's birth day, which occurs in the review; the third being the whole purpose and end, which I had in writing that book. Of these three therefore briefly, and in the order, I have mentioned them.



OF THE REVELATION.

§. I. Of the passage touching the number 666.

IN the first chapter speaking of the identity of number, betwixt the Hebrew words מעשר *maishser*, that is, *tythe*; and כפרות *becoroth*, which signifieth *first fruits*; (in which kind of identity, both the Jews and divers of the antient christians frequently supposed too much mystery) I add that, the *unlimited liberty of our times in so confidently daring to tell us the mystery of the number of the beast, would make a man give the more regard to these collections out of numbers.* And presently after relating a ridiculous casting up of that number out of *Thomas Elmham* the prior of *Lepton*; I say there, that *this dream of the prior's hath no place there otherwise than as an old pattern of trifling boldness, used in the later arithmetick of many on that passage in St. John.* And such misfortune had I as to be so conceived, as if I had in those passages taxed all of *unlimited liberty and trifling boldness*, whosoever they were, that had offered to calculate that number; than which nothing was further from my purpose. And I briefly now both open my meaning that I had when I wrote it, and what also I have had the happiness to learn touching it from his most excellent majesty. For my meaning there; both passages being as I supposed, restrained to them which with too much confidence on their own fancies durst tell us, that this or that word certainly was denoted by the *Holy Ghost* in that number; of which sort of men divers are (some making it out of *Luther's* name by turning him ^a into לותר *Lutther* in Hebrew characters, or into Λεθερώναι, or out of *Σαββει*, which denotes his nation; or out of *Martin Luther*, every of the letters being taken numerally by, I know not what liberty; for his name of all others, hath been most varied, and hath been suspected to have been by prediction denoted also by ^b *Luternus*, written over the picture of a monk in the college of *Ingnigen*, in *Carinthia*, founded by *Barbarossa*; others making it out of *Mabomet*, first according to their own fancies expressing it by Μαδμῆς, the true name being *Mohamed*; others out of the ἡαλαζόνεια *elis*; others out of δυνῆτις; others, according to a like lightness, otherwise, as I had seen in *Viega*, *Alcazar*, *Genebrard*, and some more of the later time, which I willingly omit here) I doubted not but to these I might justly

attribute *unlimited liberty and trifling boldness*; while they grounded themselves rather on their own rash fancies, or depraved judgments, than on the careful and impartial examination of the holy text, or of the true and false church. But I was in my soul as far from the purpose of denoting hereby all kind of interpretation of that number, as I was and am from believing or regarding the vanity of those I have now remembered. I ever thought with all reverence of that antient exposition of this number in the name of *Λαβίν*, which *Irenaeus* ^c bishop of *Lyons*, but some *LX* years after the apostles times, says, is *valde verisimilis*; where yet he offers other calculations of the number by names, as especially among the antients also venerable *Bede*, *Andrew* archbishop of *Caesarea*, his successor *Aretas*, and *Primasius* do upon the holy text. For also it was not without example before, among the *Gentiles* (from whose forms of expression, divers things were received into christianity) to denote names by numbers only; as we see in that of *Σάρατις* designed antiently ^d by the word ἑπταγράμματος, because it is a name of seven letters; and in the prayer that the great lady *Philology* makes to *Phoebus*, in *Martianus Capella*, ^e she expresses him by

*Octo & sexcentis numeris, cui litera trina
Conformat sacrum nomen, cognomen & omen.*

that is, perhaps, 'ΥΗΣ', which makes just *DCVIII.* in *Greek* numerals, and is an old mystical name ^f of *Phoebus* or *Osiris*. But some take it rather for 'ΗΥΣ' that is *propitious, favourably minded*, or one that is *mente placida*, being ^g chiefly persuaded to think so by a divers reading found in some ms. copies of it, which have

Conformat sacrum mentis cognomen & omen.

as it is expressly also in an old written copy of *Capella* that I have. But also with all reverence, I think of such expositions, as to second this of *Λαβίν*, that the same thing be still, and according to the analogy of scripture and church story pointed out by them, which is the exactest rule of interpretation of it, as I was long since taught, especially by his majesty's most divine and kingly premonition to all princes and states of christendom. And he there and elsewhere in his excellent works, makes by a most acute de-

^a Florimond, de Raemond de la naissance de l' heresie. liv. i. ch. 5. hereses lib. 5.
^b Hesychius in verb. επταγραμμ.
^c Grotius ad dictum Capellae locum.

^d Paracelsus in chronico, Carinthiae.

^e De nuptiis Merc. & Philology. lib. 2.

^f Adversus

^g Plutarch. lib. περὶ Ισιδος

duction of time (which may as well have place here, as the account by numeral letters) *Boniface* III. and also *Benedict* II. to satisfy the same number ^h for the mystery of *Antichrist*'s name. And both stand with the sense also of *Αντιχριστος*, which denotes what is of *Rome*. Neither yet insists he upon the one or the other, singly, as upon clear certainty. Nor doubtless can his so exquisitely able and sharp judgment

fix with a clear confidence in any disquisition, but only where exact truth is perfectly discovered to him. But it is left to his readers choice to take which he likes best of them: all three resulting to the same end of proof. So was it left by the fathers of the primitive times, *nece asseverantes pronuntiabimus*, says *Irenaeus* of it; and *de re tam incerta nihil audeo definire*, are *St. Ambrose* his words upon the text.

§. II. Of Calvin's judgment on the revelation.

AFTER these words of the number speaking of the book of the *revelation*, I have a passage of *Calvin*'s answer touching it which is related to have been, that *he knew not at all what so obscure a writer meant*. And this answer of his, (which I use only in the by, to denote the obscurity and difficulty of that part of holy writ) I there say was *as judicious as modest*, my meaning being, as I profess from my heart, that it was *as judicious* to see the difficulty and obscurity of it, in regard of his own understanding, as it was *modest* to confess it. And it was far from me to think there, that his answer was such as would have become all men, as if no man had known at all what *St. John* meant. And there was perhaps a time, even in the strength of *Calvin*'s years, when he had no great reason to be very forward to adventure upon such difficulties in holy writ. For he spent a great part of his youth in the studies of *humanity* ¹ and especially of the civil laws, under those learned *Stella* at *Orleans*, and *Alciat* at *Bourges*, and in those times he might speak that of the *revelation*, while he was yet of another profession. But also it might perhaps suit him without disparagement, even after he became a divine. For he wrote his *institutions*, and was made doctor at *Geneva*, before he had seen

twenty seven years; which is not an age, wherein a divine, especially one that comes but lately from another profession, (as he did) should venture too boldly upon such difficulties. And the tradition among the *Jews* is known, that the prophecy of *Ezekiel* ^k is not to be read, much less expounded by any man, that is under the age of thirty, and that only for the supposed difficulty. Besides, though *Calvin* lived long after till the fifty fifth year of his age, and wrote divers commentaries on parts of the holy scripture, yet he never wrote on any part of the *revelation*. But whether, or at what time, he gave that answer, I of myself affirm not, but only upon *Bodin*'s ^l credit who could not but know him; both of them being in their several ways very famous, and of the same time and country. And *Bodin* speaks it as highly commending him also, *valde mihi probatur*, saith he, *Calvini non minus urbana quam prudens oratio*, &c. But all that I intended was only this, that he expressly confessed a great difficulty in it, which the more commends the interpretations of it, made according to the analogy of the text and order of times, among which his majesty's, specially in that his unimitable *premonition*, is as the clearest sun among the lesser lights.

^h Praefat. monit. ad reges, &c. & paraph. in apocal. cap. 13.
^k D. Hieronym. in Prologo galeato. ^l Method. histor. cap. 7.

ⁱ Theodor. Beza & Melchior Adam. in vita Calvini.

OF THE
BIRTH-DAY
OF OUR
SAVIOUR.
BRIEFLY

Of the anniversary celebration of birth-days : The state of the question, and this discourse digested into parts.

IN the review of the fourth chapter, having occasion to speak of the authority of the *Clementines*, that is, the eight books of *constitutions*, attributed to the apostles, in which an express constitution is, that the birth-day of our Saviour should be celebrated on the twenty fifth day of *December*; (or of the ninth month, as it is there called, being accounted from *April* as the first) I noted that constitution for one character of that volumes being supposititious; in regard that in the *eastern church* (where those constitutions being in *Greek*, must by all probability have been in most use) the celebration of that day was not received on the twenty fifth of *December*, until the antient tradition of it was learned from the *western*, about four hundred years after Christ; and some touch also I have there, of the opinion of them that think that day not to be the true time of his birth. This passage hath been so conceived, as if I had purposely called in question the celebration of that sacred day (which is ἡ ἡμετέρα ἀπαύσις, as ^a St. *Chrysostom* styles it, ἀρχοπαλῆς, ἡ πηγὴ, ἡ βίβλα παρὰ ἡμῶν ἀγαθῶν, that is, as the main fort of all happiness, and the fountain and root of all good that we enjoy;) and so call it in question, as if I supposed it were observed at that time without sufficient ground; and as if I were too inclining to that part of the hot-brained and disturbing puritans, which impiously denies the keeping of a day as an anniversary feast consecrated to the birth of our blessed Saviour; from which my conscience was ever, and is most clearly free. For I knew, first, both from sacred and profane story, that the anniversary birth-days, ^b not only of princes, but of some private men also, were with frequency ever observed, and the beginnings of cities under that name yearly celebrated; And even among the heathen, those that professed

such philosophy as was nearest to true divinity, that is, the *Platonists*, were most religious in yearly keeping their *Plato's* birth-day, which they received by tradition to be the same with *Apollo's*, that is, the seventh day of the *Attick* month *Thargelion*, which answers to our *April*; and this was still observed till the time of *Plotinus* and ^d *Porphyry*, who lived about 270 years after our Saviour's birth; and after the discontinuance of it for many ages, it was revived in the days of our grandfathers, with much solemnity, in the duchy of *Florence* by *Lorenzo Medicis*. But he misplaced it in the year, while he and his guests being better *Platonists* than *chronologers*, took the seventh of *Thargelion* to be the seventh of *November*. As also the old trifling *astrologers* committed a like fault, while in the scheme ^e of his nativity they place the sun in *Pisces*, which must denote our *February*, or the *Attick Anthesterion*. But however, an anniversary day was observed for his birth: So was there antiently for the birth of some false Gods; For they had their certain days for the births of ^f *Mars*, *Apollo*, *Diana*, *Minerva*, the *Muses*, *Hercules*, and others, and carefully observed them; And for princes, and private persons, even to this day a celebration is in use at the yearly returning of their birth-days. To deny therefore, with that wayward-sect, such an anniversary honour to the Saviour of the world, were but to think him less worthy of it than false Gods were esteemed by the gentiles, than princes by their subjects, than private friends by their greater friends, whose birth-days they have yearly celebrated. But of this I trust no man that truly deserves a name among christians will make scruple. Some indeed (and those not a few among the learned) have doubted of the just time of the birth of our Saviour; which while they doubt, they offer the more occasion to

^a Tom. 7. edit. Savilliana, page 725. *loc. cit.* ^b CC. Theodos. & Justin. tit. de feriis. Sed de hac re plene Martinus de Roa lib. de die natali. ^c Plutarch *συμ.* 8. cap. 1. Laertius in vita Plat. &c. ^d Marfil. Ficinus comment. ad Plat. sympos. cap. 1. ^e Jul. Firmicus Mathes. lib. 6. cap. 30. ^f Calend. vet. Rom. a G. Hervartio, nuper editum, &c.

others to question and impugn the celebration of it, as it is now settled in the church; For if that were not the true day (as they argue) it follows that there were no more reason (save only what comes from the latter, and arbitrary constitutions of the church) to keep that day than any other through the whole year, unless also some other day were found to be the exact time of it. But for my self here; As I was far from questioning the duty of celebration of it, so was I also from doubting the right of celebration of it on this very day of December whereon it is now kept. And to make clear my mind here, I shall now more largely, according to what his majesty's most learned directions have taught me, declare the certainty of that feast, as it is at this day observed, even from the eldest of the christian times, and apostolical tradition, received even from the practice of the disciples; For it is one thing to deny (as I have done) that it was so ordained by the apostles in those *Clementines*, (which I think all learned and ingenious men will deny) and another and far different thing to affirm, that the tradition of that day, as it is now kept, is both apostolical, and as antient as the birth it self; as I shall presently deliver in the deduction of the continuance of it, according as it is now observed through all christendom. I say, through all christendom: For although in that feast, and in all others unmovable, there be the known difference of ten days (which were taken out of October in the year 1582^e by pope Gregory XIII. when he reformed the *Julian kalendar*) betwixt us, with some few other states, and those which have received the *Gregorian kalendar*; Yet both they and we agree in this, that upon the 25th day of that month (that is with us of our *Julian December*, with them of their *Gregorian December*) this feast is ever to be observed. So that we meddle not here at all with any part of the differences betwixt the *Julian* and *Gregorian* year, but only endeavour to make it certain, that on this day of that month *December*, that feast hath been ever settled in the western church; from whence the eastern also antiently received it. For it is clear, that on what day soever of any month an unmovable feast is to be kept in our *Julian* year, on the same day of the month it is to be kept in the *Gregorian*; so that the proof here is equal for the use of both accounts. Thus appears the state of the question; and to this purpose, for order's sake, shall be shewed,

1. *The authorities of the keeping it on this day both in the eastern and western churches about four hundred years after our Saviour, and that then it was antient in the western church, and known also under the name of the winter solstice day; which is especially here observable.*

2. *For preparation of more particular proof of the tradition of this feast-day, the supposition which the most primitive ages had touching the time of the solstices and equinoxes.*

3. *That the keeping of it on this day was so*

received from tradition, even of the eldest times since our Saviour; and this justified from the fathers, supposing it to have been on the very day of the antient winter-solstice.

4. *Express testimonies to the same purpose out of antient history, and a confirmation from the general use in the several churches of christendom.*

5. *The common reasons used out of the holy text to justify this day, and how they are mistaken, and therefore not used here; together with what some would prove from the scheme of this nativity.*

6. *The chief objections that are made against this days being the true time of the birth, with plain answers to them.*

7. *Some other opinions among the antients touching it, and how some of them may agree with what we have received, and the rest are of no weight against it: And there more especially of the antient confusion of this feast with that of the epiphany.*

SECT. I.

The authorities of the keeping it on this day both in the eastern and western churches, about four hundred years after our Saviour; and that then it was antient in the western church, and known also under the name of the winter-solstice day; which is especially here observable.

FOR the first, that is, the authorities of the received use of keeping this feast on the 25th day of December about four hundred years after Christ's birth, they are frequent in St. Ambrose, St. Chrysostom, St. Augustine, and others of the fathers that lived about the end of those four hundred years. Those three especially have many sermons appropriated to the celebration of this day, and they frequently tell the people confidently, that the birth of our Saviour was on the 25th day of December, or the eighth kalends of January; as also that the birth of St. John Baptist was on the eighth kalends of July, or the 24th day of June, according as to this day they are observed. Ecce, faith^b St. Ambrose, in *nativitate Christi dies crescit, & Joannis nativitate decrescit; illo oriente lux proficit, hoc nascente minuitur*: That is, on our Saviour's birth-day the days began to lengthen, and on St. John's they began to shorten; For the fathers herein supposed the 25th day of December to be the winter solstice, at what time the days always begin to lengthen; and the 24th of June to be the summer solstice, in which they contrariwise begin to shorten: And this was according to the antient astronomy, out of which supposition in this feast-day, the antiquity of the tradition of it shall be also presently confirmed. And to this purpose of the summer-solstice at St. John's birth, and of the winter at our Saviour's, they apply (I dispute not how well) that in

^a Constat. sum. pontif. p. 775, & Clavius in kal. Greg. five tom. 5.

^b Serm. de temp. 8. & 10.

St. John, ¹ Ἐκείνον δὲ αὐξάνει, ἐμὲ δὲ ἐλαττωσάτω, i. e. *He must increase, but I must be diminished.* So St. Augustin also, *Natus^k est Johannes hodie, ab hodierno minuuntur dies; natus est Christus 8 kalend. Januariæ, ab illo die crescent dies.* And enough to this purpose occurs in others of that¹ age, wherein these two births were observed, and only these two, and that in all, or the greatest part of christendom, *solius domini* (saith^m St. Augustin) & *beati Johannis dies natiuitatis in universo mundo celebratur & colitur.* But it being so clearly plain that about this time of four hundred years past after our Saviour, this twenty fifth day was so observed, and taken generally for his birth-day, it falls next to enquire the original whence it was so taken: Had those *Clementines* been of sufficient credit, there had been no need to have made further inquiry; for then we might have thence resolved that the apostles had ordained it; and it had been fit for them that stand so much for the authority of those constitutions, to have proved that the apostles had done so, that so they might have cleared their supposititious volume of such a character of falsehood. For doubtless, had such a constitution been published in that volume, and by the apostles, the *eastern* church had not so long been ignorant of it, as it appears by St. Chrysostom they were: For until some ten years before his sermonⁿ made upon this day, especially for the truth of the time of the feast, that church had not been generally instructed with this certainty of it; for then it was newly learned from the *western* church, in which even from *Thrace* to *Cadiz* (as he tells us from such as instructed him) it was so observed. But although that ordinance touching it in the *Clementines*, attributed to the apostles, be supposititious, yet there is great reason for us to think, that the tradition of this feast to be so kept on that day was apostolical, that is, taught and deduced into the church (though not in writing) both from the apostles, and first disciples and observers of our Saviour. *Quid autem* (saith^o Irenæus) *si neque apostoli quidem scripturas reliquissent nobis, nonne oportebat ordinem sequi traditionis, quam tradiderunt iis quibus committebant ecclesias?* And we shall here use aptly enough the very words also of^p Tertullian, speaking of divers observations in both sacraments, and other parts of christian religion in his time, which was near the apostles; *Harum & aliarum ejusmodi disciplinarum si legem exposcules scripturarum, nullam invenies:* But, *traditio tibi prætendetur auctrix, consuetudo confirmatrix, & fides observatrix.* But for the order of proof here, (it being first cleared that this tradition was about the time of those fathers that testify it commonly received in christendom) before we come to the particular deductions of it out of the elder ages that preceded them, we shall here not untimely first note, that as it was commonly received as a thing then settled, so was it also generally thought of as what was then very

antient. So says St. Chrysostom expressly, ^q being instructed from learned men of the *western* church, it was then ἀνωθεν ἢ, πρὸ πολλῶν παραδοθέντα ἑστῶν, that is, *of antient time, and delivered in the church many years before,* as his words are; and yet, saith he, *it is new too; new* in the *eastern* church, because (as he writes) we have so lately learned it, that is, within ten years since; but he calls it παλαιὰν ἢ ἀρχαίαν διὰ τὸ ταῖς πρεσβυτέραις ταχέως ὁμιλίαις γίνεσθαι, &c. i. e. *old and very antient, in that it is even of equal age with the antient feast-days* which they had received: and again, though it came but lately into the *western* church, yet it was, saith he, παρὰ τοῖς τοῦ ἑσπέραν ὁπότερον ἄνωθεν γνωρίζομεν, i. e. *well known from antient time to those that were of the western church.* And St. Augustin also expressly says, ^r that the birth was upon this day, *sicut tradit ecclesia;* which denotes great antiquity even in his time. And in^t another place, speaking of the celebration of St. John Baptist's birth-day, which was received with this, (it seems) by a like tradition; *Hoc majorum traditione suscepimus,* (saith he) *hoc ad posterum imitanda devotione transmittimus.* These passages alone are enough testimony, that this feast-day, thus placed, was reputed in those times, (that is, about four hundred years after Christ) *very antient;* But to know *how antient* it was more particularly, it behoves us to look backward from those times by such degrees, as that by carefully observing one of them after another, up towards the times of our Saviour, we may be herein instructed according to the occurrence of such testimony as may make to the end of the inquiry; and I doubt not but we shall so well enough at length find it received in the church, (in the *western* church,) even from apostolical tradition, derived from observation, while yet our Saviour was on the earth. But to begin this course of inquiry by looking back by degrees from the time of St. Chrysostom, and the rest of the fathers of about his age, we shall first look on the time of near 100 years before them, that is, of *Constantine* the great, and the first general council of *Nice*, held under him in the year 325; at which time we shall, by sufficient arguments, first shew, that this feast was kept on the twenty fifth day of *December*, as now it is, and that then also from antienter time, against those which suppose the beginning of it no elder than after or about *Constantine*; and from thence we shall go upward to the apostles. But because the proof that hath first reference to the time of this council, and makes much otherwise also for confirmation of the antiquity of this celebration of the day, (as shall be presently shewed) consists especially in observation of the *name of the time* under which those fathers received, denoted, and celebrated it, that is, of the very day of the *winter solstice*, with reference to the *spring equinox*, as to the time of the *conception* of our Saviour, and to the *summer solstice*, and *autumn equinox*, as to St. John's

¹ D. Joan. c. 3. comm. 30.^k D. Aug. serm. de diversis 40. & 59. l. 4. adverb. Crefcon. c. 37. & in Psalm. cxxxii.^l D.

Hiero. in epist. de celebr. Pasch. tom. 4.

^m Serm. de sanctis 2.ⁿ D. Chryl. edit. Saviliana, tom. 5. 207. 68. p. 511.^o Adverb. haeres. l. 3. c. 4.^p De corona militis. c. 4.^q Serm. dict. item in hom. 34. tom. 2. edit. Basil. & in serm.^r 27. de nat. Jo. Baptist. eodem tom.^t Enarrat in Psalm. cxxxii.^u Serm. de sanct. 4.

birth and conception; it is first here requisite, that we shortly open the antient supposition which the most primitive times had, touching those four beginnings of the quarters of the year; which (being much different from what was received, both at the time of the council of Nice, and before it, and from what is also yet retained in church-cycles) will make way for confirmation of the received opinion of the just time of that sacred birth-day.

SECT. II.

For preparation of more particular proof of the tradition of this feast-day; the supposition which the most primitive ages had touching the time of the solstices and equinoxes.

THE antient and civil supposition of the solstices and equinoxes, (in which an express character is found of the antiquity of this tradition, as shall be presently shewed) was both before and about our Saviour's birth-day, (especially in the Roman empire) of another kind from that which either at this day is, or at the time of the birth was agreeable to the more accurate and natural astronomy; I mean, the supposition which was publicly received in their kalendars and parapegmata; which denoted both their sacrifices, feast-days, and country observations for matter of husbandry: For they supposed in those kalendars, that the sun's entrance into the first degree of Aries was on the fifteenth kalends of April in the Julian year, that is, on the eighteenth day of March; but that the spring equinox was not until the eighth kalends of April, that is, the twenty fifth day of March. So likewise for the summer solstice, upon the fifteenth kalends of July, that is, the seventeenth of June, they placed the sun's first entrance into Cancer; but the solstice on the eighth kalends, that is, on the twenty fourth of June. So the fifteenth kalends of October, or the seventeenth of September, was their supposed time of the sun's first entrance into Libra; But the autumn equinox on the eighth kalends, or the twenty fourth of September; And according to these the first entrance of the sun into Capricorn they placed on the fifteenth kalends of January, or the eighteenth of December; But the winter solstice on the eighth kalends of January, that is, the twenty fifth of December; So that the equinoxes and solstices were not supposed in the first entrance, or in the first degree of those four signs, (as at this day they are, and many ages since have been) but at such time as the sun held the eight degrees of them. For the sun's proper diurnal motion being about a degree, it so fell out in their calculation, that eight days being reckoned from the first entrance into every of those signs (as is seen in the examples) on the eighth day the sun was in the

eight degrees of those signs, and then made the supposed time of solstices and equinoxes. The testimonies of this kind of placing them in those times are frequent. Ovid^c expressly teacheth us so for the summer solstice. But in the kalendar that is commonly joined with him, and received by others, it is therein mistaken. The like for all four^a do Pliny,^x Columel,^y Varro,^z Martiannus Capella^z, the scholiast on Germanicus his Aratus, and the author of the fragment joined with Censorinus: And of the natural forces of the two tropicks, or solstices, to this purpose Manilius;^a

*Has quidam vires octava in parte reponunt;
Sunt quibus esse placet decimas; nec desuit autor
Qui primae momenta daret, fraenosque dierum.*

Meaning that the common opinion was, that they were (with the equinoxes) in the eighth part of their signs, but that some thought them otherwise; some in the tenth, some (as they ought) in the first. But this opinion of the eight parts, and so by consequence of those times of the equinoxes and solstices was a most antient tradition, and retained still in their kalendars, or fasti, made for civil, sacred, and rustick use; notwithstanding that the more accurate astronomers had found it to be an error; not otherwise than at this day those which keep the Julian and Dionysian account in the church, (as we in Great Britain) suppose the spring equinox on the 21st of March, though the known astronomy teach us, that it anticipates about eleven days. And as it happens in like cases, they still retained what had been from antient time settled in the state, neglecting the corrected astronomy; and that especially, because those old kalendars were already fitted to their feasts and sacrifices, and were more known to the people, who could not but have been much troubled with an innovation of the time of all their publick solemnities. Neither did Sosthenes in his divers amendments of the year made upon Julius Caesar's command, or the rest after him so employed, alter any thing in this supposition: All which is fully expressed in that of Columella, in his precepts of husbandry; where having first spoken of the solstices and equinoxes, falling upon the eight degrees of those signs, he presently thus admonishes: *Nec me fallit (saith^b he) Hipparchi ratio, quae docet solstitia & aequinoctia non octavis, sed primis partibus signorum confici: Verum in hac ruris disciplina sequor Eudoxi & Metonis, antiquorumque fastos astrologorum, qui sunt aptati publicis sacrificiis; quia & notior est ista vetus agricolis concepta opinio.* He gives here the true reason why that supposition was retained; but, by the way, is deceived in this, that he takes Eudoxus and Meton to be of those antienter astronomers, from whom it was received. It is true indeed that in the old^c parapegmata, which shew us that, according to Calippus and Euctemon, the solstices and

^a Fastorum l. 6.

chitect. l. 9. c. 5.

quod Geminio sub nectitur.

^u Hist. nat. l. 2. c. 19. l. 18. c. 25. & 29.

^z Nupt. Philol. & Mercur.

^a Astron. l. 3, ad extrem.

^x De re rustica, lib. 9. c. 14. & l. 11. c. 2.

^y Agricult. l. 9. c. 14.

^z Ar-

^c Parap.

equinoxes were at the first entrance of the sun into the signs proper to them: *Eudoxus* yet had otherwise placed them; as for the purpose, the *spring equinox* on the sixth day after the sun's entrance into *Aries*, and the *winter solstice* on the fourth day after the first entrance into *Capricorn*: But we find not that he had taught this learning of the eight days or parts; no more do we that *Meton* was any teacher of it; although also for this particular, beside the published *paraepmata*, I made special search also for it in *Ptolomy's* ^d Φάσεις ἀπλανῶν ἀστέρων, ἢ συνάγων ἐπισημασίων, a book never yet printed, but fraught with divers pieces of the *paraepmata* both of *Meton* and *Eudoxus*; and wholly another thing from that which goes under a like name for *Ptolomy's*, published at the end of some editions of *Ovid's fasti*. Beside, it is certain, that the *summer solstice* observed by *Meton* with *Euctemon* in the 316th year of *Nabonassar*, that is about 440 years before *Christ*, was upon the 21st of the *Egyptian* month *Phamenoth*, as ^e *Ptolomy* expressly testifies, which for that time agrees with the 27th of the *Julian June*. Neither *Eudoxus* therefore, nor *Meton*, thus placed the *solstices* on the eighth kalends of their months. Others of late time have much troubled themselves, to find the ground or original whence this supposition came among the antients; as especially cardinal *Contaren*, *Genesius de Sepulveda*, and most of all *Joseph Scaliger*; but their conjectures are most uncertain, and too weak to rely on. Neither, I guess, will the original be found among any of the antients that are classed in authority, but in a transcript of some parts of a *Latin* translation by *Abraham de Balmis*, of a book titled ^f *Isagogicon astrologiae Ptolomaei*, (which indeed appears to be *Geminus* his *phaenomena*) compared with the *Greek*; I find these words inserted, as if they were but translated from the first author; *Uterque tropicus; § ambo aequinoxia secundum astrologorum Graecorum opinionem, sunt in primis gradibus horum signorum; sed secundum Chaldaeorum opinionem, in octavis gradibus*; but the *Greek* copy hath no such thing; though it be like enough that the copy whence he translated it, had; that is an *Arabick* copy of *Geminus* who (as *Euclid* also, *Ptolomy*, *Aristotle*, much of *Galen*, and other *Greek* authors), was turned out of *Greek* into *Arabick*, and thence into *Latin*, long before the *Greek* itself was translated immediately into *Latin*, as we have it at this day; And it appears that his translation was from an *Arabick* copy, in that alone, that the *paraepma*, which is at the end of this *Latin Geminus*, hath the names of *Eudoxus*, *Calippus*, *Euctemon*, *Dositheus*, and *Meton*, so varied as frequently other names are, which are expressed out of *Arabick* letters into *Latin* in like translations; as for *Eudoxus*, it hath *Orcasis*; for *Calippus*, *Philidis*; for *Euctemon*, *Oetiman*; for the other two, *Dufsonius* and *Matheon*; all which plainly were

mistaken by the translator, when he found either the names written without essential points in the *Arabick* character, or else mis-transcribed, (as it might easily be,) by such a writer as was not worthy to be trusted to; for the mishaping of a letter, or the doubling of a point, and the like, soon makes such variance of names expressed out of that language. But for the matter of the eight degrees, and the *solstices* and *equinoxes* referred to them, here is authority that it had original from ^g the *Chaldees*, which I yet think it as far from truth as that of *Columel's*; neither is this a fit place to make larger inquiry after it. It here sufficeth to shew it manifest, that this placing of those parts of the year was observed from antient time, and that especially in the state of *Rome*; as we see also in those their old country-feasts, the *robigalia*, the *floralia*, the *vinalia*; which were the three main feasts wherein, from antient time, they made intercession to their Gods against all hurt that might happen to their green corn, the ripening of the fruits, and their vintage; and were kept (and so noted by ^h *Varro*) according to no other account of the sun's place or motion than is before delivered. And according to this account are the *equinoxes* and *solstices* in venerable *Bede's ephemeris*, noted with the addition of *juxta quosdam*, to be understood, although in the print they somewhat vary from it; But it is clear, that in his *December*, the *solstitium juxta quosdam*, and in his *March*, the *aequinoctium juxta quosdam*, are both placed a day before they should be, that is, they ought to be on the eighth kalends, (not the ninth) the one of *January*, the other of *April*; with which the *Sol* in *Capricornum*, and the *Sol* in *Arietem* there before noted, to the 15th kalends, exactly suppose the *solstice* in the 8th degree of *Capicorn*, and the *equinox* in the 8th of *Aries*, that is, in the 25th days of their months; reference being still had to this antient account, which he, being most curious in the cycles of time, would not omit; although his *ephemeris* were purposely made for the *Dionysian* year, which also he hath together expressed in the same columns: But, I suppose, the chief reason why these two stand so displaced, is, because the noting of the birth of *St. Anastasia* was thought more necessary to the eighth kalends of *January*, than this old supposed *solstice*; and therefore there being not room enough for the *solstice* to be added, it was cast upon a void place of a line next preceding. The same may be said of the *spring equinox*, which had no room on the eighth kalend of *April* in the column, by reason of the conception and passion of our Saviour together noted to that day; And that he is so to be understood, he himself elsewhere is ⁱ testimony enough, expressly relating this antient course of accounting the *solstices* and *equinoxes*; So that his *ephemeris* is a special example of it, if rightly understood; as also is that *calendarium Romanum*, lately cut in brass, and so published from the

^d Cod. ms. est v. c. Henrici Saville eq. aurati; mihi vero communicavit pro sua humanitate v. c. J. Bambridge medicinae d. & mathematicae egregius. ^e Mathematic. syntax. l. 3. ^f Copiam mihi perhumaniter fecit v. c. Jac. Utherus, sacrae theol. d. undique doctissimus. ^g Kal. Jan. Brumale solstitium observant Chaldaei, ait Columella, l. 11. c. 2. ^h Apud Plin. l. 8. c. 19. & Scholiast. ad Aratea prognostica. ⁱ De temp. ratione, c. 28.

print, and supposed to be as antient as *Constantine* the great; where the *summer solstice* is indeed by the cutters or the transcriber's fault set to the 7th kalend of *July*, which plainly should have been on the eighth; and the sun's entrance into *Cancer* is on the 17th kalend, which should be on the 15th; as also the sun's entrance into *Aries* should have been placed there on the 15th kalend of *April*, which agrees just with the feast of *Hilaria* being on the eighth kalend. And according to this supposition of the antients, did that learned gentleman, *George Herwart von Hohenburg* (out of whose library this *kalendar* was lately published) judiciously declare the reason of those differences that appear in it from the later astronomy; and that in his letter written to *signior Haleander*, a gentleman of curious learning in *Rome*; the copy whereof was thence sent me through the hands of that learned and worthy gentleman *monsieur Pierese*, an advocate in the parliament of *Aix*; and this some two years since, when betwixt him and my self, and from him to *Haleander*, divers letters passed touching the particulars and authority of that *kalendar*.

SECT. III.

That the keeping of it on this day was so received from tradition, even of the eldest times since our Saviour; and this justified from the fathers, supposing it to have been on the very day of the antient winter solstice.

THAT antient^k supposition of the *solstices* and *equinoxes*, being thus hitherto first opened, let us, in looking back by degrees, first (as is before proposed) begin with the time of the council of *Nice*, held in the year of our Saviour 325. It will so appear, that before that council, this feast was established in the *western* church, and that by the general testimony of those fathers, which with one voice suppose it as formerly placed on the very day of the *winter solstice*; For had it been begun after or about the time of that council, and withal supposed to have ought to have been kept on the *winter solstice* day, then doubtless would they have placed it on that day, which was received in the church to be the *winter solstice* day, after or about the same council; as at this day in the *Gregorian* year, who doubts but that a feast to be newly instituted on an *equinox* or *solstice*, or with reference to either of those times, would be placed by them, which have received that reformation, on the *equinoxes* or *solstices*, or with reference to them according as they are in the corrected *kalendar*, and not as they fall in the *Julian* or *Dionysian* year? For example also; what greater testimony were there (if all other were lost) to prove the antiquity of that very kind of keeping the feast of

Easter as we do in our church, to be of the primitive times than this, that the *Paschales termini* are retained still according to the *spring equinox* received in the primitive times? Now to make clear our purpose, here it is also certain, that, about and after that council of *Nice*, the *spring equinox* according whereto the *paschal* cycles were made, was supposed in the church upon the 21st of *March*, as is seen also in the *Paschal* account used to this day in the church of *England*; so that it was become four days sooner than in those elder times, when it fell in common opinion on the 25th day: But when the *spring equinox* was so changed, and according to the change also received, it could not but follow that the beginnings of the other three parts of the year must also be altered, that is plainly seen in the known course of the sun's motion. And therefore the *solstices* and the other *equinoxes* must also vary in their months, and by a like or very^l near like difference of days anticipate, as they are accordingly cited in *Bede's ephemeris*, who^m elsewhere also admonishes as much. Therefore it must follow too, that about and after that general council the time of the *winter solstice* was placed (and so supposed in ecclesiastical account) upon the 21st or 22d of *December*. But if it had been so received when this feast-day was first ordained, and specially placed on the *solstice* day, (as the fathers generally by tradition from former times place it) there had been necessary cause enough to have had it fallen yearly three or four days sooner than it did, both in the primitive times, and doth at this day, that is, on the twenty first or twenty second of the same month. By consequence was it then ordained or received in the church, at such time as the *winter solstice* was not supposed on the twenty first or twenty second day of the same month, but on the twenty fifth, that is, at least before that council of *Nice*, or *Constantine* the great, however too rashly some have deliveredⁿ of it, that *post seculum Constantini Romae hac observatio instituta est*. Neither can that objection have power here, which perhaps may obviously be brought to impugn this kind of argument; that is, that it might notwithstanding be ordained first in the later part of the primitive times, or after *Constantine*, or that council, in such sort that it might be placed on the day of the *solstice* that was received at the time of the birth, that is, the twenty fifth day, and not that which the corrected account had so innovated; For this objection is partly answered before in the passage of feasts at this day to be ordained, with reference to the *solstices* in the *Gregorian* *kalendar*: And besides, if the church, about this time after *Constantine*, had regarded in a new institution the *solstice* of the time of the birth, according as it was then to be found in the month, it must be that they either regarded the true and *natural*, or the received and *civil solstice*. For the first; If they had been so curious as to have sought what the

^k Epist. Telephoripp. & not. Bini.

^l Videfis Marcel. Francolin. de temp. hor. canonic. c. 75 & 76.

rat. c. 28.

Jos. Scal. de emendat. temp. l. 6. p. 510. & Calvisius Ifagog. chron. c. 46.

^m De temp.

true place of the *winter solstice*, to this purpose, had been in the age of that birth, (as they had indeed sought for the true *equinox* of their own time for their direction of *Easter*;) they had found that the true *solstice* anticipated the twenty fifth day about two days; For, by the most accurate calculation to the noon of the meridian of *Bethlem*, on the twenty fifth of *December*, in the year commonly attributed to the birth of our Saviour, the sun was in the second degree of *Capicorn*, and some minutes over; (as ^d *Cardan* also places it in the scheme of that nativity) whence it must clearly follow, that about the twenty third day was the very point of the *winter solstice*, the diurnal true motion of that time of the year in the *perigaeum*, being somewhat more than a degree. No place was then for this true *solstice* in such their consideration of the birth-time, if they had thus enquired after it, unless they would have instituted the feast, (under that name of time) on the twenty third day, and not on the twenty fifth. For the second; What colour have we to think that they should in those times have retained the old supposition of the *civil solstice*, for their institution of this feast-day, and yet so carefully alter the formerly received *equinox* for *Easter*? This of the birth being as the head and rule of the chiefest *immovable* feasts, as that of the passion and resurrection is of the *movable*. Would they have retained the same error upon institution of a *new* feast, which with so much curiosity they had corrected in establishing the certainty of an *old* one? It rests firm therefore, that whensoever it was first instituted for anniversary celebration, it was in such an age, as had the supposition of the *winter solstice* being on the twenty fifth day of *December* yet retained in the church; Otherwise what dependence were there betwixt the name of the feast and the *solstice*? But that dependence is by the consent of the fathers fully testified, as a tradition of former times; and the latest age, which in the church retained that supposition, must at least be before the council of *Nice*, as is already shewed; therefore at least the institution of it must precede that council.

This being thus hitherto deduced, it will in the next degree of searching backward follow also, (if we can prove the received supposition of the church, touching the time of the *winter solstice* to have been long before this council, agreeable to that which here is shewed for the time of it;) that the first observation or institution of this feast, under the name of the *solstice*, upon the twenty fifth day, was also long before that council. Now as the *spring equinox* changed from the twenty fifth to the twenty first, so did the *winter solstice* of necessity change also, as is before shewed: But the *spring equinox* was also at least some fifty years before that council, upon the twenty first or twentysecond of *March*, by the received supposition of them from whose direction the church cycles were principally

guided, that is, of the *Egyptians*, and especially of those of *Alexandria*; so is the express testimony of *Anatolius*, born and bred in *Alexandria*, but bishop of *Laodicea* in the time of *Aurelian*, about two hundred seventy years after our Saviour. He shews, that then the eleventh kalends of *April*, that is, the twenty second of *March* was the supposed *equinox*; which agrees well enough with that of the twenty first, if regard be had to that variation, which the six hours, out of which the leap-year is made, must of necessity be a cause of, as *Bede* ^f withal, in explanation of *Anatolius*, hath taught us: The same *Bede* also well admonishing, that it was *regula Niceno probata concilio*, not *statuta*, ^g to have that time received for the *spring equinox*. And indeed the very words of the epistles sent out of that council touching it, and the church stories plainly prove it to have been generally known and received in the church, both of the *west*, *north*, *south*, and part of the *east*, long before. In *Constantine's* epistle ^h to the churches of christendom, sent presently upon the council, it is expressed, that it was so generally received before; and *Ruffinus* speaking of the council, tells us, that, *de observatione Paschae, antiquum canonem, per quem nulla de reliquo varietas oriretur, tradiderunt*. Nothing therefore can be clearer, than that the *equinox* of the twenty first or twenty second of *March*, (according to the difference before noted) was antient in the traditions of the church, long before the *Nicene* council: Otherwise they had as well in express terms innovated the *equinox*, as established uniformity in observing their *Easter* by it. Therefore also was the *winter solstice* about the twenty first or twenty second of *December* in the traditions of the church long before that council; then what follows hence, touching the institution of the feast which we enquire after, is, according to the former inferences, most apparent, for so much time as those testimonies reach back unto.

To go farther up in a third degree, it will be also justified, that this *equinox* (and by consequence, another *winter solstice* than that of the 25th day of *December*) was not only antienter than the *Nicene* council in the church-cycles, but also even equal to the apostles times. For although we find in the church story great differences of the primitive times touching the keeping of *Easter*, and divers cycles and canons made for it, yet those differences are chiefly about the day of the week whereon it should be kept, as between the *Tessareskaidecatites* and the churches of the *west*, but never (in any testimony of credit) about the diversity of supposition of the *equinox* that directs it, otherwise than according to that in *Anatolius*, which stands with the received time of the 21st of *March*, as is already noted. I say, in any testimony of credit. For under favour of the learned, I conceive not that attributed to *Theophilus* bishop of *Caesarea*, and published at the end of

^d Comment. ad Ptolem. quadripartit. l. 2. com. 54. & videlicet Clavius ad cap. 2. Joh. de sacro bosco, §. alter quidem colurus, p. 297. edit. 4. 1602. ^e Apud Euseb. hist. eccles. l. 7. c. 26. ^f In epist. ad Wichred. de Paschatis celebratione, tom. 2. ^g Wilfrid. apud Bedam, hist. Angl. l. 3. c. 25. ^h Euseb. de vita Constant. l. 3. c. 18. Socrat. hist. l. 5. c. 21. Nicephor. Callist. l. 12. c. 33. ⁱ Hist. eccles. 10. c. 6.

Bede's epistle to *Wichred*, where the 25th day is supposed for the *equinox*, to be other than suppositions, the whole shape of it hath the character of counterfeiting: But the *equinox* is still (for ought appears) supposed the same, in that controversy about *Easter*, had under ¹ pope *Victor* about the year cxc. as it was in the council of *Nice*, and the same also before *Victor*, even up to the time of the apostles. What else is denoted in that of *Proterius*, patriarch of *Alexandria*, to pope *Leo I.* where he tells ^m him, that *St. Mark* had taught the *Egyptians* (according as he had learned from *St. Peter*) that *Easter* was to be observed after the fourteenth moon of the first month? The first month here was known by the *spring equinox*, of which, if they had not been agreed, as much trouble (or more) would have been in establishing of that, as there was in clearing what day of the week the sacred feast of *Easter* was to be kept on. The like is affirmed of the apostolical tradition of that uniform celebration of *Easter*, by *Ceolfred* in his epistle to *Naitan* king of the *Picts*: And to confirm more fully that the observation of it, established by the *Nicene* council, was such as had been even from the beginning of christianity, or the apostles times; The very words of the epistle sent by that council to the churches of *Egypt* and *Africa* are, that now the controversy was ended touching *Easter*, and that those of the *eastern* church that had before followed the *Jews* in observing it on the fourteenth moon, did hold it *συμφωνῶντες* *Ρωμαίοις* *ἡμῖν*, *ἡ πᾶσιν* *ὑμῖν* *τοῖς* *ἐξ* *ἀρχῆς* *μεθ'* *ἡμῶν* *βυζαντινοῖς* *Πατρῶν*, i. e. agreeable to the Romans, to us, and to all you, who from the beginning observe *Easter* as we do; or, *consonē cum Romanis, & vobiscum, & cum omnibus ab initio Pascha custodientibus*, as *Cassiodore* ^o antiently translated it; which shews also that in *Socrates* he read *ἐξ* *ἀρχῆς*, that is, from the beginning, as some copies are; and not *ἐξ* *ἀρχαίς*, i. e. from antient time, as in others the reading is. It follows therefore, that even from the beginning, that is, from the apostles time, the same *spring equinox* was received in the church, that is, the 21st or 22d of *March*, as was afterward; and that it was thence established on the 21st by the council of *Nice*, and that by consequent, in those times of the apostles, the formerly received *equinox* was altered from the 25th to the 22d or 21st; and so also (as of necessity it follows) the *winter solstice*, from the 25th of *December*, to near about the 21st or 22d of the same month. Whence also it is to be concluded, that this feast-day was received as to be kept on the 25th day, even before the apostles time, and that among the disciples of our Saviour, while he was yet on earth, that is, while in common reputation, the 25th day of *December* was taken for the *winter solstice*: Otherwise, what colour were there why the consent of the fathers should denote it by that civil *winter solstice*, which was out of use in the church, both in their time,

and had been so likewise from the times of the apostles; that is, from some time after the passion of our Saviour, before which, there was no need at all (for the establishing of our *Easter*, which was to be ruled by the *spring equinox*) to vary the placing of those points of the quarters of the year? But it being commonly received, (out of the account and calendars of the *Gentiles*) that the 25th of *December* was the *solstice*, and that on the same day our Saviour was born; it grew familiar (it seems) and so was delivered down to those fathers, that the birth-day was on the very *winter solstice*, which they so often inculcate: But the apostles and evangelists, not being able perhaps (in the infancy of the church) to settle the anniversary celebration of *Easter*, until about their later times, that is, about 100 years after this birth, carefully observed (and especially *Peter* and *Mark*) where the natural *equinox* was, (according to which the *solstices* ever vary) and so found it in that time about the 22d or 21st of *March*; (as by exact calculation it will happen, according to that before noted touching *Anatolius*) and hence they delivered the knowledge of the change of those quarters of the year to posterity. But also, because even from the birth itself, the 25th day of *December* had been kept, or known for it, notwithstanding that it was in vulgar opinion conceived to have been on the day attributed to the civil *solstice*, in common reputation among the *Gentiles*; yet would they not vary it from that day, because indeed naturally it had no reference to the *solstice* (which anticipated it three days, as is before shewed) but was proper to the 25th day of *December* only, as it was the 25th of that month: Although those fathers, being none of the best astronomers, thought still (however the *solstice* was altered in their times) that at the time of the birth the natural *solstice* had fallen on the 25th day, and thence only they so often note it, mistaking vulgar supposition, delivered in the calendars of the *Gentiles*, for exact calculation.

S E C T. IV.

Express testimonies to the same purpose out of antient history, and a confirmation from the general use in the several churches of christendom.

Neither is this antiquity of certainty only thus proved from the common joining the feast with the *winter solstice*, in the fathers expressions of it, but also from express testimonies denoting as much in relations of the antients. In which (to observe first a like course, as before, in going upward from the time of those fathers towards the apostles) we find, that many years before the council of *Nice*, that is, under *Dioctesian*, this feast was thus celebrated, and that in some part of the *eastern* church also; however that church was not generally instructed in

^k *Tóm.* 2. p. 132. edit. Colon.
Ceolfred apud *eund.* *hist. eccl.* l. 5. c. 22.

^l *Euseb.* *eccles. hist.* l. 5. c. 22. &c.
ⁿ *Socrat.* *hist. eccl.* l. 1. c. 6.

^m Apud *Bede.* de temp. rat. c. 42. & *videlicet*
^o *Hist. tripart.* l. 2. c. 12.

it, till in St. *Chryſoſtom*'s age. For in the church ſtory ^a it appears, that, under that emperor, *Anthimus*, biſhop of *Nicodemia*, together with many thouſand chriſtians, were aſſembled to keep that feaſt-day, when as the emperor, or his fellow perſecutor *Maximinus*, commanded fire to be put to the church wherein they were aſſembled, and that none of them ſhould eſcape that would not ſacrifice preſently to *Jupiter Viſtor*; whereupon they all willingly received the crown of martyrdom; and in the ancient *martyrology* of *Rome*, the paſſion of thoſe martyrs is placed on the 25th of *December*, in theſe words, *Nicomediae paſſio multorum millium martyrum, qui cum in Chriſti natali ad domini-cum conveniſſent, &c.* which alſo for the time is juſtified by the *Greek* ^b *menology*, where the words *συναθροίσεας* (*Anthimos*) ἐν ὑπὲρ αὐτὸν ἐκκλησίᾳ τῷ Χριστῷ λαόν, ἡ γὰρ πτωκάτω ἡ ἐορτὴ τοῦ Χριστοῦ γενέσθαι συνέορταζεν αὐτοῖς, &c. that is, *Anthimus* aſſembling in his church a multitude of chriſtians on the feaſt day of Chriſt's birth, kept the feaſt with them, &c. But indeed the *Greek* church caſts this feaſt of the martyrs on the 28th day of *December*, as they do alſo on other days the ^c memories of St. *Eugenius* and St. *Anaſtaſia*, (both which the *weſtern* churches retain with this birth-day on the 25th) the one on the 22d, the other on the 24th day. But this was done by them only, becauſe the more ſingle honour might be given both to our Saviour's birth, and to thoſe other names, being ſo divided: *Ut horum ſolemnitatem* (ſpeaking of thoſe martyrs ^d ſaith *Baronius*) *celebrius agerent, eam tranſſulerunt.* As alſo among the *Jews*, a tranſlation was often uſed of their feaſts from one day to another, that two ſabbaths or great feaſts might not concur, as their ^e doctōrs deliver. Hence then it is enough alſo manifeſt, firſt, that by ancient teſtimony of the monuments of the church, this feaſt was thus obſerved before *Conſtantine*, or that council of *Nice* which was held many years after the death of *Dio-cleſian*.

But alſo, to look farther upon the times preceding this martyrdom, we ſhall find good teſtimony that it was taught to poſterity to be kept ſo, even by the apoſtles, who knew it as a clear certainty while our Saviour was yet on earth: For though they ordained it not in thoſe *conſtitutions* falſly attributed to them, or in any other written, yet might they teach it as a tradition to be received ever in the church; as they did the changing of the *sabbath* from the ſeventh day to the firſt of the week, the ſolemn renunciation of the devil at *Baptiſm*, the keeping of *Eaſter* on the *Sunday*, or the like, *quas ſine ullius ſcripturae instrumento* (as ^f *Tertullian* ſays) *ſolius traditionis titulo, exinde conſuetudinis patrociniis, vindicamus.* To this purpoſe, among St. *Chryſoſtom*'s works in *Latin*, one homily is ^g *de nativitate Domini*, (as the *La-*

tin title is, for the *Greek* of that homily I have not yet ſeen) wherein he confidently, as elſewhere, teaches, that this day of *December* is the juſt day of that birth, and for his authority brings no leſs than St. *Peter*'s teſtimony; *Petrus* (are the words) *qui hic fuit cum Johanne, qui hic fuit cum Jacobo, nos in occidente docuit*; Which hath plain reference to that before noted, out of his other long oration for the ſame matter, where he tells ^h us alſo, that in the controverſies of that time touching this feaſt, ſuch as defended it as what ought to be kept on this day, juſtified that it was *παλαιὰ καὶ ἀρχαία, καὶ ἠνωθεν τοῖς ἀπὸ Θεοῦ μετὰ Γαλιλαίων ἰκνῶν καταδιδόναι, καὶ ἐπίσημα*, i. e. very antient and from old time known, and famous from *Thrace* to *Cadiz*, that is, in the whole *weſtern* church. To theſe may be added that of *Evodius*, whom *Nicephorus* calls the ſucceſſor of the apoſtles, and it is delivered, ⁱ that he was ordained by St. *Peter* himſelf in *Antioch*; that we may ſo diſtinguiſh him from that other *Evodius* biſhop of *Uzalis* ^j in St. *Auguſtine*'s time; He in an epiſtle touching the times of the paſſion of our Saviour, of St. *Stephen*'s martyrdom, of the death of the bleſſed virgin, and the like, ſays expreſſly of her, (as the *Latin* is in ^k *Nicephorus*, tranſlated by *Langius*, for neither have I the *Greek* of him) *peperit autem mundi ipſius lucem, annum agens quindecimum 25 die menſis Decembris.* And likewiſe in an old *Greek* author (the book being written about the time of pope *Honorius* I.) in the library of St. *Mark*'s in *Florence*, expreſs teſtimony is, *apoſtolos memoriae prodidiſſe Chriſtum ex virgine natum Bethlemae 25 Decembris*, as *Albertus Widemonſtadius*, of his own ſight, witneſſeth in his notes on that impious book called *Mahomet*'s divinity, and brings alſo *Heſychius* his authority to the ſame purpoſe. And to theſe may be added *Cedren*, *Oroſius*, and ſome antient manuſcript *faſti*, cited by *Cuſpinian* upon *Cuſſiodore*. And there is authority alſo, ^l that, however *Epiphanius* in his works have another designation of the day of this birth, (as anon is ſhewed) yet out of the monuments of the *Jews* he learned, and then taught, that this was the very day; which they ſay, was juſtified alſo by ſome writers brought to *Rome* from *Jeruſalem* by *Titus*; which alſo is ſtrengthened by that of St. *Chryſoſtom*, when he ſays ^m expreſſly, that in publick records kept at *Rome* (in his age) the exact time of the deſcription under *Quirinus*, ſpoken of by St. *Luke* (which could not but be a ſpecial character of the time of our Saviour's birth) was expreſſed; and then he goes on: *But what is this to us, ſaith he, that neither are at Rome, nor have been there, that ſo we might be ſure of it? Yet hearken, ſaith ⁿ he, and doubt not; for we have received the day παλαιὰ καὶ ἀρχαίως ταῦτα εἰδέναι*, i. e. from thoſe which accurately know theſe things, and dwell

^a Nicephor. Calisto, l. 7. c. 6.

^b Ad ſex. xii.

^c Menol. ad dictos dies.

^d Ad martyrol. 8 kalend. Jan.

^e Talmud maffec. Roſh. Haſſana.

^f De corona militis, c. 3.

^g Edit. Baſil. tom 2. hom. 39.

^h Edit. Savil.

tom. 5. p. 512.

ⁱ Suid. in verb. Ναζωρεὶς & Χριστὸς.

^j Cuius nomini aſcribuntur opera aliquot ad fin. tom. 10.

^k Auguſt. ſubjuncta edit. Lovaniſii.

^l Eccleſ. hiſt. l. 2. c. 3.

^m Catholiciſ Armeniorum in legatione ad Armenios

male legitur 20 Dec. tam in biblioth. patrum edit. Pariſ. tom. 3. p. 864. quam in edit. Colon. tom. 12. part. 1. p. 891.

ⁿ Nam Graece erat

^o Tom. 5. edit. Savil. fol. 512.

^p Ibid. p. 513.

at Rome : And that they ἀνῶθεν καὶ ἐκ παλαιάς παραδόσεις αὐτοῦ ἐπιτελούντες νῦν αὐτῇ ἡμῖν τὴν γνώσιν διέπιδεξαν, i. e. having from antient time and old tradition celebrated it, have now also sent us the knowledge of it. This is likewise confirmed by an old barbarous translation of what was taken out of *Africanus* and *Eusebius*, and first published in the noble *Scaliger's thesaurus temporum*, where the words are; Aug. & Sylvano Coss. dominus noster Jesus Christus natus est sub Augusto 8 calendas Januariarum; and then, in ipsa die in qua natus est, pastores viderunt stellam, Chuae 28, which should rather be the 29th, for so agrees the 25th of December to that of the *Egyptian Choiac*, which the author means. And *Prudentius*, upon the day, supposing the old tradition of the concurrence of the *solstice* with it,

*Quid est quod arctum circum
Sol jam recurrens deserit?
Christusne terris nascitur,
Qui lucis augeat tramitem?
Hic ille natalis dies,
Quo te creator arduus
Spiravit, & limo indidit,
Sermone carnem glutinans.*

And of later times the authorities are infinite.

These testimonies being compared with the consent of the fathers, that, about 400 years after Christ, have written that it was antient, (as is already shewed) and being confirmed by the arguments made against the supposed later institution of it, out of the place of the received *winter solstice*, enough manifest the antiquity and certainty of this feast day, according as we now observe it; and that even from the age wherein it first brought forth the redemption of mankind. And to these we may add, the consent of christian churches ever since about those 400 years: For after that the eastern or Greek church of Asia had learned the truth of it from the western (as is delivered) this celebration of it yearly increased, and grew still more famous through christendom: So expressly *St. Chrysostom*, καθ' ἕκαστον ἐτὸς ἐπιπιδώσει καὶ λαμπροτέρα γίνεται, (saith he) i. e. every year it increased and grew more famous. But indeed, because in some places it was not as yet so received, but that old erroneous opinions touching it (as it happens in like cases, and shall anon be more particularly shewed) still held their place, among some that were too wayward to be brought to prefer truth newly discovered to them before their own errors; Therefore about 100 years after *St. Chrysostom*, it was expressly ordained by the emperor *Justin*, (if my author deceive not) that in every place of the christian world it should be thus observed: My author here, is *Nicephorus Calistus*, who (as the translation of him is) tells us first of *Justinian*, that he primum servatoris exceptionem (that is, the hypatante, which in our western church is the purification

of the blessed virgin) toto orbe terrarum festa die honorare instituit; and then he adds, sicut *Justinus de sancta Christi nativitate fecit*. And according hereto are the calendars, and books of divine service, not only of the western, which are every where common, but of the eastern churches also. In the *menology* of the Greek church in December; Τῇ αὐτῇ ἡμέρᾳ πέμπτῃ ἢ κτ' σάρκα γενέσθαι τῷ Κυρίῳ, καὶ Θεῷ, καὶ Σωτῆρι & ἡμῶν Ἰησοῦ Χριστῷ. i. e. On the 25th of the same month, the feast of the incarnation of our Lord, and God, and Saviour, Jesus Christ: and

Παρθενικὴ Μαρίη Θεὸν ἐκὰδ' ἡμέρας γενέσθαι πέμπτῃ.

that is, The virgin Mary brought forth our Saviour on the 25th day. Other volumes of their divine service, as their *apostolo-evangelia*, and the like, enough shew this also. And for other churches which are not under the name of the Greek, as those of Antioch, or Syria, of Ethiopia, and of Elcotti or Egypt, although we have not their calendars published with such exactness of the placing of their feasts, as we have those of the Greek church, yet have we testimonies enough of them all, whence we may collect that they agree with us in this anniversary celebration: As, first, for that of Antioch; they keep¹ this birth upon the same day with us in their month *Canun* the former; and in *Alfragan* (as he is translated) we read in his enumeration of the Syriack months, *Canun prior 31. dierum, cujus 25. nox vocatur nox nativitatis*: So in the Ethiopian church on the 29th of their month^m *Thachscasch* they kept it, which agrees always with the 25th of our December, though their intercalation falling before ours, (and in their *Mascaram*, or our August) changes the day of the week every leap-year into the next after what we keep: And for that of Elcotti; we see in a short description of their account, received from an Ethiopian^a priest, that their *amolad*, or the feast of the nativity, is placed against their month *Chiach*, which answers to our December, and the succession of their feasts is just as in the Syriack account; and therefore reason enough is, that thence we collect the very days in both to be the self same. And to conclude here; What greater testimony can there be that it was received into the church, even from the disciples and apostles of our Saviour, than this, that it was so antiently observed, and hath been ever since so generally received through christendom? For so of the like things that great father, *St. Augustine*, pronounces; ^o Illa quae non scripta, saith he, sed tradita custodimus quae quidem toto terrarum orbe observantur, dantur intelligi vel ab ipsis apostolis, vel a plenariis conciliis, quorum est in ecclesia saluberrima auctoritas, commendata atque statuta retineri: Sicuti quod Domini passio, & resurrectio, & ascensio in coelum, & adventus de coelo Spiritus Sancti, anniversaria solennitate celebrantur; & si quid aliud tale

¹ In hymn. ad calend. 8 Jan. eccles. l. 17. c. 28. emendat. temp. p. 670.

^a Panegy. in diem natal. edit. Savil. tom. 5. pag. 512.

^m Widemondad. in epist. subnexa test. Syriac. & vide fcs computum Antioch. apud Jos. Scalig. l. 7. de

^o Jos. Scalig. dicto l. p. 650.

^o Apud Scalig. dicto l. p. 661.

ⁱ §. VII.

^o Epist. ad Januarium 118.

^h Hist.

apud Jos. Scalig. l. 7. de

occur.

*occurrit quod servatur ab universa quacun-
que se diffundit ecclesia:* All such things he sup-
poses either delivered by the *apostles*, or or-
dained by *general councils*; For *councils* here,
we have no testimony that they ordained it;
therefore it rests by his argument, that we de-
rive it from the eldest tradition that may be in
christianity. But we end here this inquiry, and
resolve with that old hymn of St. *Ambrose*, used
in the service of this day in the church of
Rome.

*Sic praesens testatur dies,
Currrens per anni circulum,
Quod solus a sede patris
Mundi, salus adveneris!
Hunc coelum, terra, hunc mare,
Hunc omne quod in eis est,
Auctorem adventus tui
Laudans exultat cantico.*

Neither find I any christian church that in
the later ages hath otherwise celebrated it, save
only that of the *Armenians*, who^p retained an
antient custom of confounding it with the *Epi-
phany*, and that to the time of *Manuel Comne-
nus*, which is about four hundred forty years
since, and perhaps yet do; of which confusion
of those feasts more in the last paragraph. But,
because in these proofs hitherto declared, the
common and most received grounds and reasons
brought for it out of the holy text, and some
other, are omitted; as also on the other side,
some objections are made in later times against
it, and that by such as bear even the greatest
names in the state of learning; and some antient
testimonies also impugn what we have hitherto
concluded: It follows next, (least the inquiry
should seem done with too much negligence)
that we both consider of those common grounds
and reasons, and then shew why they were not
here used; and furthermore, that we give such
answer to those objections, and antient testimo-
nies, as that they may not at all hinder the cred-
it of those arguments which before have so de-
monstratively justified it.

S E C T. V.

*The common reasons used out of the holy text to
justify this day, and how they are mistaken,
and therefore not used here; together with
what some would prove from the scheme of
this nativity.*

OF those which have generally received it,
the antients about four hundred years
after it have strived to fetch *reasons* for it out
of *holy writ* (being unhappily not contented
to rely wholly on the tradition) and some of
later time justify it by *astrological observations*;
both being deceived; the first by misunder-

standing the text, the other by too much ming-
ling their errors in the consideration of nature
with the thoughts of this most *sacred birth
day*. For those antients; They knew out of
^q *Moses*, that the high priest did only once
every year enter into the holiest place, or the
sanctum sanctorum; and this is ordained to be
on the tenth day of the seventh month, that is,
the feast of *kippurim*, or *expiations* in *Tisri*:
Then out of St. *Luke*, they supposed that the
angel appeared to *Zachariah*, being high priest,
and sacrificing there on the same day which
they would make agree with the 24th of *Sep-
tember*, (although for the very day they have
somewhat differed in the *eastern church*, and
some have also^r supposed the conception in
October, some in *November*) and that, on the
night following, *Zachariah's* wife, *Elizabeth*,
conceived St. *John Baptist*, as the angel fore-told
him: From hence, according to the same evan-
gelist, they accounted six months, at the end of
which time, the blessed virgin *Mary* conceived;
that time falls into the 25th of *March*, from
whence nine months being accounted, (the com-
mon time of a birth) the 25th of *December* is
found the very birth-day of our Saviour: This
is the sum of the calculation used out of the holy
text by the^t antients, although not without
some confusion of months; while by reason of
application of old *lunar* months to the *Roman*,
which are *solar*, they confound herein some-
times *April* with *March*, and *September* with
October.

That other sort which would prove it by
astrology, shews us the *scheme of this nativity*,
erected for the altitude and meridian of *Beth-
lehem*, to the midnight following the 25th of *De-
cember*, and then telling how wonderfully it is
(by the rules of that art) agreeable to so won-
derful a birth; and anticipating some part of
the accusation they might justly look for, they
declare themselves, that they mean not that any
thing touching his divinity, his miracles, his ho-
linels of life, or sending forth the gospel, de-
pended at all on the stars: But they say, that
as naturally he was of the best temperature, and
exactest beauty, and had continual health, and
so singular gravity of aspect, *sic etiam Deus
optimus & gloriosus* (as *Cardan's*^r words are)
*optima constitutione astrorum atque admirabili
genesin illius adornavit*; Which constitution
of the heavens, if the Almighty, (says he) had
not to this purpose ordained to have concurred,
and have been observed specially with this birth,
one of these two things had happened; either
that the very day, and hour and minute of the
hour of that birth, had not been so constantly
and diligently ever kept in the church; or else
that all the significations in the scheme had not
been *adeo singularia* (as he writes) *magnifica,
gloriosa, & tanto concursu digna, tum vero
omnibus quae successerunt de vitae sanctitate,
de morum gravitate, &c. adeo congruentia, ut
nil exactius possit excogitari*; and after the par-

^p Catholicus Armeniorum in legat. ad Arm.

^q Lev. xvi. & xxiii.

^r Stephanus Gobarus Trith. apud Photium, cod. 232.

^t D. Chrylustom. in saepe laudato panegyrico. Anastasius Antiochenus, Cedrenus, chronici Alexandrini author, &c.

^r Ad Ptolom.

Tetrabib. l. 2. text. 54.

riculars largely declared. he too boldly concludes against such as justly enough impugn the art of *astrology* as groundless, with this, that they can now have nothing else left to speak against it, as *Ptolomy* teaches it, than this only, that they should perhaps object, that *Ptolomy*, to gain credit to the profession, wrote his whole *quadripartite*, according to the agreement betwixt this scheme, (which it is most likely he never saw) and the parts of our Saviour's life denoted by it; than which, saith he, (as he well might) nothing can be more absurd. But out of this we may easily see, that such as stand upon those learned errors, cannot but think with him, that the very day and hour of this birth is fully confirmed by that scheme: Neither is there cause (so their grounds were certain) but that they might hence conclude also, that this were the very time, although no other testimony were extant of it: For what want they (in this pretence) of that knowledge of the ancient *Tarutius*, who was able (as he made some learned men believe) not only to foretell out of the scheme of a nativity, but also to find out of the circumstances of any life and fortune, the very point of the birth, and so frame the scheme itself? as *Plutarch* says he did, both in the search after *Romulus's* birth-day, and the first foundation of *Rome*; And the finding the exact scheme, is the same with finding the exactest time of the birth; which those astrologers, (it seems) think they have done, as well out of the congruity (as they suppose) of the scheme to what they apply it, as out of any testimony or tradition of the church.

But the truth is, that both this of some astrologers, and that other of calculation out of the *holy text*, deserve nor place nor name of reason to this purpose. For that of the *calculation* of the months out of the *holy text*; the chief ground on which it insists, and which being taken away, it all becomes merely vain, is, that of *Zachariah's* being a high-priest, and in his sacrificing in the *holiest place*, or *sanctum sanctorum*, or in the *oracle*, as the names of it are varied; for a sacrifice in that place was only in that feast of *expiation*; that is, the tenth of *Tisri*, or seventh month, and this only by the high-priest; But it is most clear that *Zachariah* was no high-priest, but only one of those twenty four courses or stations of priests which weekly served at the temple. For *David* distinguished the "posterity of *Eleazar* and *Ithamar* by lots, for the continual and daily service and sacrifice, into twenty four courses, and of those courses every one had a week for attendance, so that after every twenty four weeks, the first came to attend again; as also it was in the twenty four courses of the *Levites*, their weeks in this attendance always ending on the morning of the sabbath. Hereof is plentiful testimony, both in holy * writ and in the *Jew's liturgies*, besides *Josephus* and the old fathers, and it is fully and shortly

expressed by *✓ Eucherius*; *Erant sortis viginti quatuor* (saith he) *et sacerdotum, et Levitarum et janitorum, qui per totidem septimanas sibi ex ordine succederent, sabbato nova turma intrante ad officium, et post sabbatum, ea, quae proxima septimana ministraverat, domum redeunte*. In these twenty four courses the eighth is the family of *Abia*; Of this eighth course was *Zachariah* a priest, and was at this time in the week of his course burning incense in the temple, but not in the *holiest place*; So is the text of *St. Luke*; *a certain priest et εφημερις Αβια, i. e. of the course of Abia*, speaking of *Zachariah*; and afterward, *as soon as the days of his ministration were accomplished, &c.* What course or special days of ministration to be accomplished could here belong to the high priest of the *Jews*? But as *Mattathias*, and *Flavius Josephus* were ² priests of the sons or course of *Jehoiarib* (that is, of the first course) so was *Zachariah* of *Abia*, or of the eighth. Neither was any high-priest of that age bearing any such name: But he that was high-priest at the birth was *Joazar*, and his predecessors were *Joseph* ², *Mattathias*, *Simon*, &c. So that nothing is more certain than this, that *Zachariah* was not high-priest; although antiently very great names were deceived, while they took him to be so, as *St. Ambrose*, *St. Chrysostom*, *Anastasius patriarch* ^b of *Antioch*, and others expressly. *Zachariah* then being no high-priest, it plainly follows that their whole calculation of months here from the tenth of *Tisri* (in which only the high-priest entered into the *oracle*) proves nothing at all, but supposes merely false grounds; and so no proof of the certainty of this day can be extracted out of that holy story; and *Zachariah's* sacrifice, for ought appears there, might indifferently be on any other day of the year. We omit here their supposition of an exact number of days for the natural time of a birth, which plainly can never be known. And in so clear a point thus much is rather too much than enough.

For that other reason or confirmation (as they would have it) out of *astrology*, doubtless, it is most vain (that we may speak no worse of it) both in regard of the art itself, and also of this application of it. For the art itself; though very many authors are of it, yet there is none extant of any great antiquity; and of those which are, very few agree to any purpose among themselves. *Ptolomy*, (who is the antientest of them, whose volumes of it are publicly extant, and lived about 140 years after our Saviour) ^c varied from what the *Chaldeans* before him had observed. The *Arabians*, as *Haly*, *Albumazar*, *Messalah*, the author of *Alcabitus*, *Zahel*, and such more, have another doctrine from his. The *Latins*, as *Manilius*, and *Julius Firmicus*, neither agree among themselves nor with others; to omit the numerous differences that are in the many volumes of it written in the

* 1 Paral. 24.

* 1 Paral. 9. comm. 25. *Jos. apoc.* 1. 7. c. 11. & in vita sua, & 2 adv. Apionem.

² 1 Maccab. c. 2. comm. 1. *Jos. in apoc.* 1. 12. c. 8. & in vita sua.

^c Tetrabib. 1. 1. comm. 57, 58, &c.

^a Niceph. patriarch. in chronol. &c.

^b Ad 1, 4. reg. c. 28.

^b Ms. apud

middle and latter ages. What certainty therefore can there be in that art, whose professors do make no other pretence, than long continuance of *constant observation* of signs, and things signified, to justify themselves; and yet in truth they have no testimony of such *continuance of observation*? And I trust no man will think that by *rational collection* only, (as in some other faculties) without a *preceding* and *constant observation* of many ages at least, it is possible to discover the nature of this or that star, or of the various positions of the heavens which every minute produces. Besides, without supposition of a certainty, not only of the degrees, but in some particulars of the minutes also, in which this or that planet is, the *astrologer* proceeds not; Yet it is most known that the *astronomers*, from whose noble search these suppositions are patiently taken by the *astrologers*, are herein even almost as differing among themselves, as the *astrologers* in their denoting of effects; Witness the difference of hours in calculation by the *Alphonfine* tables, from the *Prutenick*, made according to *Copernicus*, and of both from the restored motions of *Tycho Brahe*. And two of the planets, *Mars* and *Mercury*, which bear no small rule in the precepts of *astrology*, have hitherto scarce less concealed their motions and places in the heavens, then *Proteus* would have done his true shape. Yet still what the *astronomer* knows is uncertain, and ingeniously confesses to be so; the *astrologer* for the most part slothfully believing, and so fixing himself on that belief, takes for his infallible ground, and so deceives, and is deceived in his *aspects* (which he resolves *partile*, when they may perhaps be *platick*, and *platick* when they may be *partile*) in his *directions* in the points of his *Horoscope*, and of the other three of his figure, in his *lines*, in his *ferdariae*, in his *conjunctiões*, and in what else stands upon such exactness of calculation. But this is no place to speak more in particular of the art; enough hath been said of the vanity of it by *Mirandula*, *Alexander ab Angelis*, and others that have purposely written volumes against it. But, for the application of it to this of our Saviour's birth-day, it is both too groundless also, in respect of the hour to which the figure is erected, and withal impious, in the rest of the suppositions. For the hour, it is erected to midnight following the twenty fifth of *December*, for so much we must understand that which *Cardan* designs the time by; *Diebus 6. (saith he) horis 12. ante radicem astrologorum, qui anni initium sumunt in calendis Januariis*: This falls upon twelve of the clock of the night following the twenty fifth of *December*. But whence, I wonder, was *Cardan* so sure that this was the minute of the hour of the birth? Some indeed that among the antients erroneously placed it on the sixth of *January*, took the point of midnight to be the very minute, as we see in those collections out of *Stephanus Go-*

barus, Tritheites in *Photius*. And in some part of the *Asiatick* churches (especially of *Syria*) the night of this day hath the name of the *night of the nativity*, which *Alfragan* remembers. But that testimony of the *nativity* cited out of an old *Greek* manuscript in *St. Mark's* library in *Florence*^d by *Widemonstadius*, says, it was *hora diei sexta*: *Hesychius*, there also mentioned, puts it on *hora diei septima*; with which agrees that chronicle of *Alexandria*, or the *fasti*^e *Siculi*, *ὥρα ζ. ἡ ἑβδόμη*, i. e. the seventh hour of the day. And though none of these are of credit enough to justify the very hour; yet, it seems, they all meant it a birth of the day, and not of the night, the hours of which they also note by the name of the hours of the night; neither can it be cleared by the holy text, whether it were in the night, or in the day. The angel in the night says to the shepherds, *For unto you is born this day*, (that is, ἐπεὶ θη σήμερον) a Saviour, out of which words it were too much rashness to resolve whether the point of the birth were in the night, or in the day. If then *Cardan*, or his followers had been led by authority, they should have rather erected the figure (if at all they erected it) to the sixth or seventh hour of the day; that is, about twelve hours before their supposed time; and so the whole scheme had been changed, and *Aries* had been the *horoscope* instead of *Libra*, and *Capricorn* in mid-heaven for *Cancer*. Besides also, had the midnight following the 25th day, been the just time, those which in *Jewry* propagated the tradition to posterity, should (by all probability) have delivered it to have been on the 26th day of the *Julian December*, not on the 25th; for by the use of the *Jews*, their natural days^f were accounted from evening to evening, so that the night following, the 25th day was part (in their account) of the 26th day; as also the ecclesiastical account of days by the canon law,^g and that from ancient time. Neither can it for this reason alone be solved, unless advantage of a different account of days be taken from the old use in the state of *Rome*, whereunto *Jewry* was then subject; for in that state the natural day was from mid-night^h to mid-night; Yet according to that too it stands but indifferent to which of the two days the birth should be referred, being thus placed in the very point of midnight, which parts them. Besides also, the church of *Rome* hath taken it to have been in the night-time, preceding the 25th day; for they in the *vigil* of the *feast* celebrate the shepherds watching, and in the morning they have a special mass, with referenceⁱ to the shepherd's visitation of our Saviour, at that time in the manger: So that according to their supposition, that scheme is not for the birth, but for a day after. In sum, the hour is every way uncertain. Their proof therefore being thus shewed groundless, in regard of the exact hour of the natural day (which is unknown) I hope there need not

^a Ad theolog. Muhamed. not. 12.

quaest. 152. praeter lit. sacras.

can. 90. & 91.

erudit. theol. l. j. c. 5.

^c Editione Raderiana, p. 532.

^d Quod die dist. 75. & extra, de feriis, c. 1.

^e Francolin de horis canonicis, c. 43. & synod in Trullo

^f Ordo Roman. fed & videlicet Hugo. de S. Victore,

^g Severus Antiochenus apud Anastas. Sinait.

^h F. tit. de feriis l. 8. & Plutarch in probl. Rom. 84.

ⁱ Ordo Roman. fed & videlicet Hugo. de S. Victore,

be much said, to justify that the suppositions of dependance betwixt any working or significations of the stars, and that great and most sacred mystery of the incarnation, are most impious; although it were so that otherwise the traditions of that art had their place. As if either the common objects of sense, or uncertain collections of man's weak understanding, had so much to do with what, but at the best, we are able to apprehend by faith only. But *Cardan* had herein example to follow in those, who long before him, had impiously referred the beginning of *christian*^k religion to a certain number of revolutions of *Saturn*. And therefore also he makes that comet which in 1533. appeared in *Aries* under the northern part of the *milky-way*, and was (as he supposes) of *martial*, *jovial*, and *mercurial* quality, to denote the schisms and change of religion, which soon after fell in this kingdom under *Henry VIII*. For to *Aries* (says *Ptolomy*) is this island subject, as to a tutelar sign. And in this nativity also, that star, which *St. Matthew* speaks of, *Cardan* takes for a signifying comet, and places it in the *ascendant*; because, it seems, he read in the *evangelist* that the wise men saw it in the *east*. But there is good authority among the antients, and that by collection out of the holy text, that their seeing of it in the *east*, was a continual seeing of it^l for two years time, before the birth, in the countries, that lay *east* from *Jewry*; And doubtless also it could not be of any such height as comets are at the lowest supposed to be, neither could it have designed out a particular house in *Bethlehem*, if it had been so high as to have been carried either as stars or comets are, in the diurnal motion of the heavens. But enough hereof is already said against him by that great *Tycho Brahe*, with whose words^m also we conclude here, that *Cardan* and his followers, *plus impie quam iusta ratione, quomodocunque tandem excusent, hoc asseverant, ut reliqua (pudet n. referre) quae astrologicis suis commentis hac de re inseruit, non adducam.*

There was reason enough therefore why neither of these first kind of arguments (whereof the one is taken from a groundless calculation of months in the holy text, the other from the vanities of *astrology*) were used among the proofs brought for the certainty of this birth-day: For he that endeavours to establish a truth by arguments, should no less religiously abstain from *false premises*, than he ought carefully to meet with the sharpest *objections*; lest while the conclusion is of itself true, and would clearly appear so, if no other but true grounds were used to induce it; the credit of it be therefore still questioned, because in the foundations whereon it is so made to insist, there is such use of apparent falsehoods. At least, he rather seems too willing than truly able to prove, who so mixes *truth*, *doubts*, and *falsehood*, in deducing his conclusion, that either some of his premises first patiently received and credited by himself, and then offered in his arguments, have

indeed either much more need of proof, but are less proved by him than his conclusion; or else are every way false, and so utterly betray both the conclusion and his judgment. But we leave these, and go next (as it is before purposed) to the *objections* of late time made against what is hitherto *concluded*, touching the just day of this sacred birth.

SECT. VI.

The chief objections that are made against this days being the true time of the birth, with plain answers to them.

THE *objections* against this received opinion or tradition of the day made in later time are chiefly two; the one taken out of the *enumeration* of those *circular courses* of the priests, divided into their twenty four families, as is before expressed; the other, from the *circumstances of the time of the year* of this birth, mentioned in holy writ. For the first. Divers *chronologers*, after they have according to their own fancies altered the years of account from our Saviours birth, (some making it one, some two, some three, some more years antienter than the common *Dionysian epocha* received in the church) then, that they may settle also the very day of the birth, or at least the time of the year wherein the day fell, they calculate by those weekly ministrations of the twenty four courses of the priests, to find out the week wherein the course of *Abia* (of which *Zachariah* was) ministered in the temple; for then would it follow, that the time of *St. John's conception*, from which the *conception*, and *birth* of our Saviour was accounted, would nearly, if not exactly be found also. For the text is, that *after those days* (of his ministration) *his wife Elizabeth conceived, and hid herself five months, &c.* For example, some here supposing in their chronology that the birth was two years before the vulgarly received time, and in the 4711 year of the *Julian period*, thus work in calculation to find out the time of the year when our Saviour was born; They observe first, that *Antiochus* polluted the temple, and discontinued the daily sacrifices, and so by consequent the continuance of those courses; Then, they say, that *Judas Maccabeus*, upon the *new dedication* of the temple re-continued the daily sacrifices, and by a like consequent restored the courses, and in restoring them began with the first, that is, the course of *Jehoiarib*, and this in the 25th day of the *Hebrew month Casleu*, in the 4549 year of the *Julian period*, which agrees with the 24th of *November* of that year; this day fell on *Monday*, so that the continuance of the course of *Jehoiarib* was (according to the first constitution) till the morning of the *sabbath* following, the next *sabbath* before this *new dedication* of the temple falling so on the 22d of *November*. From this renewing of the courses they thus reckon; From the course of *Je-*

^k Albumazar de conjunct. differ. 8 tract. 2. & apud Rog. Bacon in opere majori ms. ad Clem. p. 4.

^l edit. a Paris, in edit. Lovanienf. tom. 10. p. 431. Nicephor. Calist. l. 1. c. 13.

^m Progymnasim. de nova stella. p. 326.

Jehoiarib, being the first, to that of *Abia*, being the eighth, must intercede forty nine days; so that the course of *Abia* began on the 10th of January in the 4550 year of the Julian period. Having then before supposed that the year of the birth was the 4711 year of the Julian period; and that the conception of St. John was in the year preceding, that is, in the year 4710; they account over the whole cycles of those twenty four courses that intercede from the course of *Abia* in January of the year 4550, and thence observe at what time the course of *Abia* falls again in that 4710 year of the Julian period. Thus they find that in those 160 years, 349 cycles of those courses being past, the course of *Abia* being the last in this computation, (which begins at the next from it) of the 349, falls exactly to begin upon the 21st of July (being the sabbath) of the year 4710, and so ends upon the 28th of the same July, that is, the morning of the sabbath following. By which they conclude, that upon, or immediately after, the 28th of the same July, St. John was conceived, according to the text, that tells us, *After the days of Zachariah's ministration, &c.* This being granted, it would follow, that the birth of our Saviour (according to the vulgar calculation from the time of St. John's conception) would be in October or November of the following year; that is, of the 4711 of the Julian period. Others by another liberty in this kind of numbering, placing it in September, others otherwise, while they fetch their arguments out of the revolution of these courses.

The other objection, that is, from the circumstances of the time of the year of this birth, is out of the holy text; where it is written, that there were shepherds in the same country abiding in the fields, *καὶ ποιῶντες τὰς φυλάκας καὶ νύκτες ἐν τῇ ποιμένι αὐτῶν*, i. e. and keeping watch over their flock by night, and this at the time of the birth. This, say some, of all times fits not the midst of winter, or December, but rather the spring, summer, or autumn, when the temper or heat of the night permit both sheep and shepherd to be in the fields.

But neither of these reasons have any weight against that received tradition of the 25th of December; First, for that of the twenty four courses; It were something indeed if we exactly knew with which of the courses *Judas Maccabaeus* began his instauration of the sacrifices; for supposing then that from this beginning and new dedication until *Zachariah's* ministration, no disturbance of the continuance of those courses had happened, and also that we had the just number of years fully agreed upon from the same dedication to our Saviour's birth, it were such an argument as could not in any kind be exceeded, so that we also otherwise allow the common calculation of time, that was used by the fathers out of St. Luke, in regard only of the distance between the conception of St. John, and the conception and birth of our Saviour. For

St. John was, as they commonly agree, conceived presently upon the end of *Zachariah's* ministration, and this conception once fixed were a constant epocha (according to the vulgarly received interpretation of St. Luke) from whence, the time of the year, at least of our Saviour's birth-night, may be clearly collected. But, on the other side, if we fail in the certainty of the beginning of the courses, who sees not that nothing can be concluded out of them to satisfy such a judgment, as dares not rely upon mere conjectural inferences, without an open clearness in their antecedents? Now for that matter, no old stories have mention of the name of that particular course with which *Judas Maccabaeus* began; but they only shew the new dedication, in which it may be granted that there was an instauration of the courses; But whether by beginning again (as these suppose) with that of *Jehoiarib*, which is first in *David's* distribution, or with that of *Jedaiah*, being the second, or with any other of the twenty four, nothing is left to instruct us; And we know that through *Antiochus* his profanation of the temple, the courses were discontinued in the 143 year from *Seleucus Nicanor*, and that upon the 25th day of *Casfeu*, and that, upon the same day, five years after, the sacrifices, and by consequent the courses, were restored. But it is neither known what course was then in ministration, when *Antiochus* profaned the temple (for we have no certain epocha from whence that can be deduced) or with what course the first week after the new dedication was served: How then is it possible to reckon by the cycles of those courses, and so find the just time of this of *Abia*, or the eighth? No more than it might be possible that one, who knew only that we had twelve months in the year, but withal were wholly ignorant when the first began, could yet tell at what season the eighth fell? And for that their conjecture of the beginning with the course of *Jehoiarib*, because that was the first in *David's* distribution, it is both in itself a very weak one, and perhaps expressly against the strictness used among the Jews in observation of those courses. For besides that, no testimony at all assures us, but that any other of the courses, as well as that of *Jehoiarib* (according to the opportunity of time, and fitness of persons) might be the first at that new dedication. We have it confessed by the greatest of them, which this way impugn the received tradition, that the certainty of the cycles of those twenty four courses was so carefully kept so long as the sacrifices continued, that no one course might supply the room of another, against the order of succession in their cycles: For example, if that of *Jehoiarib* were for this week, then of necessity that of *Jedaiah*, being the second in the cycle, must be for the week following, and that of *Harim* for the third week, that of *Seorim* for the fourth, and so the rest according to their succession in the cycle; And this inasmuch, that if (for the purpose) that of *Harim* should have missed at the temple in the

^a D. Luc. c. 2. comm. 8.

^o Lib. Hafimoneorum, c. 1. 20. & 4. 52. Epit. Jasonis c. 10. 5. item Joseph. Ben Gorion, l. 2. c. 13.

third week, after the end of the course of *Jedaiah*, yet might not the service be supplied either by the following course of *Seorim*, or by the continuance of that of *Jedaiah*, neither might any other minister in the temple that week, nor might that of *Seorim* (being the next in the cycle) begin till the sabbath following. And to this purpose also, ^p they bring that old canon of the *Jews*, כל כהן וכל לוי שניכנס בעבודת ה' : חוב מיתה : i. e. *Every priest and every Levite that puts himself into the ministration of any of his fellows is punishable with death.* And by this also they understand, that in *Josephus*, ^q where he says that the daily sacrifice failed upon the 17th day of the Macedonian month *Panemus*, (which was the 17th day of their *Tammuz*, whereon the *Jews* keep a solemn fast to this day) and that this was ἀνδρῶν ἀπορία, i. e. *for want of those which should minister*, as if only (as they understand it) the reason were, because the course of that week failed, and might not be by their canons supplied either by the preceding course, or that which was the next week to succeed, nor by any other. This being thus confessed by them, they should otherwise have searched in their way of proof, out of those courses accounted from the new dedication under *Judas Maccabaeus*: For upon this supposition, they should first have been sure what had been the last course at the time of *Antiochus* his prophanation; then should they have reckoned over the cycles from that course, and so have observed upon which of the 24th, the ministration, beginning on the sabbath, being the 23d of *Cassien*, in the 148th year of *Seleucus*, or *Dhilkarnun* would happen; and thence might they have reckoned forward to search out that of *Abia*, in this question of *Zachariah*'s ministration. For if there were such a careful avoiding of supplying the course of one by another; then follows it plainly, that it was as certainly known at the time of *Antiochus* his prophanation, to which of the courses the ministration, five years from that week, would necessarily belong, as it was then known, what course was in the present ministration: For example, admit five years were complete from the end of the week of the prophanation and discontinuance of the courses under *Antiochus*, to the end of the week of the dedication; and suppose also that the first course, that is, of *Jehoiarib*, had served in the temple in the week of prophanation, then must it necessarily first follow, that the course of *Jedaiah*, or the second, must have served in the week following; that is, the first week of those five years. Now in those five years (taking in about a day to make the numbers round in the example) we have 261 weeks, (and 261 weeks are ten complete cycles of those twenty four courses) and twentyone weeks of advantage to go on with to make an eleventh cycle: If then the strict observation of keeping every course to his own week (which was as well foreseen always by the revolution of

those cycles as any immovable feast, or the dominical letter in our ecclesiastick accounts is fore-known) were in such use, then clearly what course soever should have served in the first week after the prophanation, that and none other should have served in the sixth week of this eleventh cycle, which in our example falls to that of *Jedaiah*. Reckon with him on, in this eleventh cycle, till the 21st course (as the weeks require) and then the course of *Gamul* is proper to the very week of the new dedication; And this way, if the course which served at the prophanation were known, it were easy to find which of them should, by that tradition of the *Jews*, have served at the dedication: But when we neither know which of them served at the prophanation, nor which at the dedication, what rashness is it to rely upon a bare conjecture, and that also such an one as is adverse to that received tradition of the exact keeping of the cycles, and is in substance confessed to be so by such as have used it? These things thus considered, it follows, that they which insist upon this argument, taken from the beginning of the twenty four courses in that of *Jehoiarib*, under *Judas Maccabaeus*, fail in their ground, and prove nothing at all against our received tradition. The weakness of their objection also is therein increased, that their chronology in it is so uncertain, that they know not clearly in what year to fix the birth; some of them making it one, some two, some three, or more, years before the common *epocha*, and this also upon conjecture. But while they vary so much in the year, they have little reason to be confident (out of their own grounds only, wherein they refuse this so antient tradition) that they can in their supposed years be sure of the very day, of which no other old testimony instructs them, than either what we have before remembered, or that which shall presently be both delivered, and so cleared also, that it may not have weight against what is already justified. And it might easily fall out, that the certain year of the birth might be forgotten, or at least not so remembered, or the memory of it not so preserved, as that later posterity could clearly have notice of it; and yet that the day of the month on which the birth fell, might, by the continuance of tradition, (as it hath been) be clearly known. The anniversary celebration gave the day certain to posterity, which could not thence find any thing to rectify them in the exactness of the year, as we see also in an example of the *Roman* state. They clearly knew that the birth of *Servius Tullius*, who was the first that was king there against the will of the common people, fell upon the *nones* of some month, but they knew not at all of what month, nor in what year, for ought appears: And therefore they avoided publick meetings in the city upon the *nones* of every month through the year, that so they might be sure to avoid them (as supposed most unlucky to the state) anniversa-

^p Videbis inprimis Jos. Scalig. Ifag. canon. l. 3. p. 298.
c. 13.

^q περί ἀνδρῶν. c. κπα. κς.

^r Macrobius l. 1. Saturnal.

rily on his birth-day. This anniversary avoid-
ing publick meetings, or fairs, on the *nones*,
continued the certainty of his being on the *nones*
of some month, though the month were un-
known; and so did the anniversary celebration
continue from the disciples the day of the month,
though perhaps the year be not clearly enough
certain. And there was other reason also why
the certainty of the year might be unknown:
For there is nothing that preserves such a cer-
tainty, but either such *express testimony* of au-
thors as cannot be questioned, or else a *continu-
ance of vulgar supputation of time* from, or very
near from, the time of the birth itself. But we
have herein had neither of these. For the first,
that is, *the testimony* of old authors; they vary
in the years of *Augustus* and of the *consuls*,
which are the characters by which they design
it; and besides, they are not of such antiquity
as that we can clearly rely upon them; And for
that of *vulgar supputation of time*; the com-
mon account either in instruments, letters, re-
scripts, or the like, was not at all made by the
years of our Lord, till between five and six
hundred years after the birth; that is, after the
time that *Dionysius* made his cycle of five hun-
dred thirty two years, by multiplication of the
cycle of the sun into the *golden number*, and
from that time brought¹ in (according to his
own suppositions) the supputation of time by
the years of our Lord. For before that age, the
christian use was, either to note times by the
consuls of the year, as the antient course of
Rome was, and as we see in old *general coun-
cils*, and in rescripts of the emperors, in the
codes of *Theodosius* and *Justinian*; Whence al-
so *Constantine* ordained it for a^m law, that if
any edicts or constitutions of the emperors
should be found *sine die & consule*, they should
be held of no authority; Or else by that *aera*
(commonly called *aera Hispanica*) which be-
gan under *Augustus*, thirty eight years before
the *Dionysian epocha* of our Saviour, and was
chiefly used in *Spain*; as we see both in the
titles of the old councils of *Sevil*, *Bracara*, and
Toledo, and in inscriptions of that country;
But also it was in use too in *Africk* and *France*,
as we may collect by the titles of most of the
councils of *Carthage*, of *Arles*, and *Valence*;
unless we suppose that *Isidore* (from whose
volume of councils we have these) being a *Spa-
niard*, used the supputation by that *aera* in the
titles, without warrant of the original copies.
But we have in the very context of the acts of
the fourth council of *Arles* use of this *aera*;
which was also in the accounts of time at *Rome*,
as is seen in the epistles of pope *Leo*, subscribed
with the years of it. Others denoted the years
by an account from some regaining of their free-
dom; as those of *Antiochia* did from an *epo-
cha* forty eight years before our Saviour, which
is the $\chi\rho\iota\mu\alpha\tau\iota\sigma\mu\acute{o}\varsigma\ \tau\eta\varsigma\ \text{'}\text{Αντιοχείας}$, so frequently
spoken of in *Evagrius's* church story; or

from that of *Seleucus*, or *Dhilkarnun*, begin-
ning after *Alexander's* death. Others from the
year of the creation, as the *Greek church*:
Others from a time that fell 283 years after our
Saviour, (as those of *Egypt*, and the adjoining
churches) that is, from *Dioclesian's* persecution;
which, in *Egypt* and *Ethiopia*, is to this dayⁿ re-
tained; and by the christians, that use *Arabick*,

called, *تاريخ الشهداء* *tarick alshebuda*, i. e.

the epocha of the martyrs; and among the
Ethiopians $\alpha\mu\alpha\theta\text{:}\mu\iota\chi\rho\alpha\tau\eta$: *amath micbrath*,
i. e. *the year of grace*. So was also that of
Spain, in common use there, till somewhat
above three hundred years since it was by spe-
cial constitution abrogated, and *the year of our
Lord* made the beginning of the account of
time; and this alteration is by the *Spanish*
lawyers referred to *John*, the first king of *Ca-
stile*. *Duravit (aera) usque ad tempora regis
Johannis primi* (saith^v *Lopez*) *qui jussit apponi
annos nativitatis Domini*. So also writes *Aze-
vedo*,^o so others of them; Whence it appears,
that antiently, till long after our Saviour, no
account was vulgarly made by the *years of his
birth*, in which the true year of it might be by
a continual tradition retained: And also, that
although about the time of *Justinian* (that is,
when *Dionysius* began his cycle) the course of
reckoning from this birth was brought into use,
yet it was received but in few parts of christen-
dom, and that principally within *Italy*, in the
instruments, it seems, of the court of *Rome*.
And it is observable here also, that with us in
England, however our antientest stories of the
time since christianity, both in *Saxon* and *Latin*,
are deduced by distinction made out of the years
of our Saviour, and that according to the court
of *Rome*; our church proceedings and instru-
ments belonging to that jurisdiction have anti-
ently had, and still retain an account by those
years; Yet the characters of time, both in the
pleadings and instruments of the secular jurif-
diction, hath been ever, and is chiefly by the
years only of our *sovereigns, kings or queens*;
so are our records distinguished, of pleas, patents,
parliaments, and the like; so are the instru-
ments of conveyance, and what else is of
that nature: In which, doubtless, the antient
course of computation is so retained, that it
shews us, that none other hath been ever proper
to the practice of our secular jurisdiction. And
although indeed at this day clearly, it be not
cause of exception, or erroneous, if the times in
a pleading or instrument be distinguished only
by the year of our Lord, yet antiently it was
much stood upon under^z *Edward III.* when in
a writ of annuity brought by the prior of
St. Trinity of London, against an abbot; the
prior declared upon a composition, bearing date
in *such a year of the Lord*, and the defend-
ant's counsel took exceptions to it, supposing
that none should declare, at the common law, of

^c Beda de temp. rat. c. 45.

^e C. Theodof. tit. de consti.

princ. l. 1. si qua.

^u Jof. Scalig. de emendat. temp. lib.

3. p. 465. & 629.

^x Marian. de reb. Hispan. l. 3. c. 24.

^y Ad l. 54. partit. 3. tit. 18. de las escrituras.

^z Ad l. 3.

Recopil. l. 2. tit. 1. de las leyes.

^{*} 23. Ed. 3 fol. 21 b. 24.

Ed. 3 fol. 51. a. & 53. b.

the year of the Lord, but of the king; But upon deliberation it was resolved good, for this reason only, *because the composition had only the date of the Lord*; as if properly and necessarily otherwise it should have been of the year of the king. And so, doubtless, did they think, who in the times of king *John*, and *Henry III.* not only carefully used the years of the king only, as at this day, but also in recognisances entered ^a for payment of money a year or two after the entry, they denoted the time of payment by the year of the king, that should happen only if he reigned so long; as in the forty first year of *Henry III.* the recognisance should bind the recognisor to pay money in the forty second or forty third year of his reign. All which further confirms, that the computation of time by the years of our Lord, even after such time as it came at all to be in use, hath not been near so vulgarly received as the anniversary celebration of the day of the birth, under the name of the *old civil solstice*, or the twenty fifth of *December*; And therefore it may easily be, that the very year may be uncertain for want of such a continuance of tradition, which might have come to us from the time of the birth, if from thence a computation received at first in the church had continued it. But the yearly celebration, or memory, continued even from the eldest of *christian* time, hath taught us the exact day of the month; therefore we have reason enough still to resolve on it.

But also for farther search into what may at all afford us any certainty of the course that ministered at the time of *St. John's* conception; If we first believe the perpetual continuance of them, according to the succession in their cycles; and then also the testimony of an old *Jew* touching the course that served at the second destruction of the temple under *Vespasian*, we shall so have another time, than hath been yet mentioned, for the course of *Abia* in the conception of *St. John*, and by consequent another birth-day of our Saviour, if we keep still the vulgar supputation of time collected out of *St. Luke*. That *Jew* is *rabbi Jose*, whose words in the *feder olam* ^a *rabba* are these; *When the temple was first destroyed, it was the evening of the sabbath, and the end also of the sabbatical year, ושבתו של ידורכיביתה, ותשעה באב היה: וכן שנייה* that is, *and the weekly course was that of Jeboiarib, and it was the ninth day of Ab; and so it was also in the time of the second destruction*. Here we find the course of *Jeboiarib*, fixed at the second destruction under *Vespasian*; that is, in the seventieth year of the vulgar account from the birth, and that about the beginning of *August*, to which the ninth day of *Ab* answers. From hence therefore reckon by the cycles backwards into the year that precedes the *Julian* year, in which our Saviour's birth is commonly fixed, and so between the beginning

of this *August* in the year of the destruction, and the beginning of *August* preceding the vulgarly supposed time of the conception of *St. John*, will intercede seventy one complete years; that is, a hundred fifty four cycles of those courses of twenty four, and nine courses over; Therefore plainly in that year the course of *Jeboiarib*, is about the ninth week from the beginning of *August*; that is, in the end of *September*; and so it follows, that the end of the course of *Abia*, being the eighth, fell in the end of *November*, or eight weeks later than in the old calculation, which placed it in the end of *September*. And the birth of *St. John* (as it is now celebrated) would thus have been in the seventh month from the conception, which in nature were reasonable enough; but the holy ^c text well endures the common and most ancient interpretation, which denotes it to be in the ninth at least. And were this authority of *rabbi Jose* to be insisted on, and the perpetual succession in the cycles of those courses in this age preceding the destruction, to be resolved on, there were cause enough here to seek for another exposition of the time of the birth, out of the words of the holy text: For the common account from *Zachariah's* ministration will so fail wholly, unless we change the vulgarly received year of our Saviour's birth, and (as some do) place it three or four years further back than the *Dionysian* account doth; for so will the course of *Abia* be brought into *September*; and if we make it full four years sooner (as *Susyga* doth) that course will end also in the end of *September*, according to the common calculation herein used by the fathers; but I willingly avoid here the making of such uncertainties of chronology in years, to be arguments to justify what is otherwise certain enough in the day. Neither can we rely here, either upon the perpetual succession of the courses, or on the testimony of that *rabbin*: For the constant continuance of the courses in their succession; There is great reason in this time, after *Augustus*, to doubt of it, in regard both of the *Jews* doing frequently otherwise than their canons bind them, as also in regard of some mere necessity which might occasion some change in the succession, when they were in those later days subject to the state of *Rome*. And for that of the course of *Jeboiarib* then ministering, there is not credit enough in the author to make us believe him: For besides, that, while he tells us so, he is mistaken in the true day of the second destruction of the temple, which fell on the tenth of *Loüs*, or *August*, in that ^d year, not on the fourth, which answers to his ninth of *Ab*; The sacrifices, and so the courses of the priests, ceased about three weeks before, that is, on the seventeenth day of *Tamuz*, and this for want of priests, as *Josephus*, who knew it of himself, expressly hath written: But he tells us not a word of what course then ministered, no more doth *Abraham Ben David* in his *cabala*,

^a Archiv. de temp. regg. Joh. & Hen. III.

^b Edit. Basil. p. 125.

^c D. Luc. c. i. com. 36. & 36.

^d Josephe.

or he that extracted the *feder olam zuta* out of the *feder olam rabba*, where this is reported from *rabbi Jose* ; Although both these authors speak most particularly of the second destruction of the temple, but they abstain from this of the course then in service, as from what had been without warrant delivered by *rabbi Jose*, who indeed had learned from an old groundless tradition, that at the first destruction, under *Nebuchadnezzar*, the course of *Jeboiarib* served in the temple, and that this second destruction was upon the same day of the same month which the first was on ; and because he would have all in both destructions alike, he added also, that the course of *Jeboiarib* served now at the second destruction, when indeed no service at all was in the temple, and that the sacrifices and ministration were ended. So, before the destruction, other testimony is in the *Jews* liturgy, which confirms that of *Josephus* to be infallible ; On the fast of the seventeenth of *Tamuz* they sing בִּנְיָמִן הַתְּמִיד הַתְּמִיד יוֹם הַחֹרֶם i. e. *because in this day the continual sacrifice ceased, this day the continual sacrifice was taken away*. If the sacrifices then, and the courses with them (for the one of them is not without the other) ceased on the seventeenth day of *Tamuz*, what credit is to be given to him, that tells us what course ministered in the sacrifices, three weeks after ? Which being so cleared, there is nothing remaining in the cycles of those courses that can impugn the received tradition of this birth-day.

And for that other argument of the *Shepherds watching in the night*, what makes that against this of *December* ? As if shepherds might not properly be in the fields watching their sheep in the night at the midst of *winter*, especially in so warm and continually temperate a climate : For, although in *Italy* the precepts of husbandry were, that in the winter their sheep should be kept in cotes^e rather than in fields, yet they had their winter-feedings abroad also ; and the climate of *Bethlehem* is of less latitude by ten degrees than of *Rome*, and is also so much the more temperate always ; and even in our climate, that is much colder than either of them, we have watching of sheep, feeding, or remaining in the fields, at this time of the year. The rest objected out of the circumstances of time, as that of the winter, being an unfit time to make a general description in, or that the birth of the redeemer of all men should be on that day, on which the creation of the first man was (that is, as they without ground suppose, on the twenty fifth of *March*) and such like, are far more vain, and not worthy of mention. These things being thus at length cleared, we need not, I trust, be at all moved by the opposition of those learned men, *Beroald*, *Paulus de Midleburgo*, *Suslyga*, *Joseph Scaliger*, *Keppler*, (although he stands for the same time of the year, but relies not on the tradition of the day) *Wolffius*, *Hospinian*, *Lidiat*, *Calvisius*,

Casaubon, and the rest that have both made it a question, and shewed also their opinions against it.

S E C T. VII.

Some other opinions among the antients touching it, and how some of them may agree with what we have received, and the rest are of no weight against it ; and there more especially of the antient confusion of this feast with that of the epiphany.

BUT we have hitherto omitted the different opinions among the antients, touching the day of this birth ; which shall be therefore next collected, and then also it shall be shewed, that they bear no weight against what is before concluded. Those opinions (as they are delivered) are various, and chiefly five. The first is of them, who taught it to be on the 25th day of the *Egyptian* month *Pachon*, which is the 20th of *May* in the fixed *Egyptian* year. For after that the *Egyptian* month *Thoth* was fixed in the end of *August*, and so the rest of the following months (thirty days being allowed to a month, which with the five *επαγόμεναι*, make up the whole common year) both the fathers, and the most of prophane writers commonly used the *Egyptian* months as fixed, and not as they are wandering in the years of *Nabonasser*, in the *Almagest*. This of the 25th of *Pachon* is delivered in *Clemens Alexandrinus*, that lived some eighty years from the time of the^f apostles. Εἰσι δὲ δι (taith he) περιεργότερον τῇ γενέσει σωτῆρος ἡμῶν, ἢ μόνον τὸ ἔτος, ἀλλὰ καὶ τὰς ἡμέρας προσεβίβασεν, ὡς ἔστιν ἔτος Κ Η Ἀυγύστου ἐν πόλει τῇ Παχων καὶ ἀναδύ. i. e. *There are some also that more curiously denote, not only the year, but the very day also of the birth of our Saviour ; which they say was on the 25th of Pachon in the 28th year of Augustus* ; where the account is not by the common years of *Augustus* deduced from the death of *Julius Caesar*, but by the years that were past from the^b taking of *Alexandria*, and the death of *Anthony*. The second (that seems to differ here) is that in the chronicle ofⁿ *Alexandria*, where it is delivered, that the birth was on the 25th day of the *Egyptian* month *Choiac*, which is the 21st of the *Julian* *December*. The third is of those which supposed the day to have beenⁱ on the 24th or 25th of *Pharmuthi*, (that is, the month preceding *Pachon*) which agrees with the 19th or 20th of *April*. And with this may be reckoned the fourth, which is found in *Mahomet*, that says it was upon the 23d of the *Arabick* month *Ramadhan*, but in what year he designs not. But however in the *Hagaren* or *Arabian* year, this cannot come near our *December*, for according to that year, the month

^e Virgil Georg. 3. & vide Columel. l. 7. c. 4. Varro. l. 2. c. 2. & Pallad. in Novemb. die natali. c. 21. ^b Edit. Rader. p. 533. ⁱ Clem. Alex. Stromat. 1. ^f Stromat. 1. ⁿ Videfis Ensenforin. de

presely used also for *first fruits*) with other impudent falsehoods like the rest, which are every where in that absurd volume of his law; and there also the season of the year is noted by a tale of the blessed virgins having dates presely upon the birth from a tree, which (as the *Muslimans* say) * is yet growing. But for the *fifth* opinion, which is from confounding the feasts of the *epiphany* with this of the birth, (a custom also retained in the latter ages ² in the churches of *Armenia*) and made by *Stephanus Gobarus Treitbeites* in his contrarities of ancient opinions of the church, to be the main and as the only one that crosses that of the 25th of *December*; However, it be so often taken clear in *Epiphanius*, and rashly also affirmed by the general, or patriarch, of the *Armenians*, that all churches had observed it so even from the apostles: Yet doubtless there is great reason that we should think that this confusion began both without any sufficient ground, and also was bred by some such mistakings as may be observed to have been in their consideration, both of the name and time of the feast of the *epiphany*. For their grounds (besides what is in mistaking the name and circumstances of the time of this feast) there appears none that hath any colour of power, or truth, among those which have so noted it. But for the name first of the *epiphany*; The feast being antiently observed for the ² *baptism* of our Saviour in *January*, as at this day, and that in the *eastern* churches, before such time as they had learned of the *western* the true day of the birth, they supposed first that the tradition of this feast under the name of *ἐπιφάνεια*, or *ἐπιφάνια*, might well denote the birth itself, and so teach them that on this very day our Saviour was born; For the birth being of it self the first apparition of the Son of God in the flesh, and *epiphania* denoting in the language of the then both past and present ages the apparition of a deity (as is especially noted also by the most learned *Casaubon* ^b) they took it at length here to denote also the first apparition of our Saviour to the world, and that in this feast day kept on the 6th of *January*; and so concluded that this was the birth-day. Now for the circumstance of the time of the *epiphany*; this confusion of the feasts doubtless was much confirmed to them by an interpretation of a passage of *St. Luke*, where the baptism of our Saviour (which is celebrated in the *epiphany*, although *Epiphanius* place that also upon another day in *November*) is delivered to have been, when he was *ὡσεὶ ἐνθ' ἑτάλλοντα ἀρχαίου*, i. e. *beginning to be about thirty years of age*; which words are interpreted by some as if he had been of thirty complete, and beginning to be thirty one, on that day, which must of necessity be on his birth-day: And so this way also one and the same day became sacred among them to the baptism and the birth. But all this, and what other mistakings the *Greek* church

herein had, was imbraced by the most of them; but until they were better informed from the *western* church; And the general of the *Armenians* expressly tells *Theorianus* (who objects to him that sermon of *St. Chrysostom* touching it) that they knew not yet, nor had not heard of any sermon of *St. Chrysostom's* to this purpose: So that want of instruction only continued this error among them, which hath been long since reformed in the *Syrian*, *Egyptian*, and *Ethiopian* churches, as well as in the *Greek*; as is before shewed in their agreement with us in the celebration of this birth. But for those collections out of the name of the *epiphany*, and circumstances of time of the baptism, it will soon appear that they justify nothing here against the received tradition. And first, for that of the name of *epiphania*, denoting the apparition of a deity, it is otherwise enough satisfied; and there was no need at all to have it restrained to the noting of the birth-day. For although the word *ἐπιφάνεια* be used in the holy ^d text, both for the first appearing of our Saviour, or his incarnation, as also for his coming at the ^e last day; yet in the first institution of this feast of the *epiphany*, it was used (I suppose) for neither, but for that publick apparition or manifestation (by which the *Latin* fathers denote *epiphania*) of him to the world at his baptism, in regard whereof he was before but privately known. So expressly *St. Chrysostom*, whose authority is here beyond exception; ^f *Τινὲς ἐν ἑκαστῇ, φαίη ἡ ἐπιφάνεια λέγεται; Ἐπαδὼν ἕκ' ὅτε ἐτίθη τὸ πᾶσι ἐγένετο καταδήλωσ, ἀλλ' ὅτε ἐβαπτίζετο, μέχρι γὰρ ταύτης ἡγοῦτο ὁ ἡμέρας τοῖς πολλοῖς.* *Why then is it called epiphania?* (in regard, as he before had said, it is not the celebration of the birth-day, but of the day of the baptism;) *Because* (saith he) *when he was born, he was not then manifested to all men, but when he was baptized; for till then he was unknown to the multitude:* And to this purpose he brings also that of *St. John*, *I baptize with water; but there standeth one among ye whom ye know not, speaking of our Saviour; And the same evangelist* expressly; *I knew him not, but ἵνα φανερωθῇ τῷ Ἰσραὴλ, i. e. that he might be manifested to Israel; therefore I came baptizing with water.* So *St. Jerom* tells ^g us what the name of *epiphany* denotes; *Significat* (saith he) *baptisma in quo aperti sunt Christo caeli, & epiphaniarum dies bucusque venerabilis est, non, ut quidam putant, natalis in carne, tunc enim absconditus est, & non apparuit.* Others of the fathers have as much.

Hereto may be added the consent of posterity, after such time as the true day of the birth was discovered to them in the *eastern* church. And in a poem (as they call it) used in the service of the *epiphany* in the *Greek* church, made by ^h *Sophronius*, patriarch of *Jerusalem*, an express passage is fully to this purpose; *Δοξάζομεν σε ὁ ἀπατοεὶς ἐκ μήλες, καὶ ἀμύτοεας ἐκ πάλες, ἐν*

* Postellus de orbis concordia l. 2. c. 2.

² Catholicus Armen: in, legat. ad Armenios.

^a Videfisc Amm. Marcellini.

l. 21. in Constantio & Juliano, & Orig. homil. de diversis s.

^b Exercit. in Baron. 2. §. 2.

^c In legatione ad Armenios.

^d Epist. 2. ad Timothe. c. 1. comm. 10.

^e Ead. epist. c. 4. com. 1.

^f Panegy. εἰς τὸ

ἡ γινώσκω βαπτισμα tom. 5. edit. Savil. p. 529.

^g In comment. ad Ezechiel. l. 1.

^h Euchologium p. 93. b.

γάρ τῇ προλαβέσθαι ἐορτῇ νήπιόν σε εἶδον, ἐν δὲ τῇ παρέσθαι τέλειόν σε ὁρώμεν, ἃ ἐκ τελείας τέλειον ὁπαρανεία Θεόν ἡμῶν. i. e. *We glorify thee that art without father of a mother, and without mother of a father; and in a preceding feast (of the nativity) we knew thee an infant, but in this present feast (of the epiphany) we see thee at full growth, appearing to be our most perfect God.* According whereto also, St. Augustine¹ hath express words, and that often. For however they had antiently in the Greek church confounded the feasts of the baptism, or epiphany, and the nativity; yet, being admonished from the western church, they confessed their error in this, that they severed the commemoration of the baptism from this of the birth, and placed the birth on his proper day in December; And yet they still retained for the baptism, the name of epiphany, which also is sometimes² *θεοφανία*, as in the menology, and in the apostolo evangelia of the Greek church, in January, τῇ αὐτῇ ἡμέρᾳ ἡ ἀγία θεοφανία τῇ κυρίῳ ἡμῶν Ἰησοῦ Χριστῷ, i. e. *on the sixth of the same month the holy theophania of our Lord Jesus Christ*; for then was the first publick apparition of his godhead. In the church of Egypt also this day is severally kept

by the³ name of *الکیم* *alchamim*, i. e. the feast of washing or bathing; *quod ecclesia vetus Egyptiaca baptismum eo die iteraret*, says Joseph Scaliger; though perhaps that name may have reference to that old custom used in the church, of providing water, in the night of that day, for the holy uses of the whole year following; which St. Chrysostom⁴ remembers, and is yet retained in the Greek church, as it appears by their *euchologium* or common prayer book. As also in the Syriack church, which hath this feast severed (as ours here) from the birth, and keeps it⁵ under the name of *ܠܗܕܝܢܒܪܐ* *hbad dinobora*, i. e. *ἡ φῶς ἐορτή*, (as Nazianzen calls it) or *the feast of lights*; and *ܕܝܢܚܒܐ* *didinacha*, i. e. *of light appearing in the east*; according whereto also they, as others, use in this feast great store of lights; which hath reference doubtless to the very word *epiphania*, which denotes *enlightning* also, or *illumination*, in the vulgar translation of the new testament; And both in that sense, as also in the other of *apparition* or *manifestation*, it may verbally besides signify the apparition of the star to the wise men:

*Stella, quae solis rotam
Vincit decore ac lumine.*

as Prudentius of it; and Sedulius of the wise men,

*Stellam sequentes praeiviam,
Lumen requirunt lumine.*

both in their hymns made proper to this of the epiphany.

So that both the name of the epiphany is from the antient and primitive times fully satisfied, either in that of the baptism, or in the apparition of the star. Whence also the Dutch, French, Italian, and Spaniards, note it by the name of the day of the three kings, for so those wise men are commonly reputed to have been. And also the feast itself hath been long since, after the truth learned from the western church, observed apart by itself, as having in the first observation of it, no community with this of the birth-day; and that among those, which before had confounded them. It follows then, that even by their own confession, that had been the authors of this confusion, they had been deceived in application of the name of epiphany to the birth of our Saviour. And for that collection of time out of the testimony of St. Luke, it is clear that no certainty of the day can be thence extracted; the word *ὡς*, i. e. *as it were*, or *about*, expressly excludes such certainty. So St. John, *ὥρα ἡ ὥς δεκάτη*, i. e. *it was about the tenth hour*, which clearly denotes not the beginning or end of the hour; neither needs there farther proof of the weakness of that collection.

At length to conclude therefore, the authorities of the antients, and the consent of christian churches for this birth-day, as it is now anniverfarly kept, being as before declared, the mistaken reasons being rejected, (lest their falshoods might prejudice the clearness of the truth) the objections of later time being answered, and the different opinions of the antients touching it being either groundless, or not in truth opposing it; It rests, that we resolve on it, as upon as certain and clear a truth of tradition, as by rational inference, by express testimony of the antients, by common and continual practice of several churches, and by accurate inquiry, may be discovered.

¹ Serm. in Epiphan. dom. 1, 3, 6. &c. & de diversis 64.

edit. Paris. p. 161.

edit. Savil. p. 524. tom. 5.

² Comput. Elcopi apud Scalig. de emendat. 1, 7, p. 661.

³ Widemonstad. in subnexis test. Syriaco.

⁴ Videtis Theophil. Alexand. in edito tom. 3. bibl. patrum

⁵ Panegyric. eis τὸ ἀγιον βαπτισμα.

Of my Purpose and End in writing the History of T Y T H E S.

FOR my *purpose* and *end*, which I had in writing that book: In the brief opening of it here, I doubt not but to give such *satisfaction* to all good men, touching what is too frequently imputed to me, that they may hence know, how far it was from me to have a thought of writing any thing purposefully against any *right* of *tythes*, or *other maintenance of the clergy*, (as is supposed) to whom, in general, no man, I think, could ever in his heart give more *loving reverence*, than I have ever done, as the familiar witnesses of my manners can enough justify. Neither when I wrote it, was, or now is, the number of my friends without divers, and some of the choicest names, of that coat. Neither want I the *suffrages of many temperate judgments* among them, who, by knowing me well, know also, that I am so far from being in my thoughts adverse to their maintenance, that there lives not any, who indeed can with, to the deserving part, more increase of it. And I did think, that none would have otherwise conceived of me, out of what I had written. But seeing some do, and that the book itself is *by publick authority suppressed*, and therefore not commonly seen; and being had also, is not enough known, without more time of *perusal*, than many are willing to bestow on it; and divers readers withal (and those especially which greedily turn it over, as in like cases, only because it is suppressed) are most *incompetent judges* of it: Therefore I shall here briefly design out first the *whole body* of it; and then also make such farther declaration of *my purpose in writing* and *publishing* it, that I may so both clear myself of such imputations, as I now suffer by it, and give also full *satisfaction* to all offence, which hath been herein taken against me.

§. 1. The matter of the book, with the faith used in the relations of it.

The *whole body* and *matter* of it is convertible with the title, that is, *history only*, either of *laws* made, or of *opinions* held touching *tythes*, or of *practice* of payment of them. And as every such history should be framed according to *succession* of time, so is this. It begins with what express *testimonies* are in the *boly text*, in *fathers*, or *rabbins*, touching *tythes before the law*: then follows the *law* and *practice* of the *Jews under the law*, then of the *Gentiles*, and next of the *law*, *practice*, and *opinions* of all, or of the most of *christian churches from the primitive times to this day*, with a more parti-

cular declaration of *law* and *practice*, from antient time to the present, used in the *church* and *state of England*: And very many laws made for *tythes*, and other records, touching them, which never saw light before, are published in it. This is the *sum of the contents of the whole book*, in which so much impartial care was every where used, that whatsoever could be found that gave any light, or further testimony to the historical part of this ecclesiastick revenue, was most faithfully inserted. And I call the Almighty to witness, that I neither purposely omitted any thing, which might give light out of history, to the subject, nor did I, or do I yet, know of any passage there falsely quoted by me, or of any author's words in any kind falsified, although it be noted, and that in print, not only that I have falsified divers places of antient authors, but also expressly in large terms, *that all my quotations in respect of tythes are false*^a. But I could never yet know, that any man could find so much as the least falshood in any of my quotations. And for those few that have been so noted to be false, I carefully searched them again, and found them all so exactly true, according as I had used them, that I willingly offer the loss of all my books (which is the fittest *pledge* in such a case and, *without a pledge* offered, such a controversy, that may be perpetuated by iterations of affirmation and denial on both sides, cannot be so well determined) to him, whosoever he be, that can find, that I am not able, with my authors, fully to justify every one of them, as I have already protested in those papers, which were lately written and dispersed only to vindicate my faith from such *aspersions of falsification* as were laid on me. For although I have ever, and that naturally, avoided the beginning of *all personal opposition* in any matter of learning; yet being so publicly *charged*, and in print, with *falsifications*, whereof I knew myself most guiltless, I had, as I conceived, just cause to clear myself of it, at least to my friends privately, by writing, although I had not *liberty to use the press* for it. Neither was I so forward to increase the quarrel in those papers, as to meddle with all *inferences* and *arguments* brought against my express testimonies of history. I was well contented, rather to allow him (that had so made himself my adversary) his own *logic* and *fancy of collection*, and so securely to trust his, and my readers judgements with it. And had I not been charged with falsifying, I had never more thought of, or in the least kind regarded any thing of the rest, that was so written

^a Animadvers. on the history of tythes, p. 110.

against me. Nor could any thing there, but what so touched my *faith in relation*, have provoked my pen against any man; especially against him, who (for ought I know) may be as learned as he is reputed. But for matter of *falsification*, because some others also (as I have heard) pretend that I am guilty of it, (the truth whereof cannot be clearly discovered without comparing my *relations* with my *authorities*, which in very many particulars cannot be done without the use of many such books, as are not to be seen without my will, or the especial favour of some of my worthy friends) I here profess that, because I used in writing it, above *one hundred several volumes*, which were never publick, and divers other books, not commonly to be had; I am, and ever was since the publishing of it (and so I have still professed myself) most ready to communicate all the private manuscripts I have used (for, through the favour of some noble and worthy friends, I can promise so much) and to design out also the passages taken out of them, to any man that would take the pains to examine them; So clearly secure I am of my own good *faith* in the relations. But for matter of learning and inference, I willingly leave all that to greater judgments, and most willingly allow every man his own liberty of interpretation.

§. 2. *The cause that first moved me to write it, with the course kept in composing and publishing it; and my acknowledgment touching it being published.*

The matter or *body* of the work thus opened, with my *own faith* used in the relations; my *purpose* in it, shall fully, I trust, appear both in the *cause*, that first moved me to think of such a work, and in the *course* I kept, both in the *composing* and *publishing* it. The *cause* which first made me think of it, was, that I saw the bare *historical part of learning*, and of *human laws* made, touching *tythes*, and of the various *practice of payment*, both in this kingdom and in other states, lay wholly or too much neglected amongst them, who nevertheless having, as *divines* or *canonists*, written of *tythes*, would (as I conceived by their works) have made use of that *historical part*, if they had been furnished with it. The *practice* of the *Jews*, the *various interpretations* among the antients, of *tythes* given before the law; the *tythes* of the *Gentiles*, and the *multitude* of examples in the *practice of payment* and *jurisdiction* exercised, touching them, both in *foreign states* and *at home*, were such things, as I doubted not, but that even every ingenuous christian would be glad to know, in this consideration of this ecclesiastick revenue. And I found also these, so much *unknown to divers*, with whom I had obvious discourse about the *law* and *practice* of *tything* in this kingdom, that what I affirmed out of such testimony, as had fallen under my observation in search of *law* and *history*, was denied me often, as if I had offered them my own fictions only. Hence took I the first

thoughts of writing it, and I doubted not at all, but that it would have been *acceptable to the clergy*, to whose *disputations* and *determinations* I resolved wholly to leave the *point of divine right of tythes*, and keep myself wholly to the *historical part*. And to this resolution I constantly restrained myself. In the *course* therefore of *composing* it, I took only by way of story, the *various opinions*, touching *tythes*, which either were *for the divine right*, or *against it*, the *laws* and the *practice* of payment of them; and this, as I found any thing that gave light in any of those three, in such testimonies of credit, with which my reading could furnish me. Neither omitted I any *opinion* or *passage*, that for ought I have yet learned, *makes for tythes* in the *primitive times*. I collected them in it in the very words of the *fathers* that afforded them. The *opinions of the following ages, to this day*, I faithfully related, as I found them, and divers also for the *divine right*, which were never before published, but have been since used, and cited only out of my collection for the justification of it. Neither is there any *passage* or *opinion* publick for the *divine right*, either of the antient or modern times, (that I could yet learn) which I have not either in *particular* inserted, (as in relating all those of the *primitive times*) or in *general* faithfully designed, as sometimes in the *later ages*. So did I relate the *practice*, so the *human laws*, touching *tythes*; in which, besides what I noted out of the *constitutions*, *decisions*, and *customs of foreign states*, I have one whole chapter, wherein, about forty several *acts* or *ordinances* are for *tythes* in this kingdom, very many of which were never before printed, but now first collected out of *manuscripts*, *histories*, *parliament rolls*, *synods*, and the like, and have been thence used also since for *special testimony*, by such as have written for the *divine right*. And in all these, I ever carefully abstained from letting fall a syllable of any *determination*, or *argument* of mine own, touching the point of *divine right of tythes*. No otherwise (for example) than *Plutarch* did in his books of the *divers opinions of philosophers*. He relates them, touching the most of particulars, that fall under the disquisition of nature, but yet censures not any, so that he delivers his own. Neither durst he, nor could he; for doubtless, he had not so studied them, as that he was enough able to *confute* or *confirm* them; but he sought and collected them as *history* only. So did I here the *opinions of the rabbins*, of *fathers*, of *later divines*, of *canonists*, and such more. And indeed, if I had done otherwise, I had run wholly from my *title*; for what had my *opinion*, touching *divine right* been to *matter of history*, which is only fact, and was all that my *title* directed me to? I never conceived that there was reason, why it should be exacted of him, who relates *fact* only, that he should conclude in a thing to which his premisses have no reference; that is, in matter of *right*. Besides also, had there been *proper place* in it, for a determination, touching the *divine right* of

of them; yet I had purposely avoided it; and would have inserted my *just excuse* for doing so, and such a one, as even those, which have looked for in it, but found not any opinion of mine, touching the question of the *divine right*, will, I trust, allow for a just one; that is, that it could not be fit for me to meddle with that question, both in regard to my profession, which is restrained to *human laws* (to the search whereof history is incident) and in respect also of the *practised laws*, both of this kingdom, and of all other states in christendom. For my profession; it had been strange rashness in me, to have determined any thing in such a question, as not only touches not my *professed studies*, nor hath been made the object of them, but is also vexed on both sides frequently by *divines* and *canonists*; that is, by *them to whom it properly pertains*. It had been also injury in me, so to have meddled with other mens harvest. But for the *practice* both of this kingdom and other states, I saw that human constitutions and customs in every state, and so also in this kingdom, have, and that through many ages to this day, crossed the consequents, that follow upon the opinion, which concludes for the *divine right* of the *quota pars*, although divers have in the mean time written, and that in books by *publick authority* printed, for the maintenance of that opinion. Although therefore I should have so forgotten the limits of my profession, as to have studied the question to a determination in the composing this work; yet both for *providence* to mine own safety, and for *reverence as well to the state I live in, as to all christendom*, doubtless, I had purposely avoided the expression of so much. For had I upon such study of the question, determined on the one side the *quota pars*, ever due of all kind of increase by *God's law*, and withal shewed, (as I have done) both the practice of this kingdom, and of all christendom; I had therein, I suppose, determined, that the *practised laws*, both of this kingdom and of all christendom, had been against *God's law*, which I was never so much towards the sectary, as to dare to affirm. I so reverence the settled course of law and government, that out of my own brain I shall be never so bold as to tax it. But should I on the other side have concluded (if I had so studied the question) against the opinions for the *divine right* published by our divines, and that in print; I had herein also opposed my own single judgment, against what I saw *licensed by publick authority*. But I ever so revered also *publick authority*, that I would never be so insolent as to offer myself as a part against it. I had therefore reason, I think, (and I trust all men will conceive so) to abstain from either of these, although I had so studied the question to a determination; unless in the one, I should have taxed all christendom; and in the other, opposed what the *publick authority* of censuring of books here so allows of. But for the determina-

tion of that question, I both then did, and now do leave it wholly (as a thing also not vexed in my studies) to divines, to whose faculty it is only proper. Having at length (with this advice to myself, as is hitherto opened) composed it, I committed it to the *censure* of one that had the power of *licensing it for the press*. I left it with him, and to his own time, and without so much as any further request from me to him. He sent it to me *licensed*, with *ita est*, and *subscription of his name*. Then was it printed, and until it was wholly printed, I never had the least expression of any dislike to it from any man that had any *authority* or *power of command*, either in the state, or in the church. Had I received from either any command signified for the suppression of it, I had soon obeyed it, and as easily and as willingly even forgotten to think of printing it; so far was I from being ambitious of the publishing it. But as soon as it was printed and publick, divers were ready, and that in much shorter time than they could possibly have read it, after the impression of it to publish, and that also frequently in sermons; that it was written to *prove that tythes were not due jure divino*. Many lay-hearers believed them, and were ready to believe, or at least suspect that some such thing was proved there, because they that reported it, seemed both judicious, and to be so much offended with it, that they would not have it seen^b at all, least it should prejudice that *divine right*. Some also (as I can testify myself) upon the various report of it, believed confidently, that it was written to prove, nay, that it had proved, that *no tythes at all were due*: others, that I had concluded, that questionless lay-men might, with good conscience, *detain impropriated churches*; others, that it was expressly against the *tythes* of London. Whereas indeed for that first of the duty of tythes (although purposely I abstained from touching the determination of divine right, by way of disputation, as is before shewed) I doubt not, under the favour of those who are more knowing, but that I may boldly affirm, that there is, by many degrees, much more *historical testimony* out of old authors and councils, and other *human laws*, for the duty of them, collected in it, than ever was at all before published: And for *impropriated churches*, I have not a syllable that denotes any such conclusion. The same reasons that kept me from the question of the divine right, taught me also to abstain from the point of laymen's detaining things *once consecrated*. And for the *tythes* in London, I use not a word of them otherwise, than historically; and the question of them (however they are called *tythes*) is depending only (for ought I know) upon an ordinance or act of parliament, and that act I have faithfully related too. And in sum, whatsoever I have there, from the beginning to the end, is but a collection into one volume of such things of fact, as lay before dispersed in many fathers,

councils,

^b While yet in every parish church, books are by publick authority kept, wherein whole sermons and arguments against the divine right are commended and vulgarly read, as is seen in that of Fox's acts and monuments, p. 425. 446. 494. &c. 602. Edit. Lond. 1610.

councils, stories, and other records, to be seen at any time, by them that desire them.

But when these various reports of it were published, and too forwardly *believed*; and that also by *misinterpretation*, and *untimely application* of many particulars in it, arguments were by some soon drawn out of it, to oppose the churches maintenance; it so fell out, that what in itself was written only *for history*, became thus reputed the *original and cause* of such opposition. This made me much grieved, both in that I had been so unfortunate as to *publish* that, which (being clear truth of history in itself, and as I had written it) was notwithstanding so abused to far other ends than what my purpose was, or what an impartial judgment should have extracted out of it; as also in that I had, by reason of it, incurred his majesty's displeasure. Hereupon, by special command of his majesty, (whose most tender care of the church is most eminent among those admirable parts of his great wisdom and goodness) I was convened before my most honoured *lords, the lords of his majesty's most honourable privy council*, where I most willingly acknowledged (as I do still from my heart, and did ever since I first saw that any argument was taken out of it in prejudice of any rights of the church) that I was most sorry for *this error in writing and publishing* that work; and for that I had, by any manner of passage in it whatsoever, offered any occasion of argument against the right ei-

ther of *tythes*, or of any *other maintenance* of the church whatsoever. Thus much also, in the same syllables, I as willingly acknowledged before *some lords high commissioners*. Thus much I still do to the world, which acknowledgment also hath been by some as much misinterpreted as the book itself, while they collect out of it, as if I acknowledged my *historical relations and quotations to be false or full of error*; they are every one (for ought I could ever yet learn) true, as I have expressed them for story. But I am most sorry (and so should have been, though I had never been questioned) that any occasion is taken out of them in any kind of prejudice to the clergy. The *whole body* of it therefore, with the cause of writing it, and the *course* I took in composing it, together with the *circumstances of publishing it*, thus briefly hitherto opened, sufficiently (as I trust) shew, that my *end and purpose* in it, was so far from calling in question the *divine right, or any other right of tythes*, that it was on the contrary side, wholly to leave that question of *divine right to divines*, to whom it properly pertains, and to collect here all such testimony of *secular laws and history* (which have been the objects of my studies) as might at *one face* discover, what hath been *from antientest time, till this day, practised, held, or ordained, touching tythes*; which whosoever examines it, will find, that I have, although unfortunately, yet most faithfully done.



Of the JEWS sometimes living in ENGLAND.

OF the Jews first coming to this land, is uncertain. It seems that some little notice was taken of them before the conquest; after which we have divers testimonies, and besides others, the statute *de Judaismo*. Both before and after, their state and condition was very fervile, as appeareth in *legib. Confess. cap. 29. Judaei & omnia sua regis sunt, &c.* The Jews and all they had, was the king's. What they suffered in succeeding ages, our common stories discover. There was one amongst them which had the office of *presbyteratus omnium Judaeorum totius Angliae* (which I take to be their chief priesthood, in their synagogues; for if it had signified a meer lay-elderhip, I guess I should have met with it in the pleas of their exchequer) and this lay in the king's grant, as by king John's charter of it may be seen. *In rot. chart. 1. Joh. reg. ch. 171. memb. 28. Omnibus fidelibus suis, & omnibus & Judaeis & Anglis salutem. Sciat is nos concessisse, & praesenti charta nostra confirmasse Jacobo Judaeo de Londoniis presbytero Judaeorum, presbyteratum omnium Judaeorum totius Angliae habend' & tenend' quamdiu vixerit, libere & honorifice, & quiete & integre, ita quod nemo ei super hoc molestiam aliquam aut gravamen inferre praesumat. Quare, &c. apud Rothomagum 31. die Julii anno regni nostri primo.* Therein is also mention of a former charter granted by Rich. I. Certain justices were appointed *ad custodiam Judaeorum*, before whom pleas betwixt them, and others and them, were held, and matters adjudged, *secundum legem & consuetudinem Judaeorum*, as the entry often is. In most towns of note, were two christians, and two Jews, or one of both sides, appointed as publick notaries for all their deeds of contract; and those notaries had one chest, and several keys, for the safe keeping of such deeds, and they were called *cyrographarii Christiani & Judaei arcae cyrographicae Oxoniae*, or other such town. And hence must you interpret *les bouches cyrographes, in statuto de Judaismo*. As by these notaries or cyrographers, the deeds of the Jews were tried. These deeds and such like, they called usually *starra*, of their Hebrew word *shetar*, that is, a deed or contract; as *Salomon de Stanford agnovit per starrum suum*, and the like. And however land was not subject to execution for debt, till 13 Ed. I. yet it seems by 52 Henry III. that for debts of the Jews, land was seized by writ for the debtor; *Constat justitiariis & per inspectionem rotulorum de scaccario nostro Judaeorum, quod Aaron, &c.* When any man

had dealt much with them, and after all discharges doubted further ill measure by any such *starrs* or deeds lying hid, the course was to send out a process to the sheriff of the county, or constables of the castles of great towns, to make proclamation on their sabbaths, summoning all Jews of this or that synagogue to be at their exchequer, to account with such as doubted in that kind. Thus 52 Hen. III. *praeceptum est vice-comiti Essex quod clamari faceret per scholas Judaeorum Colcestriae per duo vel tria sabbata, si aliquis Judaeus vel Judaea aliquod debitum exigere poterit de Rogero filio Petri, &c.* that then he or she should come *ad computandum. Et vicecomes mandavit tam litera Latina quam Ebraica, quod nullus Judaeus nec Judaea aliquod debitum exigit de praedicto Rogero.* So do all other sheriffs and constables return in *Hebrew and Latin*. For in those times, both languages were used, not only in deeds of the Jews, which I have often seen with the *Hebrew* on the one side, and the same in the *Latin* on the other, but also in records of law, as in 43 Hen. III. in *regist. monasterii de Boxgrave in Suffex, &c.* And as both tongues were used, so in trials betwixt christians and them, the *venire facias* was *sex probos & legales homines, & sex legales Judaeos*, as often appears. What oath was given them, I find not, but *R. Moses Mitkotzi*, that lived in the time of Hen. III. writes in *praeac. affirmat. 123.* that holding the book of the pentateuch between their arms, they called to witness the God of *Israel, which is merciful, &c.*

Upon their conversion, their goods were confiscate, which was (it seems) after such time as the *domus conversorum* (that which is now the rolls) was in 17 Hen. III. built for them, where they might live *sub quadam honesta vivendi regula, & certum haberent in tota vita sua domicilium, tutum refugium & sufficiens vitae sustentamentum, sine servili labore & fœnoris emolumento*, as the words of *Mat. Paris* are. In 52 Hen. III. *Josfin Ben Salomon*, a Jew of *Marlborough*, shews to the court of the justices of the Jews, that one *Joicets* his sister, was married to one *Salon* the son of *Lombard* of *Kirkblade*, & *quod ipsa habuit in arca cyrograph. Merlebrigie unum cyrograph, xxxii. marcarum*, which upon her conversion, became the king's, as the roll saith, and *quod hoc totum sit verum, obligat omnia bona sua, &c.* which all were confiscate for not prosecuting the suit. But in the time of *Edw. I.* it was granted, that the house should have one half of the goods of the convert, and that he himself should have the other half. So *placit. 9 Ed. I. Jo. de sancto*

sancto Dionysio, custos domus converſorum hath a writ for the moiety of the goods of *Beleager* and *Huccoth*, Jeweſſes of *Oxford*, late converts, &c. the other half allowed to them.

One cruel and (to ſpeak the propereſt phraſe) Jewiſh crime was uſual amongſt them, every year towards *Eaſter*, though it were not always known (ſee *Matt. Paris* in 39 *Hen. III.*) to ſteal a young boy, circumciſe him, and after a ſolemn judgment, making one of their own nation a *Pilate*, to crucify him out of their devilish malice to *Chriſt* and chriſtians. For their circumciſing alone, take this record, *inter placita* 18 *Hen. III. rot. 21. Norff. Benedictus phyſicus appellat Jacobum de Norwico Judaeum, quod cum Odoardus filius ſuus puer aetatis 5. annorum ivit ludendo, &c.* that four years before that, *James* the Jew, had taken his ſon *Edward* as he was playing in the ſtreet, and carrying him to his houſe, circumciſed him, and there detained him one day and night, till by force of chriſtians he recovered him, having his circumciſed member then ſwoln, &c. The child being examined, confeſſed that they took and carried him to the houſe of *James* aforeſaid, where, while one held him, and covered his eyes, another circumciſed him with a knife. The piece cut off, they put in a baſon of ſand, (*in quodam vacino cum ſabelone, & quaefierunt peciam illam cum parvis ſuffletis,*) and there they with ſmall puffs of wind out of their mouths, fought it; and the Jew which firſt found it, was called *Jurnepin*, and therefore they gave the ſame name to the child, calling him *Jurnepin*. The archdeacon's official came to teſtify this with a great company of prieſts, all in the word of God ſaying as aforeſaid, that they ſaw his member ſwoln; and the coroners of *Norwich*, with thirty ſix of the citizens, teſtified as much. Hereupon the Jews were all put in priſon, and found acceſſories, except *Moſſe* the ſon of *Salomon*. Order was taken, becauſe the caſe was ſtrange, and they had no precedent of the like, it ſhould firſt be inquired of by the eccleſiaſtical

ordinary, and that he ſhould certify to the king. The Jews after procured the boy to be ſeen, and his member was found covered. But this is not repugnant to the former teſtimony, ſeeing by ſurgery,* the ſkin may be drawn forth to an uncircumciſion. In the year following of *Hen. III. Mat. Paris* reports ſuch a deed of the Jews of *Norwich*, and in 24 *Hen. III.* that they circumciſed a chriſtian child, and called him, *Jurnin*, and meant to have crucified him. All the Jews of the city were queſtioned about it; and when they would have referred themſelves to lay authority, *William de Ralegh*, the biſhop, ſays, *haec ad eccleſiam ſpectant, non ad regalem curiam, cum de circumciſione & de fidei laeſione quaefitio ventiletur*. Four Jews convicted hereof were drawn at horſes tails, and hanged on the gibbet. In 39 *Hen. III.* the caſe of *Hugh* of *Lincoln* crucified is in the ſame author, and for it eighteen Jews were at once drawn hanged. This *Hugh* is reckoned as a ſaint in *Chaucer's* prioreſſes tale. By reaſon of their exactions and uſuries, they were all baniſhed (their moveables allowed them, but *Walsingham* ſays, only their expences for paſſage) in 18 *Ed. I. Mat. Weſtmin.* numbers them 160511. The houſe of converts in *pat. 51. Ed. III. memb. 20.* is given to the maſter of the rolls.

By the ſtatute of *Judaifin*, they were to wear (every one being paſt ſeven years old) a cogniſance of yellow upon their upper garment, thereby to be known, ſome ſuch diſtinction had been generally enjoined in the council of *Late-ran*. See the *ſtatut. & cap. de Jud. 6 R. I. Roger. de Hoveden, fol. 424.* They were forbidden to build new ſynagogues, made ſubject to the payment of tythes, and were to wear on their upper garment, on the breaſt, two pieces of woollen cloth of another colour, plainly to be diſcerned, each of them two fingers broad, and four in length, by the provincial council of *Oxford*, under *Stephen* archbiſhop of *Canterbury* in 8 *Hen. III.*

* Celf. de remed. l. 7. c. 25. Epiphan. de pond. 1 Cor. vii. 12.



A BRIEF
DISCOURSE
Touching the
OFFICE
OF
LORD CHANCELLOR of *ENGLAND*.

TO the RIGHT HONOURABLE

Sir FRANCIS BACON, Kt.

Lord Keeper of the Great Seal of ENGLAND.

MY LORD,

THE times obvious discourse, whereby that all, which truly loves nobles or learning, congratulates your highly deserved honour, caused me to collect these, taken out of no obvious monuments, touching the antientest mention, conjunction, and division, of those two great offices of state, which your lordship really bear, though stiled but by the name of one. They are short, yet give large testimony of the former times. They conclude with an act made about three hundred twenty years since, of like tenor in substance with that latter under queen *Elizabeth*, which was as proper to your name, whence these also were the fitter to offer you. Enough other particulars, touching both these great offices, might have been added, but these were chosen for the usual question of the present, and thus are given (not yet seen by any other eye) as a taste of my humble observance. My lord, they are only yours, as the author would be.

J. SELDEN.

A BRIEF

DISCOURSE,

Touching the OFFICE of

Lord Chancellor of *E N G L A N D*, &c.

I. The name and office of lord chancellor of England under the Saxons.

THE eldest mention, in good authority, of the name of chancellor of this kingdom, is in *Edward* the elder's time, ^a about the year *ccccxx*. He made *Turketill*, abbot of *Croyland*, his chancellor. *Cancellarium suum cum constituit, ut quaecunque negotia temporalia vel spiritualia, regis iudicium expectabant, illius consilio & decreto (nam tantae fidei & tam profundi ingenii tenebatur) omnia tractarentur, & tractata irrefragabilem sententiam sortirentur.* This abbot held the office under *Ashelstan*, *Edmund*, and *Edred*, succeeding kings.

King *Ethelred* afterwards divided the chancellorship ^b between the abbots of *Ely*, and *St. Augustine* in *Canterbury*, and of *Glastenbury*, who were to exercise it by turn. The words of an old monk of *Ely* are; *Statuit atque concessit, quatenus ecclesia de Ely extunc & semper in regis curia cancellarii ageret dignitatem, quod & aliis, sancti viz. Augustini & Glasconiae ecclesiis constituit, ut abbates istorum coenobiorum vicissim assignatis succedendo temporibus annum trisarie dividerint, cum sanctuarii & cacteris ornatibus altaris ministrando:* So as the abbot of *Ely*, or some monk by him appointed, exercised the office from *Candlemas* four months yearly, and the other two, of *Glastenbury*, and *St. Augustine's* made up the twelve.

But there occurs not any subscription in charters by that name, till the *Confessor*, in his patent to the church of *Westminster*; after the king, bishops, abbots, and others, comes, *ego Rembaldus cancellarius subscripsi.*

Yet in the antientest monument of a grant by any king extant here, I doubt not but the chancellor subscribed, though under another name.

^c The first christian king of the Saxons founded and endowed *Canterbury* church, and in his

charter amongst the earls, occurs, *Ego Augemandus referendarius subscripsi*; where *referendarius* may well stand for *cancellarius*, the office of both (as the words applied to the court are used in the code, novels, and story of the declining empire) signifying an officer, that received petitions and supplications to the king, and made out his writs and mandates, as a *custos legis*: And though there were divers *referendarii*, as fourteen, then eight, then more again, and so divers chancellors in the empire; yet one especially here, exercising an office of the nature of these many, might well be stiled by either of the names. These are testimonies of that time without exception; though *Polydore* begin the name and office at the *Norman* conquest.

II. Whether the keeping of a seal were in the chancellorship under the Saxons.

FOR that principal part of the office, or that other office joined with the chancellorship, the keeping of the seal; If the common opinion were clear, that under the *Saxon* state, no seals were here used, then were it vain to think of it, as of that time. But there is yet remaining an old *Saxon* charter of king *Edgar*, beginning, *A orthodoxorum vigoris ecclesiastici monitu creberrime instruimur, &c.* to the abbey of *Perfore*, wherein divers lands are given, and there remain in the parchment, plain signs of three labels by the places cut for their being hanged on; and of the self same charter a testimony also as antient, that the seals were, one of king *Edgar*, the second of *St. Dunstan*, and the third of *Alfer ducis Merciorum*. That testimony is in a letter from *Godfrey*, archdeacon of *Worcester* to pope *Alexander III.* writing of that charter, and the authority of it. *Noverit, faith he, sanctitas vestra, verum esse,*

^a Temp. Edw. senioris & sequentium regum Ingulphus.^b Temp. Ethelredi.^c Temp. Ethelberti.

quod conscripsi hujus scriptum originale in virtute sanctae Trinitatis sigilla tria trium personarum autenticarum, ad veritatem, triplici confirmatione commendat; est autem sigillum primum illustris regis Edgari; secundum Sancti Dunstani Cantuariensis archiepiscopi; tertium Alferi ducis Merciorum; sicut ex diligenti literarum impressarum inspectione evidenter accepi. And it is reported by those which have searched the records of St. Deny's church in France, there remain two charters, the one of *Offa*, the other of one *Edgar*, with seals annexed; the one of which I have seen cast off in lead, and is about the breadth of a shilling thick, and having a face on the one side. Likewise amongst the *chartae antiquae*, (divers being reckoned *cum sigillo*, others *sine sigillo*) one is *cum sigillo* of king *Cnute*. Neither is there any colour of doubt but that the *Confessor* had his seal, for the print yet remains in part to be seen. But notwithstanding these singular examples of kings sealing in the *Saxons* times, it is most certain, it was not a thing common then; neither could any in the chancellorship be denominated from keeping the seal, nor in any other office. Curiosity in some particular occasion swayed more in it, than any custom; although we admit those before-mentioned for true, which may well be doubted, in regard of the frequent fraud and ignorance in committing it, which in the elder times possessed the churchmen. But for the *Confessor's*^d seal, that was without scruple certain, and thence may we confidently derive the great seal of *England*.

III. Testimonies of the chancellorship and keepership joined, in times near after the Norman invasion.

AS in the monuments of the *Confessor*, *Rembald* is named chancellor; so under the first *William*, *Maurice* bishop of *London*, and in the succeeding times others. Old stories of the monks sufficiently mention them. But little appears of the office till the time of *Henry II.* under whom, one writing the life of *Thomas Becket*, that was lord chancellor, hath this most antient testimony of it, and of keeping the seal also; *Cancellarii dignitas est, ut secundus a rege in regno habeatur; ut altera parte sigilli regii, quod & ad ejus pertinet custodiam, propria signet mandata, ut capella regia in illius sit dispositione & cura, ut vacantes archiepiscopatus, episcopatus, abbatias, & baronias, cadentes in manum regis ipse suscipiat & conservet; ut omnibus regis assit conciliis; etiam non vocatus, accedat; ut omnia sigilliferi clerici regii sua manu signentur. Item ut suffragantibus, ex Dei gra-*

tia vitae meritis, non moriatur, nisi archiepiscopus vel episcopus si voluerit. Inde est quod cancellaria non emenda est. And another of the same time; *Cancellarius sicut in curia, sic & ad scaccarium magnus est; adeo ut sine ipsius consensu vel consilio nihil magnum fiat vel fieri debeat: verum hoc habet officium dum residet ad scaccarium. Ad ipsum pertinet custodia sigilli regii, quod est in thesauro; sed inde non recedit, nisi cum praecepto justiciarii, (that is, chief justice of England, that was a viceroy) ab inferiore ad superius scaccarium, a thesaurario vel camerario defertur ad explenda solum negotia scaccarii; quibus peractis in loculum mittitur, & locus a cancellario consignatur, & sic thesaurario traditur custodiendus. Item cum necesse fuerit signatus, sub omnium oculis cancellario offertur, nunquam ab ipso vel ab alio alias offerendus. Item ad ipsum pertinet rotuli, qui est de cancellaria, custodia per suppositam personam.* Another about the time of *Edward I.* *Officium cancellariae viro provide & discreto, ut episcopo vel clerico magnae dignitatis, debet committi, simul cum cura majoris sigilli regni, cujus substituti sunt cancellarii omnes in Anglia, Hibernia, Wallia, & Scotia. Omnesque sigilli regii custodes praeter custodem sigilli privati.*

IV. Of the division and conjunction of lord chancellor and lord keeper, till an act made that they should be one.

BUT, for that of *cancellaria emenda non est*,^e an example not long after was, not only in truth to the contrary, but entered also in publick records. For *Walter de Gray*, of the family of the *Grays* of *Rotherfield*, in *Oxfordshire*, in the seventh of^f King *John*, dat domino regi quinque millia marcarum pro habenda cancellaria domini regis tota vita sua; & pro habenda inde charta domini regis. So are the words of the^g roll, and the days of payment are set down also; and in the rolls of the same year occurs, *Hic recepit W. Gray cancellaria.* Yet had he not always the custody of the seal, for in the charter roll of that year, after the taking his chancellorship, there is but one patent or charter dated by him, as the fashion then was, with dat. per manum W. de G. cancellarii nostri, or the like.

Those that both follow and precede, are dat. per manum Hugonis de Welles archidiaconi Welensis,^h who, it seems, kept the seal; and therefore he is expressly called the king's chancellor in some monks that writ of that time, as others are for the same cause. Neither was it ever heard of them to have the chancellorship granted, yet

^d In the register of *Croyland* it appears, that the Normans brought in the use of seals to charters.

de Gray cancellar. & alii missi ad Orthonem imp. nepotem regis Johannis.

^e carta regis W. de Carrio de domo sua de Carrio, &c. teste Wil. de Briwer. apud Westm. 21 Maii. Carta regis Joh. facta Mauricio de Gant de manerio de Barewe, teste vel dat. per manum Radulphi de Nevill apud Buttevil 28 Julii an. 16. pat. p. 2. m. 8. Et ibid. m. 4. Ric. de Mariscis cancellarius.

^f Pat. 17. Joh. m. 2. Ric. de Mariscis cancellar. 28 Apr. Et ib. in dorsi, idem cancellarius missus Romam. Cart. 18 Joh. rex dedit Baldwinio de Guine manerium de Benefeld, &c. dat. per manum magistri Ric. de Mariscis cancellarii nostri apud Nareas 30 Maii. Pat. 15 Joh. p. 1. m. 8. Et fin. m. 5. Walt. de Gray cancellar. ib. m. 5. idem factus fuit episc.

Wigor. Pat. 18. Joh. m. 5. Ric. de Mariscis cancellar. 14 Julii. Cart. 17 Joh. m. 3. Ric. de Mariscis cancellarius.

^g Cart. 14. Joh. dorsi Walt.

^h Pat. 14. Joh. m.

the seal still to remain in another hand. For also while this *W. de Gray* was chancellor, *Richard de Marisco*, whom *Matthew Paris* calls chancellor too, and others misreckon him for one who had the keeping of the seal, the roll is, *nono die Octobris anno regni domini regis 15. liberavit magister Richardus de Marisco archidiaconus Richmond. & Northumbr. domino regi sigillum apud Ospring*; and then on the twenty second of December following, *apud Windlesores liberatum fuit sigillum domino R. de Nevill, deferendum sub domino P. Wintoniensi episcopo*, that was *Peter de Roches*, or *de Rupibus*, chief justice of England. But this here, out of the infallible testimony of records, touching *W. de Gray*, differs not a little in time from the relation of the monk, notwithstanding the seal thus committed to *Ralph de Nevill*, who had it also under *Henry III.* in the beginning of his reign, *totius regni ordinante consensu & consilio*; yet the patent and other charters and close letters of the time, are for the most part, *per rectorem regni*; or *teste P. Wintoniensi episcopo*; or *T. H. de Burgo*, chief justice of England under *Henry III.* *per eundem*; or *per P. Wintoniensem episcopum*, or the like.

And yet also in rolls of that time, where *Nevill* never at all makes the *teste*, or hath his name added, mention is of him for other uses as belonging to the office of chancellorship, as the delivery of the counter-briefs to him and *fines, &c. mittend' in scaccarium*, according to the use of that age. But although both records and story thus make *R. de Nevill*, lord keeper from king *John* unto *Henry III.* yet had not he any patent of either¹ chancellorship or keepership till eleventh of *Henry III.* where both a patent of the keeping of the seal for life, either by himself or deputy, and another of the chancellorship of England, *toto tempore vite sue*, were made to him, both bearing the same date.

Yet after this^k also, through divers oppositions in state against the goodness and noble carriage of this *Ralph de Nevill*, the seal was after unjustly taken from him, and restored again, as his former right. And in twentieth of *Henry II.*

the king would have had it from him, *sed idem cancellarius* (saith the monk) *hoc facere renuit, videns impetum regis modestiae fines excedentem; dixitque se nulla ratione hoc facere posse, cum illud communi consilio regni suscepisset. Quapropter nec illud similiter sine communi assensu regni alicui resignaret.* Yet in twenty second of *Henry III.* the king violently took it from him, and committed it to one *Godfrey*, a templer, and *John of Lexington*; *emolumentis tamen* (so says the story) *ad cancellarium spectantibus, episcopo quasi cancellario, redditus & assignatis.* Afterward one *Simon Norman*, a lawyer, had it; and from him it was taken, and committed to *Richard* abbot of *Evesham*; who kept it three years, and then resigned it in the twenty sixth of *Henry III.* The chancellor and keeper (of right) *Nevill*, was afterward reconciled to the king, and died in the twenty eighth of *Henry III.*

In the acts of parliament of which year, one is, that the keeper of the seal should be always the chancellor, and that all things sealed otherwise should be void. The words are, *si aliqua interveniente occasione dominus rex abstulerit sigillum suum a cancellario, quicquid fuerit interim sigillatum, irritum habeatur & inane, deinde cancellario fiat restitutio.* And it appears otherwise, that they always took it unjustly done, if the chancellorship and keepership were not in one; by reason whereof, before that, in a charter of king *John's*, yet extant in some hands, of the moderation of the fees of the seal, no person is spoken of but the chancellor and his under officers; as if it could not have been but that whoever had the seal, the same should only be chancellor.

According to that, the chancellorship and keepership were joined in all the chancellors under *Henry III.* and *Edward I.* most of which being made bishops, resigned their seal and office, although, afterward under the succeeding kings, sometimes the seal was committed to other hands upon some requiring occasions; and some lord keepers were created in later times before Sir *Nicholas Bacon*, in whose time that statute of 5 *Eliz.* was made.

¹ Cart. 11 H. III. p. 1. m. 28.

^k An. 13 H. III. The king granted to *Ralph* bishop of *Chichester* the chancellorship for life, 16 Nov. And likewise to the same *Ralph*, the same office, An. 16 Hen. III. 14 Julii. And by another charter of the same date, the custody of the seal for life also, to exercise that keepership in person, or by an assignee. Vide etiam cart. 17 H. III. pro eodem episcopo de eisdem officiis pro termino vite sue.

THE
PRIVILEGES
OF THE
BARONAGE of *ENGLAND*.

VOL. III.

9 E

THE

THE INTRODUCTION:

*By way of table or index to the chapters following contained
in this treatise.*

THE privileges are special rights belonging to the baronage of England, (in which name are comprehended all those, who as *praelati*, or *magnates* & *proceres regni*, by common right are to be summoned to every parliament, wherein also they have place and voice as incident to their dignity) and concern them, either as they are one estate together in the upper house, or as every one of them is privately a single baron.

For privileges of the first kind.

CHAP. I. *Testimonies are hereby collected touching their making of proxies.*

CHAP. II. *Their privileges in suits, as well for their followers as for themselves during the parliament.*

CHAP. III. *That none of them be subject to be questioned before the lower house only.*

CHAP. IV. *Their jurisdiction in* { *offences as well capital, as not capital. matters of errors out of the king's-bench.*

CHAP. V. *Their passing of bills and giving of judgments heretofore, without any assent of spiritual lords.*

CHAP. VI. *Their appointing of judges out of themselves, for examination of delays of judgments in other courts.*

CHAP. VII. *Their tenants of ancient tenancies, being discharged of paying the charges of knights of the shire.*

For privileges of the second kind, (of which also some are communicated to baronesses) the heads of the collections are,

CHAP. I. *First touching oath and protestation upon honour.*

CHAP. II. *Tryal by peers.*

CHAP. III. *Scandala magnatum.*

CHAP. IV. *Process against them in English courts proceeding by bill and answer.*

CHAP. V. *Their number of chaplains qualified.*

CHAP. VI. *Their retaining of strangers.*

CHAP. VII. *Clergy without reading.*

CHAP. VIII. *Their liberty of hunting in the king's forests.*

CHAP. IX. *Amerciaments of them.*

CHAP. X. *No process in a civil account to be awarded against the body of a baron.*

CHAP. XI. *A knight to be returned upon every pannel where a baron is party.*

CHAP. XII. *No day of grace against a baron of parliament.*

CHAP. XIII. *Making deputies of places of trust committed to them without words of the special power.*

Besides these, they have some rights which are so commonly known, that there needs no particular mention of them; as their interest in making, or repealing of laws, or the like. And divers others may perhaps be found, which have not been obvious in the late search made for them. But of these particulars beforementioned, according to the order in which they are described, such store as are here, are collected (as the time would permit) out of the parliament rolls and journals, patent and close rolls, crown rolls, the proceedings of the English courts at Westminster, the registers of the archbishop of Canterbury, and of the delegates, year-books of the common law, statutes, and other good authorities, and in such sort, that frequently the words of the chiefest testimonies are transcribed, lest the freedom of the reader's judgment might be otherwise prevented by short collections.

WE the lords of the sub-committee for privileges, received of the hands of John Selden, of the Inner Temple, who, by order of the house, was to draw up a collection touching the privileges of the peers of parliament, a volume containing those heads before-mentioned, and in the same order handled, as before they are expressed. The number of the heads are seven of one kind, and thirteen of the other. The number of the leaves received are 130; and those words in the six preceding pages are a true copy of the preface to the same collection.

Dec. 6. 1621.

E. Sheffield.

W. Say & Seal.

Henry Rochford

Du. North.

E. Denny.

THE P R I V I L E G E S O F T H E B A R O N A G E of E N G L A N D.

A N D F I R S T,

Of those special rights which concern them, as they are
one estate, in the upper house of parliament.

C H A P. I.

Of the proxies of the lords of parliament.

UPON the summons of the parliament, licence of absence being obtained, and in the same licence (as usually) it being provided that a proxy be made, the baron so licensed may appear only by that proxy to whom his voice is so committed, although his writ be, *quod personaliter interfit*. And so also without licence, upon sickness, or such inevitable cause of absence.

The first mention of proxies that occurs in the memories of our parliaments, is of Carlisle, under Edward I. where the words are, *Quia omnes prelati, milites, & alii de communitate regni, tunc plenarie non venerunt, receptis quibusdam procuracionibus prelatorum, qui venire non poterant, adjournantur omnes qui summoniti sunt ad parlamentum, usque ad diem Mercurii proximum sequentem ad horam primam*. And in a parliament held at Westminster under Edward II. the bishops of Durham and Carlisle, remaining upon the defence of the marches of Scotland, are severally commanded to stay there; and in the writ this clause was ordered to both of them; *Sed procuratorem vestrum sufficienter instructum ad dictos diem & locum mittatis, ad consentiendum quod tunc ibidem per dictos prelatos & proceres contigerit ordinari*. And the like testimonies are afterwards under the same king for allowance, and making of proxies, by the name of *procuratores sufficientes*. And in succeeding times the testimonies of them down to this day are most frequent.

But two things are most especially observable touching them.

1. That although general proxies are admitted, yet sometimes when the nature of the parliamentary business required more speedy and full advice, a clause was inserted into the summons to premonish the baron summoned, that his proxy should not be admitted, unless he were compelled to absent himself by most inevitable necessity. So was it in the writs of summons under Edward III. to the parliament, held for advice touching the voyage with the king of France, into the holy land, every baron having these words in his writ; *Scientes pro certo quod nisi evidens, & manifesta necessitas id exposcat, non intendimus procuratores seu excusatores pro vobis admittere, ea vice, propter arduitatem negotiorum predictorum*. And likewise under Richard II. the summons to the archbishop of Canterbury, and the rest had these words in it; *Et hoc nullatenus omittatis, ne quid absit per vestram absentiam quam necessitate infirmitate tunc detenti fueritis quod aliquantulum illuc laborare non poteritis nullo modo excusat. habere volumus ista vice expeditio ne potior nostrorum predictorum retardetur seu aliquantulum deferatur*. And divers other examples are for personal appearance, and excluding proxies.

2. That the course of the elder times was not, that barons only were made proxies in the upper house, as at this day; but other men also of lower condition. And this is very frequently in the case of bishops, and parliamentary abbots and priors, who gave their letters usually to parsons, prebendaries, canonists, or such

such like. In that parliament of *Carlisle* under *Edward I.* the bishop of *Exeter* sends to the parliament, *Henry de Pinckny*, parson of *Hough-ton*, as his proxy; the bishop of *Bath* and *Wells* sends *William* of *Carleton*, a canon of his church; and in like sort other of the spiritual lords of that time.

In the beginning of the seventeenth year of *Richard II.* the bishop of *Norwich* makes *Richard Corgeaux*, being then dean of the arches, *Thomas Hederjett*, arch-deacon of *Sudbury*, and *John Thorpe*, parson of *Erping-ham*, his proxies, by the name of *procuratores sine nuntii*. And in the same year the bishop of *Durham's* proxies are *John* of *Burton*, canon of *Bewdley*, and master of the rolls, and *John* of *Wendlingborough*, canon of *London*; and other like are of the same time. By which also that of the preamble of the statute of *praemunire* is understood; where it is said, That the advice of the lords spiritual being present, and of the procurators of them that were absent, was demanded. The like under *Henry IV.* and *Henry V.* are found in the rolls. And under *Henry V.* the archbishop of *York* gives the proxy to the bishop of *Durham*, and two other clerks of his province. And it is observable, that in the making of proxies by the whole number of bishops in case of attainders upon appeal, their course was sometimes to make a gentleman, beneath the degree of a baron, their proxy; as under *Richard II.* first they made their proxy for assenting in the parliament, but afterwards the earl of *Wiltshire* had that place in the same parliament. But this (of making others than barons of parliament, proxies) is rarely found in the cases of the lords temporal.

One special case of it is under *Henry V.* in that of *Thomas de la Ware*, who being a clergyman, had his barony descended unto him, and is stiled in the summons always *magister Thomas de la Ware*, and not *dominus*; he gave his letters to *John Franke*, and *Richard Hulme*, clerks. But the proxy rolls for the temporal lords are for the most part all lost. The following times, especially ever since the first memory extant of the journals of the upper house, which began the first of *Henry VIII.* have kept a constant course of making parliamentary barons only proxies. And it appeareth in those journals that one, two, or three are joined in the letters, *conjunctim & divisim*. And most commonly temporal lords give their proxies to temporal, and spiritual to spiritual men; Yet not without examples of a temporal lord's giving his letters of proxy to a spiritual and temporal lord together; as under queen *Mary*, *Francis* earl of *Shrewsbury* made *Anthony* viscount *Mountague*, and *Thomas* bishop of *Ely*, his proxies; And in the beginning of queen *Mary*, *Stephen Gardiner*, bishop of *Winchester* is joined in letters of proxy, sometimes with a temporal lord.

CHAP. II.

Privileges in suits, as well for their followers as for themselves, during the parliament.

IN a bill exhibited under *Henry IV.* is shewed, that the lords, knights, &c. *Et leur homes & servants*, &c. should not be arrested, or otherwise imprisoned by the custom of the realm; and it is prayed that if any be, the parties offending may make fine and ransom, and give damages, &c. Hereunto the answer is, *Ad sufficient remedi en la cas*. In the beginning of queen *Elizabeth*, *John Broxham* being plaintiff, in an assize in the county of *Lincoln* against the lord *Willoughby*, it was ordained, that an injunction should go out of the chancery, *subpaena* 500*l.* that the plaintiff should not proceed to trial.

To this head may be referred that case of the lord *Cromwell*, cited in the title of *process* against them in *English* courts. And in the journals of queen *Elizabeth*, king *James*², and our present sovereign, the testimonies of these privileges for the servants of every baron of parliament are most frequent.

Hereunto may be added that of the citation out of an ecclesiastical court against the earl of *Cornwall*, which was served upon him in *Westminster-hall*, as he was going to the parliament, at the suit of *Bogo de Clare*, and the prior of *St. Trinity* in *London*, for the earl sued them for the contempt, and recovered a thousand marks damages.^b And in the same parliament, the master of the *Temple* petitioneth, that he might distrain for rent in a house in *London*, which it seems the bishop of *St. Davids* held of him; *In qua non potest distringere in tempore parliamenti*. But the answer is, *non videtur honestum quod rex concedat, quod ille de consilio suo distringatur tempore parliamenti, sed alio tempore distringat per ostia & fenestras, prout moris est*.

CHAP. III.

No peer of the upper house to be called to answer in the lower house only.

Thomas Philips complained of the bishop of *London* upon divers articles in the lower house, and this at first by order of the house, whence it was referred by reason of the slight nature of the offence, &c. whereupon the bishop remembering the upper house of their privileges, *ejus verbis auditis, procures omnes tam spirituales quam temporales una voce dicebant, quod non consentaneum fuit aliquem procerum praedictorum alicui in eo loco responsurum*.^c So where the bishop of *Bristol*

^a Diurn. parl. 39 & 43 Eliz. & 1 Jac. &c. Hen. VIII.

^b Rot. parl. 18 E. I. rot. 2. dorso.

^c Rot. Martii in diurn. parl. 15

had written the book of *Union*, which was conceived to be derogatory to the honour of both houses, yet he was complained of only in the upper house. And that so he ought to be, and not before the lower house alone, it was acknowledged in the message delivered from the lower house touching him.

C H A P. IV.

*Their jurisdiction } Offences } as well capital
in matters of } as not capital.
Errors out of the king's-bench.*

THE power of judicature belonging to the lords of parliament, is chiefly seen in their jurisdiction upon writs of error, and their judgments of offences, as well capital as not capital, which they give to any publick mischief in state.^d

Of these judgments of such offences, many examples are of former times in the records of parliament, and out of them are here selected some such, as most of all conduce to the opening of the course of accusation, the form of the defendants answering, the usual ways of trial, and other incidents in their various kinds of judgments, which are found arbitrary in cases not capital; so that they extend not to the life or inheritance; and in capital offences so arbitrary, that the form of the death inflicted, sometimes varied from the ordinary course used by the common law for such offences.

The examples are under these two heads of offences, capital and not capital.

Under the first head are these cases of,

1. *John Mautravers.*
2. *Boeges de Bayons.*
3. *John Deverill.*
4. *Thomas Gurney.*
5. *William de Ocle.*
6. *John de Gomeniz,*
7. *And William de Weston.*

All condemned to death for treason, and all to be drawn and hanged, saving *Gomeniz*, who was judged to be beheaded, because he was a banneret, and had served the king in his wars.

Under the second head are these cases of

1. *John at Lee*, steward of the household.
2. *Richard Lions.*
3. *William lord Latimer.*
4. *William Ellis.*
5. *Chichester and Botesbam.*
6. *Alice Pierce.*
7. *Cavendish* against Sir *Mich. de la Poole* chancellor of *England*.
8. The earl of *Northumberland*.

For writs of error; their power, and course in them may be seen in some special examples which are expressed; whereunto is added that of *Thorpe*, being speaker of the lower house, under *Henry VI.* which specially shews the power of judicature in the lords, although otherwise it tastes too much of what is wholly against the privileges of every member of the parliament at this day.

*Parl. 4 Edw. 3. no. 3.
Judicium Johannis Mautravers.*

Restouz les peres countes & barons assemblez a ceste parlement a Westminster si ont examine estraitement & sur ce font assentuz & accordez que John Mautravers si est cupable de la mort *Esmou* counte de Kent le uncle nostre seigneur le roi qore est come celui que principalement traieroulement & fausement la mort le dit counte compassaiffait que la on ledit Johan savoit la mort le roy Edward in par quant le dit John per enginouse manere & per ses fausses & mauvoise sotiletes fist le dit counte entendre la vie le roi le quel faus compassement fust cause de la mort le dit counte & de tut le mal que sensuist. Per qoi les fudite peres de la terre & juges en parlement ajuggent & agardent que le dit Johan soit treyne & pendu, & decolle come trefour quen part qil soit trove. Et prient les peres fuditz a nostre seigneur le roi qil voille comander que briefs soient faitz de faire publier & crier per tut le roialme que qi purra prendre let dit Johan vis & le mefine au roi il avera mill marcs & si per cas ne purra estre pris vis que qui porte fa teste il avera cink centz livres du donn le roi.

No. IV.

Judicium Bogonis de Bayons & Johannis Deveroil.

Estre ce autiel juggement est acorde que soit fait de Boeges de Bayons & Johan Deveroill per la cause fudite, & que qi purra prendre le dit Boeges vis & mefine au roi avera centz livres ou que porte la teste il avera centz marcz: & que qi purra prendre le dit Johan vis & mefine au roi avera cent marcs & que qi porte la teste avera xl livres du donn le roi.

No. V.

Judicium Thomae de Gurney & Willmi de Ocle.

Item, Juggement est assentuz & accorde de Thomas de Gurney & William de Ocle pur la mort le roi Edward pierre nostre seigneur le roi qore est, que fausement & traieroulement lui murdrerunt & que qi puisse prendre le dit Thomas vis avera c livres, & que qi porte la teste

^d See 3. E. 3. 18, 19. pl. 32. Scroop.

c marc. Estre ce que qi puisse prendre le dit William vis a vera c marc, & que qi porte la teste si per cas ne puisse estre pris vis il avera xl livres du donn le roi.

Par. 1. Rich. 2.
Comenis, Weston.

Item, Per la ou supplie est per les communes que toux ceux quont renduz & perduz chastelx ou villes per de la per verray defaute de capitains puissent estre a responce a ceste parlement & selonc leur desert fortement punis per agard des seigneurs & baronage eschievant le malvoise ensample qils ont donez as autres que sont gardeins des villes & chastelx, comande est a sire *Alein de Buxhull* conestable del tour de Londres que il face venir devant les seigneurs en parlement a Westminster le vendredy le xxvii jour de November lan fuistdit *Johan* sire de *Gomenis* & *William de Weston* pris & detenuz en la dite tour a comandement nostre seigneur le roy per cause qils avoient perduz & renduz tielx chastelx & villes as enemys nostre seigneur le roy pur y respondre sur les articles que leur ferront surmys par la dite cause de part nostre seigneur le roi. A quel jour de vendredy les ditz *Johan* & *William* amesnes par le dit conestable devant les seigneurs avant ditz en plein parlement faantz en la blanke chambre ils font severalment aresonez a comandement dez ditz seigneurs par sire *Richard le Scrop* chivaler senechall del hostel nostre seigneur le roi en manere com sensuit.

William de Weston vous empristez dez lui trespuissant prince que Dieux assoile, sire Edward jadyz roi Dengleterre aiel nostre seigneur le roi qore est de sauvement garder a lui & a ses heirs rois Dengleterre chastel de Outhrewyk sanz le surrentre a ascuns, si non audit aiel ou a ses ditz heirs ou per comandement de lui ou de ses ditz heirs. Lavez vous *William* qestes home liege nostre seigneur le roi en temps de mesme nostre seigneur le roi qore est veray heir au dit aiel delivre & surrentre as enemys nostre seigneur le roi sanz comandement de lui en arrierement de lui & de sa corone & del estat de son roialme Dengleterre encontre vostre liegeance & emprise fuistditz. Que veuillez a ceo dire? Sur quoi le dit *William* dist, qil avoit mys ses responses en escript; & myst avant une cedule contenantz plusieurs choses contenuz deinz ycelle, & veuez & lieuz la dite cedule en plein parlement. Sur ce lui fuist demande par le dit senechall, fil y myst avant ceste cedule pur final respons en cel partie ou non, & sur ceo le dit *William* priast la dite cedule lui estre rebaille, & le metroit einz sa response final, quele cedule par la dite cause lui estoit rebaille, & puis apres ledit *William* myst avant la dite cedule ove un addition mys en ycelle en plein parlement pur finale response en celle partie. Le tenour de quel cedule est tiel come sensuit:

A tresage conceil nostre seigneur le roi & as autres nobles & communes du parlement supplie &

monstre *William de Weston* que com il soit accuse de ceo que len deust malvoisement aver rendu le chastell de Outhrewyk le quel il avoit en gard du baill & assignement nostre seigneur le roi: plese a vostre sage & just discretion avoir de ceo le dit *William* excuse pur le causes qensuent. Primement vous plese remembrer, que com le dit *William* estoit nadgairs garni par un espye que un grand poair des enemys vindroit sur lui pur le dit chastell assegu' ove tresgrandes & tres grevous ordinnances, sur quoi le dit *William* maintenant par son atornee & par ses lettres requist au dit conseil, qil leur pluist de forcer le dit chastell du pluis des gentz pur la defense & la sauve garde dycell, eiant regard que la garnison du dit chastell, qadunque estoit, ne fuist ny suffisant de la moyte pur la multitude de si grande force en si large place resister, mais au finale neputant il nen poit du dit conseil aucun socour avoir, & ensi le dit *William* non pas en sa defaute estoit lesse sanz suffisance des gentz pur le ditz chastell long temps garder & defendre; dont il vous supplie que prendre ent vuillez juste & benigne consideration. Item plese vous savoir coment par un lundy heure de prime viendront les enemys pur le dit chastell assegu' a la nombre entour MMDc homez darmez & dcc arblasters de Genevoys ovesque MMDc de la commune du payz, eiantz ix grosses canons un grand engyn & un trebuchet outre aucun mesure que len avoit unques veu par devant en celles marches, & mesme leur maintenant grande partie des gentz darmez & arblasters avantditz vindront devant les portez pur le dit chastell assailler & a ceo point estoit vu chivaler du leur tuez, lui, quel fuit cousyn au seigneur de Clifton, a ce que len disoit & plusieurs autres aussi fuerent adonques que tuez que naufriz; & deins brief temps apres ils comencerent a traire & getter de leur canons & engyns & ensi continuerent de jour en autre leur assalt cestassav' marsdy, mecredy, jedy, & fuerent adonques les murs & les mesons du dit chastell rontez & partusez en plusieurs lieux; & ils avoient aussi par force trenche les fosses dudit chastell en troys lieux si que leawe sestoit del tout issue & en cel nuyt vynt une grande partie deaux, & par force firent foire & abatre les barres si que lendemain que feust vendredy, ils vindrent au point de jour ove tout leur effors pur le dit chastell assailler: mais ove laid de Dieu ils feurent encore hostez par force de leur assalt, & dun partie & dautre y avoit des mortz & des blesses. Et mesme le jour le mareschal de *Burgoyne* parla au dit *William* & as autres del dit chastell rendre sur qoi eantz consideration a ceo que le dit chastell ne se poit tenir, qoi pur la petiteffe des gentz qoi pur ce, que les murs en plusieurs lieux feurent enfeblez par leur mervaillouses ordinnances, trete fuist ovesque les seigneurs au fyn; que le dit *William* ovesque ses compaignons savisevoient contre lendemain, & ensi alors se departiront. Item mesme celui nuyt les enemys firent atrerere toutes leurs ordinnances des engins trebuchet & canons & dez fagotz & eschiex ove tout plain des autres jusq; pres de fosse du chastel

fel avant dit ; & lendemain que feust samudy ils se firent tout plainement ordiner dassailler la place & lors primerement ils manderent un herauld au dit *William* pur favour, si le dit chafel leur ferroit rendu ou non. Sur quoi le dit *William* par lavis des plufages de fes compaignons eiant consideracion coment ladit place estoit de leur ordinances destouxt & enfebli, & auxi qils feurent poi de gent pur la defense, a ceo que xii de leur compaignons feurent a celle temps que mortz que nautrez que maladez ; si que il ne vemyt des toutz gentz de la garnison en faunte pur soi defendre forsq ; seulement xxxviii & pur ceo par commune assent le dit chafel, que puis ne se poer tenir, fuist par force rendus pur les vies hommes & leurs biens salver. Et que touttez cestez choses avant ditz sont verraiez, le dit *William* se mettra a son proeve felons voz discretz ordinances. Item fait a remembrer que quand le dit chafel fuist ensi renduz come par desuis est dit, certains gentz de Franceys bargainerent ovesq ; le dit *William* pur ses vitailles illoques achater ensemblement ovesq ; certaignes prisoners queux le dit *William* tenoit deins le dit chafel emprisonnez, queux choses il rescue de leur pur son paiement mille & cynq centz francz ; des queux il paia a ses compaignons pur partie de leur gages, que leur fuist aderere dun quart del an & dim. DCLXXVIII. francs. Item puis fuist paie a Caley pur vitailles du dit chafell avant ceo temps dues cccc & xlii francs. Item pur la passage du dit *William* & de ses compaignons tanqen Engleterre ; auxi & pur les dispenses du dit *William* esteant a Caley xxxv francs. Et pur ce supplie le dit *William* geiant regard de justice & benignite coment par envieuse suggestion il ad este contre toutz reison accuse & dont de son estate & de son nom pur grant peche des melfisantz il est trop arieriz, eiant auxi consideracion coment de ses propres biens il ad pur la greignour partie paie ses compaignons pur leurs feedz, que leur fuit due, come est desuis dit, & auxi des grandes costages, qil ad deu devant ceo temps pur le dit chafel vitailier, dont il ad baillie ses obligations en plusieurs lieux & doit grandes sommes si qil est des toutz partz defait si vostre juste benignitee ne lui focour : vous plesse pur Dieu & pur petidordeigner ensi pur lui si qil purra parmy vostre discrete noblesse recoverir son estat & ses biens.

Item le dit *William Weston* monstre coment le primer iour quant les enemys vindrent devant Arde, il sen ala en haste a Caley devant le capitaine, & lui pria de pluis de focour, & aide des gentz pur meulx garder son fort de Outhreyk & defendre, si les enemys y venissent ; & le capitaine lui respondist bresment, qil ne lui delivraest ne bailleraest focour ne aide a dit temps pur ceo qil soi doutroit mesmes que les enemys venissent devant la ville de Caley.

Et veuez & luez la dit cedula en plein parlement. Maintenant apres estoit le dit *Johan* arefoncez illoques par le dit seneschal en la manere que sensuyt.

Johan sire de *Gomenis* vous empristes sur de lui trespuissant prince, que Dieux assoile, sire Edward jadyz roi Dengleterre aiel nostre seigneur le roi qore est, de sauvement garder a lui

& a ses heirs rois Dengleterre les ville & chafel de Arde, sans les fustendre a aucun si non au dit aiel ou a ses ditz heirs, ou par comandement de lui, ou de sez ditz heirs, les avetz vous sire de *Gomenis* en temps de nostre seigneur le roi qore est verray heir au dit aiel deliverez & fustrenduz as enemys nostre seigneur le roi sans comandement de lui en arrefissement de lui & de sa corone & del estate de son roialme Dengleterre contre vostre empriste fustdit. Que veullez a ceo dire ?

Sur quoi disast le dit *Johan* que les ditz ville & chafel de Arde estoient si febles qil ne les poast bien garder contre grand poiar des enemys qestoit illoques prest dassailler mesme le ville & chafel, & pur ceo y fist assembler toutz les chivalers esquiers & autres esteantz en la dit ville & leur disast les periles du dit ville & la force des ditz enemys & de commune conseil & assent des ditz chivalers esquiers & autres il se issa a les enemys pur traiter ovesq ; eux pur saver les liegez nostre seigneur le roi, esteantz deins les ditz ville & chafel de Arde, sanz ceo que il riens prist pour la furrendre dez ditz ville & chafel de Arde.

Sur quoi un Geoffrey Dargentein chivaler disast en plein parlement au dit *Johan* ; que le dit Geoffrey estoit a celle temps en la dit ville en compaignie ove le dit *Johan* ; & que les ditz ville & chafel Arde ne feurent unques deliverez ne fustrenduz par son conseil ne assent ; mes quil estoit tout dys prest des morer & viver sur la sauve garde dycelles, & ceo offrit le dit Geoffrey a prover qique le vodroit de dire.

Et outre suite demande au dit *Johan* si y vodroit riens autre chose dire & il dit que non. Sur quoi le dit conestable estoit charge sur la sauves gardz des ditz *Johan* & *William* tanq ; alendemeyn la famedy profchyn ensuant & de les sauvement remesner devant les ditz seigners en le dit parlement as lieu & jour fustdit.

A quele jour de famedy ceste assavoir le xxviii jour de Novembr. lan fustdit, estoient les ditz *Johan* & *William* remesnez en dit parlement al lieu fustdit & leur estoit monstre severalment par le dit seneschal a mesme le jour a comandement des seigners avantditz coment sur les responses que les ditz *Johan* & *William* avoient donez en le dit parlement come desuis est dit, les seigners du dit parlement ceste assavoir, le roi de Chafel & de Leon & duc de Lanc. Edmond counte de Cantebr. Edmond counte de la March, Richard count Darundell, Thomas count de Warr. Hugh count de Stafford, William count de Suffolk, William count de Salisbrie, Henry count de Northumberland, Johan sire de Nevill ; Roger sire de Clifford & plusieurs autres seigners barons & banerettes, esteantz audit parlement favoient assemblez & avisez de temps, que les ditz responses feurent donez en parlement le vendredy tanque y ce famedy al heure de tiercz des choses touchantz les responses avantditz & veuez & examinez diligemment les ditz responses & autres articles touchantz celles matirs. Et eue sur ceo bone & meure deliberacion & deue information des pluis vaillantz & pluis discretz chivalers & autres, esteantz en le dit parlement estoit dit adeprimes en manere com sensuyt aut dit *William* par le seneschal recitant les choses

avant ditz touchantz le dit William.

Y semble a les seigners avantditz que vous William que avoistez empris de sauvement garder le chastel de Outhrewyk com dessus est ditz l'avez vous William sanz null dureste ou defaute de vitaillez malement deliveres & susrenduz as enemys nostre seigneur le roi par vostre defaute demesme contre tout plain de droit ou de reison & en contre voz liegeance & empris fuisditz & eue par deue informacion en tien cas que par la ou nadgairs le baron de Greystock qestoit seigneur & un des piers du roialme avoit empris de sauvement garder al avant dit aiel la ville de Berewyk le dit baron apercevant apres le dit aiel foi adresser a chivacher ad roialme de France le dit baron sanz mandement du dit aiel, remist la dit ville de Berewyk a un vaillant esquier *Robert de Ogle* com lieutenant au dit baron pur sauvement garder la dit ville de Berewyk au dit aiel ; & le dit baron sen ala com chivalier home as partiez de France au dit aiel ; & illoeqs demora en sa compaignie, survient que un assaut de guerre estoit fait a la dit ville de Berewyk per les Escotz & le dit Robert com lieutenant du dit baron la defendi forciblement & a darrein, par tieux fortz assautz mesme villes estoit pris sur le dit Robt. & deux des filz le dit Robt. illoeqs tuez sur la defense dycell nient miens a cause que le dit baron avoit mesmes empris de sauvement garder mesme la ville au dit aiel & sen depertist delleques sanz mandement de mesme laiel, & la dite ville de Berewyk estoit perduz en absence du dit baron, lui esteant en la compaignie du dit aiel, as parties de France come dit este estoit ajuge par ladvis du dit aiel le roi de Chastell que si est les nobles duces & countes, queux Dicux assoile, Henri iadys duc de Lancastre, les countes iadys de Northth & Stafford, & sire Walter de Manny, que la dite vile estoit perduz en defaut dudit baron & per celle cause il averoit jugement de vie & de membre & que y deusse forfaire tout quil avoit, & a celle jugement rendre avoit le dit seigneur Walter les paroles per comandement du dit aiel. Queux choses consideretz & ceo auxi que vous William susrendistez le dit chastel de Outhrewyk as enemys nostre seigneur le roi avant ditz sanz nulle dureste ou defaute des vitailles contre voz liegeance & emprise fuisditez les seigneurs avant nomez seantz cy en plein parlement, vous ajuggent a la mort & que vous soiez trainez & penduz ; Mez pur ceo que nostre seigneur le roi nest uncore enforme del manere de ceste jugement l'execucion ent ferra mys en respit, tanque le roi ent soit enforme. Sur quoi comande est a dit conestable de sauvement garder ledit William tanque il eit autre mandement de nostre seigneur le roi.

Et quant au dit Johan sire de Gomenys touchant les responsez avant ditz lui estoit monstre per le dit seneschal coment les ditz seigners savoient assemblez & avisez dez ditz responsez, come dessus est dit, & contre lui estoit monstre, coment que au temps que sire Rauf de Ferrers chivaler avoit le gard des ditz ville & chastell de Arde la dite ville de Arde nestoit si fort par la moyte quele nestoit au temps que le dit Johan la susrendist & le dit Rauf avoit eu mandement du dit aiel de

les susrendre pur la feiblesse dycelle avant ceo que le dit Rauf foi mettroit a tres grand peril pur la sauve gard dycelles, nientmoins le dit Rauf les tenoit & defendist forciblement contre un tresgrand & fort assaut de guerre ; Et eue sur ceo & les choses avant ditz & autres evidences touchant les responsez du dit Johan en celle partie estoit dit en manere come sensuyt, au dit Johan esteant en parlement par le dit seneschall recitant toutz les choses avanditz touchantz le avant dit Johan & auxi le avantdit jugement du dit baron & la cause dycelle en manere come dessus.

Y semble a les seigneurs avant nomez seantz cy en plein parlement, considerantz vous responsez en cell partie & les examinentz & enformacions sur ceux come dessus & eiant regard auxi a ce que nadgairs, outre le nombre des gentz par queux aviestes autrefois empris de sauvement garder les ditz ville & chastell xx homez darme & xx archers vous feurent envoiez as ditz ville & chastel de Arde en afforcement dy celles felons vostre requeste ent fait as certains seigners nadgairs esteantz en message a Caleys de per le dit aiel & a ceo auxi que au temps qil estoit a vous dist perle roi de Chastell que si est que si vous ne les purroitz bien garder vous ne les deusses en nulle manere prendre a garder, & un autre les averoit a garder que les vodroit reprendre de sauvement garder audit aiel et a ses heirs avanditz, & vous empristez de les sauvement garder sanz les susrendre a nully si non per manere come dessus est dit. Et ore vous Johan sanz nulle dureste ou defaute de vitaille ou de artillerie ou dautres choses necessaries pur la defense dez ditz villes & chastel de Arde sanz comandement nostre seigneur le roi malement lavetz deliveres & susrenduz as enemys nostre seigneur le roi per vostre defaute demesme contre tout plain de droit ou de reison, & encontre vous emprisez fuisditz per quoi les seigners avanditz cy en plein parlement vous ajuggerent a la mort & pur ceo qestes gentil home & baneret & avetz servy audit aiel en ses guerrez & nestes liege home nostre seigneur le roi, vous serrez decolle sanz autre jugle avoir. Et pur ceo auxi, que nostre seigneur le roi nest encore enforme del manere de ceste jugement l'execucion ent ferra mys en respit tanque nostre seigneur le roi ent soit enforme. Sur quoi comande est a lavandit conestable de sauvement garder le dit Johan tanque il eit autre mandement de nostre seigneur le roi.

Et a fait a remembrer que Geoffrey Martin cler de la corone fist mesmes cest record & le deliverast escrit en ce present rouble per sa main propre.

Parl. 42. Edw. III. No. XXI.

William Latymer du countee de Dorset mist avant une petition en ce parlement en la fourme q'ensuit.

A nostre seigneur le roi & a son conseil monstre William Latymer del countee de Dorset, que come nostre dit seigneur le roi autrefois en la pestilence graunta al eveque de Salisbris la garde des manoirs de *Doulish* & *Denelish* en le dit countee en sa mein esteantz per la meindre age Robert filz & heir Robert

Latymer

Latymer chivaler, ensemblement ove le mariage le dit Robert le filz, adonquē esteant del age de seis ans, pur certeine sūme des deniers a luy paiez & rent annuel a paier. Qi estat le dit William *Latymer* avoit tanque monsieur *Johan de la Lee* adonques seneschal per procurement *Thomas de la Bere*, manda un *Richard de Jmworth* sergeant d'armes en Dorsete au dit William del amefner a Loundres en fause garde come prisonner ove l'enfant avant dit. Cest assavoir le lundy prochein devant la feste de la nativite de seint Johan le baptiste, l'an nostre seigneur le roi qore est trent neofieme, & il ensi fist. Et adonques le dit monsieur Johan chargea & commanda le dit William de part roi, q'il ne irroit hors de ville sur peine de mille marcz, tanque il en averoit de lui a departir. Et issint demora per un mois ensuant, & nulle congie ne peut avoir de ent departir, tanque il avoit fufrendu le corpz le dit heir la patente le roi a dit monsieur Johan & le fait le dit eveſque du purchas le dit William & outre fait un fait de reles a dit monsieur Johan & le conu en leſcheqier; Sur quoi le dit monsieur Johan lui commanda de tenir toutz les terres & tenementz avantditz tanque al seint Michel adonques prochein ensuant, pur une certeine sūme des deniers. Et adonques le dit monsieur Johan lessa au dit William la garde du dit manoir de Denelish rendant quarante livres per ann. & du remenant lui ousta, & des autres & tenementz que le dit heir avoit de son purchas, dont il fust feisi come prochein amy l'enfaunt, cest assavoir, *Pulham, Helton, Whit-chirch, Orford & Stokett*, & les ad a rente a dit William & as autres diverses persones a sa volunte. Et issint par tiel duretee emprisonnement & arest, est le dit William mys a grantz meschies, tresgreves damages & pertez en grant anientisement de son simple estat, dont il prie remedie.

As pointz de quele petition le dit *Johan de la Lee*, respondy & dist. Qe per cause qe les manoirs, terrez & tenementz vel heritage leir compris en la dite petition, furent extenduz mablement par l'echetour & lessiez hors de la mein le roi a trop petit value a grant damage & deceit du roy, il purſuy devers le roi & fist reprendre mesmes les manoirs terrez & tenementz en la mein le roi, la garde de queux manoirs, terres, & tenementz & le mariage du dit heir, le roi lui grauntea tanque al age du dit heir & issint les tient il du grant le roi.

Quele respōs fust avys as seigneurs non resonable & moins fufficeant, par cause, que le dit William fust oustez de la gard & mariage fufditz sans proces & respōs & que le roi avoit graunte a devant la garde de mesmes les manoirs ove la mariage du dit heir al eveſque de Sarum tanque al plein age du dit heir; a quele graunte le dit William ne fust partie: Quele chose le dit Johan ne dedist point & per tant le dit William sanz coupe de deceite ou damage par lui fait au roi celle partie.

No. XXII.

Et aussi fust le dit Johan mys a reson devant les seigneurs de ce que au temps q'il estoit seneschall del hostiell le roi, il fist attacher diver segentz per leur corpz ascuns per sergeantz d'armes, & ascuns per autre voie, come William *Latymer* & autres, & les fist venir devant lui mesmes come devant le conseil le roi en places ou il lui plust hors de chescun place le roi lui accustumez a respondre de diverses choses dont la conuſſance dult apperteiner as places le roi a ce ordeinez contre la lei & les usages du roialme.

No. XXIII.

Et aussint qe per la ou lauctorite du seneschal estant deinz la verge il fist attacher divers gentz dehors la verge, come *Johan Godard* & autres a respondre en la mareſchalie de chose faite dehors & ascuns fist prendre & mander a la tour de Loundres de sa auctorite demefne sanz comandement le roi come *Johan Sibile, Esmond Visdilieue* & autres.

No. XXIV.

Ensement, per la ou *Hugh de Lauenbam*, provour, qi avoit appelez certaines gentz de felonie & feust devant les justices le roi a Newgate & divers gentz areinez a sa fuite de queux ascuns le mistronſen paijs & ascuns se defendirent per leur corpz & demorerent en prison come la lei demande; laquele appellour feust lessé aller a large per comandement le dit Johan contre la lei & comandement des justices. Et puis quant il avoit combatu en *Smetbesele* & fait son darrein & dult avoir estee remefnez a la prison, pur autres appeulx nient terminez, le dit Johan prist le dit Hugh de sa auctoritee demefne & lui lessé aller a large. Et ascuns nient appelez en roule de coroner a la suggestion le dit Hugh fist prendre & emprisonner aussi come il seussent estee appelez.

No. XXV.

Ensement per la ou le dit Johan fust jurrez au roi & de son conseil il bargayna ove monsieur *Nichol Lovayn* la garde du manoir de *Reynham* en Kent, esteant adonques en la mein la dit Nichol per mendre age del fitz & heir Johan de Staunton per la ou per certeinis evidences come per lettres patentes du grant seal le roi come autres queux le dit Johan avoit & prist devers lui apparuiſt overtement, que le dit manoir estoit tenuz de nostre seigneur le roi en chief come del chafel de *Doure* & per tant la garde dicelle appartient au roi a grant damage & deceit du roi & encontre son serement.

No. XXVI.

Des queux pointz & articles il ne se poait dument ne fufficealment excuser per la leie. Et per tant fust le dit Johan comaunde a la tour de Loundres a y demorer come prisonner tanque il eit fait syn & raunceon au roi a sa volunte. Et dit fust a monsieur *Aleyn de Buxhall* constable

conestable de la tour, qil preist garde de lui & issint departirent les prelatz ducz countes & barons & communes.

Et puis du comandement le roi fust le dit Johan fait venir hors de la tour en garde a Westminster. devant le grand conseil & autrefoitz examinez sur les pointz de la petition le dit William Latymer respondi & dist.

No. XXVII.

Que nostre seigneur le roi lui avoit comys la garde des manoirs terres & tenementz del heir fust, tanque al age le dit heir, ensemblement ove le mariage le dit heir & aussi franchement come le roi mesme la garde lui dona, si franchement & entierment il la voleit, rendre en la mein le roi; & illoques devant le dit conseil la suffrendy.

No. XXVIII.

Per quoi del avys du dit conseil en consideration as pointz de la petition le dit William fust acorde & assentu per le dit conseil que les manoirs terres & tenementz & les corpz del avant dit deussant estre reseizez en la mein le roi, & livrez al dit William Latymer a tenir come il lestit du lees le dit eveque tanque al plein age leir fust, selonc au roi pur ycel en manere come il sefoit avant que le dit Johan lui ousta dicelle & que lettres patentes le roi faites al dit eveque de mesme la garde & mariage & les lettres le dit eveque de mesme la garde & mariage faites au dit William & renduz al dit Johan que le dit William per duretee & manace, soient pleinement restituez al dit William, & que lenroulement de le reles au dit Johan par le dit William de mesme la garde & mariage issint per duretee & manaces fait & conu per le dit William en l'eschequier soit cancellez aritez & anientez & tenez pur nul a touz jours, fauve totesfoitz au roi son droit en temps avenir.

No. XVII.

Richard Lyons.

Primerement Richard Lyons marchaunt de Loundres estoit empechez & accusez per les dites communes de plusieurs deceites, extorsions & autres malx faitz per luy au roi nostre seigneur, & a son peuple, si bien du temps qil ad este repeirant a la maison & al conseil du roi, come autrement du temps qil estoit farmer des subides & custumes le roi. Et per especial de ce que le dit Richard per couvyne fait per entre luy & aucuns du prive conseil nostre seigneur le roi pur leur singuler profit & avantage ent avoir ont procurez plusieurs patentes & brieves de licence estre faitz de caryer grande fuyson des *leynes, peaulx launtz* & autres marchandizes ailleurs de per de la que a l'estaple de Caley, encontre les ordenances & defenses ent faitz devant ceste heure en parlement en destruction de mesme l'estaple de Caley & del monyage illoques a grant damage du roi & del roialme Dengleterre & annientissement de la ville de Caley avant dite. A auxint de ce qil ad mys & procurez destre mys sur les *leynes peaulx launtz* & les autres marchandizes certains nouvelles impositions sanz

assent du parlement; & celles impositions levez & coillez grant piece a son oeps propre & al oeps de ceux qil sont de sa dite couvyne entour le roi sanz la veue ou tesmoignance d'aucun contrerollour, & sanz ce qil y est chargez per record ou autrement forsque a sa volonte, mais ent est tresorier & reseivour tant seulement & le haut tresorier del roialme ne se ent medle de rienz; Et dit est comunement qil prent en certain x shiel. en une parcel & xii den. en une autre parcell de chescun saak &c. qamonte a une tresgrande somme per toutz le temps qil ent ad este reseivour ou tresorier come dessus est dit. Et ensement d'une autre nouvelle imposition de quatre deniers per luy faite & mys sur chescune livre de monoie a envoier de per de la per Lumbardz & autres marchauntz per voie deschange per la propre auctorite & sanz garrant ou assent du parlement ou autrement & mesme celle imposition de quatre deniers de livre, grant piece de coillast & gardast al oeps du roi nostre seigneur le roi ent de rienz paie. Et auxint de diverses chevantes faitz al oeps le roi sanz cause necessarie & per especial dune chevante que se fait ja nouvelment en Loundres de xx mille marc pur queux xx mille marc nostre seigneur le roi sefoit obligee de repaier xxx mille marc & ce per le conseil le dit Richard & d'autres privez entour le roi, q'avoient covenantez avec les creanceours d'avoir part du gain & destre parteners covertement al dite chevante; a la quelle chevante le dit Richard apprestast sa propre monoie & apres gainast per voie de usurie du roi son seigneur, de qi conseil il estoit demurrez devant grant quantitee de monoie en grant damage & deceite du roi. Et auxint de plusieurs autres extorsions faulxmes deceites, oppressions, champerties & meintenances faitz a nostre seigneur le roi & a son peuple chescune parte del roialme sibien du temps que le dit Richard estoit farmer des subides & custumes le roi parmy le roialme & demurrez issint devers lui & son conseil & tresorier ou reseivour des dites nouvelles impositions come autrement per preignant sur lui notoirement en toutes les dites choses poir roial, que ce fust horrible chose tout rehercer. Et auxint per la ou le roi nostre seigneur ad este dettor de record as diverses gentz de plusieurs grandes sommes de deniers si ad le dit Richard per lassent d'autres privez entour le roi de sa dite couvyne fait bargainer plusieurs tieux dettes, aucuns a la foiz pur le disme denier & a la foiz pur la vintisme ou centisme denier & faitz procurer le roi de paier le dette entier & issint per ses tielles subriletes & pur son singuler profit son sibien le roi nostre seigneur come les dites dettes malement descuz. Et per especial le *priour* de saint *Johan Jerusalem* en Engleterre a qi le roi estoit dettour dune certaine somme & le dit Richard ent avoit xxiv marc pur brocage pur fair le dit priour avoir paiement del remenant, et une autre foiz del seigneur le Despenser a qi le roi estoit semblablement dettour & le dit Richard avoit de luy per mesme celle manere une autre grande somme de deniers & issint de plusieurs autres en grand deceite esclaudre & vilenie du roy & de sa courte.

No. XVIII.

A quoi le dit *Richard* present en parlement dit que quant al dit chevante fait al roi de les xx mille marcz avant ditz il y est outremēt faunz aucune coulpe; & puis dit il, qil n'ent avoit unques profit ne gain ne appeiffait unques rienz a la chevante avant dite, en monioie ne en autre chose, & ce fust il prest de prover per toutes les voies resonables qome voleit demander. Et quant a les ditz impositions de v. *shell*. & xii. *den.* al saak de leynē &c. & quatre deniers al livre de monioie il ne se poait clerement excuser, qil ne les avoit issint levez & coillez & ent pris devers luy partie, cest assavoir xii. *den.* de chescun saak de leynē &c. mais ce fist il, il dist de comandement nostre seigneur le roi expres & a la priere & assent des merchantz qi telles licences demanderent. Et quant al remenant dy-celles impositions, il les avoit entierement fait deliverer al reseivour de la chambre le roi & ent plainement accompte en dit chambre. Et fust dit al dit *Richard*, qil y baillast avant son garrant per qi auctorite il fist les dites choses, mais nul garrant ne auctorite mist avant en parlement souz le seal du roi n'autrement, fors; seulement qil dit qil en avoit comandement du roi mesmes & de son conseil, del faire. Et sur ce fust tesmoigne overtement en parlement que nostre seigneur le roi ent avoit dit per expres le jour devant a ascuns seigneurs cy presentz en parlement qil ne savoit coment ou en quelle manere il fust divenuz en tiel office devers lui, & que puis est il nel conust mye pur son officer. Et quant as autres articles ledit *Richard* ny fist nulle responce einz dist, que fil y eust drieuz trespasses ou meffait il se mist en la grace du roi nostre seigneur.

No. XIX.

Par quoi le dit *Richard* est agardez a la prisone a la volonte du roi & destre mys au fyn & raunceon selonc la quantite & horribletee du trespass & qil perde sa fraunchise de la citee de *Loundres*, & jammais ne soit en office du roi n'approche au conseil ne a lostel le roi. Et sur ce autrefoitz le dit *Richard* estoit mandez devant les seigneurs du parlement & y fust dit a luy que sembloit as seigneurs, que ses malfaitz estoient si grandes & horribles qil nestoit pas suffisantz dent faire satisfaction. Et tantost le dit *Richard* se submist en la grace du roi son corps, ses terres tenementz biens & chateux. & y voloit & grantast, que son corps terres biens & chateux fuissent a la volonte du roi, dent ordeiner & faire ce que lui plerroit, requirant al roi de lui graunter son vivre si luy plerroit & si ne lui plust mie que feist de lui & de quanq; il ad pleinement sa volonte. Par quoi il est auxint agarde que touz ses terres tenementz biens & chateux soient seiziz es mains du roi, & le corps demore en prisone a la volonte du roi.

No. XX.

Et quant a les extorsions faitz per le dit *Richard* ou ses deutes, du temps qil estoit farmer des dites subides ou custumes, come dessus est dit; ordene est en parlement que bone enquerre se face per suffisantz gentz en toutes les portz d'Engleterre.

No. XXI.

Le sire *Latymer*.

Item, *William sire de Latimer* estoit empeschez & accusez per clamour des ditz communes de diverses deceites, extorsions greivances & autres malx faitz per luy & autres des soens & de sa covyne, du tempz qil ad demurrez devers le roi nostre seigneur, sibien en Bretagne quant il y estoit en office ovef; le roi, come autrement en Engleterre du temps qil ad este chamberlein & du prive conseil meisme nostre seigneur le roi. Primerement de ce que quant le dit sire de *Latymer* avoit este longement capetaen de *Betherell* & officer per aillours en Bretagne, si avant que au drain la paix ou trieves se firent, & sur ce criez fuist & publiez de per le roi parmy Bretagne; que nully Englois n'autre desfors prendroit aucuns vivres vitailles n'autre riens des parsones des villes chasteulx ne d'autres, si non qils paiaissent prestement pur ycelles nene ferroient prendre on ranconer nulle persone ville forteresse n'autre bien, sur peine de quanq; ils purroient forfaire. Et nient contrecesteant tout ce, le dit sire de *Latymer* & ses lieutenantz ou officers firent prendre torcenouement & par force des diverses gentz du pais plusieurs vivres & vitailles a grant value, sanz rienz paier, & auxint firent ranconer plusieurs paroches & ent pristerent & reseurent rancons tanq; a la somme de quatre vyntz & trois mill livres, dont le roi nostre seigneur navoit unques rienz, a grant damage & villenie du roi & oppression du poeple es dites parties & encontre les crie & defens avant ditz; Sicome en une lettre faite & sealles des sealx des plusieurs seigneurs de Bretagne appelee *Ragman* & envoie en Engleterre a nostre seigneur le roy dessus dit puis pleinement appiert. De quelle *Ragman* les communes prirent davoit la voue en parlement & celle requeste fust grauntée mais le dit *Ragman* nene poait estre trovee en aucune manere ne homme ne savoit dire pur veritee ou il estoit devenue. Et encores autrefoitz il estoit accusee de ce que ses deutez ou lieutenantz ou dit temps a *Betherell* & *Plymmeson* avoient pris nonduement illoques cent & l. mill escutz d'or dont le roi n'avoit unques riens ne restitution aucune ent fust fait as parties de queux celles sommes furent prises, de quelle fait une bille estoit baillez avant en parlement, en la fourme que sensuyt.

No. XXII.

Fait a remembrer que les parocfs qi soleient estre raunfoncez a *Betherell* & *Plummeson* par temps des trieves ont paieez, a tant a monsieur *Johan Pert* conestable de *Betherell* desouz le sire de *Latymer* a Willam son fitz & Huchoun de *Middleton* reseivour de la dite ville desouz le sire de *Latymer* durant le tempz de quatre annz depuis que le sire de *Latymer* departi hors de Bretagne.

La somme de an en an xl mill fraunkes.

Et auxi le dit conestable *William* & *Huchoun* ont rescuz de ranfoncez qi soleient estre ranfoncez

foncez par le guerre a plurir niell & a chafteen blank tant que eust bien paieez tous les sôwdiours de la dite ville.

La somme L mill fraunks.

Et auxi le païs de Bretagne ont paieez au dit conestable William & Hugh pur la mort de diverses gentz nostre seigneur lige q̄ furent tuez sur le païs de Bretagne.

La somme xxx mill fraunks.

Et auxi le dit conestable & William son fitz avoient levez sur la païs de Bretagne pur le or monsieur Jakes de la Plaunche perdatz vers Engleterre.

La somme xii mill fraunks.

Et auxi le dit William pur il perdatz xx marcز en le isle de Jernesey en un nief, & pur ce il leva sur les raunfoncez de la dit Betherell.

La somme iii fraunks.

Et auxi Robert de Raveneston, son garson embla une senitour de argent & pur ce le païs du Bretagne feurent raunfoncez.

La somme ii mill fraunks.

No. XXIII.

Et auxi le dit conestable William & Hugh receivoir de la dite ville ont rescueuz par diverses foitz pur vitailles venduz come flour, vyn, & charz, & autres vivres la somme x mill fraunks & plus; la quele veut fust perdition de voz pouvres liges & la ville de Betherell qar par les extorsions, que ils font ferez a susteinent l'orible occision de le pour poeple auxibien come des gentil hommes fist la dite vill perdre; Sur qoi ils supplient a nostre seigneur le roi & a son conseil de faire les ditz conestable William & Hugh venir & respondre de les rescites fustditz issint que nostre seigneur le roi puisse estre servy de ce que lui apent, & voz pources leges q̄ furent en le garnisture du dite ville puissent estre paieez de leur gages pur le tempz que ils furent en la dite ville, si pleser vous soit.

No. XXIV.

Et auxint le dit sire de Latymery estoit empeschez par le dit commune de diverses chevantes faitz al oeps du roi sanz cause necessarie, a grande perde & grevouise damage du roi. Et par especial dune chevante que se fist ore tard al oeps du roi par le conseil du dit syre de Latymer, Richard Lyons & autres de sa covyne de vynt mill marcز; pur quelles vynt mill marcز nostre seigneur le roi festoit obligez a ses creanteours en dit cas de leur repaier trent mill marcز; & ce fuist fait par covyne des ditz sire de Latymer & autres faitz

privement avec meismes les creauteours davoit part del dit gain & dyestre partenens au dit fait, souz covertute de meismes les creanteours qar y li fust surmys en especial, que la monoie du roi meismes en sa chaumbré dont le dit sire estoit alors gardein ou tresorier, & auxint la monoie propre des ditz syre de Latymer & Richard si fust appresté a ladic chevante faire.

Et auxint de ce qe per semblable covyne perentre luy & le dit Richard, pur leur singuler profit & gayn, il ad procurez & conseillez nostre seigneur le roi, de graunter plusieurs licences per patentés & briefs de faire carier grant quantitee des leynes & peaulx launtz, as autres parties doultre meer, que a Caleys, encontre les ordinances & defenses ent faitz avant ces heures en destruction de l'estaple de Caleys & del monyage illoeqes a grant damage du roi & del roialme d'Engleterre & annientissement de la dite ville de Caleys.

Et ensement de ce qe per semblable covyne faite perentre luy & le dit Richard pur leur singuler profit il ad fait mettre sur les leynes peaulx launtz, & autres marchandises de l'estaple diverses nouvelles impositions; cest assavoir, sur chescun saak de leyne, &c. passantz aillours de per de la que a Caleys parmys tielle licence, xi shell. & plus encontre les estatutz & ordenances ent faites.

Et auxint de ce qe pur son singuler profit & mal governaill entour le roy nostre seigneur le roy & son roialme ont euz & suffertz plusieurs autres grevonces perdes damages & villaines, sanz nombre; Come del perde du ville & fort de seint Salveour en Normandie, & del dit lieu de Betherell & d'autres forterefces ja perdus. quelles eussent estre bien salvez & gardez si le roi ent eust este bien conseillez.

Et auxint des certaines espyes & autres felonns priséz & emprisonnez par le roi, & puis apres deliverez par le dit sire de Latymer de sa propre auctoritee, sanz la science & volentee du roi, preignant sur luy & encrochant notoirement, en faisant les dites choses poair roial.

No. XXVI.

A quoi le dit sire de Latymer lors present en parlement dist, que salue a luy quanq; a lui doit estre salvez a luy come a un des peeres del roialme, tant en jugement doner come autrement en tempz avenir, si plect a nostre seigneur le roi & as seigneurs ycy assemblez ent durra sa responce a celui, q̄ en especial lui vorra surmettre aucune des choses avantditz. Et puis apres par tant que nulle especialle persone vorroit apertement accuser le dit sire de meismes les choses en parlement, einz que les communes vorroient maintenir les accusementz en commune le dit sire de Latymer en excusation de sa persone & declaration de sa fame dist.

No. XXVII.

No. XXVII.

Que voirs estoit qil estoit capitaine de Becherell & que une tielle paix & cry furent faitz en Bretagne de per le roi & que une enqueste y fust fait & mys en escript & enfeales des plusours fealx des seigneurs de Bretagne, & envoiez a nostre seigneur le roi en Engleterre, quelle enqueste est ilint appelle *Rageman*. Mais il dit que celle enqueste fust faite & procuree mains vraiment par Bretons & Franceoys qi unques navierent le roi nostre seigneur ne nul autre Englois par haine & envie pur avoir destruit le dit fire fauxement. Et il dit ore come autrefoitz avoit dit a nostre seigneur le roi quant il ent estoit semblablement empeschez devant le roi mesmes que toutz les profitz queux il unques rescueust per luy mesmes ou autrement en Bretagne ne passent en toutes choses la somme de dys mill. livres accomptez en mesme la somme de dys mill. livres toutz les profitz qil y rescueust pur les raunceons del viscount del Roan & des autres prisoners queux il prist a la Bataille de *Orroye* & ce est il prest & toutdys ad este de prover par toutes les voies resonables q'ome de son degree & estat doit faire & doit ressembler a toutes gentz. Il dist pur voir que depuis que celle *Rageman* fust ilint fait par les enemys du roi & del roialme come desus est dit & auxint dehors le roialme que toutez gentz la doivent tenir de la meindre credence & reputation. Et encores il dit que celle somme de dys mill. livres dont il favoit devant submys & toutdys se vorra submettre en la grace de son seigneur lige, ne purroit il ja paier si noun qil vendist fa terre & vessellmentz & eust aide de ses lieutenantz & rescievours en dit lieu de Becherell les quez y ont rescueux & eues tielles raunceons encontre le dit cry si nulles y furent rescueux.

Et tost apres ce les communes oier ceste respnce de submission prient as seigneurs du parlement pur le roi, que des ditz dys mill. livres execution fust fait tantost envers le dit fire de Latymer, come de chose passe parmy la dite submission descome il conust que autre foitz il ent estoit empeschez & la dit submission estre fait par luy, come dit est, & ne monstre mye grec estre fait al roi ne nulle pardoun n'autre chose par la quelle il doit estre deschargez.

Et les seigneurs respondirent qe sa respnce serroit reportez au roi nostre seigneur & fur ce droit ent serroit fait pur le roi.

Et quant a la dite bille baille avant en parlement de les faitz ses ditz deputez ou lieutenantz a Becherell & Plymmeison le dit fire de Latymer dit qil y est outrement innocent & sanz coulpe. Qar il dist y del tempz que celle *Rageman* fust ilint fait & envoie a nostre seigneur le roi il ad demurrez continuellement en Engleterre par comaundement du roi mesmes & rien ne rescueust unques des ditz lieux ne aillours en dite terre de Bretagne

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puis son departir dilloques n'en monoie n'en autre chose quelconque par les mains ses ditz lieutenantz ou deputez illoques ne par nulle autre.

Et les communes repliantz a ce distrent qe si fist il ou autrement y rescueurent les lieutenantz en noun de luy & prient qil fust chargez de respondre a nostre seigneur le roi pur ses ditz lieutenantz & rescie ivours illoques en cas qil meismes ne soient assez suffisantz. Et les seigneurs respondirent a ce qe ent prendroient avivement de sages de leye & fur ce ferroient droit chescune partie.

Et quant as dites chevances faitz al oeps du roi nostre seigneur sanz cause necessaire; Il respondist & dist, qil nassentist unques a ces sanz cause trop necessaire & grantement bufoignable.

Et quant a ce, qe luy ent est surmys de ceite faux covyne ou autre disloialtee pur profit ou part avoir; Il dist que ent est outrement innocent & sanz coulpe ne vnqes apprestat ne deliverast aucune monoie n'autre chose del roi ne del soen ne d'autry al dire chevante faire & ce fust il prest de prover auxint par toutes les voies come doit faire.

Et quant a les patentes & briefs faitez & grantez de passer leynes & peaulx launtz &c. aillours que a l'estaple de Caley: Il dist, que celles licences furent commencez devant son tempz avec le roi sibien a Jenewe & Venice come aillours; Et puis il dist, que si rienz ent estoit fait en son tempz ce ne fust my fait par le soen conseil seulement einz par luy avec autres & ce encores pur un tresgrand profit al roi, dont il estoit loialment responduz en sa chaumbre.

Et quant as nouvelles impositions; Il dist qe nulle nouvelle imposition unques estoit mys fur les leynes quirs & peaulx launtz par luy de novel ne rienz ent paieiz puis al soen escient nulle part fors; seulement les subides ent grauntez en parlement si non a lynstance & especiale requeste & priere de ceulx que tieles lycenses demanderent les queux paierent voluntifment & sanz nulle manere compulsion xi shill. al saak & les x s cest assavoir al oeps du roi & les xii den. al oeps des clerqs escrivantz & pursuantz les ditz licences de qi nouns il nest mye appris en certain. Et puis il y dist qil nent prist unques rienz al soen profit demesne par luy ne par nul autre & ce fust il prest de prover par toutes voies resonables.

Et sur ce fust tesmoigneiz en parlement per monsieur Richard Lescrope chivaler, nadgaires treforer nostre dit seigneur le roy, & par William Walworth de Loundres, que au tempz quant la dite chevante ce fist au roi de les ditz xx. mill. marcz, le dit William Wallworth prfrist en noun de luy meismes & de ses compaignons marchantz del dit estaple de Caley al dit fire de Latymer de faire chevante a nostre dit seigneur le roi de dys mill. livres sanz rienz ent respndre de entrees par userie ou autrement par covenant tielle q'ils y purroient estre repaiez de les ditz dys mill. livres en leur propre mayns des subides dues al roy de leurs leynes & lors profcheinement apassers

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vers Caleys & auxint par covenant que le roi leur grantast que nulles tielles licences ferroient grauntez deslors de carrier leynes &c. aillours que a l'estaple de Caleys

A quoy le dit sire de Latymer respondist & dist, qil ne oiait unques de eux nul tiel profre & les autres affermantz la contraire jurerent que le dit William Walworth y fist a lui tiel profre.

Et quant a la perde dez dites villes & fortz & de la delivrance d'aucunes espyes ou felons issint emprisonnez, le dit sire dit auxint, qil y eist de rienz coupable, & ce voet il prover & averfer per toutes les voies raisonnables q'il doit faire.

Et fur ce plusieurs autres paroles & reſons monstreez & parlez sibien en plein parlement come autrement devant les prelatz & seigneurs soulement sibien pur nostre seigneur le roi come pur la partie du dit sire de Latymer & plusieurs examinations ent faites sibien en prive come en apert apres longue deliberation ent eue fust jugement renduz en parlement vers le dit sire de Latymer en les paroles que sensuient.

No. XXVIII.

Pur ce qe le sire de Latymer est trovez en plein parlement en defaute per son singuler conseil & government encontre le profit le roi & du roialme, cest assavoir, de diverses chevantes faitz en perde du roi sanz cause necessaire, & auxint de patentes faites en destruction de l'estaple des leynes & del monyage de Caleys a grant damage du roi & del roialme D'engleterre & annuyntissement de la ville de Caleys, & ensement des diverses grevous impositions mises sur les leynes encontre l'estatut du parlement ent nadgairs fait.

Il est agardez per les prelatz & seigneurs en plein parlement a prisone destre en garde du mareschall & faire fyn & raunceon a la volonte le roi.

Sur qoi la dite comune ad suppliez al roi qe pur ce qil est trovez en tieux defautes par ses singulieres susditz q'il soit oustez de toutes offices le roi & especialx & privez conseilx entour le roi pur tout tempz.

Quelle requeste le roi ad ottoier & le voet & grante.

No. XXIX.

Et fur ce le dit sire de Latymer trovast en parlement certains prelatz seigneurs & autres ses maynparnours durant le parlement de avoir son corps devant le roi & les seigneurs a respondre pluis avant a les articles dont il estoit issint aretteez souz certeine payne & forme comprizez en une cedula annexe a y cestes & par celle maynprise le mareschall D'engleterre luy lessust aler a large.

William Elys.

No. XXXI.

Jtem William Elys de grant Jernemuth est empechez & accusez en ceste present parlement en diverses maneres. Primerement, cest assavoir, par la furnise des communes a luy faite, qe

le dit William tantcome il y ad est fermer nostre seigneur le roi de sa petite custume en port de grant Jernemuth & depute de Richard Lyons fermer del subside de vi. den. al livre grauntez al nostre dit seigneur le roi parmy le roialme de toutes merchaundizes passantz hors du roialme & entrantz en y celle pur la salve garde du meer & des merchauntz passantz par meer & de leur merchaundizes ad pris par luy & ses servantz sibien des Englois come des estranges en dit port & les membres dycell par extorsion par colour de ses ditz offices plusieurs grandes sommes de deniers & autrement q'il ne deust avoir fait en grande prejudice & esclandre du roi & damage de son dit roialme & oppression & arrierissement de les merchauntz avantditz. Et par especial est furnys al dit William q'il avoit pris de merchauntz d'Escoce chacez par tempest en une nief chargez de diverses merchaundises d'Escoce a Kerkelerode deinz mesmes le port xxxiii livres par extorsion par la ou le dit merchaunt d'Escoce ne deschargeast nene veulloit descharger rienz de ses ditz merchaundizes neny veulloit avoir venuz la si non qil y fust chacez par tempest come dist est & celuy leust bien del faire parmy les trieues d'Escoce que veullent que toutz merchauntz d'Escoce issint chacez par tempest deinz le roialme soient honestement tretez sanz mal faire a eux ou a leur biens en aucune manere.

Et le dit William Elys present en parlement dist, qe voirs estoit qil estoit un des fermers del dite petite custume & aussint depute a dit Richard del subside avant dit & qil avoit bien & loialment pris les ditz custumes & subsidies des merchauntz passantz & venantz selonc le purport des comissions ent faitz sanz ce qil y prist ou fist prendre unques rienz par extorsion plus, que ent fust due clerement al roi & ce fust il prest de prover per quelconq; voie qil deust fair.

Et les ditz communes repliantz a ce distrent qe le dit William avoit mesmes conuz a eux en leur commune assemblee en la maison de chapitre deinz l'abbeye de Westminster le jour devant qil avoit rescueux les ditz xxxiii livres & prierent que encontre sa conifance demesne faite si overtment devant tantz des perſones ne fust autre soit rescueux a dire le contraire. Et fur ce les dites communes amesnerent en parlement Johan Botild & William Coupere de Leystoft & deux autres les queux avoient paieiz a dit William Elys pur le dit marchand d'Escoce les ditz xxxiii livres pur pluis plener enformation avoir de la matire avant dite; Les queux Johan & William Cowpere ent examinez en parlement different & consuſrent q'ils furent obligez a nostre seigneur le roi & al dit William Elys par leurs lettres obligatoires en les ditz xxxiii livres pur le dit Escott qi fust leur host apaiers a certain jour pur le dit subside de vi. den. al livre duez de touz les merchaundizes en le dit nef tout fust il ensi que le dit Escott ny deschargeast unques riens come dessus est dit & au dit jour del paiement ils paiarent al dit William Elys les ditz xxxiii livres.

Et sur ce les ditz communes prièrent jugement de dit William Elys; Et le dit William Elys dit que coment il avoit rescueuz les ditz xxxiii livres de Johan Botild & des autres avantditz nient mains il ne les rescueut unques fors; supposant que celles furent duez & encores ce fist il souz condition tielle que si tost q'il ent eust brief ou autre mandement du roi nostre seigneur de la faire delivrance q'il le fist a eux tres voluntiers & sanz delay: Et outre ce il dist que brief lui vient de ent faire restitution al dit marchaunt & par vertue de mesme le brief il ent ad fait plene restitution a un Johan Fauxhide d'Escoce attourne general pur les marchauntz d'Escoce come piert par un general releffe fait au dit William Elys par le dit attourne, quele relees il mist avant en le parlement compernant que le dit Johan Fauxhide attourne general des marchantz d'Escoce releffast pleinement al dit William Elys toutes maneres d'actions reales & personales que le dit marchaunt d'Escoce ou nul autre marchaunt d'Escoce avoit ou aucunement purroit avoir vers lui pur aucune cause du mounde tanq; a la fescance de mesme le relees.

Et ce veue & entendue fust dit per les seigneurs que le seal de relees ne fust mye autentique ne les parties d'Escoce ny furent mye presentez par ont homme ne poait savoir si tiel attourne fust fait ou neinye ne si cele relees fust un loial relees on un relees forcez. Et outre ce fust dit al dit William Elys que coment que un tiel attourne general fust fait en veritee nient mains le leye ne voet mye que attourne face relees general. Et sur ce mesme le relees fust baillez en la mayn du sire de Percy pur ent enquerre la plain veritee al prochain jour de marche vers Escoce & fil y fust trovez relees forcez que le dit William Elys fust bien puniz. Et les communes prièrent que bone enquerre fust fait del dit William Elys & de touz autres deputez del dit Richard Lyons parmy le roialme generalment. Et ce y estoit otroiez par les seigneurs.

Parl. 1. Richard II. No. XXXII. XXXIII.

Item William Fitz Hugh orfeure de Londres mist avant en parlement une bille en la forme que sensuit.

A tres excellent & trefnoble seigneur le roy & a son treshonour & trefage conseil monstrent les poveres communes de la mistier dorfeuerye en la citee de Londres coment Johan Chichestre Johan Botesham & plusieurs autres grands & riches orfeures de mesme la mistyer en mesme la citee pur lour compassement & sotyll engyne deceyvablement firent plusieurs gentz de les ditz communes ensealler severallment diverses obligations & ceux q'i refuserent de ce faire furent pris & emprisonnez & en peril de mort par grevous manace des ditz grands & riches orfeures tanqils avoient enelles severallment diverses obligations come leurs poveres compaignons avoient fait devant a cause que les ditz poveres orfeures ne deussent overer achater ne

vendre a nul mercer coteller jualler vphalder ne a nul autre denizein ne forein nul rienz de lour ouereigue si non qils le vendissent a treble value ne que nul de eux deust porter vessell ceynture nautre chose dor ne dargent a nul seigneur dame ne a nul autre pur lour profit faire & fils firent que la payne compriz deinz les obligations encurreroit sur eux come devant le mair viscontz & aldermans de la dite citee par la confession des ditz riches orfeures feust prove. Sur quel debat non resonablement issint moeve par bon mediacion & advis de dit mair & des plusieurs aldermans de la citee les ditz riches & poveres orfeures soy mistrent en arbitrement des trois bones homes pur final acord des touz les debatz & querrell entre eux moevez. Les queux arbitrours assenterent sur certains pointz reherceez a les parties fusditz & ordeignerent mesmes les pointz estre affirmez & enrollez en la Guyhall de Londres pur final acord tenir sanz conterdit as touz jours & sur ce les parties fusdites senterbaierent. Mais ore a celle accord les ditz riches orfeures ne voillent assenter ne suffrer que les ditz pointz soient enrollez & tenuz come les ditz arbitrours ordeignerent. Et outre ce par lour procurement plusieurs messeisors ont de jour en autre plusieurs de les ditz poveres communes en agait de tuer que Dieu defend & auxi purchafer un nouvelle chartre encontre le dit acord & en defeasance & annyntissement des ditz communes. Plese a vostre trefgraciouse seignorie ordeigner & comandere que la dite acord pust estre afferme & tenuz finalment. Et que chartre ne null autre chose soit grante a eux en prejudice & annyntissement de les ditz poveres orfeures pur Dieu & en oeuvre de charitee.

Et sur ce les ditz Johan Chichestre & Johan Botesham & plusieurs autres orfeures de Londres vindrent en parlement & avoient oie de la dite bille & tantost estoit demandez en parlement del dit William Fitz Hugh fil vorroit maintenir la dite bille & trover plegge de y faire & rescivre ce que la loy demande dist que si voloit il. Et puis apres pur ce que il ne poait trover les plegges einz guerpist autrement la dite bille si fust le dit William Fitz Hugh comandez a la Tour par agard des seigneurs du parlement.

No. XLI.

Item le xxii jour de Decembre durant encore ce present parlement Alice Perrers fuist fait venir en mesme le parlement devant les prelates & seignors pur y respondre sur certains choses quelles pur lors serroient furnisfes envers elle de part le roi. Et sur ceo par comandement des prelates & seignors du dit parlement monsieur Richard Lescrop chivaler seneschal del hostel nostre seigneur le roi y rehercea en parlement en presence de la dite Alice une ordinance fait au parlement tenuz a Westminster le Lundy prochain apres le feste de Saint George lan du regne le roi Edward aiel nostre seigneur le roi qoreft cynquantisme en

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cestes paroles; Pur ceo que plainte est fait au roi que aucuns femmes ont pursuyz en les courtz du roi diverses besoins & querelles per voie de meynenance & pur lower & par avoir quele chose desplest au roi & le roi defende que desormes nulle femme le face & par especial Alice Perrers sur peine de quonque la dite Alice purra forfaire & destre bannyz hors du roialme. Et celle reherceall faite le dit seneschall furnist a dite Alice que sembloit as seignors du parlement quele avoit encourru la paine compris en la dite ordinance & auxi forfait encontre la dite ordinance en certainz pointz & par especial en deux. Cest assavoir que par la ou monsieur Nichol Dagworth chivaler fuist ordeinz par le conseil du dit aiel daler en Irland pur certains chargantz boisoins que ferroient profitable au dit aiel & a son roialme la dite Alice puis la dite ordinance faite come est dit tant pursuast a dit aiel en sa court a Havering que a sa singuler pursuyte & procurement le dit Nichol fuist contermande & son viage de tout lessé a grand damage du dit aiel & de son dit roialme. Item que par la ou Richard Lyon pur certains mesprisions des queux il fuist convict al dit parlement tenuz le dit ann cynquantisme se submist en dit parlement en la grace du dit aiel cest assavoir son corps toutz ses terres & tenemens biens & chateulx & toutz ses autres possessions par qui le dit Richard fuist mys a prisone & toutz ses terres & tenemens biens & chateulx & ses autres possessions avant ditz seiseiz en mayn du dit aiel des queux terres & tenemens il dona aucuns al counte de Canteburg & aucuns a monsieur Thomas de Wodestock ore counte de Buckingham a terme de lours vyes. Le quel aiel puis eiant pite du dit Richard lui voillant par lassent de son conseil fair grace lui pardonaist lempriisonement de son corps & lui fist restorez as certains de ses terres & tenemens biens & chateulx avanditz le quele pardon semblaist a dit aiel & a son dit conseil estre grace assietz. Nientmeyns la dite Alice pursuast tant a dit aiel en sa court a Shene que par sa singuler pursuyte & procurement le dit aiel granta au dit Richard toutz ses terres & tenements biens & chateulx avandist ensemblement ove les ditz tenements les queux le dit aiel avoit done as ditz countes a terme de lours vies come defuz est dist. Et outre ceo pardona a dit Richard ccc livres de certains arrerages dues par le dit Richard en leschequer; & auxi lui granta mill marcz de son tresor a avoir de doun la quele pursuyte & procurement feurent contre lordinance avandite. Et le dit seneschal demanda la dite Alice coment ele se voudroit de cestes articles escuser.

La quele Alice respondist & dist que de cestes articles ele nest pas coupable & ce ele est prest daverer & prover par la tesmoignance de monsieur John de Ippe alors seneschal del hostel du dit aiel & William Strete adonqs counterollour du dit hostel monsieur Alein Buxhull chivaler Nicholas Carren a donqs gardein du prive seal du dit aiel & dautres que

feurent entour le dit aiel & pres de luy al temps que suppose est quele ensi deust avoir forfait & qi mieltz y scienent ent la verité. Et sur ceo est jour done a dite Alice tanque al Mekerdy prochain enfeuant. Et en la meme temps par lassent des prelates & des seignors du dit parlement ordeigne fuist & assentuz que cestes articles ferroient triez par tesmoigne ou par enqueste de ceux que feurent del hostel du dit aiel par queux la verité purroit meultz estre conuz & enquis. Et sur ceo y feurent certains perones jurrez & examinez devant le duc de Lanc. le counte de Cantabr. le counte de la Marche le counte d'Arrundell & le counte de Warr.

Cestassavoir primerement monsieur Roger Beauchamp nadgaris chamberlyn du dit aiel jurrez sur les seintz evangiles & diligement examinez sur le article touchant le contermandement monsieur Nichol Dagworth & sur le autre article touchant le pardon & grace faitz a Richard Lyons dist par son serement; Que en presence de dame Alice Perrers une bille lui fuist baillie a Havering pur bailler au dit roi & aiel quele bille il prest & puis quant il avoit entendu quele contenoit le revocation de monsieur Nichol Dagworth d'Irland pur ceo qil estoit enemy a monsieur William de Windefore a ce que la bille supposoit il respondist qil noosa ceo baillez au roi pur ceo que le conseil avoit ordeine le contrarie. Et la dite Alice lui requisist & dist que hardiment le bailleroit au roi & meynenant le roi les demanda de quele chose ils parlerent & monsieur Roger luy respondist dune bille que contient tiel matiere. Et meynenant quant le roi avoit entendu la bille il respondist que la petition fuist resonable & quant monsieur Roger repplia que le conseil avoit ordeine enfy la contrarie le roy respondist qil mesmes fuist sovereyn juge & luy sembloit que la bille fuist resonable & lui comanda qil ferroit revenir le dit monsieur Nichol & ensi fuist fait mais quel jour ou mois ce fuist fait il ne soi recorde point. Et quant a la matiere de Richard Lyons le dit monsieur Roger dit qil ne fuist pas chamberleyn al heure & pur ceo il nent sciet rienz sinon par oy dire.

Item monsieur de Lanc. diligement examinez devant les ditz countes dist qil vient un jour a Havering & trova dame Alice Perrers illoqs & tantost monsieur Roger Beauchamp lui monstra une bille contenant le matiere susdite. Et bien tost apres quant il parla au roi & la matiere fuist touche le roi dist que ne luy sembla mye reson qun enemy deust estre juge dautre & le duc respondist que tiel enemistee perentre eulx ny estoit encores provez mais voirs estoit que le dit monsieur Nichol y estoit envoiez pur profit de la terre & de tout le roialme. Et sur ceo estoit ordeinez devant le roi que les ditz monsieur Nichol & monsieur William vendroient devant le conseil & si le dit monsieur William purroit prover aucune cause verroye de enemyte perentre eulx qadonqs le dit monsieur Nichol ny irroit mye & fil ny purroit prover

prover tiel enemistee qadonqs l'ordenance de conseil ent fait avant efferroit en sa force. A quele chose le roi lassentuz bien pur le heure. Mais tantost assailler de la chambre la dite dame Alice vient au duc & lui priaist chierment qil ne fustrist par aucune manere le dit monsieur Nichol aller illoqs; qi respondist qil ne ferroit rienz autrement que defuz nestoit ordeinez devant le roi. Et quant ele y veoit qautre grace ny purroit avoir de lui se enpassa & lendemain matin quant le dit duc prist conge du roi en son lyt mesme le roi lui comanda sur sa benifon qil ne fustrist en aucune manere que le dit monsieur Nichol iroit vers Irland lordinance ent faite le jour devant au contrarie nient contreteant. Et ensy fuist le dit monsieur Nichol contremandez.

Et quant al article de Richard Lyons il dist en sa consience que la dite Alice si fuist principale promotrice du dit bofoigne mais il ne fust pas present quant ce estoit faite.

Item monsieur Phelip de la Vache jurrez come defuz & diligement examinez dist quant al article de monsieur Nichol Dagworth qil noyast vnqs la dite dame Alice parler au roi de mesme la matire, mais il oyast en lostel le roi la dite dame Alice faire grant murmur & dire que nestoit pas resonne ley que le dit monsieur Nichol qestoit enemy al avant dit monsieur William deust aler en Ireland pur enquere & faire justice encontre lui & puis ne sciet il parler de ceste matire. Mais quant al article de Richard Lyons, il dist qil fuist un jour a Shene quant le dit Richard fuist amenez devant le roi & qil fuist appelez a la chambre le roi pur oyer ceo qent deust estre fait; Et quant il entendoit la matire il ne vendroit demurer einz issist la chambre. Et outre il dist que feurent a lors dedeins la chambre du roi la dite dame Alice Nicholas Carren monsieur Alein Buxhull Waulter Walshe & plusieurs autres. Et dist outre que comune par lance fuist en la court que la dite dame Alice fuist grant aideur & amye en celle besoigne.

Item Nicholas Carren jurrez come dessus & diligement examinez dist qil fuist comandez de par le roi devenir a Shene au roi & la il trovast Richard Lyons le quel Richard & Nicholas feurent comandez de venir devant le roi a son lyt ou ils troverent dame Alice Perrers feant al chief du lyt & la fuist monstree que le roi vorroit pardonner a dit Richard CCC livres en quelx il estoit encores tenuz au roi come des arrerages de son acompte en lescheber, & auxi que le roi vorroit doner a dit Richard mill marcz de son tresor & outre de faire pleine restitution de les tenemens queux il avoit done devant a ses filz de Cantebrugg & Wodestock come dissus est dit & sur ceo le roi comanda le dit Nicholas de dire de per lui as ses ditz filz la volonte. Mais il dist qil ne se remembrast si ceste matire fuist monstre a celle heure devant le roi par relation daucune autre persone ou par la bille du dit Richard illoeqs lieue ou autrement par le dit Richard mesmes ou par le dit Nicholas; mais le dit Nicholas soi remembrast asse bien qil requist au roi qil ver-

roit faire venir dedinz les curtyns monsieur Alein de Buxhull & autres chivalers & esquiers que feurent adonques dehors par tesmoignir ceo que le roi avoit dist a dit Nicholas en les ditz comandementz & ensy fuist fait & adonqs toutz les comandementz le roi feurent reherceez en presence de toutz y ceulx. Et quant al matire de monsieur Nichol Dagworth il dist qil neust favoit rienz devant ceo que monsieur Roger Beauchamp lui envoia qil deust faire contremander le dit monsieur Nichol.

Item monsieur Alein Buxhull jurrez semblablement & diligement examinez dist qun jour a Shene apres la darrein parlement il fuist appelez au roi ou il trovast dame Alice Perrers Nicholas Carren & plusieurs autres chivalers & esquiers que viendrent ovesq; lui & illoques fuist reherceez par le dit Nicholas comment le roi avoit fait grace a Richard Lyons de ses tenemens queux estoient tenuz par le counte de Cantebrugg & monsieur Thomas de Wodestock & lui avoit pardonez CCC livres de ses arrearages son accompte en lescheber & lui avoit donez mill marcz de son tresor. Et quant ceo fuist faite la dite dame Alice pria le dit monsieur Alein qil vorroit dire as ditz countez la volonte du roi & les charger sur la benifon de lour piere de lour lesser & ouster des ditz tenemens & monsieur Alein respondist que ce ferroit il volenters si le roi lui comandast ceo faire & maintenant al instance de dite Alice le roi lui comanda densy faire.

Et quant al article de monsieur Nichol Dagworth il dist qil ne sciet rienz sinon qil oiaist la dite dame Alice dire plusieurs foitz q'nest pas reson ne ley que le dit monsieur Nichol que fuist enemy a monsieur William Windefore deust estre envoieez en Ireland pur faire inquisition de lui ou encontre lui.

Item William Strete nadgairs countrollour del hostel du dit roi & aiel jurrez en mesme la manere & diligement examinez dist qil estoit un jour a Haveryng quant William de York parlast au roi pur monsieur William de Windefore en presence de dame Alice Perrers pur destorber la passage monsieur Nichol Dagworth & la dite dame Alice disoit que ne fuist pas reson qun enemy ferroit juge dautre; Et outre le dit William Strete dist en sa consience que la dite dame Alice fuist principale promotrice de la dite besoigne a ceo qil creit.

Et quant al article de Richard Lyons il nent favoit rienz devant ceo que tout fuist esploite.

Item John Beverle jurrez en mesme la manere & diligement examinez dist qil noiaist vnqs la dite dame Alice parler au roi del un article ne del autre qar ele soi gardast bien de lui qele ne parla rienz en sa presence; mais il cryet en sa consience qele fuist promotrice en la dit bofoigne qar il ne conoist nul autre que purroit avoir pursuez celle matere & puis ne sciet il dire de ceste matire.

Et nyent meins feurent fait venir devant le dit duc & les ditz countes monsieur Roger Beauchamp monsieur Alein Buxhull monsieur John de Burle monsieur Richard Stury monsieur Phelip de la Vage monsieur Johan de Foxle & monsieur Tho-

mas Barre chivalers Nicholas Garren John Beauchamp de Halt John Beverle George Felbrugge John Salesbury William Strete Piers Cornwayle Thomas Lonedon & Helmyng Leget esquires del hostel de dit aiel; les queux furent jurrez & chargez a dire la plaine verite sy la dite Alice fuist coupable de les articles avant ditz ou noun. Les queux dient sur leurs serements que la dite Alice pur lower fuist principale promotrice a dit aiel en sa court a Haverlyng entour le feste de toutz seintz lan du regne du dit aiel cynquantisme del article touchant le revocation du dit monsieur Nichol Dagworth & par ele fait a leurs escientz. Item quant al article touchant Richard Lyons ils fachtent bien que la dite Alice fuist bien voilante & a leurs escientz conseillante & eidante al dit besoigne devers le dit aiel a Shene en le mois de May darrein passe.

Et pur ceo que treuve est qele est coupable des articles contenuz en mesme lempchement & les seigneurs du parlement que furent au parlement quant la dite ordinance fuist fait recordont que leurs entencion fuist que mesme l'ordenance serroit estatut & porteroit force du statut & les generals paroles *queconque la dite Alice purra forsaire* se tendroient sy bien al forfaiture des terres & tenemenz come biens & chateulx & toutes autres possessions confideriez les damages & vilenyes per ele faitz au roi & au roialme par quele cause la dite ordinance ce fist en punissement de restrendre & punyr la dite Alice solement. Per qui est agarde en ceste present parlement que la dite ordinance tener force & effect solonc lentente avantdite & qele soit bannyz hors du roialme & ses terres & chateulx tenemenz & ses possessions sybien en demeine come en reversion soient forfaitz au roi & seisez en sa mayn. Et est lentencion du roi & des seignors & ore ordeignez & assentuz en mesme le parlement que toutes les terres des queux autres sont enfeffez purchaes a son oepe & des queux ele prist les profits ou fist la bargain a son profit demeine soient forfaitz a cause de la fraude & disseite que poet estre presume de ceo qele estoit puis enbande par celle cause de mesfaire soient forfaitz au roi & seisez come les autres. Et nest pas lentencion du roi ne des seignors que ceste ordinance ne agarde faitz pur sy odieuse chose en ce cas especial s'etendant a nulle autre persone ne en nul autre cas soient pris en ensample.

Item ordeine est & assentuz que nyent contrestante la dite forfaiture si ele purchasa aucuns terres ou possessions par force ou duresse soyt y par fyn ou par fait en pais ou fait enrollez ou autrement que ce purchase soit tenuz pur null & eient les parties que se sentent grevez leur recovrir par proces en la chancellerie & par avis des grandes du conseil soit droit fait as parties & restitution fait solonc ce que le cas demande issint que les purchases faitz en bone foy ne soient pas annintiz ou adnullez par aucune voie.

Et istum rotulum sic factum & scriptum tradidit & liberavit Edwardus Brudenell clericus de corona &c. ad hoc in parlamento assignat. clerico parlamenti.

Parl. 7. Richard. II. Pole. Cavendish.

Item fait assavoir que le xxiiii jour de May lan present un Johan Cavendish de Londres pessoner foi pleignast en ce parlement primerement devant la commune d'Engleterre en leur assemble en presence d'aucuns prelatz & seigneurs temporelx illoeqs lors esteantz & puis apres devant touz les prelates & seignors esteantz en ce parlement. Au comencement de quel sa plainte il priaist as ditz seigneurs que pur Dieu ils lui fussent surce & hastin pur noïame pur salvete de sa vie & qil eust suffisante suretee de paix de ceux des queux il ferroit sa plainte & par especial il demandast suretee de la paix de monsieur Michel de la Pole chancelier d'Engleterre & celle requeste a lui fuist grantez. Et sur ce par comandement des seigneurs avant ditz le dit monsieur Michel illoeqs present y trovast meinprise pur lui & pur tous les foens de bone paix porter envers le dit Johan cest assavoir le count de Stafford & le count de Salesbris. Et ce fait le dit Johan reherceast comment au darrain parlement il avoit fait poursuite par une fa bille envers Gyboun Manfeld Robert de Paris Johan Hankin & William Horfeman pur avoir restitution des certains biens & merchandises de grant vallue perduz sur la meer en defaute des ditz Giboun Robert Johan & William au temps quant avoient empriz la salve garde de la meer & des merchandises passantz & venantz en le moien temps encontre tous enemys horspris poair roiall quelle sa bille estoit endossez en dit parlement il dist & comys a la chancellerie pur discuter & terminer la matiere y comprise selonc ley & reson. Et dist oultre la dit Johan que de sa dite besoigne il avoit parlance & trettee avec un clerc & familier de dit chancelier qad a noun Johan Otere & par especial de se coment sembloit au dit Johan Otere que le dit pessoner purroit mieltz avenir davor bone seignourie & aide en son cas de mesme le chancelier en qi meins lesloit de sa dite busoigne gisoit haut & baas luy quel clerc demandast copies de ses billes & de mesme la busoigne entier les quelles il lui delivraist & celles veues & entendues il lui permist que pur xl livres al oepe de son dit seigneur quatre livres a son oepe propre ent serroit in bien & graciosment aides de son dit seigneur & de lui sanz nulle difficultee & sur celle promesse le dit Johan Cavendish s'accordaist bien & granteist de lui paier les dites xliii livres en manere qil les demandest. Mais pur tant il dist qil navoit mye alors la some present en main de paier il se obligeroit volentiers par ses lettres al payement faire bien & loialment a certain jour & ensi fuist fait. Et puis apres le dit pessoner ce dit il baillast au dit clerc certaine quantitee de harang sturgeon & dautre pesson de la vallue de ix ou x marcz al hostel & oepe de chancellor avant dit en partie de payement des les xl livres avandites & trois verges de drap de scarlett que luy costa entour xxxii shill. il delivraist al dit clerc en pris de deux marcz en partie de payement de les qua-

tre livres a lui promifez. Et dist oultre le dit Cavendish que combien qil avoit tant fait & promys al oeps del une persone & del autre toutes voiez il ne trovast gairs longement aide favour ne focour en effect en la persone del dit chancellor en fa dite querelle einz il fust par le dit chancellor delaez & encores est & justice ne ent purroit il avoir devant lui combien que as grantz travaux & coustages il ent avoit fait fa purfuite devers lui continuellement de jour en autre & de terme en terme. Affirmant oultre par ses paroles qil ent avoit le greindre fufpition del mal & pur quoi einz fait fait pur tant que le dit Johan Otere lui avoit countez a diverses foitz qil poiait avoir refceuz greindre somme de mefmes ses adversairs pur avoir este avec eux encontre le dit Johan Cavendish qil navoit dycell Johan & auxint pur tant il dist que bien pres as toutes les foitz qil venoit al hostel del dit chancellor pur parler avec lui de fa matire il trovast illoeqs ses adversairs devant lui ou il les enconroit en venontz de mefme le chancellor. Mais fi le dit chancellor doit estre reputez pur coniffant de cest affaire entenduz queconque il ad ore contez il dit ou nemye Dieu le fciet mais le juges vous melleignours. Mais il dist que voirs est que a certain jour paffe le dit chancellor lui fist faire paier pur son dit peffon & avec ce fist debrifer la dite obligation; Mais si ce fist il pur loialtee & confcience ou autrement pur efchuir efclandre & reproche en le cas il ne fciot ore dire mais le juggez vous melleignours. Et il dist oultre pur certeine que pur les trois alnes de scarlett ne fuist il mye encores paieiz.

Et fur ce le dit chancellor primerement devant les prelates & seignours en parlement & secondment devant les seignours & comunes respondist & dist que de ceste affair & de toute ceste matire il est innocent en chefcun degree.

Et primerement quant a ce que luy est furmys par laccufation ore dite que le dit peffoner ad este tout dys delaies & encores est par le dit chancellor & que droit & justice ne lui est fait en fa dite querelle ce ne contient veritee. Et ce vouche le dit chancellor a record toutz les justices & fargeantz de la roialme qont este presentz en la chancellarie movent sovent quant la matire ad este pledez perentre les parties en quelle querelle est pledez tanq; a huisse dont partie gist en jugement & partie cemeint en travers ifint que riens ne remeint affaire ore forsq; le jugement rendre de ce que remeint en jugement & trier ce qest traverser les queux jugement & travers ont este mys aucunement en delaie pur difficultee & pur nule autre cause par ont il nest mye veritee ce dit le chancellor que le peffoner ad ore dit qil nent poet avoir justice & qil est malement delayez.

Et quant al rement del accusation ore faite le dit chaceller jurast par le sacrement de Jesu Christ qil est oultrement innocent & sanz coulpe & puis nent vient unqs a ce confiance forsq; en manere qil dirra qest tiel. Il dist que nouvellement il avoit parlance avec les officers de fa maison pur avoir lestat dicell & pur ordener paiement as ceulx as queux

pur les despenfes de son dit hostell il estoit detour & alours primerement & nonnpas devant aucuns diceulx officers lui conterent la manere coment vne tielle quantitee de harang & flurgeon qestoit portez a fa dite maison nonnpas par voie dachat ne de purvoiance einz en une autre covite manere estoit despensdiz en mefme fa maison dont il se merveillaft pur cause qil navoit confiance del dit peffoner & avec ce alors luy conterent mefmes ses officers coment une tielle obligation estoit auxint faite par le dit peffoner gavoit une querelle pendant devant lui & tantost celle matire a luy desclofe & par lui entendue il estoit meelt grevoufement ennuiez & corutez & jurast a ses ditz officers qil nemangeroit none beveroit deinz mefme son hostell tanque le dit peffoner feust per paieiz de queconque il avoit fait envoyer ou livrez deinz son hostell avantdit & tanq; mefme lobligacion feust derompuz oultrement & defait & fur ce si estoit tantost le dit peffoner de son comandement fait venir en presence del dit chancellor en la chapelle deinz son hostell ouil demoert au present quant il est a Londres en la quelle chapelle ou le corps nostre seignour Jesu Christ sacrez remeint continuellement il jurast par mefme le sacrement en presence de son dit clerc & del dit peffoner combien qil nestoit mye tenuz del faire que son dit clerc navoit unques touchez a lui de la matire devant contez neutrement en avoit il confiance en privee ne en appert sinoun que par relation de ses autres officers en manere avant dite & qil nestoit unques percenar al dit covenant en fait nen parlance en aucun manere & fur ce il fist tantost le dit clerc deprifer mefme lobligacion & fist auxint le dit peffoner estre paieiz pur son peffon avant dit.

Et le dit chancellor par jurast devant les seigneurs par le sacrement de Jesu Christ que fa excufation ore donee si contient plein veritee & encores il est present del prover en quelconq; manere que plesse a nostre seignour le roi & as nobles seigneurs du roialmcy presentz de faire ordener; & priaft le dit chancellor as seigneurs avantditz que aiant due consideration al estat qil portez deinz le roialme parmy son dite office de chancellor que lour pleust de lui ordener de due remede & justice de mefme le peffoner fur le defame & grevoufe efclandre qil ad ore fait si fausement & si horriblement de fa persone en parlement qest le plus haute courte del roialme. A quoi le dit peffoner tantost illoeqs respondist & dist qil ne avoit par fa dite plainte de rienz fait accuser mefme le chancellor einz soulement son clerc dessusdit.

Et pur tant que le dit peffoner dessavoiaft en partie fa dite accusation & ifint le deniaft par fa bouche qil nel avoit mye fait de la persone del dit chancellor einz de son dit clerc. Et auxint parmy ce que si bien le dit clerc come le dit peffoner fur ce examinez couffrent que obligation avant dite si estoit fait al dit clerc soulement & en son noun faux nomer le persone del dit chancellor en ycelle; Et que mefme le clerc fur son serement fait en la cas si fesoit toutdys oultrement excufer son dit seignour

seignour le chancelier qil nestoit unques con-
sant dicelle obligation ne del covenant avant
dit autrement que dessus nest dit. Et pur tant
auxint que les ditz Giboun Robert Johan &
William esteantz personnelment en ce parle-
ment & examinez sur leurs ligeances depose-
rent expressement qils ne donnerent unqs riens
nene promistrent donn ne reward au dit chan-
celler en prive ne en appert par eux ne par
autre persone del monde les seigneurs avanditz
tenoient la persone del dit chancelier pur ex-
cusez de queconque estoit compris en laccusation
avant dite.

Et sur ce le dit chancelier priaist dereschief
as seigneurs illoques que combien que le dit
pessonier lui avoit ilint par fa dite defavouerie
en partie excusez toutes voiez pur tant que
purroit apparoir clerement a chescune discrete
persone qi oiaist la dite accusation que lentente
des paroles quelles le dit pessonier avoit dit
sonerent expressement en moelt horrible es-
claudre de sa persone que mesme le pessonier
feusse mis en arest tanq; il auroit trevez suffi-
sante meinprise dattendre ce que sera jugez
sur ceste matire & especialment sur le faux
esclandre avandite. La quele requeste estoit
otroiez & avec ce comandez par les seigneurs
que si bien le dit pessonier come le dit clerc
feussent mys en arest & einfi fuist fait. Et puis
apres si estoient ils lesez aler a large cest as-
avoir le dit pessonier par la mainprise de Thomas
Spicer & Esteven Skinner qui estoient obligez
corps pur corps davoier ledit pessonier de jour en
autre devant les seigneurs avant ditz ou devant
quelconqs autres juges qi a ce ferreront assignez.
Et puis apres pur tant que le parlement si feust
a cell foitz bien pres sur le fyn & les seigneurs
furent auxint grantement occupiez illoques
entour les autres grosses busoignes del roialme
si estoit en ce parlement la dite querelle avec
toutes choses dependentes & incidentes comys
as justices nostre seignour le roi pur oier &
terminer ycelle finalment si bien pur le roi
nostre seignour come pur les parties selonc le
roi auxi avant come les seigneurs de parlement
eussent peu fait si la querelle eust este tretez
pluis avant en lour presence & en mesme par-
lement.

In Schedule.

Record. fact. apud Westminsterium per
Justiciar. &c.

ET postea die Martis proximi post Octab. Ste
Trin. viz. 14 die Junii anno regni domini
regis Ric. II. post conquestum 7. Robertus Tre-
silian capitalis justiciar. in banco ipsius regis,
Robertus Belknap capitalis justiciar. in commu-
ni banco & Roger. Fulthrop unus justiciar. in
communi banco vigore commissionis parlamen-
ti dicti domini regis apud novum Sarum ultimo
tent. fact. & autoritate ejusdem commissionis
unde in rotulo parlamenti predicti. mentio facta
est specialis contra quendam Johannem Caven-
disb de London sishmonger qui in parlamento
predicto primo viz. coram communitate regni
Angl. congregat. & postmodum alia vice coram

magnatibus ejusdem regni in eodem parlamento
de Michaeli de la Poole milite cancellario dicti
regni & Johanne Ottere clerico ipsius cancellarii
de diversis misprisionibus sibi per eosdem factis
ut asseruit graviter querelavit & ipsum can-
cellarium per hoc multipliciter accusavit & de-
famavit processerunt in hunc modum.

Inprimis viz. ipsum Johann. Cavendisb co-
ram eisdem justiciar. apud Westm. dicto 14
die Junii assidentibus sibi tunc ibid. Hugone
Segrave milite thesaurario Angl. magistro Wal-
tero de Scirlaw custode privati sigilli Johanne
Walbam custode rotulorum cancellarie nec
non Waltero Clopton Willielmo Ricbill & Jo-
hanne de Lockton servient. ipsius regis venire
fecerunt qui ibidem comparsens & de accu-
satione sua predicti. & facti. & in rotulo parla-
menti predicti plenius irrotulat. cujus materia
una cum responsionibus per dominum cancella-
rium in eodem parlamento adhuc in excusa-
tionem suam datis prout continetur in rotulo
predicti. pro majore parte recitat' coram ipso
Johanne de Cavendisb tunc ibidem allocat. fuit
per justiciar. predic' & super hoc quæsitum
fuit ab eodem si quid haberet pro se vel ulte-
rius dicere sciret quare ipse penam in statuto
contra hujusmodi defamatores edito subire non
debeat maxime cum idem cancellarius se in
parlamento illo excusavit & omni alio modo
possibili se inde excusare est paratus. Qui qui-
dem Job. ad hoc respondebat & dixit quod
ipse nunquam personam dicti cancellarii in parla-
m. illo defamavit nec aliquid finistrum sive
inhonestum de persona ipsius cancellarii clam
vel palam in parlamento illo dixit vel alias
affirmavit quovis modo. Sed dicit quod quic-
quid per eum in hac parte fuerit hoc solum
de prefato Job. Ottere clerico ipsius cancellarii
in ista materia factum & sententia verborum
suorum ac modo & forma eorundem nec non
responsionibus & excusationibus ipsius cancella-
rii & aliorum ex parte sua hinc inde factis &
dictis ibidem debite ponderatis. Et ulterius
habend. respondit ad hoc quod ubi prefatus
Job. Cavendisb dixit quod justiciam coram dicto
domino cancellario in causa sua non potuit ha-
bere contrarium expresse habetur de recordo
in cancellar. predicti. prout alias predicti cancellarius
allegavit in eodem parlam. clare constare
debet cuicumq; discreto & intelligenti
quod idem Job. Cavendisb per accusationem
suam predictam, ipsum cancellar' in eodem parla-
m. false defamavit. Per quod consideratum
est quod prefatus Job. Cavendisb super defama-
tione illa convincatur & idem cancellar' recu-
peret versus eum damna sua. Et quod Job.
Cavendisb predicti committitur prisonæ domi-
ni regis ibid. moratur. quousque tam prefato
cancellario de damnis suis predictis quam dicto
domino regi pro fine competenti sibi inde debito
plenarie satisfecerit.

Parl. 10 Ric. II.

En y cest parlemen touz les communes
dun accord & unement assemblez vien-
drent devant le roi prelatz & seigneurs en la
chambre de parlement compleignantz greifment
de Michael de la Pole count de Suffolk darrein
chancellor

Dengleterre lours esteant present & lui accuse-
runt par demonstration de bouche en manere en-
fuant; cest assavoir.

Article 1. Primement le dit count
esteant chancellor & jurrez de faire le profit
du roi purchasa de nostre seigneur le roi terres
tenementz & rents a grant value come piert par
record & rolls de la chancellerie encontre son
ferement la ou il ne lavoit tant deservi confide-
rez la grant necessite du roi & du roialme. Et
entre se a cause que le dit count feust chancel-
ler au temps dudit purchasé faite les ditz terres
& tenementz feurent extendus a maindre value
qils ne vaillent par an par grante some en de-
ceite du roi.

2. Item la ou IX seigneurs feurent assignez
au derrein parlement pur veer & examiner le
stat du roi & du roialme & dire leur avis com-
ment il purra meuz estre amendez & mys en
meliour governance & disposition & sur ce
lexaminement fait & le report sur ce fait au roy
sibien par bouche come en escript le dit nad-
gairs chancellor disoit en plein parlement que
les ditz advisement & ordinance deussent estre
mys en due execution & ce ne feust faite &
en default lui qalars feust principal officier.

3. Item la ou la charge feust grantez per les
communes au derrein parlement per estre des-
penduz en certain forme demande par les com-
munes & assentuz par le roi & les seigneurs &
noun pas autrement les deniers ent prove-
nantz feurent despenduz en autre manere si que
la meer nestoit gardez en manere come feust
ordinez peront plusieurs meschiefs sont avenuz
au roialme & vray semblable est devenir &
ce en default dudit nadgairs chancellor.

4. Item par la ou un Tydeman de Linbergh
gavoit a lui & ses heires de don le roi laiell L
livres per an de la customes de Kingston sur
Hull le quele Tydeman forsist devers le roi &
auxint le paiement des ditz L livres annueles feust
discontinue par XX ou XXX ans le dit nad-
gairs chancellor se sachant purchasa a lui & ses
heirs du dit Tydeman les ditz L livres annuel-
les & fist tant que le roi lui conferme la dite
purchasé la ou le roi deust avoir ove le profit.

5. Item par la ou le haut mestre de saint An-
toigne est fismatick, & par celle cause le roi deust
avoir le profit que a lui appartenoit en le roialme
Dengleterre le dit nadgairs chancellor que deust
avoir avancez & procurez le profit du roi prist a
ferme le dit profit du roi pur XX marcz pur
an & ent pris a son oepe par propre bien entour
mille marcz. Et al heure que la mestre de seint
Antoine en Engleterre qore est deust avoir pos-
session & livere dudit profit il ne la poast avoir
avant qil & deux personnes ovesq; lui favoient
obligez par recognifance en la chancellerie &
par instrumentz en trois mille livres de paier
annuellement a dit nadgairs chancellor & a Johan
son fitz C livres per an a terme de leur deux
vies.

6. Item qen le temps du dit nadgairs chan-
celler feurent grantez & faitz diverses chartres
es patentees des mures tresons felonies
rafures des roules vente des lois & en especial

puis le comencement de cest parlement feust
faite & enseale une chartre de certains franchi-
ses grantez au chastell de Dovorr en desheritefon
de la corone & subverfon des toutes les places
& courts du roi & des ses lois.

7. Item par la ou ordinance feust faite au der-
rein parlement pur le ville de Cant que dys
mille marcz deussent estre cheviz & pur celle
chevance deussent estre perduz III mille marcz
le en default & negligence dudit nadgairs chan-
celler la dite ville feust perduz & nientmayns
les X mille marcz paieez & les ditz III mille
marcz pur le chevance perduz come dessus est
dit. De toutz les quex articles les dites com-
munes demandent juggement du parlement.

A quoi le dit count fist ses respous en mane-
re qensuit.

Primerement le dit count disoit as seigneurs
du parlement coment il estoit chancellor Deng-
leterre & pur le temps representa la persone
du roi en sa absence & demanda s'il deveroit
respondre sanz presence du roi depuis qil feust
empesche des faitz en temps qil estoit chan-
celler.

Secondement le dit count avoit ordeine par
l'avys de son conseil que monsieur Richard Le-
scrop son frere en loi averoit les paroles de se
response des ditz empeschementz. A quelle
chose les seigneurs disoient que feust honest
pur lui de respondre par sa bouche demesme. Et
surce il fesoit protestation q'il purroit adder ou
diminuer a ce response ce que a lui purroit
estre honourable & profitable par avys de son
conseil. Le quele chose lui estoit grante.

Et quant al primer article de son empeche-
ment cest assavoir depuis qil estoit chancellor
qil deust purchacer certains terres du roi &c. La
dit count respondoit que depuis qil feust chan-
celler il ne purchasa unques nulles terres ne
tenementz du roi ne le roi lui dona ne a nully
de soens nulles terres ne tenementz tanq; au
temps que le roi lui fist prendre lestat du count
mes par voie de verroie echange. Cest assa-
voir que come le dit count avoit CCCC marcz
annuels sur la custume de Kingston sur Hull par
descent de heritage pur queux il pluist au roi da-
signer au dit count terres & tenementz a la
value & assigna & dona partie devant qils feust
chancellor & partie depuis & ce au profit
du roi sibien annuellement come par cause dune
summe de mille marcz paie au roi par la dit
count pur celle cause. Et oustre dist que le
roi a son primer viage en Escocce il lui plaist de-
faire duks banneretz & chivalers al honour de
lui & de son roialme il pleust a lui sanz de-
sire ou covetise dudit count de sa propre motion
de lui faire count & lui comanda de prendre
lestat & noun de count de Suffolk en lieu de
celui que nadgairs morust & apres ceo noma
la quantite de ceo qil averoit pur maintenir
celle estat. Et outre ceo disoit qil voilloet as-
signer mesme la quantite de les terres que esto-
ient au dit count de Suffolk que derrein morust.
Et pur ce que la dit count disoit au roi que
madame la reignee & la dame de Suffolk avoi-

ent toutz celles terres a terme de lour vies en lour meyns nostre dit seigneur le roi disoit q'il ordeigneroit aillours pur lui a la vallue tanq; mesme les terres lui feurent descenduz. Et quant a la desert &c. le dit count respondut que anomer fa desert ne gist en sa propre bouche honouablement a dire mes une chose dist il que tanqe persone que ce soit que prent aucune charge sur lui tantost ad il deservi ce appartient a mesme sa charge. Et outre dist qil avoit este pris deux foitz de guerre & un foitz en Alemanyne quant il estoit messager pur la mariage du roi & avoit a mesme le temps tant de damage & peril en son corps & perde de ses biens qil ne vorroit pur atantz des terres avoir tieux meschiefs sil nequidoit meulx eschaper qil ne sevoit a mesme le temps autres choses il ne voet nomer mesmes mes si pleust au roi ascuns choses recorder bien soit &c. Mes le dit monsieur Richard Lecrop disoit pur le dit count que le dit count avoit travaille a baner per XXX ans & plus sanz deshonour ou reproeve loiez soit Dieux & ad este capytain de Caleys & admiral & envoie en diverses foitz en message & tretees du roi & auxint este chancellor Dangleterre par grand temps & du conseil du roy & ne feust mye treit de petit estat a cest honou du count mes endowez honouablement & fufficentment pur lestat qest plus pres lestat du count. Les quelles choses purront estre causes de desert ovesq; mesmes les causes que la dit count ad nome devant pur lui mettre a tiel estat & honou. Et quant as empeschements de les extentes que feurent faitz en desceit du roy &c. le dit count respount qil pria au roi qil lui plerra assigner ascuns en queux il fassoit de veer que le ditz extentes seroient resonablement faitz. Et le roi disoit que ce ne seroit mye honouable pur le dit count de faire nouvelles extentes du temps qil estoit chancellor qar seroit suspecious que cause de celle office les extentz seroient faitz plus favourablement mes la voluntee du roi feust que la dit count prendroit les extentes que feurent faitz devant le temps qil pensoit de lui faire count ou que le dit count qui doit davorir mesmes les terres & de ce nully purroit parler mal. Et pur ce le dit count dist que nulles extentes des ditz terres feurent faitz au temps qil estoit fait chancellor mes qils ad pris a plus hautes extentes & que sont plus profitables au roi. Et outre ce le dit count dist que son dit estat du count ovesq; ce que le roi lui dona pur mesme lestat meyntenir feust conferme en plein parlement & sur ce sefoit son homage pur la dit estat chargez de bouche de monsieur Despargne & duc de Lancastre & sur ce le roi lui dona les patententes faitz en ses maynes propres en noun de possession comandant le clerc du parlement de les mettre en la rolle du parlement & ent enrollez.

Item quant al secont article voir est que les IX seigneurs assignes firent report de leur avys au roi & le dit count par commandement de roi disoit que la voluntee du roi estoit que seroient mys en execution quele chose les officers

& autres du conseil le roi & lui firent en partie come a Chirburgh & Brest cestassavoir annuellement au profit du roi v M marcz & plus & il fist sa diligence come il poaist que tout le dit avys deust avoir este mys en execution tanq; come en luy feust. Et pur ce que les actes & l'execution des ditz points touchent les faitz dautres officers & auxint en ascun manere autres du conseil du roi le dit count respount qil est avyse que autres officers joyndrent a lui en cest respons & en cas que eux ou nul autre lui verra assigner defaut en especial il sa excusera si Dieu plect.

Et en mesme la manere, il respont a la tierce article & a la derrein.

Item quant al quart article il dist que la dit Tydeman avoit L livres annuels sur lahciente custome de Kingstone sur Hull a lui & ses heires enheritablement a toutz jours du grant le roi E. aiell le roi gore est feust paie de ycell long temps come piert per l'accompt des custumers de Kingstone sur Hull en leschequer nostre seigneur le roi. Quel Tydeman pur mille marcz queux il devoit au dit count lui granta par son fait long temps passe en la temps le roi E. aiell les L livres avantditz avoir & prendre audit count & ces heires a toutz jours. Et per cause que le dit count fist restitution del patent du dit Tydeman & le roi deschargez des arrerages le roi lui fist pardon de mesme le purchase sanz ce que le dit count lors conust & unqore fait aucune forseiture ou dette envers le roi du dit Tydeman.

Item quant a la quint article le dit count devant qil feust chancellor pria au roi de donner a Johan son fitz lospital en la procuracie de seint Antoigne en Engleterre & le roi lui granta franchement sanz rien rendre ou autre condition & lui fist un garrant au privie seale. Sur quoi le gardein du privie seale pur ce qil y avoit une eglise approprie a mesme lospital ou procuracie ne verroit faire garrant du grant sanz une certaine ferme rendre au roi & a cause de paiement de y cell il fist la garrant as ditz count & Johan rendant vint marcz per an durrant la guerre. A quele temps le dit count ne savoit null vallue del dit hospitall ou procuracie & a plus-tost qil savoit il monstra au roi qil feust de la vallue de quatre cent marcz per an & le roi disoit qil lui pleroit bien qil faveroit tout soit il de greindre vallue. Et le dit count disoit au roi que la dit rent ne feust mye del possession de temporele ne spirituele mes des coillet de pardon & qil ne voillent mye prendre le profit a son oeps mes emploier en almoigne sil pleust au roi quele chose il ad faite par assent du roi &c. Et si appiert overtement que le roi ne feust deceu depuis que la vallue lui feust clerement monstré & mys par assent du roi en almoigne sanz profit temporel du dit count. Et outre il fist protestation qil nest pas tenuz de respondre a la partie par ceste empeschement. Nientmoins pur declaration de son estat il dist que a cause que la benefice feust spirituell el envia al pape pur avoir ent collacion a son dit fitz quell le

pape lui attroia issint que son dit fitz feusse professe en lordre deinz certain temps & pur ce que pur certains causes son dit fitz ne poiat estre professe deinz le dit temps il remanda a la dite court pur avoir ent dispensacion & ceste chose issint pendant en delay vient le mestre qore est ove les bulles del apostoil de mesme la chose & par la issint & treita ove la dit ore count qil cesseroit de seure plus avant vers la dite court pur son dit fitz & issint de son bon gree per celle encheson grante de rendre annuellement al dit count & son dit fitz les centz livres contentuz en la dite article.

Item quant al sisme article en quele est especifie dune chartre grante a Dovorr il dist que garrant lui vient de la faire & pur ce que ce feust le chastell & al profit le roi sanz male entent du dit count elle passa le seale legerement sanz grande avys nient entendant lours que feust encontre les loies. Et si ascun vorrot avoir declare ou enforme le dit counte que ce eust este prejudicial au roi en ses cors il neust point este enseale & tout feust elle enseale il la voilloit avoier repelle & dont nulle damage nest unqore aveniz &c. Et quant as autres chartes especifies en mesme l'article il les fist per garrant sanz male entencion ou covyne de luy en null point. Et outre il prie que nulle novellerie soit mys sur luy autrement que nad este avant ces heurs sur tieux officers entendant que si chancellor face patente encontre reson ou juge rendre jugement encontre la loi que tiel patente ferra repelle et tiel jugement revercez sanz autre punissement offraire a tiel officer ou juge.

Et les communes repliantz al response du dit count del primer article monstrerent as seignours la copie de son serement fait quant il feust creez chancellor en manere qensuit: *Vous jurrez que bien & loialement servirez a nostre seigneur le roi & a son poeple en loffice de chancellor & droit ferrez as toutes gentz pources & riches selonc les loies & usages du roialme. Et loialement conseilerez le roy & son conseil celerrez. Et que vous ne sarez ne sufferez le damage desherite son le roy ne que les droitures de la corone soient destruz per nulle voie si avant come vous le poez disturber & si vous ne poez destourber vous le ferrez savoir clerelement & expressement au roi ensemblement ove vostre loial avys & conseil. Et que vous ferrez & purchaserez le profit le roi pur tout ou vous le purrez faire raisonablement. Si Dieu vous aide & les seints evangelies.* Priantz que ce lieu & bien entendu & considererez les circumstancez de son dit response si bien cest affavoir de ce que nad pas dedit qil ne receut du don le roi puis qil estoit fait count esteant en loffice ce du chancellor diverses terres & tenementz come contentuz est en lempchement come qil ad coniz overtement qil receut du roi autres terres & tenementz que sont certains & seures a la value de quatre centz marcz per an en eschange de quatre centz marcz annuels quels il avoit sur la custome de Kingstone sur Hull que sont casuels & nemye si seures nient enformant le roi clerelement de son damage celle partie, & coment qil ad dit qil receut partie des ditz terres & tenementz issint pris en eschange devant qil estoit

chancellor les communes dient qil estoit lours du privie conseil du roi & ace jurrez & puis en la creation del office du chancellor altrit de novell par serement & il en cell office agreant as eschanges per lui devant suppliez prist & receust du roi le remenant des ditz terres & tenementz en pleine per fournissement des eschanges suiffditz & demandont jugement du parlement sur tout son respons desuldit.

Et al response del second article les communes repliantz disoient que depuis qil conste en sa primere protestation qil representa lestar du roi tancome il estoit en tiel office & issint lestandy son poiar sur toutz les autres per qoi coment que defaut estoit en les auters il ne poast per tant estre excuzez & per especial ce que le roi lui comanda a dire en parlement come il ad dit il estoit le plus tenuz de mettre la chose en execution & descome il ne dist point que les damages ne sont avenuz come ils surmettent ils priont jugement de parlement.

Et al respons del quart article les communes repliantz disoient qil ferra trove de record en leichequer lavant dit Tydeman estre dettour au roi en grandz soimes come ils supposent & cell cause appartient au roi le dit rent tout neust il autrement forfait & issint fuist le roi descet & prient que les recordes soient examinez. Et dient outre que un Neel Hakeney fuist occis par sa feme & sa servant & le dit Tydeman pur quele felonie les ditz feme & servant furent ars & le dit Tydeman sensuy.

Et al respons del quint article les communes replierent purposantz ensampliez dun William de Thorpe nadgairs cheife justice du bank le roi que mort est surmettantz qil prist xx livres dune partie qavoit affaire en plee devant lui & pertant vendy la loi pur quelle cause il estoit a-jugge a la mort & forfaiture de ses terres & chateux. Et disoient qen ce que le dit count esteant issint chancellor prist le ditz centz livres du dit proviseur devant qil fist le livre al dit proviseur hors des mayns du roi des ditz profitz quele livre il deust avoir fait selonc le commandement du roi franchement sanz riens prendre lours semble qil vendy la loy & prierent jugement.

Et al respons del sisme article les communes repliantz disoient qil apertenoit a lui si sage come il est destre bien myse & bien conseil que nassenteroit ne ferroit tiele chose que cherroit en desherison du roi & oppression de son poeple desicome il poaist avoir en sufficeante de conseil des justices & des autres a sa volente & prient jugement de parlement.

Et sur ce le dit count repliant a la replication des communes touchant son serement disoit que prendre les parolés du dit serement generalment sanz autre especial entendement null chancellor ensealeroit james nulles choses de donn ou grant du roi a nulle persone des terres & tenementz ou autre biens sans offense de son tement. Mes que la dit count dist que nest pas compris en ladic serement ne defenduz a lui de prendre a luy mesmes de donne du roi nient plus qe nul autre person.

Et depuis que les dons donez as autres personnes en le dit voyage des diverses estats ne as autres devant ne sent empeschez ne tenuz encontre le serement du chancelier il semble a lui que ne plus il doit este empeschez pur donns donez a lui pur son estat depuis qen le dit serement nest defenduz ne restraint a lui plus qas autres & plus especialment pur ce que le dit estat & les donz donez sont confirmez per plein parlement. Et outre dist qil accepta le serement du chancelier alentent qil le tondroit solonc son sen sa conscience & poair. Et pur les causes devant expressez il dist que devant Dieu a respondre qil ne pense rien avoir fait en les choses fuissit encontre son serement & sa conscience. Et nentende mye si le chancelier enscellent donns du roi as seignours pur leur estat menteyner ou pur autre cause resonable per gorant du roi que lui vient soit encontre son serement &c. Et dist que ce qest compris en le serement *qil ne souffrera damage ne disheriteson du roi* &c. ce est a entendre a ce qil entende des matiers dont le roi nad conissance & ce appiert per la cause compris en le serement qil ferra savoir au roi clerement & expressement & apres que le roi est enforme en tiel manere le chancelier purra faire le comandement du roi sanz offence du dit serement. Et dist que de son estat & de ce que le roi luy dona fust expressement fait per le comandement conissance & volonteé du roi & issint nient encontre son serement & nentendre mye que de celle matire ne doit estre empesche.

Item quant a ce que les communes disoient que le dit count avoit deceu le roi a cause qil avoit pris de roi le manoir de Feaxflete en vallue de L livres quel manoir vaut cc livres per an &c. Le dit count respont que monf. William de Morsers lui disoit qil avoit ewe les deux parties du dit manoir ove le rent en Northdalton a ferme per vij ans pur lx marcz per an & qil avoit perduz de celle ferme en le dit temps C marcz. Et outre dist que le dit manoir ove les dis marcz de rent en Dalton tout ensemble sont estenduz come piert en la chancellarie forsque a xli. livres ix souldz iij deniers ob. Et pur ce que le dit count avoit entenduz que le count de Kent avoit les ditz deux parties du dit manoir ensemblement. ove les ditz dyz marcz de rent fuissit en value de L marcz si que sont entiers le manoir fuit de vallue mesme les L livres. Et oustre dist que le dit manoir ove les marcz fuissit ne vallent puis a paine a tant & dist que queconque persone que voet sustenir les charges du dit manoir sufficalment & lui paier pur les deux parties L marcz per an & qant la tierce partie soit eschue de lui adonques paier pur la dit manoir ove les x marcz de rent L livres per an qil le ferra de bone coer.

Item quant a lempeschement des communes de L livres de la pension del proviseur de saint Anroyne & que le dit count deveroit vendre les lois & mistrent en sample de monfieur William de Thorpe, &c. Le dit count respont que les casés ne sont rien semblables qar les parties plederent devant le dit monf. William come devant leur jugge per les lois d'Engleterre en qele cas null jugge ne doit prendre de null partie de leur

faire droit. Mes en le cas du dit provisions nulles parties plederent devant le dit count come chancelier mes le dit proviseur vient a luy ove bulles de nostre seint pier le pape & neime come a chancelier na jugge en celle cas mes come pier & amy a Johan son fitz aquele heuire home ne savant si le dit Johan avoit esploite de la grace du pape ou nemye & auxint defautes feurent trovez par le counseil du dit count en les bulles du dit proviseur & per mesme la cause le dit proviseur par les amys de sa bone gree proffist une en pension de Clivres pur lesser sa fuite en la court de Rome pur son dit fitz & pur ce que nenpecherait ses bulles si que les choses fuissint ne feurent faitz come devant jugge mes par amyable composition come poet estre prove par instrument, & par tesmoigner en ceste ville. Et issint ceste motiere ne touche mye les loies Dengleterre & touz jours le dit count nentende mye qil ferra tenus de respondre a la partie en cest cause.

Et sur ce apres les respons du dit count donez as accusomentz des dites communes & les replications a y ceux faites dune partie & d'autre le dit count a la requeste des dites communes pur la grandesse des defautes a lui issint surmises estoit aresté par comandement du roi & comys en la garde de conestable Dengleterre & puis lessé a mainprise.

Juggement.

Et pur ce que le dit count nalléggea point en son respons qil observe lessé de son serement en ce qil jurast qil ne faveroit ne ne soefferoit le damage ne la disheriteson du roi ne que les droitures de la corone feussent destrutz par nul voie si avant come il les poiait destourber & sil ne les poiait destourber il le ferroit favoir cleurement & expressement au roi ensemblement ove son loial avys & conseil & qil ferroit & purchaceroit le profit le roy par tout ou il le purroit faire resonablement & il tancome il estoit ensy principall officer du roi sachant lestar & necessite du roi & du roialme prist du roi tielx terres & tenementz come est suppose par lempeschement a luy en le dit primer article surmys. Et coment qil alleggea en son respons queles donns a luy issint faitz feurent confermez par pleine parlement il y a nul tiel record en roule de parlement. Per quoy agarde est que toutz les manoirs terres tenementz rentz services fees advowsons reversions & profitz ove leur appartenances par lui issint receuz du roi soient reseizez & reprenez en les mains du roi avoir & tenir a nostre dit seignour le roi & ses heirs si pleinement & enheritablement come il les avoit & trent le donnent fait al dit count. Et que touz les issues & profitz ent recevez ou euez al oeups du dit count en le mesme temps soient levez al oeups nostre seignour le roi des terres & chatelx du dit count illoeqs & aillours. Mes nest pas lention du roi ne des seignours que celle juggement sestende de lui faire perdre le non & le tittle de count ne les xx livres annuels queux le roy lui granta aprendre des issues du countee de Suffolk pur le noun & tittle avantditz. Et outre pur ce que le dit count nad pas dedit qil nestoit du prive conseil du roi & lui jurre qua nildemanda primes du roy

la dit eschange estre faite & ad conuz que devant les ditz eschanges per fourmez il feust fait chancelier en quell office il feust asrist par son serement fait en la fourme avandite.

Et il esteant issint & dit office prist du roi partie des ditz quatre centz marcz de terre par refon du dite eschange agreant al dite convenant deschange qil fist ensy devant qil feust chancelier & nallegea point en son dite respons que le roi feust distinctment enfourme de son damage celle partie cest assavoir en ce que le roi dona a luy manoirs terres & rents que sont certeignes & feures & non poent vraisemblablement estre destrutz ne adnulliez pur les avanditz quatre centz marcz annuels que sont non certains & levables & demandables des custumes & ensi come casuels & en diverses cas que purroient aventurouement eschere; agarde est que touz les terres & tenementz issint prises par le dit count pur les escharges fufditz soient reprises en mayns nostre seigneur le roi a tenir a lui & ses heirs en manere come il les tient devant le don ent fait en le dit eschange.

Et que les issues & profitz prises & eues des terres tenementz & profitz fufditz puis le dites eschanges remaignant al dit count en recompensation des dites quatre centz marcz annuels queux il avoit ensi enheritablement de la custome devant les eschanges fufditz. Hors pris que si les ditz issues & profits issint prises puis les dites eschanges sestendent a greindre vallue que les dites quatre centz marcz annuelles qadoncs le roi eit celle surplus a lever des terres & chateux du dit count illoeqs & aillours.

Et quant al article contenant que le dit count deust avoir purchase cynkante livres de rent de Tydeman Lymborgh pur ce que le dit Tydeman avoit les avant ditz cynkant livres de rent per en aprendre tant fousement de la custome al port de Hull & nemye aillours la quelle custome appartient al corone nostre seigneur le roi dauncien temps. Et le dit Tydeman estoit alien come bien est conuz ce tient hors du roialme d'Engleterre par trent ans & plus & desconuz est sil soit en vie ou noun & nest pas allegge que ascun de sa part le challengea de long temps. Et le dit Tydeman ne poast en nul manere translater le dit rent en autre persone par voie dalienacion sanz le bone volonte du roi pur ceo que lestat qil avoit en le dit rent feust a lui & ses heirs tantfousement & non pas a ses assignes come par la chartre du roi qil ent avoit & qest de record pleinement appiert. Et le dit count ne monstra pas que le dit rent feust purchase del dit Tydeman en Engleterre par quoy y ne poet estre conuz si la dire purchase fuist bone & legale on non. Et le dit count nallegea point en son respons qil quant il purchaser pardon & confirmacion du roy del purchase du dit rent monstra pleinement au roi qil purroit avoir reteni le dit rent a son propre oeps au meyns tanq; le dit Tydeman ou ses heirs linealx neez deinz la ligeance & conuz eussent demande la dite rent par qoi y semble par les ditz causes que le roi en le grant des

ditz pardon & confirmacion que demanderent par refon grant fin & estoient faitz sanz fin si feust desceu.

Et auxint come le dit count prist apres de don le roi lavandit manoir de Faxfleet & des marches de rent que feurent certains & feures en eschange pur les ditz cynkant livres de rent que feurent casuels pur ce que le dit port de Hull poet par possibilite estre adnullie par florz de mere ou la passage de loyns illoeqs destrurbe manta anienty & auxint par diverses autres causes & ensy mesq; le dit count eust en bone & profite estate en le dit rent il nallegea point en son respons qil fist pleinement son devoir envers le roi en la price du manoir & des marches de rent fufditz en eschange en la fourme avandite & ensy son dit respons est meyns fuffisant de lui excuser del defaut al lui ent furmis. Et pur ceo agarde est que si bien le dit manoir de Faxfleet & les dis marches de rent fufditz ove les appartenances soient reprises en mayn du roy a tenir a lui & ses heirs come il les tient devant le don au dit count ent issint faite come le chartre de pardon & confirmacion del purchase des ditz cynkantz livres ensi faitz au dit count soit repelle & autrement adnullie. Et que les avant ditz cynkant livres de rent soient retinez es meyns du roy & ses heirs en fourme come ce esteit avant la purchase que le dit count si dist a lui estre en fait si ascun y fuist & que les issues & profitz rescuez ou eues al oeps du dit count si bien du dit manoir de Faxfleet & de les dis marches de rent come les issues & profitz des ditz cynkante livres de rent sil ascuns prist par refon del purchase avant dit soient levez al oeps nostre seigneur le roi des terres & chateux du dit count illoeqs & aillours.

Et quant al article conteignant le profit de Seint Antoyne pur ce que le mestre del meson de Seint Antoyne a qi le dit profit provenant en Engleterre estoit due a ce qest dit est systmatick & auxint del enmite du roi & poir de France & pur tielle repote a donq; & unqore est quoi tout le dit profit duist appartenir au roi sicome de systmatick & aliens quel chose ne deveroit de refon avoir este discon audit count avant qil demandast du roi le dit profit & il conust expressement qil le demanda a son fitz come un hospital & nallegea mye en son respons que le roi quant il lui granta le dit profit estoit enforme des choses fufditz. Et auxint en ce quantil fuist tiel officer come devant est dit il envoia a la court de Rome pur mesme le profit avoir a son fitz de la collation du pape come benefice de seint esglise & devoir ensi la dit profit hors du mayn du roi par collation del apostoil & il ne dedist point qil ne receust des ditz profitz quatre centz marcz au nient alleggeant qil les rendist au roi. Et come apres le dit count conust qil fist une bargaine ove le provifour que clama la dit profit du grant du pape danon du dit provifour cent livres per an a lui & Johan son fitz a terme de lour deux vies pur deliverer le dit profit au dit provifour pur queux

centz livres ensi apaiers a lui & son ditz fitz il prist fuerthe del proviseur par recognizance & obligacions des diverses somes nient contrestant que le roi lui avoit comande par sa lettre de deliverer hors de ses meyns al dit proviseur tout le profit avant dit la ou y semble pur riens que uncore est monstre que tout le dit profit deust avoir demure en la mayn du roi pur les causes avantdites au meynes tanq; il eust este discussé ou le dit profit feust benedice de seint esglise grantable par la pape ou appurtenant au roi par reson de simacie & enemyte du dit mestre & il nalllegea mye en son respons que le roi feust clerement enfourmez des choses suisditz. Par qui agarde est que les avantditz quatre cent marcz per an du temps que le dit profit lui estoit insint grante per le roi tanq; au temps qil delivra mesme le profit au dit proviseur come auxint les ditz centz livres anuels refceuz apres del dit proviseur tanq; en cea soient levez al oepe nostre seigneur le roi de ses terres & chatelx & que tout le profit que deust desore appartenir audit count par raison du dit recognizance ou dautres obligacions ou covenantes ensy faitz en seurte de la paiement des ditz centz livres remaignent al oepe nostre dit seigneur le roi come forfait & que le dit proviseur soit ent outrement descharge envers le dit count & son fitz. Et pur les defautes & mesprisons susditz des quex le dit count est ensy conviét pur non suffisance de ses ditz respons agarde est qil soit comys a prisone du roi a y demurrer a volonte du roi & qil ne soit delivere du dit prisone avant qil eit fait fyn & ranceona la volonte du roi. Et quant al mille marcz quex il ad allegge qil ad paie au roi pur les ditz eschanges agarde est que les ditz mille marcz remaignent en les meyns du roi come en partie du paiement del fyn & ranceon que le dit count ensy fera a roy avant qil soit delivere du prisone.

Parl. 5. Hen. IV.

Item Vendredy le viii jour de Fevrier le count de Northumbre vient devant le roy & les seigneurs & communes en parlement & illoques le chancellor d'Engleterre luy monstra coment Mesquarday lors darrein passez il avoit este devant le roi & les seigneurs & communes en mesme le parlement & illoques il avoit priez au roi come il avoit fait autrefoitz a son venue devant luy a Everwyk qil pleast a mesme nostre seigneur le roi de luy faire grace de ceo qil luy avoit mespris envers luy nient gardant ses loies & estatutz come ligeance demande si come par une petition par luy baillie en parlement escript en Engleys dont le tenure sensuite y purra apparoir pluis au plein.

To my most dreadfull and soveraign liege lord.

I your humble liege beseech to yowre hynesse to have in remembrance my coming to yowre worshipfull presence into York of my free will be yowre grace goodly letters, where I put me in yowre grace, as I that night have kept yowre lawys & statuts as ligeance asketh, and specially of gederyng of

power, and gevyng of liverces, as that time I put me in yowre grace and yit de, ze feyng and hit like to yowre highnesse that all graceles shold I nat goe. Wherefore I beseech yow that yowre high grace be sene on me att this tyme, and of othir thyngs whiche ye have examined me of I have told yow pleylny, and of all I put me holy in yowre grace.

Quele petition par comandement du roi examinez par les justices pur ent avoir leur conseil & advis celle partie par protestation fait par les ditz seigneurs que le jugement appartient a eux tantseulement. Et puis lue & entendue mesme la petition devant le roy & les ditz seigneurs mesmes les seigneurs come piers du parlement as quex tielx juggements apparteynent de droit eue sur ceo par comandement du roi deliberation competente & oiez auxi & entendu sibien les estatutz faitz lan vingt & quint du roi Edward aiel a nostre seigneur le roi qorest de declaration de treson come les estatutz des liverces faitz en temps mesmes nostre seigneur le roy qorest adjudgeront que ceo que feust fait par le dit count come il est contenuz deinz la dite petition nest pas treson ne felonie mes trespas tant soulement pur que le trespasse le dit count deust faire fyn & ranceon a la volonte du roi. Sur quoy le dit count most humblement remercia nostre seigneur le roi & les ditz seigneurs ses piers de parlement de leur droiturell jugement & les ditz communes de leur bons coers & diligence faitz & monstrez celle partie. Et pria outre mesme le counta nostre dit seigneur le roi qen affermance de cestes matires pur oustre toutz awerouistes & malvoises suspicions il purra estre jurrez de novell en presence du roy & des seigneurs & communes en parlement. Sur quoy en mesme le parlement le dit count fist serement sur la croice de Canterbirs desre foial & loial liege a nostre dit seigneur le roi & a son eisme fitz monsieur le prince & a les heires insantz de son corps & a mes seigneurs ses freres & leur issue successivement & enheritablement a la corone solonc les loies d'Engleterre. Et puis apres mesme nostre seigneur le roy eiant en memoire coment a Everwyk il avoit mys au dit count que tout sanz grace il ne deust passer & auxi preignant en sample de les paroles de seinte escripture coment Jesu Crist ne vorroit faire home sayn en un membre tant soulement mes qil luy ferroit sayn en toutz ses membres entierment & veullant pur tant monstrier au dit count pleyne grace pardona a mesme le count les fyn & ranceon qa luy appartenoient a cause del trespas fuiseite le contempt fait celle partie. Apres quelles matirez ensi terminez lercevesqe de Canterbirs pria au roy que come le dit Mesquerday darrein passe au temps que le dit count de Northumb. feust en dit parlement mesme lercevesque avoit priez a mesme le count que come le duk d'Everwyk & luy mesmes & diverses seigneurs espirituels & temporels & autres personnes par ascuns malveullantz avoient estre esclandres de ce que les ditz duk & ercevesq; & les autres suisditz deussent avoir este del covine abbot & assent de monsieur Henry Percy &

& monsieur Thomas Percy de la levee de guerre que feust fait par eux encontre nostre dit seigneur le roi le dit cont vorroit alors declarer tout ceo qil savoit en celle matire. A quelle temps mesme le cont pria qil purroit ent estre excusez tanqal temps qil ferroit en fa liberte a quel temps si le roy luy vorroit comander il ferroit prest a monstrier & declarer ceo qil savoit & ent dire la veritee celle partie. Que plerroit a nostre dit seigneur le roi desicome le dit cont soit au present en fa liberte chargier mesme le count sur le serement qil ad fait sur la dite croice de monstrier & declarer overtment en parlement ceo qil sciet en celle matire. Sur quelle charge enfy a luy done mesme le cont diit qunges jour de sa vie il ne savoit des ditz duc ne ercevesq; ne de les autres fuifditz riens que sonneroit en derogacion del honorable estat du roi ou de sa roiale majeste mais qils feurent & sont a luy bones & loialx lieges. Et pur tielx mesme nostre seigneur le roi les purroit tenir & reputer & mettre en eux siablement salfiance en peril de sa alme & par le serement qil ad fait come devant est dit. Et outre ceo le dit cont de Northumbr. humblement enremerciant les seigneurs & communes leur bons & entiers coers a luy monstrez leur sist request de remercier nostre dit seigneur le roi de sa grace a lui faite des ditz fyn & ranceon. Et que si unques il ferroit aucune chose encontre nostre seigneur le roi autre que ligeance demande qils ne ferroient pur luy prier ou request quelconque par celle encheson mais qils ferroient tout autrement encontre luy. Et auxi mesme le Vendredy adjudgez feust par le roi & les seigneurs en parlement que la levee de guerre faite par les ditz monsieur Henry monsieur Thomas ferroit tenez pur trefon & ceo sibien de eux mesmes come des autres qi feurent en leur compaignie au temps du dit levee forpris ceux a queux le roi avoit fait grace & pardon les queux grace & pardon le roi voet qils estoient fermement en lour force & vertue.

Ex rotulo parlamenti anno xxxi H. VI. No. 26.

Item, the Friday the 15 day of February it was opened and declared to the lords spiritual and temporal, being in the parliament chamber, by the counsel of the duke of York, that whereas *Thomas Thorpe the Monday the day of the month of the year of the reign of H. VI. 31.* came to the place of the bishop of Durham, and then and there took and bore away certain goods and cattle of the same dukes against his will and licence. And thereupon the said duke came and took an action by bill in *Michaelmas term* last past, against the said *Thomas* in the court of the exchequer according to the privilege of the same court, for so much that the said *Thomas* was one of the court; by which privilege he ought to be impleaded in that court of the exchequer in such cases, and in none other court. To the which bill the said *Thomas* wilfully appeared, and had divers days to impale at his request and desire, and to the said bill and action, answered and pleaded not guil-

ty. Whereupon there was awarded in the said exchequer a *venire facias* to the sheriff of *Middlesex* returnable in the said exchequer, and there by the jury that passed between the duke and the said *Thomas*, it was found, that the said *Thomas* was guilty of the trespass contained in the said bill, and the same jury assessed the damages to the said duke for the said trespass to a thousand pound, and for his costs ten pound; and thereupon judgment was given in the said exchequer, and the said *Thomas* according to the course of the law was committed to the *Fleet* for the fine belonging to the king in that behalf. And thereupon it was prayed humbly on the behalf of the said duke: that it should like their good lordships, considering that the said trespass was done and committed by the said *Thomas*, since the beginning of the present parliament: and also the said bill and action were taken and scanned, and by process of law judgment given thereupon against the said *Thomas*, in time of vacation of the said parliament, and not in parliament-time; and also that if the said *Thomas* should be released by privilege of parliament, e'er the time that the said duke be satisfied of his said damages and costs: the said duke should be without remedy in that behalf; that the said *Thomas* according to the law, be kept in ward, to the time that he have fully contented and satisfied the said duke of his damages and costs. The said lords spiritual and temporal, not intending to impeach or hurt the liberties and privileges of them that were come for the commons of this land to this present parliament, but equally after the course of the law to minister justice, and to have knowledge what the law will weigh in that behalf, opened, and declared to the judges the premises, and asked of them, Whether the said *Thomas* ought to be delivered from prison by force and vertue of the privileges of parliament or no?

To the which question the chief justice in the name of all the justices after some communication and mature deliberation had among them, answered and said, that they ought not to answer to that question, for it hath not been used afore-time that the justices should in any wise determine the privileges of his high court of parliament, for it is so high and so mighty in his nature, that it may make law, and that which is law, it may make no law: and the determination and knowledge of that privilege belongs to the lords of the parliament, and not to the justices; But as for declaration of proceeding in the lower courts in such cases, as writs of *superfedeas* of privilege of parliament to be brought and delivered, the said chief justice said, that there be many and divers *superfedeas* of privilege of parliament brought into the courts, but there is no general *superfedeas* brought to surcease all process; for if there should be, it should seem that this high court of parliament that ministrerth all justice and equity, should let the process of the common law, and so it should put off the party complainant without remedy, for so much as actions of common law be not determined in this

this high court of parliament. And if any person that is a member of this high court of parliament be arrested in such cases as be not for treason or felony, or security of the peace, or for a condemnation had before the parliament, it is used that all such persons should be released of all such arrests, and make an attorney, so that they may have the freedom and liberty freely to attend upon the parliament.

After which answer and declaration it was thoroughly agreed, assented and concluded by the lords spiritual and temporal; that the said Thomas according to the law, should remain still in prison for the causes aforesaid, the privilege of the parliament, or that the same Thomas was speaker of the parliament notwithstanding. And that the premises should be opened and declared to them that were come for the commons of this land, and they should be charged and commanded in the king's name, that they with good hast and speed proceed to the election of another speaker.

The which premises, forasmuch as they were matters in law, by the commandment of the lords were opened and declared to the commons by the mouth of *Walter Moyle*, one of the king's serjeants at law, in the presence of the bishop of *Ely*, accompanied with other lords in notable number; and there is commanded, and charged to the said commons by the said bishop of *Ely* in the king's name, that they should proceed to the election of another speaker with all godly hast and speed, so that the matters for which the king called this parliament, might be proceeded in, and this parliament take good and effectual conclusion and end.

Item 16to die Februar. tunc prox. sequenti praefati communes per quosdam de sociis suis declaraverunt dominis spiritualibus & temporalibus in praesenti parlamento, quod ipsi mandatum ex parte domini regis pridie sibi injunct. cum omni diligentia exequentes elegerunt loco praefat. Thom. Thorpe, Thom. Carleton militem prolocutorem suum, humillime deprecando quatenus praefatus dominus rex hujusmodi electionem vellet acceptare.

Quibus per dominum cancellarium Angliae de mandato dicti domini regis, & avisamento concilii sui extitit respons. quod idem dominus rex de electione praefati Thom. Carleton se bene contentavit, injungendo eis quatenus ad expeditionem negotiorum parlamenti praedicti cum omni diligentia procederent.

Judgments upon writs of error in parliament.

If erroneous judgments be given in the king's bench, or in the exchequer chamber, upon the statute of 27 *Eliz. cap. 8.* the party grieved may have his writ of error returnable in parliament, but not upon judgment given in the com-

mon pleas, until the same be reversed or affirmed in the king's bench, as it was answered in parliament under *Edward III.* in the case of the bishop of *Norwich.* Upon the writ of error the lord chief justice of the king's bench is to bring in the record, and a transcript of it into the parliament, and there leave the transcript, but carry the record back. And thereupon the errors being assigned; or, as some examples are, before the *assignamus* of the errors, order is to be given that a *scire facias* be awarded against the defendant, upon whose appearance and examination of the errors by the lords, the judgment given is either affirmed or reversed.

After the record thus brought in, *clericus parlamenti habebit custodiam inde, & per dominos tantum, & non per communitatem assignabitur senescallus, qui cum dominis spiritualibus & temporalibus per consilium justiciariorum procedat ad errorem corrigendum*^b.

In which words it is observed, that the lords have power to make a delegation of their jurisdiction to a person chosen out of themselves, as a steward to judge for them. As also they did in their proceedings against *Gomeniz*, and *Weston*, under *Richard II.* when they appointed the lord *Scroope* for steward of the parliament to arraign the offenders. But this rests at their pleasure whether they will judge themselves together, or so appoint a steward.

Memorandum quod Christophorus Wray miles capital. justiciarius de banco regis secum adduxit in parl. in camera parl. inter duos bre' de errore & billa de regina indors. ac rotulat. In quibus continebantur placita & processus in quibus supponebatur error, & ib. reliquit transcript. totius recordi cum cler. parl. simul cum brevi de errore in parlam. Et super hoc venit Richardus Herbert, Joh. Aubrey, Willielmus Filliam, & Simon Browne in propriis personis suis in parliament. & statim dixerunt quod in recordo & processu praedict. in redditione judicii praedict. manifeste est erratum. In hoc quod postquam judicium praedict. in loquela praedict. versus praefat. Thom. Gomiell reddit. fuit, & antequam praedict. Johannes Hunt prosecutus fuit & impletravit praedict. primum breve de scire facias versus praefat. Ric. Herbert & coeteros praedictos manucaptores praedict. Thom. Gomiell nullum breve de capias ad satisfaciendum pro debito & damnis praedict. per praefat. Johan. Hunt in parlamento praedict. prosequend. & retornat. fuit versus praefat. Thom. Gomiell uti per consuetudinem curiae dictae dominae reginae coram ipsa regina a tempore cujus contrarii memoria hominum non existit in eadem usitat. & approbat. brev. de cap. ad satis faciendum versus eundem Thom. Gomiell, pro debito & damnis praedict. in parl. praedict. prosequi & retornari debet antequam

^a Rot. parl. 50. E. III. n. 38.

^b 22 E. III. 3. *Hadelow's case.* Rot. parl. 1 R. II. n. 28, 29. 2 R. II. n. 18, 19. &c. 20 R. II. n. 26. *The case of the earl of Salisbury.* 15 R. II. n. 23. 16 R. II. n. 17. *The case of the dean and chapter of Litchfield, and the prior of Newport Pagnel.* 17. R. II. n. 13 and 18. 1 H. VII. 19, 20. *Flowerdew's case.*

aliquod brev. de fci fac. versus manucaptors praedict. in loquela illa impetrar.' seu profectui deberet, licet consuetudo & forma caption' recognition' in curia praedict' usi fuerunt in forma praedict' viz. si contigerit eundem Thomam Gomiell in parlamento praedict' convinci, tunc iidem manucaptors concesserunt, & quilibet eorum per se concessit tam praedict' debitum quam omnia damna & custag. quae praefat. Jo. Hunt. in ea parte adjudicentur de terris & catallis & eorum cujuslibet fieri, & ad opus praedict'. Johannis Hunt levare, si contigerit praedict'. Thom. Gomiell debitum & damna illa praefat. Johannis Hunt minime solvere, aut se prisonae marescall. dominae reginae coram ipsa regina ea occasione non reddere, &c. Et petiere iidem Rich. Herbert & alii praedict' quod judicium praedict' & processus super bre. de scire fac. prosecut. in curia dominae reginae coram ipsa regina revocetur, annulletur, & penitus pro nullo habeatur. Et super hoc domini per consilium justiciariorum post longam & maturam deliberationem cum consensu adjudicaverunt quod judicium praedict' & processus super bre. de scire fac. prosecut. in curia dict' domini reginae coram ipsa domina regina revocetur, annulletur & penitus pro nullo habeatur.

CHAP. V.

Bills passed and judgments given without assent of the lords spiritual.

Under Edward III. a petition of the commons was thus. ^c

Nous ne voloms soeffrir que nul paiement soit fait as cardinalz pur lour demoere en Fraunce de treter hors du roialme d'Engleterre de pees ne de trewe.

The answer is,

Quant a les despenses de cardinalz. Il semble as countes baronns & autres sages laiz gentz du conseil le roi que les communes demandent reson & pur ce ils sacordent que ensi soit.

The like is there in two petitions of the commons against the clergy, carrying money to Rome, and cardinals having benefices here. Divers ordinances against the church of Rome are agreed by the king, the lay peers and commons, but all the prelates made protestation of not assenting or doing what may be, or turn in prejudice of their estate or dignity. ^d

The power and direction for justices of the peace is ordained at the complaint of the commons by the king, *par assent seignours temporals.* ^e And so only divers times without mention of the lords spiritual, who indeed under Edward III. protested, that they had not to do with matters of keeping the peace. ^f

The commons exhibit a petition against procurations from Rome, and benefices obtained by letters thence, &c. ^g

Ordeine est, & establi per ladvis & assent des seignours temporelx, que nul des liges le roy nautre persone quelconque de quel estat ou condicion qil soit ne preigne—dascun benefice deinz le dit roialme—Et si aucun face le contraire en aucun point contenuz en ceste ordeinance, encourage la peine & punissement contenuz en le statut de provisors, fait en temps le roy E. aiel nostre seigneur le roi gorest lan de son regne 27.

A petition in these words. ^h

Item que les appelez pursuitez accusament processe juggementz & execution faitz & renduz en cest present parlement soient approuvez affermez & establis chose faite duement pour le bien & profit du roy nostre dit seigneur & de tout son roialme, nient contrestant que les seignours espirituels & procurateurs des seignours espirituels soi absenteront hors du parlement a temps des ditz juggementz renduz, pur honeste & salvation de leur estat, come contenu est en une protestation pur mesmes les seignours espirituels & procurateurs livere en cet present parlement.

The king granteth it, and the protestation of the clergy is there entered, as followeth ⁱ.

Per enchefon qe certains matires furent movez en cest present parlement qe toucherent overtement cryme lercevesque de Cantirbris & les autres prelatz de sa province, firent une protestation en la fourme & paroles gensuent.

In Dei nomine, amen. Cum de jure & consuetudine regni Angl. ad archiep. Canturbur. qui pro tempore fuerit, necnon caeteros suos suffraganeos, confratres & coepif. abbates & priores, alioque prelatos quoscumque per baroniam de domino nostro rege tenentes pertinet in parlamentiis regis quibuscumque ut pares regni praedicti personaliter interesse, ibidemq; de regni negotiis & aliis ibi tractare consuevis, cum ceteris dicti regni paribus, & aliis ibidem jus interessendi habentibus, consulere, & tractare, ordinare, statuere, & definire, ac caetera facere quae parlamenti tempore ibid. imminet, faciend. in quibus omnibus & singulis nos Willielmus Cant. archiepif. totius Angl. primas & apostolice sedis legatus, pro nobis nostrisque suffraganeis, coep. & confratribus, necnon abbatibus, prioribus & prelatibus omnibus supra dictis, protestamur, & eorum quilibet protestatu rqui per se, vel procuratorem hic fuerit modo presens, & publice & expresse, quod intendimus & intendit, volumus ac vult eorum quilibet in hoc presenti parlamento, & aliis, ut pares regni praedicti, more solito interesse, considerare, tractare, ordinare, statuere, & definire, ac caetera exercere cum caeteris jus interessendi habentibus in eisdem, statu & ordine nostris, & eorum cuilibet in omnibus sem-

^c Rot. parl. 20. E. III. n. 33. 35. 38. See also to this purpose, 15 E. II. stat. Carl. & 25. E. III. stat. de provisors.

^d E. III. m. 2. Vide stat. edit. 38 E. III. c. 1.

Parl. 6. E. III. m. 3. n. 3.

^e 1. R. II. n. 9.

^f Rot. parl. 3. R. II. par. 3. n. 37.

^g Rot. parl. 2. R. III. in schedul. m. 13. & m. 18. five 38.

^h Rot. parl. 11. R. II. p. 2. n. 38.

ⁱ Rot. parl.

per salvis. Verum, quia in presenti parlamento agitur de nonnullis materiis, in quibus non licet nobis aut alicui eorum juxta sacrorum canonum instituta, quomodolibet personaliter^b interesse; ea propter pro nobis & eorum quolibet protestamur, & eorum quilibet hic presens etiam protestatur, quod non intendimus, nec volumus, sicuti de jure non possumus nec debemus, intendit, nec vult aliquis eorundem in presenti parlamento, dum de hujusmodi materiis agitur vel agetur, quomodolibet interesse, sed nos & eorum quemlibet in ea parte penitus absentare jure paritatis nostre, & cujuslibet eorum interessendi in dicto parlamento, quoad omnia & singula inibi exercenda, nostris, & eorum cujuslibet statui & ordini congruentia in omnibus semper salvis. Ad hoc insuper protestamur, & eorum quilibet protestatur quod propter hujusmodi absentiam non intendimus, nec volumus, nec eorum aliquis intendit, nec vult, quod processus habiti, & habendi in presenti parlamento, super materiis antedictis, in quibus nec possumus, nec debemus, ut premittitur interesse, quantum ad nos & quemlibet eorum attinet futuris temporibus, quomodolibet impugnentur, infirmetur, seu etiam revocentur.

Which protestation was read in full parliament by the commandment of the king, and assent of the lords temporal and commons. In like manner make protestation the bishops of *Durham* and *Carlisle*, *mutatis mutandis*.ⁱ This was upon the occasion of the appeal of treason in the same parliament commenced by *Thomas* duke of *Glocester*, and others, against *Alexander* archbishop of *York*, *Robert de Vere* duke of *Ireland*, and others.^k

But although they thus absented themselves, they made no proxy at this time to assent in their room; as afterwards they agreed to do in cases of judgment of death. But the first use of such proxies is in the 21 of *Rich. II.*^l neither at all such, proxies or assent of the bishops; For under *H. V.* the earl of *Salisbury* by petition in the nature of a writ of error, sued that the attainder of *John* the late earl, father to the petitioner, in the second of *H. IV.*^m might now be reversed, and amongst the errors assigned, one was, that he had been adjudged *ans assent des prelates que sont pieres & en parlement*. But it was in parliament now adjudged that this was no error.ⁿ

The archbishops of *Canterbury* and *York*, for themselves and their clergy, make protestation not to consent to any statute made in this parliament; *Quatenus ea in restrictione potestatis apostolicæ, aut in eversione ecclesiæ dignitatis tendere dignoscuntur*, which at their request was enrolled in parliament; ^o Yet an act passed at that time, and is publick, against the popes giving of benefices by way of provision in *England*.^p

In the beginning of queen *Elizabeth*, when divers acts passed touching matters of the church, as service and sacraments, and church possessions, &c. the bills passed, *disfidentibus* all the bishops, as it is especially entered in the ^q journals, with particular enumeration of all their names.

Whereunto may be added that assertion of the judges in that great deliberation had under *Henry VIII.* touching the power regal in the church, as the words are reported. *Que nostre seignour le roy poit assets bien tener son parlement per luy, & ses temporall seigniors, & per ses commons, tout sans les spirituals seigniors*^r.

CHAP. VI.

Their appointing judges out of themselves for examination of judgments and delays of other courts.

THIS is given them by a statute of *Edward III.*^s in these words. *Item, because divers mischiefs have happened of that—That in divers places, as well in the chancery, as of the king's bench, common pleas, and in the exchequer, the justices assigned, and other justices to hear and determine deputed, the judgments have been delayed, sometimes by difficulty, and sometimes by divers opinions of the judges, and sometimes by other occasions; It is assented, established and agreed, that from henceforth at every parliament, shall be chosen one prelate, two earls, and two barons, that shall have commission and power of the king, to hear by petition to them delivered, the complaints of all those that will complain them of such delays or grievances made, and they shall have power to do come before them at Westminster, or elsewhere, where the places of any of them shall be, the tenor of records, and processes of such judgments so delayed; and to cause the same justices to come before them, who shall be then present to hear their cause and reason of such delays; which cause and reason so heard by good advice of themselves, the chancellor, treasurer, the justices of the one bench, and of the other, and other of the king's council, as many, and such as to them shall seem convenient, shall proceed to take a good accord, and make a good judgment.*

And in the same parliament accordingly, the archbishop of *Canterbury*, the earls of *Arundel* and *Huntington*, and the lord *Wake*, and the lord *Basset* were assigned to the same purpose. And although the justices, chancellor, treasurer, privy seal, and others, had before taken oath, &c. yet it was ordained that those of the baronage assigned, shall give them a new oath, and increase, or diminish the ministers of justice, as they shall see cause.

^b It was ordained in a council held at Westminster, that no clergyman should agitate judicium, and he that did was to be deprived of his dignity and orders, *Roger de Hoveden* in *H. II.* p. 3. 10. & *Gervail*.
ⁱ Rot. parl. 11. R. II. n. 9. 10. ^k Rot. parl. 11. R. II. n. 8.
^l Rot. parl. 21 R. II. n. 9. 10. ^m Rot. parl. 2. H. IV. n. 30. 31. ⁿ Rot. parl. 2. H. V. n. 13. 14. ^o Rot. parl. 13 R. II. n. 24. & in reg. Courtney, fol. 332. ^p 13 R. II. par. 2. c. 2. ^q Diar. parl. 1 Eliz. yet the act of this year, as of most others, is, domin. tam spiritualium quam temporalium assensu.
^r 7 H. VIII. Kelw. 184 b. ^s 14 E. III. c. 5.

CHAP. VII.

Their tenants of antient tenancies, being discharged of paying the charges of knights of the shire.

THE commons exhibit a petition, That whereas the tenants of the lords that did hold by barony, and summons to the parliament, are discharged of paying towards the expences of knights, &c. that the king would declare the certainty of it. But the answer of it is only, As at other times, &c.¹

A like petition and answer, is afterwards under the same king in a petition, touching the same thing.²

Under *Richard II.* it is supposed that all ought to pay, but those which come to parliament by summons, by writ, and do stay there at their own charges, &c.

In a petition afterwards, * it is supposed that the tenants of such lands as were immediately held of the lords of the parliament, contributed not to those expences, but it is complained against, and the answer is only. *Soit use come ad este use devant ses heures, & si aucun se seinte grevez, monstre al chancelier sa grevance en especial, & droit luy serra fait.* Yet by a³ statute, which is not in the rolls, of three years before, the tenants of the lords, and the lords themselves shall pay for such lands, as of late times they have purchased, being before contributory.

To this belongs that in⁴ *Fitzherbert*, The villains of lords, who come to parliament, shall not be contributaries to the expences of the knights of the counties, who come to the parliament. And to this purpose the lords may by letters in their own names command the sheriff that he distrain not their villains.

¹ Rot. parl. 28 Ed. III. n. 23.
6. 12. & 11. Hen. IV. 2.

² Rot. parl. 51 Ed. III. n. 45.
³ Nat. Brev. 228. F.

* Rot. parl. 15 Rich. II. n. 37.

⁴ 12 Rich. II.



Privileges, or special rights, that concern the barons that have place in parliament, as they are every one single in their private estates, which are also communicated to baronesses.

C H A P. I.

Touching oath and protestation upon honour.

AL L oaths are either promissory or assentatory; the first being that which binds to a future performance of trust; the second, that which is taken for discovery of a past or present truth.

The first kind, they as occasion required, used, in taking the oath of all the barons for the maintenance of the great charter, and the like under king *John*^a and *Hen. III.*^b As also swearing of the lords in parliament, in the time of *Hen. VI.* that they should not take parts in the great controversy between the earl marshal, and the earl of *Warwick.*^c And the oaths of divers lords appointed for the keeping of the ordinances of the parliament in 8 and 11 *Hen. IV.* where yet the prince was not sworn, being one of those that were appointed for the keeping of the ordinances; *pur la hautesse & excellence de son honorable persone*, as the words are in the roll.^d So under *Hen. VII.* the lords spiritual and temporal swore in the parliament to the article of taking care for the preserving of the peace,^e and under *Hen. VIII.* to the bill of succession.^f But under *Rich. II.* the archbishop of *Canterbury* challenged, that neither he nor his predecessors were compellable to any oath to any but to the king. And this kind of oath is frequently taken by such barons as undertake the great offices of the kingdom. And they are all liable to the like by their tenures, by fealty, and by statutes of the oath of allegiance.^g But of these kinds of oaths for the supremacy they are discharged by the first statute that gives it.^h And in the case of essoins, wherein by the antient law, the essoiner was to swear that the party essoined should appear at a certain day, all barons and baronesses were excepted from the oath, and instead of the oath they put in surety. *Ratio vero diversitatis* (saithⁱ *Bracton*) *talis esse poterit, ut videtur, quod ita nobites & dignae personae in warrantizatione essonii non per se jurabunt, sed per procuratores, scilicet, plegios suos.*

Assentatory oaths are in cases of trial by twelve or twenty four appearing as witnesses, or being defendants, in courts which proceed by bill and answer, or when examined as plaintiffs in actions of debt brought upon arrerages of account.

In cases of trial by twelve, they are discharged of the oath, that is, in cases of trial of their peers, in which they answer guilty or not guilty, only upon honour,^k for in other trials they have no part, but are exempted from being impanelled in juries, *nisi eorum sacramentum adeo sit necessarium quod sine illis veritas inquiri non possit.*^l And thence was it, that some barons under *Edward I.* of the marches of *Wales*, refused to swear before the justices of *Oyer* and *Terminer* upon an enquiry to be made by them and others, of certain outrages committed by *Gilbert* of *Clare*, earl of *Glocester*, against *Humphry* of *Bobun* earl of *Hereford* and *Essex*. Those barons were *John* de *Hastings*, *John Fitz. Raynold*, *Roger* de *Mortimer*, *Theobald* de *Verdun*, *John* *Tregoz*, and *Jeffrey* of *Camvill*, to whom *dictum est* (as the roll saith) *ex parte dom. regis quod pro statu & jure regis, & pro conservatione dignitatis coronae & pacis suae apponant manum ad librum, ad faciendum id quod eis ex parte domini regis injungetur. Qui omnes unanimiter responderunt, quod inauditum est, quod ipsi vel eorum antecessores hactenus in hujusmodi casu, ad praestandum sacramentum aliquod coacti fuerunt.* And afterwards the oath being offered them, they answered every one by themselves, *quod nihil inde facerent sine consideratione parium suorum.*^m

Barons being witnesses.

In cases of witnesses, examples are, that they give in their testimonies upon honour only. In the court of delegates in the third of *E. VI.*ⁿ in the proceeding against *Gardiner* bishop

^a 17 Joh. Regis, Matth. Paris, fol. 350.

^b 41 Hen. III. idem p. 1297. & 1315.

^c Rot. parl. 8. Hen. IV. n. 66. 11. Hen. IV. n. 39. & vide stat. 21 Rich. II. c. 4.

^e Rot. parl. 1 Hen. VII. part. 1. m. 14.

art. 15.

^f Diur. parl. 15 Hen. VIII.

^g 1 Jac. c. 4. 7 Jac. c. 6.

^h 5 Eliz. c. 1.

c. 9. §. 3.

ⁱ 1 Hen. IV. 1. 10 Ed. IV. 6. 13. Hen. VIII. 12. Stat. lib. 3. cap. 1. §. 9. Co. 30. b.

48 Ed. III. 30. 48. aff. 6. 35 Hen. VI. 46. 27 Hen. VIII. 22. reg. 179. b. Fitz. N. B. 165. E. 6. Co. 53. a.

ⁿ Act. in foro Delegat. 1550.

^l Lib. 5. traç de Essoniis.

^m 22 Ed. III. 18.

ⁿ Plac. parl. 20. Ed. I. n. 1.

of Winchester, upon a special commission from the king; the then lord chancellor, and marquess of Northumberland, and the earls of Wiltshire and Bedford, are examined only upon their honour, or sometimes upon their allegiance or fidelity to God and to the king. And this was upon the special privilege of such persons. For both by the civil laws and common, no testimony is to be taken regularly but upon oath.

In chancery, in a case between Jeffery and Jeffery, and in another between Blighton and Dawtry, Thomas lord Buckhurst, under queen Elizabeth, ^a delivers his testimony only upon honour.

In the court of chivalry under R. II. ^o in the great case between Sir Richard Scroope appellant, and Sir Robert Gravenor defendant, touching matter of arms, the attestations taken by commission from John of Gaunt, the earl of Derby, the earl of Northumberland, the duke of York, and the earl of Arundel, are, for ought appears, without oath. For whereas others are sworn, the entry of their depositions is: *Pray and requests according to the right of arms by the procurator of master Richard Scroope, to testify and say, &c.*

And amongst others, the earl of Devonshire was examined by commission, by John Kentwood, who, in the return of his commission and the depositions certifies the court, that he had sworn all the witnesses, there being none of the nobility, but only this earl in his return, *who was not sworn, but spake in the loyalty of his chivalry.*

But in the multitude of witnesses of this cause, divers barons are sworn, as the lord Poynings, the lord Scales, the lord Gray, the lord Rutben, the lord Bassett. To every of which names in the attestations is added, *sworn and examined.* Agreeable hereunto is the examination in the case of Alice Perrers, in the beginning of Rich. II. ^p

Barons answering to bills as defendants.

For barons answering as defendants in chancery, are divers precedents of their answers in the times of Hen. VII. and Henry VIII. But there are none of that time that clears it, whether they were sworn or no; for the answers of that time, as also of the times following, till about the middle of Elizabeth or later, are frequently filed without any *jurat.* to them.

But under queen Mary, ^q in a suit by William Armer, against Thomas lord Wentworth, touching the inheritance of copy-holds in Stepney, the defendant presents in his answer with master Sackford's hand to it, who was his counsel. And on the upper part of the answer, where *jurat.* is sometimes, but rarely in that age written, these words are found; *This answer is made by counsel and the defendant not sworn by order of court.*

Then in queen Elizabeth's time, the lord Dacres being plaintiff against the lord Buckhurst, and Parker, and Manwood, these two defendants are sworn, but not the lord Buckhurst.

And afterwards the countess of Rutland's answer is inscribed *per traditionem comitissae super honorem suum.* ^r So the countess of Northumberland *In virtute honoris sui agnovit responsonem suam esse veram*; as the entry is upon her answer at that time.

And in the countess of Rutland's case, where she with Sir George Chaworth were defendants, about the latter end of queen Elizabeth, ^r the *dedimus potestatem* was, *quod comitissam super materiam in petitione contentam examinaretis*, and in the same, the other defendant was to answer upon his oath *super evangelia*; as also a *dedimus* towards the end of queen Elizabeth, ^r was directed to Roger Bromley, and Richard Brooke against George earl of Huntington, to take his oath *super honorem, &c.* About which time ^u also the lord Eure put in his answer *super honorem* only, to the bill of John Barnes and Robert Talbois.

In other courts, as the star-chamber, and court of wards, it was questioned in queen Elizabeth's time whether, barons being defendants, should put in their answers upon oath. And in the court of wards, an order was made in the lord Mountague's case, ^x that they should, and that so the course should be henceforth constant. The like course hath been held of late time in the star-chamber, as also in the ecclesiastical proceedings. And about the end of queen Elizabeth's time in chancery ^y also, the lord Wharton by a compulsory order answered there upon oath. And within these few years, the earl of Shrewsbury was ordered to answer upon oath, to one Revell being plaintiff there. ^z And divers noblemen have been sworn to their answers in chancery since the beginning of the king; ^a and some in queen Elizabeth's time also. ^b Neither is the time of queen Mary, and Edward VI. wholly without example. But the sum of all seems this, That according to the claim of the barons in 20 Ed. I. they were not antiently till about the end of queen Elizabeth, or the time of our present sovereign compellable to swear to their answers. For the first compulsory order to that purpose, falls in the 33d of Elizabeth in the court of wards. But that some of them taking no advantage of their privileges in this case, voluntarily took the oath, and others standing upon their ancient right, put it in only upon honour; as also we see in that case of Gravenor and Scroope, and Alice Perrers under Richard I. For if it were not a special privilege, it will fall out, that in all the examples where they were not sworn, the judges committed great injustice in receiving their answers and depositions without oath, if they

^a Mich. 21. Eliz. in act. cur. apud examinat.

^o Rot. process. 10 Rich. II. & 12. in arce Lond.

^p Rot. parl.

¹ Rich. II. n. 42.

^q 2 & 3. P. & M. & facie in facello.

^r 18 Junii Mich. 31. & 32. Eliz.

⁴⁴ Eliz.

^u 7 Sept. Mich. 42 & 43 Eliz.

^x 40 Eliz. apud Tothill.

^y Ordo 10. let. 10. Jac in Canc.

^z Mich. 4. Jac.

^a Mic. Winton 5 com. Pemb. Pasf. 6 com. Linc. Hill. 7. com. Dorset. & Dominus Ruffel. Pasf. 5. Jac. Hough-

ton. verf. dom. Rich. Hill. 4. viscount Mountague &c. H. 3. & 4.

had not been subject by compulsion to an oath; no otherwise than if a judge of the common law should admit evidence given to a jury, or take a verdict without oath, which were not excusable. And a few examples of their giving in answer without oath, upon this reason, are of great weight against many that shewed that they were voluntarily sworn. And those orders which were compulsory, are of so late time, and so weak power, that they cannot at all take any right from the baronage which was before settled in them.

Examined as plaintiffs in actions of debt upon arrerages of accompt.

By the statute of 5 H. IV. c. 8. in actions of debt upon arrerages of accompt, the judges have power to examine the attorney of the plaintiff, or whom they please, and this examination was meant, and hath been practised upon oath. Yet in an action brought by the lady of *Aburgavenny*,^c being a baroness, against another in the time of Henry VI. when the counsel of the defendant desired that the plaintiff might be examined, *Cokaine* then justice said, that they should not do well to make her, being a baroness, come to be examined. And however the statute, *est general, & fait pur chescun home, scil. pur haut & bas*, (as the words of the book are) yet he saith, the law will be otherwise, and different between a lord or lady, and between another common person.

Of the form that was used in swearing of spiritual and temporal barons.

In the form of swearing the promissory oath, a difference hath been amongst the barons of parliament. The temporal barons^d under H. VII. swear with their hand upon the book, the spiritual with their hand upon their breast, *i.e.* the one *tactis*, the other *visis evangeliiis*. And oftentimes antiently this oath was taken by the lords in the house upon the archbishops cross.^e At this day the spiritual lords challenge it, and sometimes use to swear *visis* only, as a thing to be done by the privilege of the church. But there is the testimony which shews, that all the bishops in a provincial synod did swear here their *juramentum corporale*,^f which is *tactis*. And howsoever it be a privilege of nobility in some other states, or of gentry, to depose by writing without a corporal oath,^g as in *Bohemia, Austria, Bavaria, &c.* yet there is no sufficient certainty with us, for an established difference of form in swearing.

CHAP. II.

Trial by peers.

IN all cases of treason or felony,^h or misprision of either of these offences, a temporal lord of parliament is to be tried only by his peers, if arraigned by indictment, *per judicium parium*

suorum, or of twelve or more temporal barons of parliament.ⁱ This holds as well in all cases made treason or felony by statute, as received antiently to be so by the common law, as justice *Stamford*^k expressly affirmeth, although usually in statutes which make any thing treason or felony, a special clause be inserted for peers to be tried by their peers, according to the known trial of peers, as also to the new trial, where perhaps more need was of such a clause. Upon the statute of remainder^l made for trial of offences committed by the English in *Scotland*; it is added, that if the offender shall be a peer of the realm, then his trial shall be by his peers. And this is clear for all temporal barons and their ladies.^m But it hath been doubted whether the same law be in case of trial of spiritual barons or no. And in that doubt one special argument among others hath been made from the name of peers; some concluding thus: spiritual barons are no peers; therefore not to be tried by their peers. Others for the other part thus, spiritual barons are peers, therefore to be tried by their peers. But of these two arguments, the first is false in matter, the second in form.

For the first. It is true and plain, the spiritual lords are peers, and so the antecedent false. The testimonies justifying them to be so, are very frequent. In the bishop of *Winchester's* case, who departed from the parliament at *Salisbury*, about the beginning of *Edward III.* and was questioned for it afterwards in the king's bench, he pleaded to the declaration: *Quod ipse est unus e paribus regni & praelatus, &c.*ⁿ and in that short disputation of the case which is left in the year books,^o he is supposed clearly both by the court and counsel to be a peer. So afterwards under the same king, in a writ of ward brought against the bishop of *London*, he pleaded to issue, and the defendant could not have day of grace, for the court said, (as the words of the book are) *que peesque est peere de la terre. Et hoc erat causa, &c.*^p And in a like case upon an action of trespass against the abbot of *Abingdon*, who was one of the lords spiritual, day of grace was denied against him, because he was *peere de la terre*.^q So expressly upon the question of having a knight returned into a jury where a bishop was defendant in a *quare impedit*, the rule of the court was, that it ought to be so, because the bishop was *peere de la realme*.^r So in the judgment given against the bishop of *Norwich* in the time of *Richard II.* he is in the roll expressly allowed to be a peer, for he had took exceptions that some things had passed against him without assent or knowledge of his *peers du royaume*. To which exception the answer was, *It behooves you not at all to touch your prelate of only certain misprisions, which you as a soldier of the king, &c. have done and committed, &c.* Here is to be added that challenge of *Stratford*, archbishop of *Canterbury* under *Ed-*

^c 3 H. VI. 48. ^d Rot. parl. 1. H. VII. part 1. m. 14. n. 5. ^e Rot. parl. 15. E. III. n. 42. ^f Circa E. II. de templo in anonimi chron.

^g Gal. observ. prac. 100. fol. 22. ^h Not in appeals 10. E. IV. 6. Stamf. 1. 3. c. 1. ⁱ 1 H. IV. 1

10 E. IV. 6. Stamf. lib. 3. c. 1. 9. Co. 30. b. ^k Fol. 153. b. ^l 4 Jac. c. 1. ^m 20 H. VI. c. 9. 6. Co. 52. b. ⁿ Pas.

3 E. III. coram rege Rot. 9. ^o 3 E. III. 18. 19. ^p 22 E. III. 9. pl. 27. ^q 27 E. III. 12. ^r 13 E. III.

enquest. 43. challenge 115. Plowd. 117. & ve. Hill. 8 E. III. Rot. 23. coram Rege.

ward III. when upon his being excluded the parliament, he thus challenged his place. *Ego tanquam major par regni post regem, vocem primam in parlamento habens, jura ecclesiae mea tantum vendico, & ideo ingressum in parlamento peto.* The same is justified by the clergy touching their *jus paritatis* before recited at large and entered in the parliament roll. And in the assignment of the errors under Henry V. for the reversal of the attainder of the earl of Salisbury, one error is assigned, that judgment was given without assent of the prelatz, *queux sont peers en parlement.* And although that were adjudged to be no error, yet it is allowed clearly in the roll, and the petition, that they were peers. So in an act of parliament under the same king, the bishops and archbishops of Ireland, are called peers of that kingdom. And divers other passages occur touching this name of prelate; neither can any scruple be further made of it.

But as this is clear that they were peers, so also it is clear that they were not by the law to be tried, as temporal barons, by their peers. And the conclusion of the contrary drawn (as before) out of their being peers, is wholly without consequence, this being a point of the common law, and that of common law, as that is distinguished from acts of parliament, which falls out generally to be only the known and received custom within the kingdom. If the practice and custom of the kingdom be therein observed, the point of law may be soon resolved. In the practices and customs divers bishops are found to have been arraigned, and legally tried upon capital offences, yet all that have been so, have had their trial only by common juries. And whether by statute any alteration be of this common law, shall presently also be examined.

That practice and custom appeareth in particular examples found from the time of Edward II. to the age next before us, thus collected. ^u Adam, bishop of Hereford, under Edward II. was indicted of divers felonies, and of joining with Roger Mortimer. He is arraigned in the king's bench; and upon question how he will be tried, he saith: *Quod ipse est episcopus Heref. ad voluntatem Dei, & summi pontificis, & quod materia praedict. articulorum sibi imposit. adeo ardua est quod ipse non debet in curia sic super praedictis sibi impositis respondere, nec inde respondere potest absque offensa divina, & sanctae ecclesiae.* Hereupon day is given over, and then the indictment is brought into the parliament, where, upon his arraignment, he gives the like answer. And Walter, archbishop of Canterbury *petit eum, & ei liberatur,* and this is commanded that he have him ready at a certain day in the king's bench. *Et praecceptum est vicecomiti Hereford. quod venire faciat coram domino rege tot & tales, &c. ad inquirend. prout moris est, &c.* And a common jury is returned, which finds the bishop guilty, whereupon he is committed to the archbishop as convict, and his lands and goods are seized

into the king's hands.

Here was the bishop tried by a common jury, although it appears both in the record, and in the history of that time, ^w that the whole clergy earnestly endeavoured to have kept him from conviction, but no pretence of any right of trial by peers is once mentioned in this behalf, though other complaints are full enough expressed against the whole proceedings.

Under Edward III. ^x John de Isle brother to Thomas de Hen, bishop of Ely, was indicted in Huntingtoushire; that he with divers others *per assensum, & procuracionem episcopi* 28 E. III. die Lunae post festum Sancti Jacobi, burnt the house of the lady Wake at Colne, by Somersham, & quod praedictus Thomas episcopus sciens praedictam combustionem per praedict. servientes suos esse factam dictos servientes apud Somersham postea recepitavit, &c. And also it was found before the sheriff and coroner that 29 of Ed. III. the bishop was *de assensu* of the murder of one William Holme, slain by Ralph Carless and Walter Ripton dict. little Watt, upon malice conceived against Holme, because he followed the suit of the lady Wake. The principals were attainted by outlawry, the bishop is arraigned, and upon question how he will be tried, *dicat, quod est membrum dom. papae, & quod ipse absque ordinario suo, viz. venerabili patre domino Simone archiepiscopo Cantuari.* Angliae primat. respondere non potest. Et super hoc idem archiepiscopus praesens hic in curia petit, quod dictus episcopus Eliensis defelonis praedict. sibi impositis hic coram laico iudice, non cogatur respondere. Et ut sciatur inde rei veritas per inquisitionem patriae, &c. praeccept. est vicecomiti Huntington quod venire faciat coram dom. rege in octab. sancti Mich. &c. ubicunque &c. 24 de just. de Somersham, & idem dies datus est episc. &c. Ad quem diem coram domino rege venit praedict. episc. in propria persona & similiter jurat. veniunt qui electi, triati, jurati & onerati, si idem episc. de assensu praedictorum Rand. & Walteri & de recept. eorum sit culpabilis necnon. Dicunt super sacramentum suum quod idem episc. est in nullo culpabilis, sed dicunt quod idem episc. post feloniam recepitavit ipsos apud Somersham, sciens ipsos feloniam fecisse. Ideo inquiretur de bonis, catallis, terris & tenementis, &c. Et super hoc praedictus archiepisc. praesens in curia petit ipsum episc. tanquam membrum ecclesiae sibi liberari, & ei liberatur custodiend. prout decet, &c. And so writs were sent out to the sheriffs of all shires where he had goods or lands to seize them for the king's benefit. And in this record it is observable, that the jurors were tried, which proves, that the bishop had his challenges to them at his trial.

About the beginning of Henry IV. Thomas Merkes bishop of Carlisle was indicted of treason before Thomas earl of Warwick, and other justices of Oyer and Terminer in Middlesex, the bishop standing before committed to the tower, for the same offence. *Et hoc justiciar.*

^f Stat. 4. H. V. c. 6. ^g 33 H. VIII. Br. Trialles. 142.

^w Thomas Walsingham, fol. 98. 99. ^x Trin. 30. E. III. Rot. 11.

^u Hill. 17. E. II. Rot. 87. dorso coram rege. & Rot. rom. m. 6.

praedict. recognit. mandatum est constabulario turris praedict. vel ejus locum tenenti quod corpus ejusdem episcop. habeant, vel alter eorum habeat coram praefatis justiciariis apud turrim praedictam die Mercurii extunc proxim. sequent. ad respondendum domino regi de prodicionibus, &c. And the precept est vicecom. London, quod tunc venire faciat coram praefat. justiciar. apud turrim praedict. tam aldermannos & cives quam alios probos homines de vicineto wardor. praedict. i. e. Baynard's castle & Dowgate, qui praefat. episc. nulla affinitate attingunt, ad faciendum tunc ibidem deliberationem de dicto episcopo, prout moris est, secundum legem regni Angliae. Ad quem diem & locum, the bishop is brought before them, and a writ comes from the king to the said justices, reciting, that licet in statuto apud Westmon. nuper edito inter caetera continetur quod nullus archiepiscopus, nec episcopus coram justiciar. nostris occasione alicujus criminis impetatur absque speciali praecepto nostro quousque aliud remedium inde foret ordinatum, de avisamento tamen concilii nostri vobis mandamus quod si aliqui archiepiscopi, vel episcopi coram vobis impetiti vel inditanti existant, tunc ad deliberationem ipsorum procedatis prout de jure & secundum legem regni nostri Angliae fore videritis faciendum, statuto praedicto non obstante. Teste meipso apud Westmonast. 28 die Januar. anno regni nostri primo. This writ being read in the court, the bishop was demanded how he would be tried. He first stands upon the privilege of the church, to whom the justices reply, that the offence was so high, that he must answer. Then with protestation of saving the liberties of the church, he pleads not guilty, et inde de bono & malo ponit se super patriam, inde bono & malo ponit se super patriam, inde fiat inde jurat. hoc instante die, &c. The jury finds him guilty, but the justices being not advised of their judgment, return him to prison. The record was afterwards removed in the kings bench, and the bishop renders himself to the prison of the marshalsea; and then being asked if he had any thing to shew, why judgment should not be given on him, he pleads his pardon, and it is allowed him.

To these precedents, a learned judge in queen Mary's time saith ^y divers were agreeable. Among which are specially to be accounted those of the bishop of Rochester in the time of Henry VIII. and of Crammer archbishop of Canterbury, under queen Mary, both tried by common juries. ^z Neither is there any example extant from the first memory of a legal trial of a bishop which is under Edward II. that testifieth any trial by peers belonging to a bishop. And accordingly heretofore it is taken clearly by that learned judge of queen Mary's time, ^a that no antient statute speaking of trial by peers, hath been put in ure to extend to a bishop, or abbot, although they enjoy the

name of lords of the parliament. *Car ils nont* (as the words are) *cel nome d'evesque ou abbe* ratione nobilitatis, sed ratione officii, ne ont lieu in parlement in respect de leur nobilitie, eins in respect de leur possession, s. launcient baronies annexes a leur dignities. Et accordant a ceo, *ily ad divers presidents, dont lun fuist in temps le roy Henry le VIII.* Whence also is it both judiciously and modestly affirmed by a most learned man of this kingdom ^b that the spiritual lords enjoy all legal privileges, as the temporal barons do, saving only this trial by peers.

That which may be here objected out of the statute of the grand charter, whereby every man ought to be tried by his peers, *id est, per judicium parium suorum*, or out of the statute of 25 Ed. III. by which all treasons are to be tried by men of the same condition of which the offender is, may easily be answered. For both these antient statutes are now to be interpreted, as it is clearly taken in continual practice, and in the books, according to the known use of the legal proceedings, and not by literal interpretation of words, as it is plainly seen in both of them. For all gentlemen, esquires, knights, bachelors or bannerets, and at this day baronets, are accounted peers, not only amongst themselves, but also to all other men of the lowest condition, ^c which yet cannot be out of the force of the word only. The like appeareth in that *non amercientur comites, vel barones, nisi per pares suos*, as it is shewed in the title of the amerciements, wherein that which the statute refers to peers is done solely by judges. And this of bishops referred to those statutes is only to be judged according to use and practice, which is the best interpreter of the statutes, and not by the meer interpretation of the word peers.

And it is most likely, that if any such right had antiently belonged to them, not only they themselves, but the temporal baronage under Hen. VI. ^d protested by the mouth of viscount Beaumont for their trial by peers, when William de la Poole put himself upon the king, and not on his peers, in such sort as those bishops put themselves upon the pope, and not upon any legal trial.

But one particular case is here to be added touching this right, singled by itself, that is, trial by peers upon the third offence against the statute of service and sacraments, under queen Elizabeth. ^e For the known trial by peers is in cases of treasons or misprisions, or one of them. And trial by peers saved to the baronage in the statute of new treason or felony, hath reference only to the known use of such trial. So that in those new treasons or felonies, such as for other offences, which were before treason or felony, were to be tried by their peers, are likewise (and none else) to be tried by their peers for new treasons or felonies, and therein the spiritual lords are equally excluded. But

^y Stam. lib. 3. fol. 153. B.

Angl. parl. 28. Hen. VI. n. 52.

^z 33 Hen. VIII. Br. trial. 142.

^c 1 Mar. Dyer. 99. Hollinghed. chron. f. 1749. 9. Co. 117.

^e 1 Eliz. c. 2.

^a Stamf. lib. 3. pag. 153. A.

^b Camd. in Ord. a. b. le feignior Sanchar's case.

^b Camd. in Ord.

^d Rot.

3. Burning of houses or barns, petty treason.
 4. Stealing of five shillings in any dwelling house, or any place adjoining^u. 5. Stealing of twelve pence, or more, without the knowledge of the person, &c.^x. 6. Burglary and rape^y. 7. Killing one that hath no weapon drawn^z.

C H A P. VIII.

Their liberty of hunting in the king's forests.

QUicunque, archiepiscopus, episcopus, comes, vel baro, veniens ad nos per mandatum nostrum, transiret per forestam nostram, liceat ei capere unam bestiam vel duas, per visum forestarii si presens fuerit, sin autem, faciat cornare, ne videatur hoc furtive facere, hoc liceat eis redeundo facere sicut praedict^u est^a. And this hath been interpreted to the coming of a lord by summons to the parliament, by process out of the chancery, king's bench, or otherwise, where the return is *coram rege*.

C H A P. IX.

Amerciaments.

IN case of amerciaments of barons of parliament upon nonsuits, or other judgments, ending in *miseri cordia*, there is a special course, both for the sum and the way of ascertaining of it, which differs from the amerciaments of common persons.

For the sum. The amerciaments of an earl, or spiritual or temporal baron is equal, that is 5 *l.* of a duke, 10 *l.* and the setting of this is by the king's justices, before whom the action dependeth, the justices in this place supplying the room of peers, by which according to the grand charter they are to be amerced^b, as expressly it is affirmed in the judgment under *H. VI.* c. against the earl of *Northumberland*, where the words of the justices are, *Pur ce que le conte est un pair de royaume il sera amercy par ses pairs selonque le statute, & pur ceo nous ne mettons le mercement en certain.*

And thence and thus is the statute of the grand charter to be understood, that faith, *Comites & barones non amercientur, nisi per pares suos*^d. But continual usage hath thus (as before is shewed) interpreted that privilege, and so hath the practice been. And thence was it under *E. II.* that a writ was directed to the justices of the common pleas, that they should not amerce the abbot of *Crowland*, *tanquam baro*, because he did not hold *per baroniam*, *aut per partem baroniae*^e.

For this matter of amerciament; While there were no other titles of greater nobility but earl and baron, which was in the time of *E. III.* who created the first duke in *England*, as *R. II.* the first marquis, and *H. VI.* the first viscount; the amerciaments of the lords of the parliament were all at 5 *l.* Whence also is generally so af-

firmed in the statutes of *Ireland* under *H. VI.* that every lord that is called lord of parliament in all pleas as well personal as real, in which amerciaments do lie, shall be amerced at 100 *s.* But when other dignities were made, and that it seems according to the proportion of the reliefs paid by those new dignities, for a duke is to be amerced at double the sum of an earl or baron, that is 10 *l.* as his relief is double, which is 20 *l.*

C H A P. X.

No process in civil actions to be awarded against the body of a baron.

NO baron of the parliament, or baroness, is to be arrested by *capias* upon an action of debt, accompt, trespass, or the like, but they are to be distrained only, and pay issues, returned for an appearance. The reason of this was anciently, because the *capias* in such cases goes out only upon *nihil habet* returned by the sheriff, which could not be for a baron, who was ever to be supposed to be seized of his barony, by which he might be distrained and lose issues. Although the reason fails now in those that have not more than the names alone of their baronies, yet the same law still remains. But this is limited to actions between party and party; for in cases of rescous, felony, or the like, where the offence is immediately to the king, a *capias* lies against a baron of the parliament^f.

And it is, as other privileges which are legal in *England*, limited also to the barons of the parliament of *England*. For it appears under *R. II.* that in an action of debt, a *capias* was awarded against the countess of *Ormond*, being an *Irish* baroness, and participating of her husband's dignities, as our ladies in *England*. Neither can a baron of *Ireland* be tried here by the peers of *England*, for they are not his peers, no more than the lord *Sanchar* might, being a baron of *Scotland*, who was indicted and arraigned only by the name of *Robert Creighton* Esq; and, upon this reason, that he was no baron of parliament, tried by a common jury. Thence it is also that an earl, baron, or duke of *France* coming into *England* by the king's safe conduct, shall not in any legal proceedings be styled so; As appears in the time of *E. I.* in the case of the earl of *Richmond*, being then also duke of *Bretagne*, and in the case of Sir *John Douglass* under *E. IV.* ^g. And the reason why Sir *Gilbert Umfravil* in the time of *E. III.* was legally to have his title, in writs, of earl of *Angus*, was, because that in that age the earl of *Angus* by that name was a lord of the parliament, as it is expressly noted in our year books^h.

And this difference it seems hath been here between temporal dignities, and spiritual; That in regard the temporal state of *England* was ever held as favored and distant from other

^r 4 and 5 P. and M. c. 4. ^u 39. Eliz. c. 15. ^x 8 Eliz. c. 4.
^b 24 E. III. 31. 38. E. III. 31. 9 H. VI. 2. 19 E. IV. 9. 21 E. IV. 77.
¹⁴ Brad. l. 3. de corona. c. 1. §. 3. ^e Claus. 15. E. II. m. 12.
²² 14 Eliz. Dyer. 315. a. 13. R. II. Returne del Vicount. 74. 43
 rege crom. lib. introit to H. IV. tit. Process 198. 1 H. V. 14.
^y 18 Eliz. c. 7. ^z 1 Jac. c. 8. ^a Cart. de foresta. cap. 11.
⁸ Co. 40 a. Griefleys case. ^c 1 H. VI. 7. ^d cap.
^f 21 E. III. 69. 29. Als. 33. 26 H. VIII. 7. 27 H. VIII. 14.
 Ed. III. Process 142. 6. Co. 52. b. Trin. 1 H. IV. Rot. 8. coram
^g 20 E. IV. 6. ^h 39 E. III. 35. b. & claus. 35. E. III. m. 2.
 states,

states, not at all communicating with them in civil government, therefore foreign dignities, which are of the civil part of states, had no respect here given them, as appears in the examples already brought.

But on the other side in dignities spiritual, because there was antiently through christendom supposed an unity in the church; so that *England* with foreign nations, and they with *England*, as members of one body, had a mutual reference to each others country, was legally valued, as a bishop in *England*; As may be seen in that case ⁱ of the bishop of *Utrecht*, (for this is the right name, though it be printed *Urtion*) under *E. III.* where being made bishop of *Utrecht*, makes a prebend of *England* void; So the title of cardinal was usually given in legal proceedings to such as had that dignity in *England*. Whence also the archbishop of *Raguse* being parson of a benefice in the bishoprick of *Carlisle*, under king *John*, was (it seems) to have been accounted here also an archbishop for dignity, though not for jurisdiction ^k.

CHAP. XI.

A knight to be returned upon every pannel where a baron is party.

IN every jury impannelled between any baron of parliament and other person whatsoever,

one knight at the least is to be returned, which failing, the array may be quashed by challenge; and testimony hereof as well for spiritual as temporal barons is frequent ^l.

CHAP. XII.

No day of grace against a baron.

IF a baron of the parliament be plaintiff or defendant in any action, and the plaintiff or defendant pray a day of grace, he shall not have it against him; and this is expressly affirmed in the books ^m.

CHAP. XIII.

Making deputies of places of trust committed to them.

OF late years it was agreed in the case of *Gilbert earl of Shrewsbury* ⁿ, that whereas the office of stewardship was granted to the earl of *Rutland*, without giving power to make a deputy, (and this by queen *Elizabeth*) that yet he might exercise the same office by deputy, by reason of the necessity that is supposed in law to be of the earls attendance upon the king, and the government of the kingdom. The same reason is, it seems, for all barons.

ⁱ 19 E. III. trial. 57.
43. 27 H. VIII. 22.

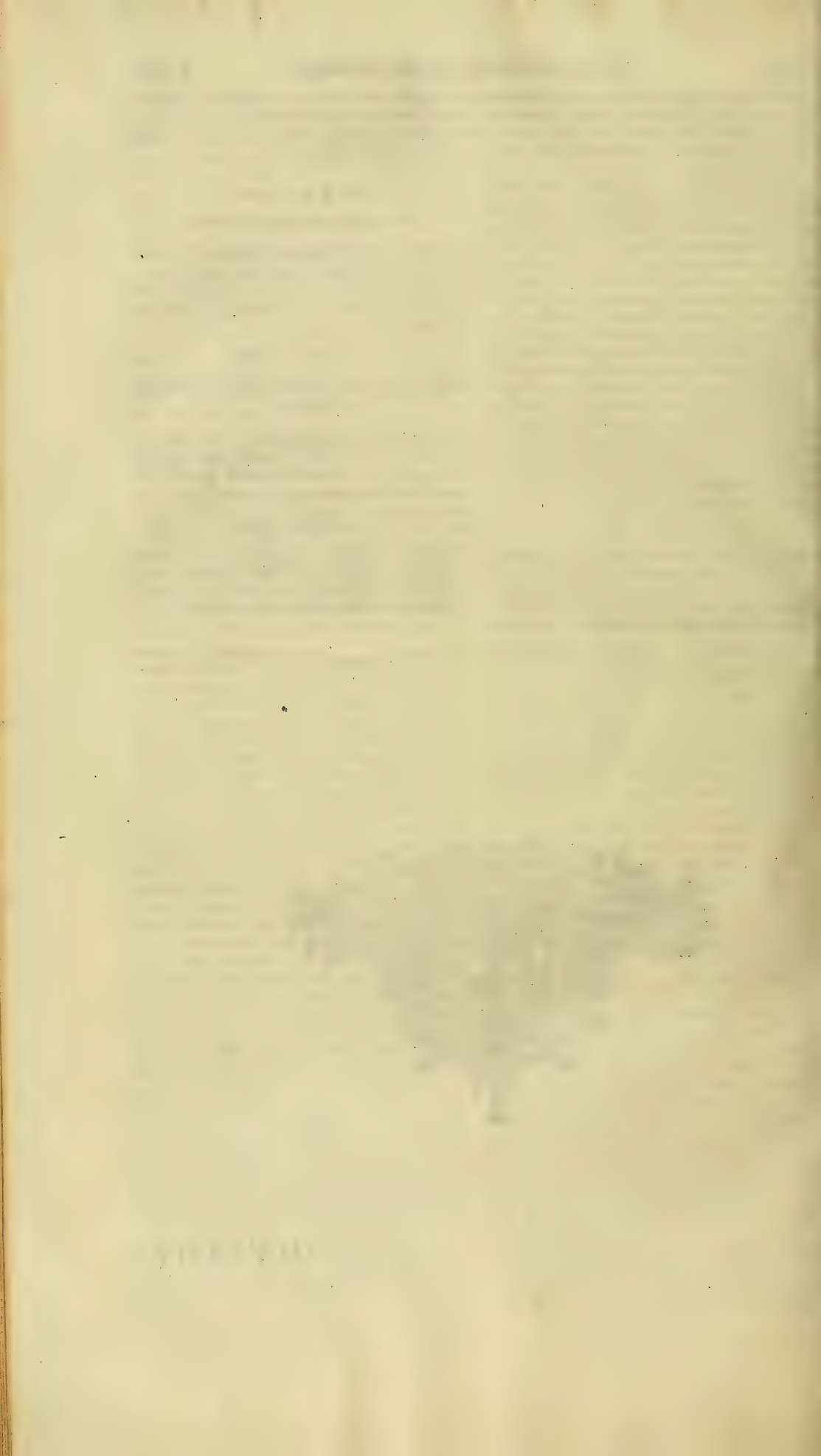
^k Extra. tit. de renuntia. cap. 9. ad supplicationem.

^l 13 E. III. Challenge. 115. Enquest.

^m 22 E. III. 9, 27. E. III. 12.

ⁿ Trin. 8 Jac. 9. Co. 49. a.





OF THE
JUDICATURE
IN
PARLIAMENT.

VOL. III.

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NEW HAMPSHIRE

JUDICATURE

IN

P A R L I A M E N T.

C H A P. I.

Peers to render judgment on peers.

THE execution of all our laws hath been long since distributed by parliament out of inferior courts, in such sort as the subjects were directed where to complain, and the justice how to redress wrongs and punish offences. And this may be the reason of the judges opinion in *Thorp's case*.^a That actions at common law are not determined in this high court of parliament. Yet complaints have ever been received in parliaments, as well of private wrongs as publick offences. And according to the quality of the person, and nature of the offence, they have been retained or referred to the common law.

Touching the quality of the person. The lords of the parliament did not anciently try any offenders how great soever the offence was, unless he were their peer. As by that of 4 *Ed. III.* where, when the king commanded the lords to give judgment on *Simon de Bereford*, and divers others also, who were not their peers, for the murder of *Ed. II.* and the destruction of the earl of *Kent*, son of *Ed. I.* a proviso and agreement was made and recorded in these words, *Et est assentu & accord', &c.* And it is assented and accorded by our lord the king, and all the grandees in full parliament, that albeit the peers, as judges of the parliament, have took upon them, and rendered the said judgment, &c. That yet the said peers who now are, or shall be in time to come, be not bound or charged to render judgments upon others than peers. Nor that the peers of the land have power to do this, but thereof ever to be discharged and acquitted. And that the aforesaid judgment rendered be not drawn to example or consequence in time to come, whereby the said peers shall do contrary to the laws of the land if the like case happen, which God forbid.^b

This proviso and agreement was made by the lords and commons, and it had these respects. *First*, to satisfy the commons, that the lords by these judgments intended not to alter the course

of the common law, and therefore they disclaimed that they had power to do this, and confess it was contrary to the law of the land. *Secondly*, to preserve their own right, to judge none but the peers, in case of life and death. For then the king's steward is to sit in the chancellor's place, and the lords are to be triers and judges: And so by judging others than their peers, descended below their degrees, for none but peers are so to be tried and judged. It is otherwise in cases of misdemeanors; then the chancellor keeps his place, and the lords are only judges and not triers. They may command a jury to be impannelled for trial of the facts; If the truth appear not by the parties answer, the testimonies are exhibited; as 1 *Rich. II.* in the case of *Alice Peirce*.^c

Here ariseth a question, Whether the spiritual lords, *de jure*, are triable by their peers or no? Out of parliament they are not to be tried by the peers; but the doubt is, whether in time of parliament, they are to be so tried or no? To me it seems they may, if the matter be moved against them in time of parliament. For as it is in the parliament at *York*, 15 *Ed. II.* in the act for the repeal of the *Spencers* banishment, they are peers in parliament. Note, that the petition for the repeal saith, that the bishops are peers in parliament. The bishops name themselves peers of the land: And the chancellor to the king. And the act styles them peers of the land in parliament.

There be divers precedents also of the trial of bishops by their peers in parliament, as well for capital offences as misdemeanors, whereof they have been accused in parliament; As the archbishop of *Canterbury*, 15 *Ed. III.*^d and the bishop of *Norwich*, 7 *Rich. II.*^e for misdemeanors: So were the bishops of *Tork* and *Chichester* tried, for treason by their peers in parliament, upon the appeal of the lords appellants,^f 11 *Rich. II.* Anno 21 *Rich. II.* the commons accused the archbishop of *Canterbury*, of treason, and the

^a Rot. parl. 31 Hen. VI. n. 27.

^b Rot. parl. 4 Ed. III. n. 2. & 6.

^c Rot. parl. 1. Rich. II. n. 41, 42, 43.

^d Rot. parl. 15 Ed. III. n. 8. 43. 49. & 17 Ed. III. n. 22.

^e Rot. parl. 7 Rich. II. par. 1. n. 15, 18.

^f Rot. parl.

11 Rich. II. n. 8. 37.

temporal lords judged him a traytor, and banished him.⁵ But if the bishop be accused out of parliament, he is to be tried by an ordinary jury of freeholders; for his honour is not inheritable, as is the temporal peers out of parliament. But the spiritual lords enjoy all legal privileges, as the temporal barons do, save that only of their trial. As no day of grace to be granted against them in any suit; a knight to be returned upon the pannel where a bishop is party; and no process in a civil action to be awarded against his body, and the like. And by this it appeareth what persons are *de jure*, triable by the lords in parliament, viz. their peers only.

Touching the nature of the offence.

Herein the complaint and accusation, as well of the party delinquent, as offence, is to be considered. For upon the information of the king at his commandment, or upon complaint of private persons, the lords may not by the law try any but their peers for capital offences. And the lords have ever referred offences of other nature complained of by private persons to the common law, if there be remedy, unless some special cause appear fit for their own judgment. But upon complaints and accusations of the commons, the lords may proceed in judgment against the delinquent of what degree soever, and what nature soever the offence be. For where the commons complain, the lords do not assume to themselves trial at common law. Neither do the lords at the trial of a common impeachment by the commons, *decedere de jure suo*: For the commons are then in stead of a jury, and the parties answer, and examination of witnesses, are to be in their presence, or they to have copies thereof: And the judgment is not to be given but upon their demand, which is instead of a verdict. So the lords do only judge, not try the delinquent.

In the lords proceedings in judicature, is observed also a certain form, which varieth according to the nature of the complaint, and the matter complained of; so that no general rules can be given therein, though many judgments have been reversed for errors, whereof there be many precedents. And the execution upon life and death, hath been stayed at the request of the commons, the proceedings being illegal, whereof I have seen only one precedent, touching the duke of Clarence, *tempore Ed. IV.* Wherefore for our better understanding of the form of judicature, let us first consider the several causes wherein judicature belongs to the parliament, and then the antient way of proceedings in each cause.

C H A P. II.

In what cases judicature belongs to the parliament.

Judicature belongs to the parliament in these six cases.

1. In judgments against delinquents, as well for capital crimes, as misdemeanors, wherein are to be considered,

1. *The accusation.*
2. *The parties answer.*
3. *The replication.*
4. *The proof by examination of witnesses, or otherwise.*
5. *The judgment.*
6. *The execution.*

2. In the reversing erroneous judgments in parliament, wherein are to be considered,

1. *The petition.*
2. *The bringing in the record.*
3. *The assignment of errors.*
4. *The reversal thereof.*

3. In the reversing of erroneous judgments given in the king's bench, wherein are to be considered.

1. *The petition.*
2. *The writ of error.*
3. *The bringing in the record.*
4. *The assignment of errors.*
5. *The writ of scire facias.*
6. *The defendant's answer.*
7. *The reversal of the judgment.*

4. In deciding of suits long depending either for difficulty or delay, wherein are to be considered.

1. *The petition.*
2. *The advice with the judges.*
3. *The determination of the lords.*

5. In hearing complaints of particular persons on petitions, wherein are to be considered,

1. *The petition.*
2. *The defendant's answer.*
3. *The proof.*
4. *The order of the lords.*

6. In setting at liberty any of their own members or servants imprisoned; and in staying the proceedings at the common law during the privilege of parliament, wherein consider,

1. *The quality of the person imprisoned.*
2. *The parties answer at whose suit he is imprisoned.*
3. *The manner of his charge.*

⁵ Rot. parl. 21 Rich. II. n. 15, 16, 17.

In certifying the elections and returns of knights and citizens for the *parliament*. But now the commons alone determine of this: Wherefore I will only shew that the commons did heretofore petition to the lords for redress herein; and what course was then taken. I leave it to the clerk of that house to shew, how the commons proceed herein at this day. Of the rest in order; and first,

Of judgments on delinquents.

§ 1. In judgments against delinquents, is first to be considered, *the accusation*. For as in the king's-bench, the justices proceed not to the arraignment of any offender without an indictment, so the lords have not proceeded to judgment, unless the crimes have first been presented to them by way of *accusation*: If otherwise, their judgments have been reputed erroneous, as that against the *Spencer's* was in 15 E. II. rot. 2. *claus. lit. penden.* For the same persons cannot be both accusers and judges.

I have observed four manner of *accusations* in *parliament*.

1. *By the commons, either by their complaints, or their impeachments.*
2. *By information ex parte dom. regis.*
3. *By complaint of private persons.*
4. *By appeal of some of the lords in parliament, which was abolished,* p. stat. 1 H. IV. cap. 14.

The accusation of the commons.

The manner of accusation ought to be by the commons alone, and not by the lords and them together; For so, earls, prelates, barons, and other peers of the land, and commons of the realm, did accuse *Hugh de le Spencer* 15 E. II. and one of the errors assigned for the reversal was, that the lords had no record before them of the causes contained in their award, *vid. rot. claus. 15 E. II.* in the parliament at *York*. The reasons may be, because the lords joining in the accusation with the commons, have declared their opinion of the fact, and there needs no further trial thereof. Wherefore the lords, who are only judges, may neither accuse any to themselves, nor join in the accusations with others.

The complaint of the commons is either by petition, or demand in general, or by impeachment in particular, which is their declaration against the party accused.

Precedents of their complaints by petition are,

Anno 21 E. III. n. 38. The commons complain of extortion used by certain merchants,

who were farmers of the king's customs of wools, not naming the parties, for which they pray remedy, and that the said merchants may be put to their answer in this parliament, for such outrage and distress done to the people. Which petition is thus answered. Let the merchants be called into the parliament, & eient *leur respons.*

In *eadem parl. n. 49.* The commons in another petition complain: That whereas divers aids have been granted to the king for his wars, certain merchants, by confederacy between them, and in manner of usury have bargained for the same, to the king's great loss, and the grievance of the commons, &c. His people pray these particulars may be examined, in presence of some, by the said commons deputed, good, wife, and loyal men during the *parliament*.

The answer.

The king will assign some of the sages of his council to hear, and determine the things contained in this article. And if any of the commons can inform the king, for his profit of any of the points herein contained, let him put it down in certain, and he shall be heard, to the end that right and reason may be done. And the justices which shall be assigned to enquire of false money, shall have power to enquire of the excess of such ministers.

Though these complaints were general, yet they pointed so directly to the parties accused, that *John de Worfenham*, and *Walter de Chairton*, did exhibit their petitions also in their own defence, desiring to come to their answers. What further proceedings were herein, is not recorded.

The commons were directed to impeach the parties whom they accused; *If any of the commons can inform, &c. let him inform in certain, and he shall be heard, &c.* So that although the commons accusation by complaint be general, yet if the complaint be received, and the parties brought to answer, the commons may then impeach the said parties, *viz.* declare against them in special; and then the suit is theirs, *prout anno 50 E. III.* against *Lyons, Ellis*, the lord *Latimer*, the lord *Nevil*, *Peach*, and others. But if the commons do only accuse by any way of complaint whatsoever, and do not declare in special against the party accused, then the suit is the king's, and the party is to be arraigned, or otherwise proceeded against by commandment, *ex parte dom. regis*, *prout Gomeviz, Weston, and Alice Peirce.* 1 R. II.

Anno 1 H. IV. The commons pray the lords appellants in the 21 R. II. may be put to their answer, and so they were ^b.

Anno 29 H. VI. The commons pray that the duke of *Somerſet*, the duchess of *Suffolk*, the bishop of *Chester*, and many others may be abandoned from the king's presence during their lives, and not come within twelve miles of the court, for that the people speak evil of them.

^b Placit. coron. in parl. 1 H. IV. n. 1, 2, 3, &c.

Answer.

The king of his own mere motion is contented that all shall depart, unless they belords, and a few of them, whom he may not spare from his presence, and so to continue one year, to see if any man can misprove them. *n. 16. inter petitiones communium.* For this was no accusation, for the commons did not require they might be banished the court.

Anno 38 H. VI. The commons among their petitions accuse the lord *Stanley* of fundry particulars, as to be of confederacy with the duke of *York*, and pray he may be committed to prison.

Answer.

The king will be advised ⁱ.

Primo Jac. 26 Maii. The commons by message accuse the bishop of *London*, for words spoken of them in the upper house.

Of the other kind of complaint by way of demand, I have seen these two precedents only.

Anno 1 R. II. The subsidy to be treated upon between the lords and commons, as the manner then was; The commons delivered to the lords a schedule of their demands to be dispatched before treaty should proceed. Amongst which one was, that all such who without cause have lost or given up any castle, town, or fortress, to the dishonour of the king, and damage of the people, may be put to their answer before the lords and commons in this present parliament.

The complaint herein is general, they accuse such as had delivered up castles, &c. if it be an accusation; but they name not the parties, yet two delinquents hereupon who were imprisoned in the tower, for delivery of castles, &c. were put to their answer, *viz. Gomeniz and Weston.* *Anno 7 R. II.* The commons grant a subsidy, according to the tenor of a schedule indented delivered in parliament, requiring it may be enrolled in the parliament roll *verbatim*; in which schedule is this protestation, That it is not their meaning to grant the said subsidy, without the conditions ensuing.

Imprimis, That the clergy make the like grant.

Item, That the bishop of *Norwich*, and others, be compelled to answer such sums, as they have received for service by them undertaken, and not performed, &c. ^k

Here the commons name one of the parties, against whom they complain, but they impeach him not; and yet he, and divers others, were censured on that general demand.

Of the *impeachments* of the commons, there be these precedents: *Anno 50 E. III.* The commons having granted the subsidy, they protested their good will, and firm purpose, to aid the king; and said, that it seemed to them for

truth, that if the king had always about him loyal subjects, good counsellors, and faithful officers, he had been rich in treasure, and needed not have charged his commons with subsidies, &c. Then they desired that three things might be enquired of. 1. The withdrawing the staple from *Calais*, by the counsel and procurement of some privy counsellors about the king. 2. Of loans to the king by way of usury, receiving again greater sums than they disbursed, wherein some privy counsellors have been partners. 3. Of buying the king's debts by way of bargain, some for the 10th penny, some for the 20th, or 100th penny, and procuring the king to pay the entire debt; to the king's loss, and profit of some privy counsellors, and others of their covin. Of which three articles, and their dependencies, the commons said, They would make farther declaration in special, whensoever it shall please the king to hear them ^l. Then follow their particular impeachments and accusations.

First, Richard Lyons, merchant of *London*, is impeached and accused by the commons of many deceits, extortions, and many other ill deeds by him done to our lord the king, and his people, as well during the time he was retaining to the king's house, and to the king's council, as otherwise, whilst he was farmer of the subsidy and customs of the king. And in special of this, that the said *Richard*, by covin made between him, and some of the privy council of our lord the king, for their private profit and advantage, hath procured many patents, and writs of licence, to transport great quantities of wools, and wool-fells, and other merchandize beyond the seas, to other places than the staple at *Calais*, contrary to the ordinances, &c. And so they declare of many other villanies in great deceit of the king, and of his court. Whereunto the said *Richard* being then present in parliament, said, &c.

Then follows his answer in particular to what was particularly alledged against him, and in general to what was generally charged upon him.

The lords reassured him for that which was particularly objected against him, and granted commissions to enquire of the extortions where-with he was charged in general ^m.

Then the commons in like manner accused and impeached *William* lord *Latimer* of divers extortions, grievances, deceits, and ill deeds, *viz.* of divers oppressions, when he served the king in *Bretagne*, for being partner with *Richard Lyons*, &c. and for loss of towns and forts beyond the seas ⁿ.

Item, William Ellis of *Great Yarmouth*, was impeached in this present parliament in divers manners. *First*, by surmise of the commons, &c. And afterwards *John Botheill*, and *William Cooper*, exhibited their two bills in form which followeth: To their thrice redoubted lord the king, and to the said council

ⁱ Rot. parl. 38 H. VI. n. 38.
17, 18, &c.

^k Ibid n. 21, 22. &c.

^l Rot. parl. 7 R. II. par. 1. n. 13.

^m Rot. parl. 50 E. 3. n. 15, 16.

ⁿ Ibid. n.

Shewen, &c. complaining of the oppressions of the said *William Ellis*, unto them, and others, &c. and their oath was taken against him ^o.

Item, *John Peach* of *London*, merchant, was accused and impeached by the said commons, that he, by the assent and aid of *Richard Lyons*, and of other privy counsellors, for their private profit and advantage, have purchased a patent under the great seal of our lord the king, containing that none shall sell sweet wines within the franchises of the city of *London*, but only the said *John* ^p.

Item, the lord *John Nevil* was likewise impeached, &c. for buying the king's debts, &c. and for loss of towns beyond the seas ^q.

Here I observe, that though the commons complained, 50 *E. III.* but of three grievances, *viz.* of the withdrawing the staple from *Calais*; of loans to the king upon excessive usury; and of buying the king's debts; yet when they who were accused appeared, they declared against them for other matters also: As against *Lyons*, for new impositions upon wools, without assent in parliament; and against the lord *Latimer*, for his misgovernment beyond the seas, and loss of forts there; and against *Peach*, for a monopoly of sweet wines, &c.

I observe also, that their declaration is not made according to the strict forms of law, as you may perceive by that against *Lyons*, wherein so many extortions are so generally set down against him, that he made no answer to them, neither could, &c. Which impeachment the lords notwithstanding did not reject, but supplied the defects thereof, by granting commissions to enquire thereof ^r.

Item, In this parliament of 50 *E. III.* an ordinance was made against women's pursuing businesses in the king's court, and especially against *Alice Peirce* ^s. I find no accusation against *Alice Peirce*; I only conjecture that the commons complained of her, though it be not entered, for she is in the number of them whom in the next parliament of 51 *E. III. numb. 87.* the speaker of the commons names to be unjustly convicted in this parliament: And none were there convicted, but those whom the commons complained of.

Item, *Adam de Bury*, citizen of *London*, was impeached by the clamour of the commons in this parliament of many deceits, and other things done to the king, and to his people, whilst he was mayor of *Calais*, and captain of *Bellingham*, and other ways, as more at large appears in one great bill, delivered in parliament the last day of this parliament at *Eltham*. And thereupon the said *Adam* was sent for to come to answer in parliament, and he came not, neither could be found. Wherefore it was awarded, that all his goods and chattels should be put in arrest; and so it was done by writs sent to the sheriffs of *London* and

Kent: ^t And the said bill is on file with the special petitions of parliament, 50 *Ed. III.*

Out of this last precedent, concerning *Adam de Bury*, I observe two things: 1. Whom they complained of: The lords sent for him only to appear before them; they sent not to apprehend him as a delinquent, until he contemned their demand, whereof more hereafter in the title of the *parties answer*. 2. That the commons delivered not their impeachment (that is, their declaration) against the party accused, until he appeared before the lords, and then they kept it until the last day of the parliament, in hope that he would be brought before the lords; and when they saw he could not be found, they then delivered their impeachment against him, to the end (as I conceive) the particulars of their accusation might remain upon record against him hereafter.

Here I also observe an error of the clerk, that he hath omitted the proceedings against *Alice Peirce*, *John de Leicester*, and *Walver Spooner*, who were all convicted in this parliament, as appeareth by the speaker's motion to the king for their pardons in the next parliament, 51 *Ed. III. numb. 87.*

Thus much touching the commons accusations and impeachments.

The next precedent is in 10 *Rich. II.* "in which parliament, the whole commons with one assent assembled, came before the king, prelates, and lords, in the parliament chamber, complaining grievously of *Michael de la Poole*, earl of *Suffolk*, chancellor of *England*, there present, accusing him openly by word of mouth. *First*, That whereas he being chancellor, was bound by oath to further the king's profit and commodity in all things: He notwithstanding contrary to the said oath, and not regarding the king's great necessity, had purchased of the king lands and tenements to a great value, procuring the same, by reason of his office, to be surveyed at an under value.

Item, Whereas at the last parliament, nine lords were appointed to see and examine the state of the king and realm; which being done, and their advice delivered to the king, as well by word as writing, by what means the same might best be remedied: The chancellor promised in open parliament, that the same should be put in execution, which was not done, through his default, he being a principal officer.

Item, Whereas the subsidy, granted the last parliament, was appointed by the assent of the king and lords, in what sort it should be expended, and not other ways employed; in this was his default, he being principal officer.

Item, Whereas *John Tidman* had a certain annuity from *Ed. III.* which he had since forfeited, and the payment thereof was discontinued for the space of twenty or thirty years:

^o Ibid. n. 31. 32.

^p Ibid. n. 33.

^q Ibid. n. 34.

^r Ibid. n. 20.

^s Ibid. n. 35.

^t Ibid. n. 37.

^u Rot. parl. 10 R. II. n. 6, 7, 8.

The said chancellor knowing this, purchased his interest, and procured the king to confirm the same unto him, &c.

Item, That whereas the great master of St. *Anthony* being a schismatick, had thereby forfeited to the king all his revenue within this realm, the same chancellor had taken the same to farm of the king for twenty marks. And whereas the master should have livery thereof again, he could in no wise get the same, until he had bound himself to pay 100 *l.* yearly to the chancellor and his son.

Item, That during the time of his chancellorship, there had passed divers charters of pardon, as well for murders, treasons, and felonies, as also for razing of rolls, and imbezelling of laws and records; and especially since the beginning of this parliament, a charter of franchises was granted to the castle of *Dover*, to the disinheritation of the crown, and to the subversion of all the places and courts of the king and his laws.

Item, That at the last parliament, divers sums were allotted for the defence of the town of *Ghent*, notwithstanding, the same money was lost, &c. by his default, &c.

Of all which articles, the commons demand judgment of the parliament, &c.

I have been long upon this, considering all the precedents follow at large. These are the most formally set down of all the accusations hitherto of the commons, yet most of these are very general and uncertain: Howbeit the chancellor took no exceptions to the insufficiency thereof, but answered to every particular.

The next accusation of the commons is in the 21 *Rich. II.* They accused divers of those whom the lords had first appealed; whereof, when we speak of *appeals*. Anno 21 *Rich. II.* the commons accused and impeached of treason the archbishop of *Canterbury*, and demanded judgment against him, and had it ^x.

Eodem parl. The commons accused and impeached of treason, Sir *Thomas Mortymer*, and *John de Cobham*, a baron of parliament, and had judgment against them both ^y.

Anno 28 *Hen. VI.* *William de la Poole*, earl marshal, and duke of *Suffolk*, was accused and impeached by the commons in manner following, *viz.* The duke being the great favourite of the king and queen, the common people laid all the fault of the evil government on him, and made ballads thereof, (which I have seen) taxing his loyalty to the king.

The parliament of 28 *Hen. VI.* begun the 6th of *November*, and held to the 17th of *December*, and was then prorogued to the 22d of *January*.

The duke of *Suffolk*, whether provoked by the ballads then made on him, or by some speech in the house of commons, whereof nothing is recorded, did require of the king that he might be specially accused, and be heard to answer, for that many reported him to be an untrue man; and he made a solemn protestation of his

loyalty, wherein he sheweth, That his father, and three of his brethren, died in the service of the king, and of his father and grandfather. That he himself had served thirty four years in the wars, being then but a knight. That he had been taken prisoner, and paid 20000 marks for his ransom. That he had been thirty years of the order of the garter; counsellor to the king fifteen years; and had been seventeen years in the king's wars, without returning home. And he prayed God so to pardon him, as he had been true to the king; and required his purgation ^z.

Whether this was sent to the commons, or what notice they had of it, appears not; but on the 26th of *January*, the commons required the duke might be committed to ward for his own confession, for that, as I conceive, he himself confessed, that the general fame went of him: And the lords, on consultation of the justices, thought the same to be no good cause of commitment, unless some special matters were objected against him ^a.

On the 28th of *January*, the speaker declared to the lords, how the duke of *Suffolk*, as it was said, had sold this realm to the *French*, who prepared to come hither. And that the said duke, for his own defence, had furnished *Wallingford* castle with all warlike munition. And then on request, the duke was committed to the tower. ^b

On the 7th of *February*, the chancellor, and some other lords, were sent by the king to the commons, a thing not usual; But wherefore they were sent is not expressed, haply to be informed what they could say against the duke, or to reconcile the business. But the commons delivered to this chancellor, and those other lords, a bill of articles against the duke, wherein they accused him of divers treasons, *viz.* For intending to marry his son to the heir of the duke of *Somerset*, and thereby for want of issue of the king, to claim the crown. For practising with the *French*, &c. And they require prosecution against him ^c.

March the 9th, The commons delivered another bill of less offences against him, requiring those articles also to be inrolled, and the duke put to his answer ^d.

These before-recited, are all the antient precedents I find recorded; the following are of later times.

Anno 19 *Jac.* The commons accused and impeached by word of mouth, Sir *Giles Mompesson*, and Sir *Francis Michell*, knights; for many oppressions done to the people: They impeached them to the lords at a conference, and afterwards delivered their declaration against them.

First, Concerning a patent for inns and ostleries.

Secondly, A monopoly for gold and silver thread.

Thirdly, Concerning a patent of concealments.

^z Rot. parl. 21 *Rich. II.* par. 1. n. 15. 16.
^a Ibid. n. 16.

^b Ibid. n. 17.

^y Ibid. n. 19. & par. 2. n. 15, 16, 17.
^c Ibid. n. 18. to 27.

^d Ibid. n. 23. to 47.

^z Rot. parl. 28 *Hen. VI.* n. 14, 15.

Eodem parl. They accused *Francis* lord viscount *St. Albans*, at a conference, of bribery, and corruption, in his office of chancellor. They delivered no writing, but a committee of the lords having considered the proofs, and drawn up the particulars in form of a charge, they were sent to the lord chancellor, and his answer required to each particular.

In the same manner, in the same parliament, they accused *John Bennet*, judge of the *prerogative court*, of bribery and corruption in his office.

21 *Jac.* In the same manner they accused and impeached *Lionel* earl of *Middlesex*, and lord treasurer of *England*, of bribery and extortion, and impositions on *French* wines and grocery, which being reported to the house, a committee was appointed to consider of the commons' plaint, and also of a committee, who had reported to the house a great want of powder in the stores, through the lord treasurer's negligence.

A committee appointed to consider thereof, did, after many examinations taken, draw up, out of the whole complaint of the commons, a charge against him; as also out of the report of the committee for munition touching the want of powder; and of a complaint made to the house by *Sir Thomas Dallison*, and of some misdemeanors whereof they are informed in the great wardrobe, and court of wards: Which charge the house sent unto the treasurer, and required his answer.

In *eodem parl.* 21 *Jac.* The commons, at a conference, accused and impeached by word of mouth the bishop of *Norwich*, of some misdemeanors, which being reported to the house, the said bishop made a present answer thereunto as it was.

In the parliament 1 *Car. I. 8 Maii.* The commons, at a conference, accused and impeached *George* duke of *Buckingham*, of many misdemeanors, and delivered their declaration in writing, that the said duke might be put to his answer.

§. 2. *The second manner of accusation is ex parte domini regis, which is threefold.*

The two first are immediately from the king, and the third from the commandment of the lords, by a formal information exhibited in parliament by the king's attorney, or counsel learned, as was that of 4 *Ed. III.* against *Roger Mortimer* earl of *March*, and divers others; and 4 *Rich. II.* against *Sir Ralph Ferrers*, knight; and 1 *Car. I.* against the earl of *Bristol*.

By the king's commandment, either upon the petition of the delinquent, and upon the return and view of any the proceedings taken elsewhere; as against the earl of *Northumberland*, and lord *Bardolph*, upon former proceedings against them in the court of *Chancery*. And 2 *Hen. VI.* upon request of the commons against *Sir John Mortimer*, knight, indicted in *London*. In these cases no articles are exhibited *ex parte domini regis*, as in the former.

By articles exhibited *ex parte domini regis*,

ex parte dominorum, against such as the complaint is made upon in general by the commons, *prout* 1 *Rich. II.* against *Gomeniz, Iffeston*, and *Alice Pierce*; 7 *Rich. II.* against the bishop of *Norwich*, and divers others. Which articles, though drawn and exhibited *per mandatum dominorum*, yet were the parties charged therewith *ex parte domini regis*.

Of accusation by information ex parte domini regis.

In *rot. claus.* 4 *Ed. III.* There is a proclamation of the death of *Edmund* earl of *Kent*; where it is said, certain letters of his containing treason, were shewed to the king; therefore he was arrested, and freely acknowledged the same before the earls, barons, and other grantees and nobles of the realm, in the parliament at *Winchester*, 4 *Ed. III.*

Here appears plainly, that articles of treason are exhibited in parliament against the earl of *Kent*.

In the next parliament in the same year, *Edmund*, son and heir of the said *Edmund*, exhibited his petition, praying the king, that the record and process whereupon the said earl was put to death, might be brought before him in parliament, and if errors be found, that right be done. The which being read before the king, prelates, earls, barons, and other grantees, in the said parliament, the king, by his royal power and dignity, by assent in parliament, repealed the said judgment. *

Note, That in this repeal, no error was alleged, nor any exceptions taken for this, that the lords proceeded upon the articles only, which were objected against him the said earl.

This is out of the close roll.

The first precedents recorded in our parliament rolls of accusations in this kind, are these of 4 *Ed. III.* in the parliament at *Westminster*, which are added at large amongst divers others, at the end of this discourse, the effect whereof doth follow, *viz.* These are the treasons, felonies, and ill deeds done to our lord the king, and to his people, by *Roger de Mortimer*, and others of his coven, reciting them all, and concludeth thus: Whereas our lord the king doth charge you the earls, barons, and other peers of this realm, that forasmuch as these things touch him principally, and you, and all the people of this realm, that you do unto the said *Roger* right and lawful judgment, as is fit for such an one to have who is very guilty of all the crimes above written, for that he believed the said things are notorious, and known for truth unto you, and to all the people of the realm. Then followeth the judgment against him. †

Item, In the said manner our lord the king charged the said earls, barons, and peers, to give right and lawful judgment on *Simon de Bereford* knight, who was aiding and counselling unto the said *Roger de Mortimer*, in all treasons and ill deeds, for which the said *Roger* was so awarded, and done to death, as the thing that is known, and notorious to the said peers,

* Rot. parl. 4 E. III. no. 11, 12.

† Rot. parl. 4 E. III. n. 1.

as the king believeth. Then followeth the judgment against him also. ‡

Then followeth the judgment against *John Mautravers, Thomas de Gurney, and William de Ogle*. *. But no particular accusations are recorded against any of them, unless they were comprised in those general words of that against *Mortimer, viz. And other of his covin*. For some of the same crimes are mentioned in the judgments, yet no doubt but the king's attorney did exhibit articles against every of them, upon which the lords proceeded to judgment.

Here I do ingenuously confess my own error, when I said that this judgment against *Roger de Mortimer* was afterwards reverted, *for that he was put to death without any accusation*, which I conceived to be so upon first view of the repeal thereof, where the petitioner *Roger de Mortimer*, the grandchild, assigneth for that the said earl was put to death, and he disinherited: *Sans accusation, & sans estre mesne in judgment ou en respons*. †

By which words, (*sans accusation*) I gave you to understand, that the articles were no accusation; whereas now upon better consideration I do find that these words do intend no accusation by witnesses, or otherwise, to prove the said articles objected against him. For these articles are a legal accusation in parliament, and frequently used, as appears by many precedents of the like nature. But there was no other proof offered by the lords to prove the same, than that the king believeth them, and that they are notorious and known for truth unto the lords, and all the people of the realm.

And the lords also having examined these articles, said all these things contained therein, are notorious and known. They speak not a word of any one witness examined, or any other proof than the common fame: For this cause, and for that the said earl was not brought to judgment, nor to answer, but condemned unseen and unheard, upon common fame only, without any legal proof, the whole parliament did very justly repeal the said judgment and record, declaring it to be erroneous and defective in all points. And the lords were willing to damn the whole record in all points, least haply it might be alledged against themselves another time for precedent.

Anno 15 Ed. II. The lords and commons joined in the accusations against the *Spencers*, and for that the lords had no record in their own pursuit upon the cause contained in their award, and they ought not to be their own judges, &c. having been accusers, no exceptions were taken to the articles, but other errors assigned, *quod vide*, where it is said to be *sans accusation*; so that they repealed it, not for that there was no accusation, but for that he was not brought to his answer.

Again, That those words, *sans accusation*, should simply signify no accusation, is only the averment of the petition. The judgment doth

not say, that there was no accusation, but that it was erroneous in all points. And so it was, no proof being produced, but common fame, to prove the answer. And this first error bred a second. I do not well understand the meaning of these words, *sans accusation*. That a peer ought to be indicted for capital offences in parliament. But having perused all the judgments, I do not find any one peer indicted in parliament. In 11 *Rich. II. numb. 7*: All the lords spiritual and temporal claimed, as their liberty and franchise, that the great matters moved in this parliament, and to be moved in other parliaments in time to come, touching the peers of the land, ought to be admeasured, adjudged, and discussed, by the course of the parliament, and not by the civil law, nor by the law of the land, used in the more base courts of the realm; which the king granted in full parliament.

This is said to be their ancient custom, *viz.* to be adjudged according to the use of the parliament only.

Then no peer can be indicted in parliament, for that it is contrary to the use of parliament. Let this suffice for the confession and rectifying mine own former error herein.

But a lord of parliament may be indicted out of parliament, and by the king's command, proceeded against in the next parliament, upon the same indictment as in these subsequent.

In the same parliament, ‡ the lord *Berkley* was arraigned, for the death of *Ed. II.* and whether out of his humility or otherwise, he waved his peerage, and put himself on the trial of his country. The articles against him though not expressed, but by the inference out of his arraignment, are for the murder of king *Ed. II.* at *Berkley castle* in the county of *Glocester*, unto which he answered, that he was then sick at *Bradley* in *Worcestershire*, and pleaded not guilty of the death of the said king, *Et de hoc de bono & malo ponit se super patriam*: The precedent shall hereafter be added at large.

It begins thus.

Placita coronae tenta coram dom. rege, Ed. III. post conquestum Angliae in pleno parlamento suo praedicto. Et allocutus de hoc, quod cum dominus Edwardus nuper rex Angliae pater dom. regis nunc, in custodiam Thomae & cujusdam Johannis Mautravers extitit deliberatus, ad salvo custodiendum castro ipsius Thomae de Berkley in com. Glocester, & in eodem castro in custodia ipsorum murderatus extitit, & interfectus, qualiter se velit de morte ipsius regis acquietare: dicit, &c.

Then follows his answer.

Here the cause, why the lord *Berkley* was tried, is mentioned, but the articles objected against him, and by whom he was accused, who questioned him, whether the chancellor or steward of *England*, or who else; all these

‡ Rot. parl. 4 E. III. n. 21

* Ibid. n. 33, 4, 5.

† Rot. parl. 28 Ed. III. n. 11.

‡ Rot. parl. 4 Ed. III. n. 16, 17.

circumstances are omitted. It appears not, I say, in what manner this crime of the lord Berkley was presented to the lords, whether by the former general information against *Mortimer*, & autres de la covyn, or by some such particular information against him alone, which I rather believe.

Some such information there must be of necessity, else how could he be questioned for his crime in parliament? But here it appeareth that the lords brought him to his answer, which they omitted to *Mortimer*, and in that point their proceedings against *Mortimer* were erroneous. And had his manner of accusation been erroneous also, no doubt but the lords would have avoided that error now against *Berkley*.

The manner how *Berkley* was arraigned here, in pleno parlamento, is explained in the precedent of, 1 *Rich. II. Gomeniz and Weston*, who were brought prisoners by the constable of the tower, before the lords in full parliament sitting in the white chamber, where they were arraigned at the commandment of the said lords in full parliament, by Sir *Richard le Scroop*, knight, steward of the king's house. The words full parliament signify the lords and commons. For that record saith, the commons prayed, that all such that have surrendered any forts, &c. might be put to their answer before the lords and commons, &c. Whereupon they were brought to their answers in full parliament for that offence. So here I conceive the lord *Berkley* being accused by the king, for the murder of king *Ed. II.* was brought before the lords and commons: For the commons are to be present at such arraignment, as shall be shewn hereafter, and the clerk of the crown having read the accusation against him, allocutus fuit: that is, the lord steward of *England* recited the fact, whereof he was accused, and demanded of him, how he could acquit himself.

This I conceive to be the manner thereof. Vide the appeals 21 *Rich. II.* for the form thereof.

I marvel the lords permitted the lord *Berkley* to waive his peerage, and put himself *super patriam*.

Anno 4 *Rich. II.* Sir *Ra. Ferrers* knight, was brought into parliament under the guard of the marshal of *England*, and there arraigned on the king's behalf, for suspicion of treason. In the process against him is recorded, that for suspicion of treason surmised against him, he was arrested in the marches of *Scotland*, by monsieur de *Lancaster*, and other lords temporal there being in the said marches, and that he was brought under the said arrest by commandment of the lords to answer in this parliament, to that which shall be surmised against him, in special concerning certain letters, which were found and sent to the king and his council. ² The letters were also recorded, and read in parliament, but the information exhibited against him, whereupon he was arraigned is not recorded. It

is only said, he was arraigned, *ex parte domini regis*.

Here might be two questions.

First, Whether was this Sir *Ra. Ferrers* legally brought to his answer in parliament by the commandment of the duke of *Lancaster*, and those other lords who were then with him in the marches of *Scotland*?

Secondly, Whether he being no baron, or lord of parliament, (for he never had summons) might be legally arraigned in parliament for life and death, upon an information, *ex parte dom. regis*, which is contrary to the law, as was resolved in parliament, 4 *Ed. III. numb. 6*?

For resolutions of these doubts, I am of opinion that the duke of *Lancaster* might send Sir *Ralph Ferrers* to the parliament, because it was then sitting, and might examine the treason whereof he was suspected, though they could not proceed to judgment against him, without the commons, he being a commoner, and not their peer: And it fell out in the examination of this business, they found the letters to be counterfeited, and so he was acquitted thereof: and so far their proceeding was not illegal. For the parliament may entertain and examine any cause, and then direct the judgment thereof to its own proper court, if it belong not unto them, as they did in 5 *Rich. II. numb. 43*, & 44. Here Sir *William Cogan*, knight, being accused by *Richard Clynedon* esquire, of matter founding to treason; After the lords had heard the cause, they remitted both the parties to the common law. And in this case of Sir *Ralph Ferrers* (if they had found he had been guilty) they might have proceeded to judgment against him, according to the precedent of Sir *John Mortimer* in 2 *Hen. VI.* who was indicted in *London*, and the indictment returned into the chancery, and thence brought into the parliament, where the commons affirmed the same, and prayed judgment against him. ^h

Anno 2 *Hen. IV.* The lords temporal gave judgment on *Thomas Holland* late earl of *Kent*, *John Holland* late earl of *Huntingdon*, *John Mountague* late earl of *Salisbury*, the late lord *de Spencer*, and *Ralph Lumley*, who were beheaded in a war they had traiterously raised against the king. ⁱ This judgment is entered, but not the information, *ex parte dom. regis*, which is necessary to be understood. For had it been omitted, *Thomas*, son to the earl of *Salisbury*, would without doubt have assigned that for one of the errors in his petition to reverse the said judgment, 2 *Hen. V. apud Leicester*. which he did not, though he assigned for an error, that his father was put to death without an accusation. ^k

In the parliament begun at *Westminster*, Feb. 6. 1 *Car. I.* and continued until June 15. anno 2. *ejusdem regis*, *John* earl of *Bristol* was charged with high treason in this manner, viz. *Primo die Maii*, the said earl of *Bristol*

² Rot. parl. 4 *Rich. II.* n. 17, 18, &c. parl. 2 *Hen. V.* n. 13.

^h Rot. parl. 2 *Hen. VI.* n. 18.

ⁱ Rot. parl. 2 *Hen. IV.* n. 30.

^k Rot.

being brought to the bar, and kneeling till the lord keeper wished him to stand up; the lord keeper told him, he was sent for to hear his charge of high treason. And Mr. attorney general being at the clerks table, began to open his charge, but being interrupted by the said earl, who with much importunity exhibited articles against the duke of *Buckingham* then present, which, as he said, he conceived to be treason, and required of the lords that his testimony against the duke, and the lord *Conway*, against whom he then also delivered articles, might not be made invalid, by the king's charge against himself, which he affirmed was procured by the said duke. Yet notwithstanding, the heads of the king's charge were opened against him by Mr. attorney, and then the said articles against the said duke, and against the lord *Conway* were read. And it was ordered by the lords of the parliament, that the king's charge against the said earl, should be first heard, and afterwards the earl's charge against the duke, &c. But yet so, as the earl's testimony against the said duke be not prevented, prejudiced, hindered, or impeached.

Secundo die Maii. The house was moved that the earl of *Bristol* might be indicted according to the stat. of 35 *H. VIII.* the treasons committed being beyond the seas, as was objected, and that being certified to both houses, they to proceed against him by trial of *peers*. But their lordships did not resolve on the manner of proceeding. Then the house was moved that Mr. attorney might provide an indictment against the said earl, to be returned to the house on *Saturday* next, *Maii 6.* And if if he doubt of the form, to confer thereof with the judges. And if any great difficulty appear, to resort to their lordships and acquaint them with it. And it was ordered that Mr. attorney proceed with the preparation, but the house not to be concluded, at their next meeting on *Thursday*. And the sub-committee for privileges, &c. to search for precedents in the mean time.

Die Jovis Maii 4. The sub-committee for privileges reported one only precedent, *viz.* the trial of the earl of *Northumberland*, 5 *H. IV.* which the clerk read unto them out of the parliament roll of that year. Whereupon after long debate, it was ordered,

First, That Mr. attorney prepare the heads of the charge, against the earl of *Bristol*, and bring them in on *Saturday* next.

Secondly, The earl then to receive his charge at the bar.

Thirdly, That when the earl hath heard his charge, the lords will determine when he shall answer; but he is not to be inhibited if he will answer presently.

Fourthly, The cause of the earl of *Bristol* is to be retained wholly in this house.

Fifthly, After the earl's charge is brought in, and his answer, then their lordships to proceed to hear Mr. attorney's proofs among themselves, and then to put the cause into a way of proceeding in this house.

Die Sabbati Maii 6. The lord keeper shewed how Mr. attorney desired, that in regard the house hath already heard the nature of the crimes objected against the said earl of *Bristol*, that the clerk of the crown in the king's bench, may attend the reading of the charge here according to a precedent of former times; which was denied, in regard the clerk of the crown in the king's bench, is no minister of this court, and also for that it was ordered *May 4.* that this cause was wholly to be retained within this house. The said order being read, the earl was brought to the bar, and the lord keeper commanded Mr. attorney to read the charge against him, who read the same out of a parchment ingrossed in court-hand, and signed by himself, *Ro. Heath*. It containeth divers articles of high treason, and other great enormities, crimes, offences, and contempts, committed by the said earl, &c. *prout posita.*

Thus much touching the charge against the said earl by information in the king's behalf.

A question was demanded of me and others in private, the last parliament: That seeing by order of the lord's house, *May 4.* the earl of *Bristol's* cause should be wholly retained in this house, how that might now be done in respect of the statute of 35 *H. VIII.* by which it was enacted, That all treasons committed beyond the seas, as this earl's were, shall be tried in the king's bench, or before commissioners assigned by the king; and an order of the upper house cannot avoid the statute. Some were of opinion, that the earl was first to be indicted before commissioners appointed by the king, and that indictment being returned into the parliament, to be tried thereon by his peers, and vouched that precedent of 2 *H. VI.* of Sir *John Mortimer's* indictment returned into the parliament.

But then the cause cannot be wholly retained in the parliament, neither can it be inferred out of the precedent of Sir *John Mortimer*, that the parliament can try any of treason unless he be indicted elsewhere. For then the parliament should not have so much power, as hath the king's bench and other inferior courts, wherein capital offences may be both enquired of and determined. Neither can Sir *John Mortimer's* indictment thus returned be a leading case, for trial of peers in parliament, for he was but a commoner, and therefore not to have been judged by the lords, unless they had first accused him, and the commons did so by affirming the indictment to be true, before the lords gave judgment upon him. But there can be no precedent shewn, that a peer of parliament hath been tried in parliament on an indictment taken elsewhere.

To resolve this question, two things are considerable.

First, The statute of 35 *H. VIII.* Whether the meaning thereof were to limit the trial of a peer in the time of the parliament (for foreign treasons assigned) in the king's bench, or before commissioners assigned by the king, and not elsewhere?

elsewhere? But I conceive the statute hath no such meaning. The preamble saith, it was doubted whether such treasons might by the common law of the land be enquired into, heard, and determined within this realm of *England*. For a plain remedy, order, and declaration herein to be had and made, be it enacted, &c. So that if such treasons have not been heretofore inquirable by the common law, then this statute provides a remedy and order for the same hereafter. But this statute doth not abridge the parliament of the power it had to enquire of, and determine such treasons in time of parliament. Whereof there are divers precedents, viz. 1 R. II. *Weston and Gomeniz*, 50 E. III. *William Latimer*, and *John Nevil*, 7 R. II. the bishop of *Norwich*, & *ibid.* 17. *Cressingham and Shipworth*, & *ibid.* numb. 24. Sir *William Elsingham*, Sir *Thomas Trevet*, and Sir *Henry de Ferrers*, all tried in parliament for matters done beyond the Seas.

The second thing to be considered is, the order itself, which I conceive to be of force, notwithstanding the statute of 35 H. VIII. for that it is neither directly contrary to the statute, nor repugnant to the common law, otherwise the act of one house alone cannot alter a former statute made by consent of both houses. And this is to be remembered, that the proceeding against a peer in parliament is not necessary. But thus it was used to be, viz. The peer accused to be brought before the lords and commons, and then the lord steward to sit in the chancellor's place, on the woolfack, and the articles to be read against him by the clerk of the crown; and upon his answer the lords to determine of their judgment, which is afterwards pronounced by the same lord steward.

A question might be, whether the commons have used to sit with their speaker at these trials? If they have, then the court of requests, or some such place, may be provided for the purpose. And thus that whole cause might be retained in parliament, notwithstanding the statute of 35 Henry VIII. Thus much touching the accusation, *ex parte dom. regis*, exhibited in a formal accusation by the king's attorney.

The duke of *Clarence* was arraigned in parliament, 18 E. IV. upon the like information; but the precedent is not in the parliament rolls, therefore I omit it.

§. 4. The second kind of accusation on the king's behalf is, *ex mandato dom. regis*, upon the roll and view of any proceedings elsewhere against the delinquent, or upon his petition: The precedents thereof are these.

Anno 5 Hen. IV. The earl of *Northumberland* was tried in parliament, *ex mandato dom. regis*, upon his own petition. The accusation and manner was thus: The said earl had

raised forces to have joined with his son *Hotspur* in rebellion against the king: *Hotspur* was slain in the battle of *Shrewsbury*, 21 July, 4 Henry IV. before the said earl could join with him. Whereupon he dismissed his forces, and retired to *Worksworth* castle. The king after the battle came to *York*, and sent for the said earl, and being come, pardoned him for his life, but abridged him of his liberty. The next parliament was summoned the 20th of *October*, to begin at *Coventry* the 3d of *December*; and the earl had his writ of summons. This parliament was prorogued till the 23d of *November* by new writs (as the manner then was) returnable *crastino Hillarii* then following, but the earl had no new summons thither; but thither he comes a petitioner. *Speed* saith, he was abridged of his liberty, but the record saith, he came before the king, lords, and commons of parliament, and not that he was a prisoner as *Gomeniz*, and *Weston*, 1 R. II. nor that he was caused to be brought as a delinquent, sent for as *Alice Peirce*, 1 R. II. And then the chancellor shewed, that upon *Tuesday* last past, he had been before the king, the lords, and commons in the same parliament, and there besought the king, as he had done before, at his coming before him at *York*, that the king would do him grace for his misprisions against him, in not keeping his laws and statutes, as by one petition delivered by him in parliament, written in *English*, the tenor whereof followeth, may appear.

To my most dreadful and sovereign liege lord.

I your humble subject beseech your highness, to have in remembrance my coming into your gracious presence at York, of my free will, by your goodly letters, &c.

The which petition, *per commandment du roy*, was examined by the justices to have their counsel and advice therein. But the lords by protestation made, claimed the judgment to belong unto them only in such cases; and so the lords tried him, and acquitted him of treason and felony, but found him guilty of a trespass only, which the king pardoned¹.

Here no information was exhibited against the said earl, yet the king's counsel opened his offences to the lords, else how could they appear.

Anno 7 Henry IV. The king commanded the lords temporal in parliament, to advise what manner of process should be made against *Henry* late earl of *Northumberland*, and *Thomas Bardolph* late lord baron, for certain ill deeds which they had lately committed contrary to their allegiance. At their meeting, the constable of *England* shewed them the process made in the court of *chivalry* against *Henry de Percy*, upon the articles of treason committed by him and others of his covin.

¹ Rot. parl. 5 Henry IV. n. 11.

In which articles are named the archbishop of *York*, *Thomas Newberry* earl marshal, the said earl of *Northumberland*, the said lord *Bardolph* and many others, and their several treasons are therein contained.

The lords having advised therein, and considered the proofs, delivered their opinion to the king touching the said earl of *Northumberland*, and the said lord *Bardolph* only, and proceeded to judgment against them. Then the king caused to be demanded of the lords temporal, peers of the realm, what they would say touching the act of the said late archbishop of *York*, and of the said earl marshal, who lately with a great multitude of people were armed, and trained in the field within the realm of *England*, with banners displayed, &c. Unto which demand the said lords temporal said, That according to the information to them given by the said constable, it seemeth unto them to be treason; yet notwithstanding the lords desired that with good deliberation, when they next returned to the parliament, they might speak thereof unto our lord the king, as no error might be found in their doings in time to come. This was done on that day the parliament was adjourned.

Here the lords had no other accusation against those two peers, but the king's commandment, upon view of former process against them in the court of *chivalry*. And the lords declared their opinion touching the archbishop of *York*, and the earl marshal, (though their treasons were contained in the same process also) least error might be found in their doings hereafter. But whether they thought their error to be, that the king had not commanded them first to advise thereon, touching the said archbishop, and the earl marshal, as he had done touching the others, let the reader judge; for my part, I think that would have been error. Could the lords proceed upon process elsewhere, unless the king commands them?

2 *Henry VI.* The judgment against *John Mortimer*, is drawn up very briefly by *John Hales*, one of the justices of the king's bench, wherein he first shews, that the said *John Mortimer* was indicted in *London*, sitting the parliament, before the lord mayor of *London*, and other commissioners appointed by the king: For that the said *Sir John* being committed to the tower, for suspicion of treason, corrupted his keeper and broke prison: That the said indictment was returned into chancery, *ex mandato dom. regis*, and by the chancery brought into the parliament before the duke of *Glocester* the king's protector, and the lords temporal, the king being then an infant. And the protector being authorized by commission to hold the parliament, *de precepto dom. regis*. that the said *Sir John Mortimer* by virtue of the writs was brought before the said duke, and lords, and commons. That the said commons affirmed the said indictment to be true, and desired judgment against him, as convict of treason and felony. And lastly, that he was thereupon adjudged.

In this is set down all the essential parts of the lords proceedings against *Mortimer*. The ceremonious or formal parts thereof are omitted, as, who complained of or accused *Mortimer* to the parliament. The king or the commons did not, for then there needed no indictment; and therefore it must move for the king either before the indictment, or rather upon the return thereof unto the house. For had the accusation been before the indictment, it had been a shorter way to arraign him also before the commissioners in *London*, (he being no member nor peer of parliament) than to return the indictment into the chancery, and then be brought into the parliament.

Here is also omitted the conference before hand, between the lords and commons touching this matter; for it is very unlikely that the lords did suddenly send for the commons, and then abruptly read the information before them, and they as suddenly affirm the same; all these are necessarily understood. That the commons affirmed the indictment, &c.

It appears that the lords cannot of themselves judge a common person for an offence, for he is no peer according to that of, 4 *Edward III.* num. 6.

The manner of accusation by information, *ex parte dom. regis*, is when the commons, as any other private person, accuse any man unto the lords in general, but do not declare the offences in particular, other than by the commandment of the king. Articles are drawn up against the delinquent, *ex parte dom. regis*.

The precedents are these.

1 *Richard II.* The constable of the tower was commanded to bring *Gomeniz* and *Weston* (whose offences were complained of in general by the commons that they named) before the lords in parliament, to answer to the articles objected against them on the behalf of the king, and they were severally arraigned at the commandment of the lords, &c.

Eodem anno, *Alice Pierce* being complained of by the commons, was accused, and commanded to come before the lords in parliament, to answer to certain things objected against her on the king's behalf.

And hereupon *Sir Richard le Scroope*, chief steward of the king's house by commandment of the lords, rehearsed in parliament in the presence of the said *Alice*, a certain ordinance, &c. made in the parliament of 50 *Edward III.* against her.

And this rehearsal being made, the said steward furnished unto the said *Alice*; That it seemed to the lords of the parliament that she had incurred the pain comprised in the said ordinance in certain points, and especially in two; that is to say, &c.

By these two precedents it appears plain enough, that the lords commanded the articles to be drawn, and exhibited though *ex parte dom. regis*, for all these are said to be done by their

their commandment. And the practice at this day is, that out of the complaints of the commons, as of *Mompesson*, the lord chancellor, and the lord treasurer, a committee of the lords did draw up the charges; but they wanted the words, *ex parte dom. regis*.

The reason why in this cause the articles are, *ex parte dom. regis*, seemed to be this :

The commons complain, but impeach not. Notwithstanding the impeachment the lords cannot proceed, neither can they impeach any to themselves; so it rests that the party is to be impeached at the king's suit.

It may be lawful for me to examine the proceedings of the lords in the complaint against *Mompesson*, and to compare them with antient proceedings in like cases, and they will appear to differ much.

And touching *Mompesson*, the commons did not only complain but accuse him: He fled, in his absence they ought to have proceeded to judgment against him, before proclamation first made for him to appear before the king and them at a day. The antient use in such cases was this.

The lords considered of the complaint, and examined the proofs produced by the commons: Then agreed on their judgment, and caused proclamation to be made throughout *England* for the party to appear at a day, else judgment shall be pronounced against him, with which the commons are to be acquainted before the proclamations are sent forth. Then the return of the proclamations to be reviewed and examined, and if any errors be therein, new proclamations are to be made in the next shire only for the party to appear at a short day: If they find no errors in the return, then judgment is to be pronounced, and not before. Thus it was in 21 *Richard II.* in *Thomas Mortimer's* case, &c. In 7 *Henry IV.* in the earl of *Northumberland's* case. But there needed no articles to be drawn up, *ex parte dom. regis*, out of the impeachment of the commons, for the suit is theirs, and not the king's.

Touching the lord treasurer. First, the commons did twerve from the antient course in this, they delivered not their accusation in writing, he being absent; Had it been in the open house, an impeachment by word of mouth had been sufficient, and the suit had been theirs; but it being at a committee, how could the lord treasurer take notice of their impeachment? Wherefore the lords of necessity did draw up a charge against him out of their accusation, and then it became the king's suit, and they were abridged of their power to reply, or demand judgment, *prout in Weston & Gomeniz case 1 R. II. & Alice Peirce, ibid.*

Neither was it now necessary for the commons to be acquainted with the delinquent's answer, or any of the proceedings, for that they neither demanded he might be put to his answer before the lords and them, nor impeached

them by word in open house, nor in writing, one of which is required in an impeachment.

And the lords they varied in this; that they did mingle other complaints with these of the commons, when each should have been a part of itself, *prout 42 Edward III. Sir Joh. at Lee's case*. Neither did the lords antiently use to omit any part of the commons complaint and accusation, as they did the imposition on the *French wines*: And the articles of the charge they sent to the lord treasurer, ought to have been examined *ex parte domini regis, prout* in the former precedents of 1 *R. II.*

The next precedent is 7 *R. II.* upon the demand of the commons against the bishop of *Norwich* and others.

§ 5. Of accusation by complaint of private persons.

I do not remember any precedent of this manner of accusation for publick offences, unless the parties complainant be particularly interested therein; yet I doubt not but such complaints have been, and may be received, and the parties proceeded against in parliament, or else that high court should not have so much authority to receive information *pro domino rege* from private persons, as the inferior courts have: But what hath been done shall appear; I will omit all complaints of particular wrongs, except it be of bribery, extortion or oppression, in men of authority.

Anno 42 *Edward III.* *William Latimer* exhibited his petition in parliament unto our lord the king, and to his council, shewing that he had the wardship and marriage of the heir of *Robert Latimer*, by mesne grant from the king, and held the same until monsieur *John at Lee*, then steward of the king's house, sent a serjeant at arms to bring them to *London*, and commanded him, being come, not to depart without his leave, upon payment of 1000 *l.* and afterwards would not give him leave to depart until he had surrendered the body of the said heir, and the king's patent unto him the said monsieur *John at Lee*; And thereupon the said *John* was put to reason before the lords, &c. no. 20, 21. And also the said *John* was put to reason before them for this; when he was steward of the king's house, he caused divers to be attached by their bodies, some by serjeants at arms, and some otherwise, as *W. Latimer* and others to be brought before the king's council, &c. n. 22. And also for executing the authority of steward out of the verge. n. 23. And also for discharging out of *Newgate*, by his authority, and against the judges commandment, *Hugh Leuenham*, an approver,* who had appealed several men of felonies, &c. n. 24. And also, that he being sworn of the king's council, did bargain with *Nicholas Lovayn* for the manor of *Rainham* in *Kent*, which the said *Nicholas* claimed to hold during the minority of *John Staynton*, whereas the said *John at Lee* knew the same was holden of the king

* Promoter.

in chief of the castle of *Dover*, n. 25.

These be the particulars wherewith the said *John at Lee* was charged. It appeareth *W. Latimer* accused him at the first, but not the rest; and I imagine that the commons accused him of the second and other particulars, for that they are laid somewhat generally, and are offences against the liberties of the commons; and also for that divers of the commons were present at the hearing; and for the fourth and fifth particulars, I perceive the king's counsel accused him thereof, for that one is an offence against the legal proceedings of justice, which then was that of the approver, viz. *He which accuseth any one of felony, &c. should remain in prison as well as the accused until trial.* Of later times the accuser puts in sureties to prosecute. And the other offence is a particular wrong done to the king in his revenues: And had any private person accused him of this, their petitions would have been recorded as well as *Latimer's*, but the lords proceeded against him upon *Latimer's* accusation, and then upon the rest severally, and they did not mingle one with another.

Anno 50 *Edward III.* the commons accused and impeached *W. Ellis*, n. 31. and afterwards *John Botild* and *W. Cooper* exhibited their bills against him, to this effect;

To their thrice redoubted king, and to his sage counsel, sheweth John Botild of Leytost that the Monday next after the ascension, in the forty ninth year of our lord the king, that now is, a ship of Scotland, charged with divers merchandizes of the merchants of Pruse, &c. (whereof the master's name is Henry Luce) was chased by tempest into Kerkele-road. And that the same day one William Savage, clerk and servant to William Ellis, by command of the said William, to ok of the said ship for the merchandizes not discharged there, 17 nobles and a last of &c. And because that William Ellis knew that W. Cooper was to come to the parliament, and shew these and other grievances in aid of the merchants, and also to shew how the great prices of herrings might be amended in aid of the whole realm, the said William Ellis, by false suggestion, caused the said W. Cooper to be arrested and put in prison in the tower for three weeks.

May it please you, &c.

Here I observe that the accusation of a private person ought to be legal and certain, as that was.

This accusation consists of two parts; the unjust taking of 17 nobles, &c. from the merchants of *Pruse*, and the imprisonment of the petitioner by false suggestion to the king.

Upon hearing of the matter, the lords ordered, That as for the complaint touching the 17 nobles, it should be sent to the king's bench to be tried there; but the lords themselves determined the imprisonment upon the false suggestion to the king, and awarded *Ellis* to prison, to pay fine and ransom to the king, and damages to the accusers.

The lords received the latter part of this complaint for two causes: The one, for the false suggestion to the king, limited by the statute of 31 *Edward III.* to be punished by the chancellor, lord treasurer, and the council if it be untrue; all which were present in the parliament.

The other, for a scruple which might arise out of the words of the statute, which provides for false suggestions only to the king himself. *Whereas Ellis his false suggestion was by a letter written to one of the king's servants, which being shewed to the king, his majesty caused the petitioner to be imprisoned.* And thus the lords expounded to be in *Ellis* a suggestion unto the king himself. And had this point been truly triable at the common law, the lords had referred it thither. This is but my own conceit.

Anno 5 *Richard II.* num. 43, 44. *Richard Clynedon*, Esq; by his bill exhibited to the king in parliament, accuseth Sir *William Cogan*, knight.

Anno 5 *Richard II.* numb. 45. the mayor, bayliffs, and commonalty of *Cambridge* were accused, &c.

The next of this kind is a very slanderous accusation of the chancellor, which I will briefly declare, and the whole proceedings therein, for that it differs in some points from the rest.

The parliament of 7 *Richard II.* at *Salisbury*, began the Friday after the feast of St. Mark the evangelist, April 20th. On the 24th of May next, *John Cavendish*, fish-monger, complained in this parliament:

First, Before the commons of England in that assembly, in presence of some prelates and temporal lords, and afterwards before all the prelates and temporal lords in full parliament.

In the beginning of this complaint, he desired the lords (for God's sake) to grant sure and speedy protection for the safety of his life, and that he might have sufficient surety of the peace against those of whom he would complain; and especially he demanded surety of Sir *Michael de la Poole*, chancellor of England; and accordingly the chancellor did, at the commandment of the king find sureties, viz. two earls, &c. Then the fish-monger rehearsed, how that all the last parliament, which was held at *Westminster*, at *Allhallontide* in the same year, he did sue by his bill to have restitution of certain merchandizes of great value, (from *George Mansfield* and three others) which was lost upon the seas by them at such time as they had undertaken the safeguard of the seas, and of the merchandizes passing and coming in the mean time, against all enemies out of the royal power. The which was endorsed faith he, and committed to the chancery, to discuss and determine the matters therein comprised, according to law and reason. Whereupon he dealt with one *John Otre*, a clerk, and household servant, to the said chancellor, for his master's favour and furtherance in the business. The clerk, after he had viewed a copy of the bill, and considered of the business promised,

promised, that for forty pounds to his lord's use, and four pounds to his own use, he should have speed: That he gave his bond for 44 *l.* to be paid at a day to come, and afterwards delivered unto the said *Otre*, certain herrings and sturgeon, to the value of nine or ten marks, to the use of the said chancellor in part, and three yards of scarlet, which cost him 32 *s.* unto *Otre*, for his own use, in part of the said 4 *l.* Notwithstanding all which, he found no favour from the chancellor in his suit, but was delayed, and still is, and cannot have justice therefore.

That the said *Otre* told him, that he could have had more money of his adversaries to have been against him; which made him suspect the worst. But, said he, whether the chancellor shall be reputed privy to this, God knoweth; judge you my lords; for the chancellor hath paid him for his herrings and other fish, and sent him his bond cancelled; but whether he did it out of conscience, or to avoid slander and reproach, he knew not; judge you, my lords; but he was not paid for his three yards of scarlet.

Unto this the chancellor made his answer, not presently, but at another time; for the record saith, he answered first before the prelates and lords, and afterwards before the lords and commons; whereas the commons were present when the complaint was made, it being in *pleno parlamento*.

And in the judges award, to whom this matter was afterwards referred, it is said to be *coram magnatibus & communat' in parlamento*. So that the answer was made some other way.

First, He protested his innocency touching the delay of justice, and shewed how the delay was through the difficulty of the cause, and vouched the justices and the serjeants, who had often heard the pleadings.

Touching the bribery, he swore by the sacrament he had no knowledge thereof, until upon accompt with his officers, he found those fishes not paid for; and then he presently caused them to be paid for, and the bond cancelled, and sent him. He denied that his clerk moved him in that business; all which he offered to prove in such manner as the king and the lords should ordain, and demanded justice against the fishmonger for the slander. Unto which the fishmonger presently answered, and said, he did not accuse the chancellor himself, but his clerk only. The lords examined the fishmonger and the clerk about the bond, and his adversaries on their allegiance, whether they had given any thing, or promised to give? And finding the chancellor free from bribery, the lords acquitted him of his accusation aforesaid. Then, at the chancellor's request, the fishmonger was committed until he found sureties to appear *de die in diem* before the lords, and before any judges who should be assigned. The lords committed the clerk also; and afterwards the parliament growing to an end, the complaint was referred wholly to the judges to hear and determine the same, as well for the king, as for the parties, *auxi avant come les peres de parlement*, might have done,

V O L. III.

if the plaint had been fully treated in their presence, and in the parliament.

The proceedings before, the judges were in a schedule, annexed to the parliament roll, and were thus;

A commission was granted in parliament unto *Tresilian*, chief justice of the king's bench, and *Belknap*, chief justice of the common pleas, to hear and determine.

They met at *Westminster* June 14. and were assisted by the lord treasurer, lord keeper, lord privy seal, the master of the rolls, and the king's two serjeants, &c. and they called the fishmonger before them, and caused to be recited the said accusation, and the chancellor's answer; and then demanded of him what he could say why he should not undergo the penalty of the statute against such scandals, especially when as the chancellor hath acquitted himself in parliament, and is yet ready to acquit himself by any way possible?

The fishmonger denied that he slandered the chancellor, but the clerk only, &c.

The commissioners considering the accusation and answer in parliament, and especially that the fishmonger said he could not have justice in his cause before the chancellor, the contrary whereof was expressed and proved out of the records of the chancery, they adjudged him guilty of defamation, and to pay one hundred marks to the chancellor, and to be imprisoned until he could pay the same, and a competent fine due to the king.

It should seem the lords could find no time to examine the injustice he complained of, and therefore referred it to the judges.

Anno 6 Rich. II. octab. Mich. numb. 59. Divers bills were exhibited this parliament by the mayor, aldermen, and citizens of *London*, concerning the fishmongers, and the said mayor, and aldermen, and fishmongers were present at the reading thereof; where *Nicholas Exton*, who spoke for the fishmongers, prayed the king to receive him and his company into his protection, which was granted. numb. 60. Then one *Walter Sybill*, a fishmonger, craved audience, and said, these bills were not exhibited for any good zeal to the commonweal, but for meer malice to the fishmongers, for that the chief exhibitors of these bills being commanded to prison for sundry misdemeanors in the time of *Ed. III.* were then imprisoned by certain of the fishmongers, who then were chief officers in *London*, for which cause, malice was borne to that time. numb. 61.

To that, one *John Moore*, a Mercer, answered, that the citizens of *London* meant to keep the peace towards them, unless they went about to let into the said city the rebels of *Kent* and *Essex*, as the said *Walter*, and others did. numb. 62.

The said *Walter Sybill* took advantage of those words, and desired the lords to bear witness.

John Moore thereupon expounded his words, saying (as the report then went) and prayed the lords that the truth thereof might be further inquired of, in the city.

There is one only precedent of a complaint made by a private person in the house of commons, and of the commons proceeding therein, against a lord of the parliament; which was thus :

Anno 15 Hen. VI. *Thomas Philips* exhibited unto the commons, his bill of complaint against *John* bishop of *London*, for his long imprisonment upon suspicion of heresy.

The commons sent up the bill, being written in papers, amongst others, to the lords, without any message, for ought appeareth upon record. On Monday following, the bill was read, and the lords *excogitabant*, that it did not belong to their house *de talibus frivolis rebus consultare*, and returned it to the commons.

Hereupon the commons sent — to the bishop for his answer in writing unto this complaint; which yet the bishop did forbear to do, until he knew the opinion of the lords herein, and acquainted their lordships therewith. The next day the lords answered all with one voice, *Quod non consentaneum fuit aliquem procerum alicui in eo loco responsurum, Lunae 2. Martii.*

In the parliament begun at *Westminster*, anno 19 Jac. Sir *John Bowser* knight, complained of the bishop of *Lincoln*, the then lord keeper; but he was not compellable to answer before the commons.

10 Rich. II. The commons accused *de la Poole*, openly in parliament before the king and lords; unto which the counsellors made a good answer (in the opinion of this age) yet upon the many replications of the commons, and the enforcement of his oath strictly against him, he was fined and imprisoned, &c.

In this parliament also, the lords and commons procured commission unto certain of the lords to inquire of the enormities of the realm, and to redress them. The king was so highly displeased with these proceedings, that on the last day of this parliament, being the 20th of *November*, he himself protested that nothing done therein should turn to the prejudice of him or his crown.

Afterwards he sought all means to overthrow those lords who procured that commission, viz. the duke of *Glocester*, the earls of *Derby*, *Arun- del*, *Warwick*, and earl *Marshal*. And at a consultation thereupon, he sent for the chief justice *Tresilian*, and some other judges, and his serjeants at law unto *Nottingham*, where, on August 25. anno 11. he propounded certain questions containing all the points of advantage against the proceedings of the last parliament, which the judges affirmed to be treason under their hands and seals. Then the king thought to proceed judicially against those lords, but they kept together with the duke of *Glocester*, at *Haringay* with a strong guard: And the king sent for them, and all doubts of danger to their persons, being first removed, they came Nov. 3. anno 11. and kneeling before the king's majesty,

he demanded why they were assembled at *Haringay* park in warlike manner? They answered, for the good of the king and kingdom, and to remove certain traitors from about him, meaning the lord of *Ireland*, the archbishop of *Tork*, *Michael de la Poole*, Sir *Robert Tresilian*, and Sir *Nich. Brembre*. And with that they threw down their gloves and gages of the challenging to prove the same. Unto which the king replied, This shall not be done so; but at the next parliament, which shall be the morrow after *Candlemas* day, and then all parties shall receive according as they deserve.

In the mean time, he conveys away the parties accused, and acquits them by proclamation; then summoned a parliament at *Westminster*, *crast. Purificat. 11 Rich. II.*

Where these few lords appellants came well armed, which made the king unwilling to come amongst them; yet at last he came.

On the first day of this parliament, the duke of *Glocester* (one of the said appellants) kneeling before the king, shewed, that whereas he understood his majesty was informed, that he intended the deposing of him, and advancing himself to the crown, he was ready to declare his innocency herein, in such sort as the lords would ordain. Whereupon the king answered, he held him thereof acquitted.

On the second day of this parliament, the said appellants exhibited their petition to the king concerning several articles against divers lords and commons, whom they appealed of treason. The said articles being read in presence of the king and lords in parliament, the said appellants offering to make proofs thereof, required that the said appellees might be called to answer; and for default of their appearance, demanded judgment against them. Hereupon the king and lords deliberated. The judges of the common law, and the sages of the civil law were charged by the king to give their best counsel to the lords of the parliament, how to proceed in their appeal rightly. Who, after long consultation, answered the lords, that the appeal is in no point made and declared according to the order of the common or civil law.

The lords, after long debate, declared by the assent of the king, that the offences being committed by the peers, the cause should be determined in parliament only, and that by the law and order of parliament only, and adjudged the said appeal with the process thereon depending, to be good, according to the laws and course of parliaments.

And the default of appearance was recorded, and judgment given, &c. against those who made their default.

After which, Sir *Nicholas Brembre*, a commoner, was brought prisoner before the king and the lords at the request of the said appellants: And the said articles being read, he pleaded not guilty; which he was ready to defend with his body. Whereupon, the commons of the parliament said, that they had seen and considered all the said articles, which they found

to be true, and that they likewise, as much as in them lay, did also accuse the said appellees, which they would have done, and it appertained to them to have done, had not the aforesaid appellants pursued the said appeals. Whereupon was answered by the lords of parliament, That the battel doth not lie in this case; but that they, upon examination of the articles, would proceed to judgment.

Here I note, That the lords cannot proceed against a commoner, but upon a complaint of the commons: But here is not expressed how the commons came daily to have a sight of these articles. I deny not, but after they were read in their presence (for their presence is always understood in judicature upon life and death *prout postea*) they demanded a sight of the articles, and considered of them apart, and then supplied the defects thereof. And this also is to be observed, that the commons accuse commoners, as the lords do their own peers. I suppose that *Brembre* was denied the battel, because the commons accused him also; or otherwise he ought to have it granted upon an appeal.

Afterwards, the commons themselves accused and impeached divers commoners, *prout 2 Mar.* Sir Robert Belknap, lord chief justice of the common pleas, Sir John Carey, late chief baron, and other justices, &c. The records were brought into the parliament, at the demand of the commons, and the commons accused the justices for their untrue answer made unto sundry questions before the king at Nottingham, to the emboldening of the aforesaid offenders in their traitorous designs and attempts, &c. Unto which they answered, &c. were adjudged, &c.

And then follows another impeachment of the commons; thus:

The accuséments and impeachments made by the commons of the realm, against *Simon de Burle*, Sir *John Beauchamp*, Sir *John Salisbury*, and *James Berners*, knights, do ensue underwritten, whereof the commons pray judgment in this present parliament.

Thus much touching the appeal of 11 Rich. II. But this begot another appeal in the 21st of the said king Rich. II. in the parliament begun Sept. 14. being the feast of St. Oswald.

Edmond earl of Rutland, Thomas earl of Kent, John earl of Huntington, Thomas earl of Nottingham, John earl of Somerset, John earl of Salisbury, the lord Dispencher, and William Scroop chancellor unto our lord the king, in their proper persons delivered unto our lord the king, then sitting in the great hall within the castle at Nottingham in his royal estate, with a crown on his head, a bill of appeal against Thomas duke of Gloucester, Richard earl of Arundel, and Thomas earl of Warwick: The which bill of appeal is recited in that parliament, and as it seems, *per copiam verborum inde*, was penned by the advice of some civil lawyer. It seems also they were very careful herein to avoid all errors of the former appeals.

For in that of 11 Rich. II. they appealed divers commoners, but here the lords appealed none but peers; then it was done by word of mouth, they being called to the king upon some other occasion, but now it was done solemnly in writing, and was delivered to the king sitting on his throne of state. There they offered to prove their accusation by battel (a thing not meet for the parliament) or in what course his majesty would ordain it; but here the bill was read in parliament, and they said, they have been, and are ready to prove, &c. as you our thrice redoubted king, and this honourable court of parliament should ordain. Nor were they less careful in their proceeding to judgment, to avoid the errors in the former, *prout in the answer*. But these appeals are now abolished by 1 Hen. IV. c. 14. and not without cause; for as this accusation was extraordinary, so were the proceedings carried with a strong hand; the former by the lords, this by the king, *prout ex chroniculis in quinto comparat cum codice 1 Maii*. A brief whereof, so much as concerns this appeal, follows hereafter at large, with the precedents of 21 Rich. II. *Ad quod parlamentum convenire jussit rex omnes dominos sibi adhaerentes, cum sagittariis & viris armatis, tanquam ad bellum, & contra hostes omnino progressuri fuissent. Ipse vero rex ut efficacies proficere possit, nequam conceptus malefactores de comit' Cestr' congregari fecit ad velandum locum stramine, &c. Eraxerat autem rex quandam domum amplissimam in palatio Westmonaster' quae pene totum palatii spatium occupavit; in qua sibi thronus parabatur altissimus, & pro cunctis regni statibus locus largus; & pro appellantis, in uno latere locus specialiter deputatus, & in alio latere locus largus pro responsu assignatus; seorsim vero pro nobilitatibus parliamenti, & qui non fuerunt electi per communitatem. Et ferale nuncupatur parlamentum.* Thus much of accusation by appeal, (which when any of the lords accused others out of parliament) was summoned; but God be thanked, they are abolished, 1 Hen. IV. c. 14.

CHAP. III.

The Parties answer.

THE party accused is to be brought to his answer, otherwise the whole judgment will be erroneous, as was *Mortimer's* 28 Ed. III. numb. 10. and *Spencer's* 15 Ed. II. and *John Matrevers's*, 21 Ed. III. numb. 65. dorf. Although the party be absent, yet the parliament hath used all means possible to have his answer, *prout 21 Rich. II.* where the lords appellants, and the commons also accused *Thomas Mortimer* of treason; and the commons said, That it was notoriously known unto them, that the king had sent his mandate by *W. D.* a serjeant at arms, unto the said *Mortimer*, in Ireland, commanding him upon his allegiance to come before him in all haste, to answer, &c. And that the said *Mortimer* having notice thereof,

thereof, withdrew himself among the wild *Irish*, where the same serjeant, nor any other officer of the king's durst come, for fear of death: Wherefore, and for that his offences are notoriously known both to the lords and them, they prayed judgment, &c.

The king, the lords, and the procurators of the clergy considered of the request of the commons with good deliberation; and then the lords, with the said procurators, by the assent of the king and commons, did award that proclamation should be made through *England and Ireland*, commanding the said *Thomas Mortimer* to render himself in proper person to the king in what place soever it shall be in *England*, within three months after the 23d day of *December* next coming, to be at his answer; and they farther awarded, that if he came not, &c. that then he shall be judged traitor, and convict of all treasons whereof he is accused, and shall forfeit, &c.

Then the king adjourned the parliament, and the appellants to the 15th of *Hillary* next at *Shrewsbury*; on which day the said appellants declared to the king, that it was awarded that proclamation should be made, &c. *ut supra*; the commons did the like: And for that the said *Thomas Mortimer* came not, they had judgment.

In 7 *Hen. IV.* The lords agreed this judgment against the earl of *Northampton* and the lord *Bardolph*, who were fled to the rebels in *Wales*, and proclamation *ut supra*, throughout *England*. At the day prefixed they examined the returns of the proclamations in the presence of the commons, and so the judgment was agreed on in their presence also; and so it ought to be in all cases of life and death. And finding a small error, they awarded new proclamations in *London* only; and the return thereof was again viewed and considered in the presence of the commons, and then on the next day judgment was given.

Eodem anno 21 Richard II. The lords appellants accused also the duke of *Glocester* of treason; and although they knew he was dead, they prayed the king that he might be brought to his answer. Whereupon the king sent his writ to the council of *Calais* (unto whose custody he committed the said duke) to bring him into the parliament to his answer. The captain returned his writ, that the duke is dead; the which writ and return being read, the said appellants prayed judgment; and the commons shewed, that the duke's levying war against the king's person, is notoriously known to all the states of parliament, and therefore they desired judgment also, and had it.

And what may not the whole parliament do when they join in one? Yet notwithstanding fearing some error (as it seems) they besought the king, that if there were any thing on record, be it by confession or otherwise which concerned their appeal, that it might be openly known, and shewn in full parliament. Whereupon, by the king's commandment, was

read a commission granted unto *William Richill* justice of the common pleas, and a confession of the duke of *Glocester*, made before him, by virtue of the said commission; yea, and *Richill* himself, being commanded, did justify that the duke did write the confession with his own hand, in his absence, and afterwards read it unto him; so careful they were to have something to supply an answer. I marvel that *Richill* was acquitted of his proceedings herein at the next parliament of 1 *Henry IV.* where he affirmed that much of this duke's confession was altered after he had returned his commission. He well deserved to die, in that he spoke not of it.

Yet there is one precedent directly contrary to all this, *viz.* 11 *Richard II.* in that appeal which happened on this occasion.

The afore named duke of *Glocester*, and four other lords went to the king, and accused the duke of *Ireland*, the archbishop of *York*, *Michael de la Poole*, and others of treason; the king adjourned them to the next parliament, promised them justice there, and in the mean time conveyed away the parties accused, and acquitted them by proclamation.

In the next parliament, 11 *Richard II.* the articles of the appeal being read, the duke and other appellants offered to make proof thereof, and required that the parties appealed might be brought to their answers; and for default of appearance, demanded judgment. Whereupon the king did deliberate with the lords, and commanded the justices, and other sages of the law to give their best counsel to the lords how to proceed rightly in this matter of appeal; who after consultation therein had, answered the lords, That they had seen and considered the tenor of this appeal, which they said was in no point made and declared according to the order of the common or civil law. But they gave no answer touching the demand of judgment for default of appearance; whereupon the lords deliberated, and after by the lords assent declared that this cause committed by the peers against the person of the king and state of the realm, shall be determined in the parliament only, and by no other law than by the law and course of the parliament: And that it belongs to the lords only to judge in such cases. And with the assent of the king they did judge the same appeal, and the process thereupon depending, to be good, according to the law and course of parliament.

Then the lords appellants proceeded, and desired to have the fault of appearance recorded, and judgment given, and so it was. So likewise 21 *Richard II.* After the king had given the full power of parliament to determine all matters begun, into the hands of twelve lords, or six, and six commoners, or any three, he adjourned the parliament from *Westminster* to *Shrewsbury* in 15 *Hil.* and there on *March 22.* it was shewed to the king how that *Robert Possington* was impeached at the parliament at *Westminster*, for being with the duke of *Glocester* in levy at *Haringay*, an. 11 *R. II.*

For

For which the said duke was adjudged a traytor, and therefore they brought the king to ordain the like judgment against *Robert Possington*, though he was dead: Whereupon our lord the king, by the assent of the lords and knights of counties, having power, &c. awarded the said *Robert* guilty, &c. and that he shall forfeit, &c.

But these extraordinary precedents cannot lead us into the ordinary course of proceedings; and I alledge them only so, as their errors may be avoided.

To conclude, it is the just and constant course of parliament, to bring the party accused to his answer; yea, though he fly justice, yet to send out proclamations into the countries, that he appear at a day, or else such and such judgments shall be given against him. I confess this course was omitted in the judgment against *Mompesson*, 18 Jac. and haply it was not then thought upon; the judicature of parliament being so long out of use; and therefore that cannot be alledged as a leading precedent.

And in that judgment 2 Hen. VI. against Sir *Jo. Mortimer*, upon an indictment of escape out of prison, being committed upon suspicion of treason, the said *Mortimer's* answer is not recorded; yet it is said he was brought before the lords, and the said indictment read in his presence, that he made an answer unto it, though not mentioned. And this proves that the party is to be brought to his answer; else *Mortimer's* presence had not been necessary.

Anno 17 Rich. II. num. 20. The dukes of *Lancaster* and *Glocester* complained to the king, that Sir *Thomas Talbot*, with others, conspired the death of the said two dukes, and prayed the parliament to judge thereof. The fact was judged high-treason, and writs sent to divers sheriffs to apprehend him, which writs were returnable into the king's-bench: and open proclamation was made in *Westminster-hall*, that upon the sheriffs return, and the not appearance of the said *Thomas*, he should be convicted of treason, and forfeit, &c.

This was extraordinary in terrorem: But what may not the whole parliament do? They may alter law much easier than form.

In the answer is to be considered,

First, In what causes the party is to answer as a prisoner; and in what as a freeman.

Secondly, When council shall be allowed him, and when not.

Touching the first.

The parliament hath guided their proceedings therein *secundum legem terræ, & judicium parium*. According to the 26th chapter of *Magna Charta*, *Nullus liber homo capiatur*

vel imprisonetur, &c. nisi per legale iudicium parium suorum, vel per legem terræ. And therefore in causes capital, whether the party accused be a lord of the parliament, or a commoner, he is brought a prisoner to his answer *secundum legem terræ, prout* 4 Ed. III. num. 16, &c. The lord *Berkley* accused by the king for murder of Ed. II. Anno 1 R. II. *Jo. lord Gomeniz* and *W. Weston*, upon the demand of the commons for surrendering forts beyond the seas. An. 4 R. II. Sir *Ra. Ferrers*, knight, was apprehended for suspicion of treason.

Anno 28 Hen. VI. Although the lords refused to commit the duke of *Suffolk* upon the commons complaint of him of a common fame of treason; yet when they accused him of particular treason, he was committed, and brought prisoner to his answer.

But in cases of misdemeanors it is otherwise; then the party accused, whether lord or commoner, answers as a freeman. The lord within his place, the commoner at the bar. And they are not committed till judgment, unless upon the answer of a commoner, the lords find cause to commit him, till he find sureties to attend, &c. lest he should fly; *prout* *Jo. Cavendish* upon the lord chancellor's demand of justice against him for his false accusation, was committed after his answer, until he put in bail, anno 7 Rich. II. and before judgment. And so *Michael de la Poole*, the said chancellor, 10 Rich. II. after his answer, and many replies of the commons, was committed, and presently bailed. Anno 50 Edward III. *William* lord *Latimer*, and *John* lord *Nevil*, being impeached by the commons, answered in their place; So did the bishop of *Norwich* and the lord chancellor, 7 Rich. II. And the said lord chancellor too, 10 Rich. II. answered in his place, though afterwards he was committed before judgment, upon request of the commons. The bishop of *Bristol*, 1 Jac. and the duke of *Buckingham*, 1 Car. I.

All these answered as freemen in their places, their offences not being capital. And the like precedents there are of commoners.

Anno 50 Ed. III. Rich. *Lions*, *William Ellis*, and *John Peach*, did answer as freemen, being impeached by the commons. And whereas the commons did that year also accuse *Adam de Bury*, who was absent; the lords sent for him to come; but he contemned their authority, and came not. Then the lords, as it seemeth by the record, sent to apprehend him, and he could not be found; wherefore they awarded that all his goods should be put in arrest, *ibid. n. 37*. It is briefly entered, *Adam* was sent unto to come and answer in parliament; he came not, nor could be found: Wherefore it was awarded, &c. Which is sufficient to prove, that a commoner is not to be brought a prisoner to his answer for a misdemeanor, if he will appear.

5 *Rich. II.* The mayor and bailiffs by name, and the commonalty of *Cambridge* were complained of in parliament, for many outrages against the scholars there; and the lords sent one writ to the mayor and bailiffs that then were, and to the commonalty, to appear and answer; and another writ to the mayor and bailiffs that did the outrage; and they appeared in person, and the commonalty by their attorney. This was the ancient course. Yet even in these days, viz. 15 *Rich. II.* the prior of *Holland* complained of a great riot committed by *Henry Treble*, and divers others, in the parsonage house of *Whitewick*. Whereupon a serjeant at arms, by virtue of a commission to him made, brought up the said *Treble*, and one more only (the principal doers therein) before the lords in parliament; who, upon the return of the examination, confessed the whole matter, and were committed. But I suppose the serjeant at arms was sent, for haply they would have obeyed no writ; and yet he was sent for two of the principal offenders only.

At this day, if the commons accuse a commoner of misdemeanors, in such a state of liberty or restraint as he is in, when the commons complain of him, in such he is to answer, *prout* 18 *Jac.* Sir *Francis Michell*, and Sir *John Bennet* were both committed by the commons before their complaint to the lords, and so they answered as prisoners; but that in a fort may be called *judicium parium suorum*.

21 *Jac.* The earl of *Middlesex* being then lord treasurer, and accused of misdemeanors only, absented himself from the house: His charge was sent to him in writing, and he answered in writing. At the day prefixed for his trial, he was summoned by the great usher to appear. He came without his staff, and knelt, until the lord keeper willed him to stand up. There he protested, that he ought to answer in that place, and desired others might not be prejudiced thereby: And I hope they will not.

The earl did himself the first wrong, by absenting himself from the house; for he might have stayed there until judgment, unless when his own cause came in agitation.

S. 2. Touching council.

In all causes of felony, treason, &c. council antiently was denied to the party accused, *prout* anno 4 *Rich. II.* numb. 21. Sir *Ralph Ferrers* was brought to the parliament under the guard of the marshal of *England*, and arraigned at the king's behalf for suspicion of treason, who prayed to the king and to the lords to have council in that case. Unto whom it was said, That in all matters wherein council ought to be granted by the law of the land, the king or lords would allow it. And it was further said unto the said Sir *Ralph*, That forasmuch as the matter stands so much upon treason, that by the law he ought not to have council in this case,

of no earthly creature, but obliged himself to answer at his peril.

This last answer was given upon deliberation. And 5 *Rich. II.* numb. 44. Sir *Richard Cogan*, knight, being accused by *Richard Clynedon*, esquire, for extorting 200 *l.* from the prior of *St. John's of Jerusalem* in a riotous manner, required council, which was denied him, for that the cause touched treason.

28 *Hen. VI.* The duke of *Suffolk* being accused of treason, by the commons, desired copies of the articles, but no council, and he answered without council.

Primo Car. I. In the parliament begun February 6. the king's attorney exhibited articles of treason and misdemeanors against *John* earl of *Bristol*, and he had council allowed him; which was on this occasion.

Anno 21. *Jac.* The earl of *Middlesex* was denied to answer by council touching misdemeanors only, that precedent of *Rich. II.* of *Michael de la Poole* being mistaken, as I conceive. And afterwards the lords considering the inconveniencies that might happen thereby, did order that council should be allowed to all delinquents in all cases generally. At the voting of which order, the king and prince were present, and I did expect some reply thereunto on the king's behalf, and especially observed whether the prince would any ways dislike of it, either in words or countenance; and he shewed none; which made me verily believe that he had been acquainted therewith beforehand; but he was not, as I shall make it appear.

In this present parliament, upon reading the articles of treason and misdemeanors against the said earl 6 *May*, and upon the earl's answer to them on the sudden, the journal is, the lords did answer that he should have council allowed him to plead his cause. But on *Monday* the 8th of *May*, the king sent a messenger to them, that he not suing for a default in cases of treason and felony: It is an ancient fundamental law of this kingdom, and desired the lords to proceed with that caution, that ancient fundamental laws may receive no blemish nor prejudice.

On the 12th of *May*, the lords answered this message, that by an order dated *May* 24. 21 *Jac.* Anno 1624. council was then present, and they had allowed the earl of *Bristol* council before the message came.

May 14. His majesty is content the earl of *Bristol* to have council, although his majesty knew that by the law he ought to have none; but takes exceptions to that order of the 24th of *May* 1624. That it was occasioned by the earl of *Middlesex*, whose cause was only criminal, which never till now extended to cases capital. And that the judges were neither advised with therein, nor the king's council heard for his majesty; and therefore his majesty is not satisfied about the general order, but will advise, &c. The lords thereupon allowed him council to plead, &c.

This parliament of the 6th of February, 1 Car. I. was dissolved before the cause of the earl of Bristol was heard and determined, and the said earl was sued in the *Star-chamber* for the very same matter contained in the articles against him in parliament: All which were but misdemeanors. And if it be lawful for me to speak freely, I believe the lords thought they were but misdemeanors, when they allowed him council in parliament.

But in cases of misdemeanors only the party accused was never denied council.

Anno 10 Rich. II. The commons accused Michael de la Poole of many misdemeanors in open parliament before the king. Afterwards in the king's absence, the chancellor said first to the lords, that he was chancellor of England, and for the time represented the king's person in his absence; and demanded whether he ought to answer without the presence of the king, since he was impeached of acts done whilst he was chancellor.

This received no answer. Secondly, He said, That he had appointed, by the advice of his council Sir Richard le Scroope, his brother-in-law, to answer for him to the impeachment. Whereunto the lords said, That it was honest for him to speak by his own mouth. And thereupon he made protestation that he might add to or take from his answer that which should be honourable and profitable for him: The which things unto him were granted. And the said chancellor declared as well by himself, as by the mouth of the said lord Scroope, That, &c.

I note here that council was not denied him, but that it was only told him, it was honest for him to answer by his own mouth.

Anno 7 Rich. II. The bishop of Norwich, for misdemeanors in general, numb. 15. was particularly charged by the chancellor, numb. 18. The bishop said, that albeit in this case he ought to have council, yet making protestation, that at all times he might amend his answer, he would answer in person, and so he did, numb. 19.

Anno 1 Car. I. The duke of Buckingham being accused by the commons of misdemeanors, had copies of the impeachment, and answered by council in this manner, viz. The duke being in his place, and standing, his council came to the bar, and then read the duke's answer, as it was penned in writing.

Yet sometimes in cases of misdemeanors, when the parties accused have demanded the copies of the articles, and council, and time to answer, the parliament hath compelled them to make a present answer without council; but this is rare, and I have seen but one precedent of it.

Anno 5 Rich. II. *die animarum*, num. 45. The mayor, bailiffs, and commonalty of Cambridge were accused by, &c. for that they in the late tumults and uproars confederated with other misdoers, did break up the treasury of the university, and compelled the chancellor

and scholars to release to the mayor all their liberties, and all actions, &c. In num. 46 and 47, several writs were sent to command them to appear. They appearing at the day, and answering to such articles as were objected by the king's council, and delivered in the two releases which were cancelled, numb. 48. Then the chancellor and scholars exhibited divers articles against them by way of petition. Upon the reading whereof, it was demanded of the said mayor and burgeses what they could say, why their liberties should not be seized into the king's hands as forfeited? And they required copies of the articles, and council, and respite to answer, numb. 54, 55.

To the copy of the articles, it was answered, that inasmuch as they had heard them read, it should suffice; for by the law they ought to have no copy. And touching council, it was said, that wherein council was to be had, they should have it; and therefore they were then to answer to no crime or offence, but only touching their liberties, numb. 56. After many dilatory shifts, the said burgeses submitted themselves to the king's mercy, touching their liberties only, saving their answers to all other matters, numb. 57. And the king by assent of the whole parliament, seized the said liberties as forfeited, numb. 58. and granted the assize of bread, and all weights, measures, &c. to the scholars. numb. 59. And the rest of the liberties he granted to the mayor and burgeses, yielding an increase of rent, numb. 60. And there is no farther proceeding against them for other crimes; yet this also proves council ought to be allowed in cases of misdemeanor.

§. Next to the answer, follows the replication; and that in my opinion belongs to the party whose suit it is. If the commons impeach any man, it belongs to them, if they will reply. And to this end, either they are all, or some of them, to be present when the party makes his answer, and to consider thereof apart by themselves, and to reply if they see cause. Or else a copy of an answer is to be sent them; and their replication expected before any other proceedings be. If they do not reply, the lords may: But if the articles against the party be so drawn *ex parte domini regis*, then it belongs to the king and the lords alone: And the commons can neither reply, nor *de jure* demand the party to be put to his answer. All this will appear in the ancient precedents which follow.

Anno 50 Ed. III. They impeached Richard Lyons for procuring patents and licences, &c. to carry, &c. to other places than to Calais. For divers other new impositions upon wools, &c. for levying the same to his own use, without view of a comptroller, for borrowing 20000 marks in London; for the king, and causing the king to repay thirty thousand marks: For buying of debts of the king at the twentieth penny, and less, and causing the king to pay the whole debt. In general words, for many extortions, &c.

His answer is,

First, to the third part, and pleads *not guilty*, which he is ready to prove: To which nothing is replied.

To the several impositions, he confessed he levied 12 *d.* on every sack of wool licensed, to his own use, but by express commandment of the king, and assent of the merchants. And for other several impositions, that he had paid them wholly to the king's chamber, and fully accounted for the whole year.

Unto this part of his answer also there is no replication recorded, it is drawn up so briefly; yet these which follow, shew somewhat of what was replied, *viz.* And it was said unto the said *Richard*, that he should bring forth his warrant by what authority he did these things. But he shewed no warrant in parliament under the king's seal, nor otherwise; but only he said he had command from the king himself and his council to do it. Now whether the lords willed *Lyons* to shew forth his warrant upon the reply of the commons, or otherwise, it appears not by conjecture out of other precedents.

Eodem anno. The commons impeach the lord *Latimer*, that contrary to the proclamation upon the last truce with the *French*, he and his lieutenants and officers have taken divers victuals by force, without paying for the same, and that he extorted great fines and ransoms of divers persons and parishes of *Becherel* in *Brittany*, whilst he was captain there, for which he hath answered nothing to the king. And for the loan of 20000 marks made to the king by him, and *Richard Lyons*, to transport wool, &c. And also through his ill government, the fort of *St. Saviours* in *Normandy*, and the said fort in *Normandy*, called *Becherel*, and many more are lost. And also that he, of his own authority, discharged spies and fellows imprisoned by the king, wherein he incroached to himself power royal.

This is the effect of the impeachment; the answer follows.

First, He said, That saying to himself so much as ought to be saved unto him, as one of the peers of the realm, as well in giving judgment, as otherwise in time to come, if it please the king and lords here assembled, he will willingly give his answer unto him who will in special object any the said things against him.

It should seem that the commons advised hereon; for it followeth, *Et puis apres*, forasmuch as no person would in special openly accuse the said lord, of the said things in parliament, but that the commons would maintain the said accusations in common, he answered to each particular.

1. Touching the ransoms that he hath been before impeached for, and the sums of money he received, it appeareth that he owed the king 2000 *l.* which he confessed, and submitted himself to the king's grace for the same. And soon after this, the commons having heard this answer of submission, prayed the lords that execution might be had of the said 2000 *l.* pre-

sently against the said lord *Latimer*, as a thing passed by the said submission being made by him as aforesaid; for it shews not any agreement with the king, nor any pardon, or other discharge. And the lords answered, that his answer should be reported to the king, and thereupon right shall be done for the king.

2. Touching the acts done by his lieutenants, he said, that he is altogether innocent, &c. For he was then in *England*, by the king's command, and he had no part thereof, &c. And the commons thereunto replying, said, that although he be innocent, yet his lieutenants received it in his name; and therefore prayed he might answer to the king for his lieutenants, if they be not able, &c.

3. Touching the loans of 20000 marks, he absolutely denied he had any share or advice therein, he made in a manner a negative answer to all the rest; offering proofs; whereupon witnesses were examined, but no other replications of the commons mentioned.

Eodem anno 50 Ed. III. W. Ellis was impeached by the commons, for that he being farmer to the king of the petty customs in *Tar-mouth*, and deputy farmer to *Rich. Lyons*, of tonnage and poundage, &c. he extorted several sums of money from the merchants, and particularly 33 *l.* from a *Scottish* merchant at *Kirk-leroad*, who was driven in thither by a tempest, but unladed no merchandize there.

The said *Ellis* answered in general, he had never taken any thing of the said merchants by way of extortion; which he was ready to prove.

The commons brought in four witnesses, who justified the extortion upon oath, and then demanded judgment. And *W. Ellis* rejoined to this replication, confessed the receipt of the 33 *l.* and avoided the extortion.

Eodem anno, John Nevil was impeached by the commons, for that he, as officer to the king, and one of his privy council, had bought divers tallies of assignments made by our lord the king, unto divers persons unto whom he was debtor, and had thereof due allowances in the exchequer; but the parties had of him little or nothing; and especially of the lady *Raven-shalm*, who is deceased, and *Reginald of Love*.

And after he was impeached, for that in this late voyage into *Brittany*, he had in the king's wages a great number of men at arms and archers, for which he accorded with the king, and those he carried with him were not sufficient, *come garcone & autres lieux*; and yet he received full payment in deceit of the king; and that by his default many forts were lost in *Brittany*.

And also at his passing at *Southampton*, his men did much mischief to the country, as if they had been enemies.

To the first, touching the buying of a debt due by the king to the lady *Raven-shalm*, he made a very good answer, and denied that he bought any debt of *Reginald Love* for gain. And the commons being present, desired that *Love* might be examined therein; and he was examined,

examined, and cleared the lord *Nevil* thereof. And thereupon *Michael de la Poole*, and *W. de Winged* being present, did expressly affirm, that the said *Love* had acknowledged before them and many others, the day before, that the said lord *Nevil* had bought the said debt for gain, &c.

And the said *Reginald Love* replying to their affirmation, said, that he never spake any such words to them or any other. *Et tantost les autres apres, &c.* And soon after the said knights and commons affirming that the said *Reginald* did not only speak those words, but also prayed that it might be shewed in open parliament, the said *Reginald* confessed, that, &c. and was therefore committed, &c.

Touching the second point, the lord *Nevil* shewed, that he made full muster of his men, &c.

Touching the third, the pillaging of soldiers, he said, that he did none; and if any were done, let the malefactors answer. And unto this it was said by the said lords of the parliament, that it was reason, sith the king paid the soldiers their wages, that the soldiers should answer for their ill deeds, and the captains should answer for themselves.

And thereupon the commons prayed judgment against the lord *Nevil* and that he might be put out of his office about the king.

Touching the articles of the lady *Ravensham* it was awarded in parliament, that the lord *Nevil* should make restitution unto her executors. *Quære hoc.*

That he be banished according to the quality of his offence, as others have been, &c.

I have translated this of the lord *Nevil* almost *ad verbum*; it needs no exposition.

The commons were present at the lord *Nevil*'s answer, and desired that one witness, whom he had brought with him, and who gave them information of the complaint, touching the buying of the king's debts, might be examined. And examined he was in the presence of two knights of the parliament, and they did contrary his false answer; and afterwards all the commons came and testified against the witness.

This is sufficient to prove, that the commons may reply, and are to be present at the answer, or have a copy thereof sent them: But the commons did not reply unto the lord *Nevil*'s answer.

Touching the pillaging of his soldiers, for ought appears, the lords replied to that part.

Primo Car. I. 6 Feb. The commons impeached the duke of *Bucks*, and declared against him in writing. The commons demanded a copy of his answer, that they might reply unto it, and it was debated at a committee, whether the commons might reply or no? Which was resolved in the affirmative, upon view of precedents, and reported to the house; and then a copy was sent to the commons. Thus much touching replication by the commons.

Where the articles against the delinquents are *ex parte dom. regis*, there the commons cannot reply, nor demand judgment; for the suit is the king's, and not theirs.

Anno 1 Rich. II. Upon complaint of the commons, *Jo. lord Gomeniz*, and *W. Weston* were put to their answers; but the articles were exhibited *de part le roy*. The complaint of the commons was general; and though the commons be there present at their answer and judgment, yet they did neither reply nor demand judgment.

The king's steward before whom they were arraigned, replied, as shall appear by the precedent at large.

In like manner the commons demanded that the bishop of *Norwich* and others might be put to their answer, and the articles were drawn *de part le roy*. And the chancellor replied to their answer, the commons not once interposing therein.

5 Rich. II. The chancellor and scholars of *Cambridge* accuse the mayor, bailiffs, and commonalty of *Cambridge*, of many outrages and misdemeanors. They appeared and answered. The king's council replied, *numb. 49.*

CHAP. IV.

Of Witnesses.

THE next considerable part in judicature, after the answer and replication, is the proof by examination. The practice at this day is to swear the witnesses in open house, and then to examine them there, or at a committee, either upon interrogatories agreed upon in the house, or such as the committee in their discretion shall demand.

Thus it was in antient times, as shall appear by the precedents, so many as they are; they being very sparing to record those ceremonies, which I shall briefly recite, and then add those of later times.

Witnesses produced by the commons.

Anno 50 Ed. III. The lord *Latimer* having answered to one of the commons complaints, touching a loan of 20000 marks for 30000 marks to be repaid, whereof he said he was innocent, it followeth thus immediately, &c. And thereupon it was testified in parliament by monsieur *Rich. le Scroop*, the late lord treasurer to our lord the king, and by *Wil. Watworth* of *London*, that when the said loan was made, the said *Watworth* offered in the name of the *Staplers*, to lend the same, and be repaid without usury, out of the customs of wool to *Calais*. Whereunto the lord *Latimer* answered, he never heard of that proffer; and the others swore the said *William Watworth* did make the said proffer to him.

Anno eodem. The commons produced four witnesses to prove their complaints against *Ellis*, *les queux examinees in parlement*, said, &c. And there I observe that two of those witnesses had exhibited a particular complaint against *Ellis*, concerning a particular wrong done unto merchants, whereof the commons complained, and *Ellis* took no exception against them.

And afterwards being put to his answer upon their particular complaints for wrong imprisonment, *Sc. Ellis* said, that they betrayed him as he was coming to London, and so he caused them to be committed, and the said complainants affirmed the contrary upon oath, and it was testified expressly by divers sufficient men, that, *Sc.* agreeing with their oath.

Eodem anno, *John Peach* being accused for extortion, affirmed, he retained it by the assent of the mayor, recorder, and of the greater part of the aldermen, and being examined in parliament, affirmed there, that, *Sc.* to the contrary, and then judgment was given.

Eodem anno, The commons accuse *John lord Nevil* for buying the king's debts of *Reginald Love*; which the said lord denied; and the commons desired that the said *Reginald* might be examined. And the said *Reginald* being charged upon his allegiance to tell openly before them the full truth, faith, *Sc.* clearing the lord *Nevil*; but afterwards he confessed against him. He was examined in presence of two of the house of commons.

Many complaints were made against *Richard Lyons* and *William Ellis* in the parliament, and a commission sent to inquire of the behaving themselves in their offices.

Rich. II. *Alice Pierce* pleaded not guilty, and that she would prove by testimony of the late king's household, whom she named. The offence being for procuring *Ed. III.* privately to revoke an ordination of his council.

The lords gave her day, and in the mean time named a committee to examine witnesses.

The committee were the duke of *Lancaster*, earls of *Arundel*, *Cambridge*, *Warwick* and of *March*. And divers witnesses who are named, were sworn upon the holy evangelists, and diligently examined upon the articles objected against her.

The lord *Beauchamp* was sworn and examined; and the duke of *Lancaster* being one of the committee, was diligently examined before the rest of the said committee, but not sworn *ad testificandum*. Earls and dukes are not sworn.

A jury of the household was impanelled for her trial before the said committee.

The order made by the lords for the examination and trial. *Par l'assent des prelates & des seigneurs du dit parlement ordeigne fust que cesles articles seroient trieés par tesmoigne ou par enqueste d'eux que seurent del hostel du dit aiel par queux la verite purroit mieus estre conus.*

By virtue of this order, the said committee did take the examination of the witnesses, and after their examinations, it follows thus:

Et nyent meins seurent fait venir devant le duc & les dits countes monsieur R. B. &c. And so names eight knights, and nine esquires, *queux seurent jurrez a dire la verite si la dite Alice fust coupable de les articles avant dits ou nemy.*

Note, This is the only jury I find recorded

for misdemeanors in parliament. I make no doubt but if the delinquent doth put himself upon the trial of his country, that a jury ought to be impanelled therefore.

But if the commons impeach any man, they are *in loco proprio*, and there no jury ought to be; only witnesses are to be examined in their presence, or they to have copies thereof: And the judgment not to be given until the commons demand it.

For proof that the witnesses ought to be examined in their presence, *vide 50 Ed. III.* the impeachment of the lord *Nevil*, where *Reginald Love* was examined in presence of two knights of the house of commons, who contraried his testimony, *numb. 34.*

The proof that a delinquent may put himself *super patriam*, *vide 4 Ed. III.* where the lord *Berkley*, who waived his peerage, was tried by a jury of *Glocestershire* and *Warwickshire*, for that he was arraigned for the murder of *Ed. II.* at *Berkley castle in com. Glocest.* And he answered, that he was sick at that time at *Bewdley in com. Wigorn.*

But he was arraigned upon an information *ex parte dom. regis*, and not upon the impeachment of the commons; for then they had been *patria sua*. And as the party may put himself *super patriam*, so he may demand battel: But not when he is accused *ex parte domini regis*, *prout Clarence, anno 18 Ed. IV.* Nor when he is accused by the commons, *prout Brembre, 11 Rich. II.*

When the earl of *Arundel* was brought to answer the appeals, the lords appellants threw down their gloves by way of a challenge. The earl answered, *si essem liber, non resurgeram.*

Note, That the commons had accused them — also. *Vide a Herald. parl. lib. Mayle-refs.* And thereupon it was testified openly in parliament, That our lord the king had expressly said that day, before the same lord then present in parliament, *That he knew not how nor in what manner the said Richard was come into such an office about him*; and which is more, *he did not know him to be his officer.*

Anno 22 Rich. II. The lord *Cobham* being brought to his answer, for procuring a commission to himself and others, in derogation of the king's prerogative, *11 Rich. II.* and for executing the said commission.

He denied the procuring thereof, and that he would not have used the said commission without the king's commandment, and that he told the king so much, and that the king commanded him not to intermeddle therein. Whereunto our lord the king answered and said, that he was in such governance at that time, that he could not otherwise say, because of them that were then about him. And that the lord *Cobham* knew well that the said commission was made at his will. The which thing the lord *Cobham* did not gainsay at his trial; and so judgment passed on him for the same, and he adjudged a traitor. *Et qui non vult.*

Anno 18 E. IV. George duke of Clarence was arraigned in full parliament; there is no mention thereof in the roll, but in a manuscript of that time, written by a frier of Croyland. *Tam testis est vera, & disceptatio ea habita inter duos tantae humanitatis germanos. Nam nemo arguit contra ducem nisi rex; nemo respondet regi nisi dux. Introduciti autem erant nonnulli de quibus a multis valde dubitatur, an accusatorum an testium officiis sunt functi; utraque enim officia in eadem causa eisdem personis non congruunt. Delevit enim objecta dux ille per justificationem, asseruit, si exaudiri possit, manuali defensione teneri causam suam. Quid multis numeror parliament les reputantes auditas informationes sufficere formarunt in eam sententiam damnationis quae ab Henrico duce Buck. pro tempore noviter creato Anglorum seneschallo prolata est. Postea dilata est executio, quo ad usque prolocutor communitatis in superiorem cameram cum sociis suis adveniens, novam ejus conficiendae rei requisitionem fecerat, & consequenter infra paucos dies factum est id quaecunque genus supplicii secreti infra turrim London. utinam sine malo, anno dom. 1418. regni vero regis E. IV. 18. Per anonymum in biblioth. Cotton.*

Here let us examine for what illegal proceedings the commons desired to have the cause tried again. The author saith, *nemo arguit contra ducem nisi rex*. This the commons held to be against law, that the king himself should enforce either article or testimony against a delinquent in a capital cause: For it is inconvenient, that he who hath the forfeiture of life, lands and goods, shall be accuser, witness, or judge. The commons were present at this trial, and considering the inconveniencies thereof, they returned, and made the request *ut supra*.

Primo Car. I. In the parliament of 6 February, John earl of Bristol was accused by the king's attorney of treason beyond the seas, 8 May 1626. The said earl petitioned the lords, that seeing several points of that charge are grounded upon private conferences, wherein his majesty by testimony becometh a witness, and in case the earl should be convicted, his commission cometh to the crown, &c. he desired their lordships to put his majesty in mind thereof, for the declining his accusation and testimony.

9 Maii, these questions were proposed to the judges.

1. Whether in treason or felony the king's testimony is to be admitted, or not?
2. Whether words spoken to the prince, who afterwards is king, make any alteration in the case?

And the judges were to deliver their opinion therein on the 13th day of the said month of May.

And on Saturday morning, being the said 13th day, the judges were desired to deliver their opinions.

The lord chief justice said, they appointed to meet and to consider thereof; and Mr. At-

torney desired to know the time of their meeting; and before that time he brought them a message from the king, *viz.* that his majesty was so sensible of his honour, that he would not suffer the right of his crown (which may justly be preserved) to be damaged in his time. That they might deliver their opinion in any particular questions concerning the earl of Bristol, but not in the general questions, whereof his majesty could not discern the consequence, which might happen to the prejudice of the crown, every particular case varying according to the circumstances.

4 E. III. The articles were read against Roger Mortimer; and it followeth thus: Wherefore our lord the king doth charge the earls and barons, peers of this realm, that forasmuch as these touch him principally, and all the people of this realm, that you do unto the said Roger Mortimer right and lawful judgment, such as appertaineth to such an one to have, who of all the faults abovesaid, is very guilty, as he believeth. And for that the said things are notorious and known to be true unto you, and to all the people of the realm.

This was all the proof produced against Roger Mortimer. The lords hereupon judged him. But afterwards, anno 28 E. III. numb. 8. they reversed it as erroneous; so that although the king's testimony, confirmed by the common fame, was 4 E. III. received against Roger Mortimer, yet it was afterwards adjudged *not accusament* in the 28th of the said king E. III.

In that parliament of 18 Jac. divers witnesses were examined in open house in the causes of Mompeyson and the lord chancellor, upon interrogatories agreed on before hand, and divers at a committee. And it was resolved, that none might be examined upon any thing that might accuse. Whereupon the earl of Southampton, one of the said committee, signified, that a scruple did arise, whether Sir Ralph Hovsey should be examined, what bribe he gave to the lord chancellor; and upon the vote, it was agreed, he should, *dissentiente comite Dorset*.

Eodem anno, The lords did find that the testimony of divers of the house of commons was necessary, touching the complaint against Mompeyson, and therefore sent a message to this effect.

The house of commons, before their complaint exhibited against the lord Cobham and doctor Feild, for a bribe concerning Egerton's case, 18 Jac. examined one Davenport, but not upon oath. The lords, when they had examined Davenport, found that the case was not so foul as he related it unto the commons, and therefore sent his examination again unto them, and then punished him for his false relation.

C H A P. V.

The judgment.

First, Unto whom the judgment belongeth, and the king's assent, and of the preience of the spiritual lords, the commons and the judges.

Secondly, The judgment itself, and by whom it was demanded, and by whom rendered.

In making of our antient laws, the commons did *petere*, the lords *assentire*, and the king *concludere*.

So in judgments on delinquents in parliament, the commons might *accusare* & *petere judicium*, the king *assentire*, and the lords only did *judicare*.

§. 1. That the judgment belongeth only to the lords, appeareth by all the old records that I have seen; *prout* 4 E. III. against *Mortimer*, the earls, barons, and peers, did award and judge by assent of the king, &c.

5 H. IV. In the case of the earl of *Northumberland*, protestation was made by the lords, that the judgment belonged unto them only.

For the clearing of this point, that the judgment belongeth to the lords only, *vide* the protestation of the commons, 1 H. IV. which excludes the commons from any right thereunto, *viz.*

On *Monday, November 3.* The commons made their protestation in manner as they did in the beginning of this parliament, and then further declared to the king, that no record in parliament be made against the commons, that they are or shall be parties to any judgment given, or hereafter to be given in parliament. Unto which it was then answered by the archbishop of *Canterbury*, by command of the king, that the commons are petitioners, and not demanders; and that the king and the lords have ever had, and of right shall have the judgment in parliament in manner as the commons themselves have declared, saving the statutes to be made, and in grants of subsidies, and the like, though to be done for the common profit of the realm, the king will have especially their advice and assent: And that this order be held and kept at all times to come.

This excludes the commons from all right to judgment; but whereas it saith, the judgments in parliament belong only to the king and lords, that is to be understood touching the king's assent only, as appeareth by the replication of the parliament in this point in 2 H. V. which was thus:

In the parliament at *Leicester*, 2 Hen. V. num. 13. *Thomas* earl of *Salisbury*, petitioneth to reverse a judgment in parliament against *John* earl of *Salisbury*, his father, in 2 H. IV. and one of the errors assigned was, for that the judgment was not given by the king, but by the lords temporal only; whereupon the clerks of the parliament, at the king's commandment

gave copies of the said judgment of 2 H. IV. and of the said error assigned, unto the king's sergeants at law then present. *Ad sequentem solutionem juris regni in hac parte visarentur: Super quod servientes ad legem crastino die, domino regi, ac dominis spiritualibus & temporalibus praedictis hoc in parlamento petierunt scrutinium pro domino rege in hac parte. Quibus dictum erat ex parte domini regis, quod ipsi procederent ulterius absque aliquo scrutinio habendo quoad declarationem & judicium super supradicta, &c.* And afterwards day was given at the next parliament, which was held at *Westminster*, eodem anno 2 H. V. In which parliament the said judgment of 2 H. IV. being examined and discussed at full, *videbatur tam dicto domino nostro regi, quam etiam dominis suis antedictis, &c. quod idem judicium & declaratio praedicta versus eundem Johannem, &c. sunt & fuerunt bona & legalia declaratio & judicium. Per quod consideratum fuit in praesenti parlamento per praedictos dominos tunc ibidem existentes, de assensu dicti domini regis, quod praefatus nunc comes nihil capiat per petitionem aut prosecutionem suam praedictam; & ulterius tam domini spirituales, quam temporales praedicti, judicium & declarationem praedictam versus dictum Johannem quondam comitem Sarum, ut praemittitur, habita sive reddita de assensu ipsius domini regis, asserunt fore & esse bona & justa & legalia: & ea pro hujusmodi ex abundanti decreverunt & adjudicaverunt.*

Out of the last recited precedent of 2 H. V. may be observed, that the temporal lords by assent of the king, may give judgment on offenders for capital crimes; and therefore, whereas it is said, 1 H. IV. that the judgment belongs only to the king and lords, that is herein explained.

The king's assent ought to be to capital judgments, and the lords temporal to be only judges therein, and not the lords spiritual. But in misdemeanors, the lords spiritual and temporal are equal judges, and the king's assent is not necessary, as shall appear.

§. 2. *In what cases the king's assent is necessarily required.*

Touching the king's assent, it is expressed in divers judgments on capital offences, 4 E. III. against *Mortimer*.

Anno eodem against *Simon de Bereford*; and there be divers other judgments that year of this nature, wherein the king's assent is not expressed; but against *John Mautravers*, *les peres de la terre*, & *juges de parlement* ajuggent & agardent que le dit *John* be drawn, hanged, &c. not mentioning the king's assent. And there are two other precedents of the same nature briefly recorded; *Estre ce autiel juggment est acorde que soit fait de Boeges de Bayons & Johan Deveroil.* And *Item autiel juggement est acorde de Tho. de Gurney & W. de Ocle,*

not mentioning by whom the said judgments of—death were given.

2 *H. IV.* The judgment against the earl of *Salisbury* and others, for treason, is by the king's assent; and so is the judgment of *H. IV.* against the earl of *Northumberland*, and 11 & 21 *R. II.* upon those several appeals. In all which the king's assent is recorded. And so the articles objected against *Simon de Burley*, without the king's assent, and against his will, which I shall here recite.

Item, The aforesaid duke, earls of *Arundel* and *Warwick*, &c.

And *Thomas Mortimer* continueth his traitorous purpose, and by force of men took and imprisoned divers men, your liege, &c. amongst others, *Simon de Burley*, knight, and him they carried in the parliament at *Westminster*, held the morrow after the purification of our lady, in the 11th year of our reign, and there were furnished against him divers points of crime and treason, and thereupon was demanded of every lord there present in parliament, his advice of the said *Simon*, touching the said crime. And afterwards the said dukes, and earls of *Arundel* and *Warwick*, would know your advice, thrice redoubted lord. You answer plainly, that the said *Simon de Burley* was not guilty of any the said points; and then they took upon them traitorously to have constrained you to have given your assent to the judgment which they have purchased against the said *Simon* upon the points aforesaid. And you, thrice redoubted lord, would not consent to any judgment to be given against the said *Simon*. And yet notwithstanding the aforesaid dukes and earls took upon them royal power in prejudice of you, and derogation of your crown and without your assent, and against your will, and in your absence, and in the absence of many other peers in parliament, and without their assent, and against their will, awarded that the said *Simon* should be drawn, &c. and thereupon caused him to be beheaded, but traitorously against your crown, peace, and dignity.

This I have recited at large: Unto which the duke of *Glocester* made no answer, being dead before the said earl of *Arundel* pleaded the king's pardon, which was not allowed him.

The said earl of *Warwick* confessed all the articles in the said appeal, and put himself upon the king's grace, and the said *Thomas Mortimer* could not be found.

This parliament begun at *Westminster die Lunae post festum exaltationis sanctae crucis*, and was adjourned to *Shrewsbury*. And on *Tuesday 28 January*, the parliament there shewed unto the king how that they in the said parliament at *Westminster* had accused and impeached *John de Cobham* in the 11th year of the king's reign, with others convicted in this parliament, accroaching to himself royal power in judgment, awarded that the lieges of the king, *Simon de Burley* and *James de Barnes* knights, should be drawn, hanged, and beheaded

V O L. III.

Without assent of the king, and against his will, and in his absence, and in the absence of many other peers of parliament, who with-held themselves, and would not sit in such judgment, and against their will, traitorously against the peace of the king, his crown and dignity.

And prayed our lord the king to cause the said *John de Cobham* to join in this present parliament to answer to the things aforesaid, and to ordain such judgment against the said *John de Cobham* as the cause demands. The said *John de Cobham* was brought, &c. And touching the said judgment awarded against the said *Simon* and *James*, the said *John de Cobham* said, that it was told him by them who were present then, that it was the king's will to make such judgment against the said *Simon* and *James* convicted of the said judgment and award which he had so given against the said *Simon* and *James*, notwithstanding his answer; whereupon, &c. judgment was given against him, and he adjudged a traitor.

Here is objected, that the judgment against *Simon de Burley*, was given by the lords without the king's consent. Secondly, against his will. Thirdly, in the king's absence. Fourthly, in the absence of many of the peers, and against their wills.

Touching the first, viz. the king's not assenting.

It may be objected, that the lords gave judgment against *Weston*, 1 *R. II.* without the king's assent, but yet not against the king's will; for they respited the execution until the king might be informed thereof. And the reason then given for the said respite, was, for that the king is not yet informed of the manner of this judgment. But whether the lords proceeded to that judgment against *Weston*, before they informed the king, because the king's assent is not necessary, or for that it being the last day of parliament, they had no leisure to inform his majesty thereof, let the reader judge; yet it seemeth to me, that the king's assent is necessarily required in capital causes and judgments, for these two reasons:

First, For that all precedents mention the king's assent in capital judgments, except that one against *Mautravers*, 4 *E. III.* which might be the omission of the clerks, who drew up the roll; for it is said directly afterwards in the said bill, num. 6. that the peers gave those judgments in the presence of our lord the king, and by his assent: And except that of 1 *R. II.* against *Weston*, in the last day of the parliament, and it was three in the afternoon that day before the lords had determined what to do in that business; so that it may be the lords were prevented of time herein, to have which, they respited execution, for that the king was not informed of the manner thereof.

Secondly, For that the lords appellants 11 *R. II.* who had then great forces about them,

were so earnest with the king for his assent to the judgment against *Burley*, that the duke of *Glocester* told him, as appeareth by his own confession, 22 R. II. *That if he would be king, he should not intreat for Simon de Burley, to save him from death*^a. And in the end, when his majesty would not assent to their judgment, yet they wrought so, that messengers were sent unto him, and brought word, (not before they gave judgment against *Simon*) and the king's assent is mentioned in the said judgment. All which the said lords would not have done, had not the king's assent been necessary.

And afterwards in the parliament of 21 R. II. the lord *Cobham* being accused for giving judgment without the king's assent, answered, that the messenger brought word, that his majesty had assented; And yet because he did not gain say that the king did deny his assent, the commons immediately demanded judgment. All which seem to imply, that the king's assent is necessary in judgments upon capital offences.

Touching the second, viz. Judgment against the king's will.

It is all one with judgment without the king's assent.

Touching the third, viz. In the absence of the king.

The judgments of this kind are good notwithstanding, so as the king doth assent; as that of *Simon de Burley*, 11 R. II.

Touching the absence of many of the peers :

That is to say, of many of them, and against their will; this cannot invalid their judgment, so as the greater number of the lords be then present (accounting the proxies of the absent lords) for it is not material whether some lords do absent themselves, or disassent. The chiefest matter is the assent of the lords who are present, either in person or by proxy. The others are to answer for their absence without a just cause shewn, or a proper assent.

§ 2. *In judgment on misdemeanors, the king's assent is not required.*

50 E. III. The lords judged divers commoners for misdemeanors, and the king's assent not mentioned; as *Richard Lyons*, *William lord Latimer*, a privy counsellor, *John lord Nevil*, a privy counsellor, *Jo. Peach*, and others. The king was then sick at his manor of *Eltham*, and on the last day of the parliament, the lords, prelates, and commons came before him there, and he heard the petitioners, and their answers for most part read, and also judgment given on the privy counsellors and others, *dont ils se leyron franchement le respous de mesme nostre seignior le roy*, num. 15.

Which shews that the king had not assented to them.

7 R. II. The bishop of *Norwich* was accused of misdemeanors, and judged.

10 R. II. The lord chancellor *Mic. de la Poole* was judged by the lords for misdemeanors, and *Speed* saith, that the king was much displeased thereat; for it appeareth he gave not his consent. And it was one of the questions demanded of *Tresilian* and others, 11 R. II. Whether the judgment were erroneous, or not? and resolved to be erroneous; yet it was not objected against any the lords appellors, that the judges proceeded without the king's assent.

§. 3. *The king's presence in parliament.*

In 4 E. III. The king commanded the lords to do right and lawful judgment on *Mortimer*. The which earls, barons, and peers, having examined the articles, came again before the king, and said, &c.

Ibidem. The king commanded them to give judgment on *Simon de Bereford*. The which earls, barons, and peers, came again before the king, and said, &c. And so the king was present at their judgment, but not at their consultations.

10 R. II. The king was present when the commons accused the lord chancellor, *William de la Poole* of misdemeanors, but he was not present at his trial; for he demanded if he ought to answer *sans presence de dit roy*, being chancellor? and in the end he answered notwithstanding.

21 R. II. In the cruel parliament of the lords appellants, the king was present at the parlies: *Non constat* whether he was present at the consultation of the lords.

5 H. IV. The king was present when the earl of *Northumberland* was to be tried upon his own petition, and so were the commons. And the king delivered the petition to the judges for their opinion; but the lords claimed their right: But this was on the *Wednesday*, and the *Friday* following the king and commons met there again, and the chancellor rehearse first, what was done the first day; And the lords having had competent deliberation on the said petition, and having heard and considered the statute, they adjudged, &c.

It is plain the king was not present at this consultation of the lords, though at their judgment.

7 H. IV. He commanded the lords to advise what manner of process shall be made, and what judgment shall be rendered against *Henry de Peircy* earl of *Northumberland*; and a week after the lords declared their opinion to the king. And it appeareth in that roll very clearly, that all evidences and examinations were shewn and taken by the lords in the absence of the king, and their advice also agreed on in his absence, but the judgment reversed in his presence.

^a A bold saying. This duke of Gloucester was many years after imprisoned for this at Calais, and died in his bed.

To conclude, the king may be present if he please, at the parties answer, in capital causes, and at the judgments given, *prout*, &c. but he was never present at other times of proceeding against the delinquent, nor at any answer for misdemeanors, for ought I have yet seen.

§. 4. The presence of the lords spiritual.

In cases of misdemeanors, the lords spiritual have ever been present, but never in offences capital. This is so generally received of all men, that it is not worth the labour to prove it; yet I will vouch the precedents; for it may be out of one or other of them somewhat may occur worthy the observation.

In misdemeanors.

In 1 R. II. *Alice Peirce* was brought before the prelates and lords in parliament, to answer, and the prelates and lords did ordain.

42 E. III. numb. 20. &c. *John de Lee* was put to reason before the prelates, lords, dukes, earls, barons, and some of the commons.

7 R. II. *Jo. Cavendish* accused the lord chancellor of bribery, before the prelates and lords in parliament. The chancellor answered before the prelates and lords.

In offences capital.

In 4 E. III. The earl of *Kent* was brought before the counts, barons, & autres grandes en mesme parlement, &c. for treason dorf. numb. 38.

Eodem anno, the articles of treason being read against *Mortimer*, the king charged *les counts & barons, les peeres de son realme*, to give judgment. And judgment was given *per les dits counts, barons & peeres come judges del parlement*.

Item, The king commanded *les dits counts & barons* assembled in parliament, to give judgment on, &c. and so were four others tried in the same parliament, all for treason, and not one word of the prelates, either when the articles were read, or at the judgment.

6 E. III. *post festum Sancti Gregorii, n. 6. 7.* the parliament being commanded to consult of the keeping of the peace, and punishment for the breaking thereof, the prelates departed, *pur ceo que aviz fuit dits prelates, que ne attinet pas a eux consuler de guard de la pees ne de chastisement de tiel*; yet afterwards when they heard what was ordained touching those malefactors, for the apprehension of them by hue and cry, &c. to bring them before certain commissioners to be tried according to law, the prelates gave their consents also to the act, and added also excommunication by the assent of king, lords, and commons.

Anno 1 R. II. The commons prayed that such as gave up forts, *puissent estre a respons a cest parlement. Et selon leur desert punis per agard des seigniors & baronage*. And thereupon *John Gomeniz* and *William Weston* were

brought before the lords aforesaid in full parliament, &c. It is to be understood before the temporal lords; for the bishops are never comprized in the word *baronage*.

Anno 11 R. II. Divers lords and others being appealed of treason, and other misdemeanors, the prelates absented themselves during the trial, having first made protestation saving their right to be present in parliament, *ut pares regni more solito interesse, considerare, tractare, ordinare, statuere, definire & caetera exercere, cum caeteris, &c.* Verum quia in praesenti parlamento agitur de nonnullis materiis, in quibus non licet nobis juxta canonum sacrorum instituta quomodolibet personaliter interesse, ea propter pro nobis & nostrum quolibet protestamur, quod non intendimus nec volumus, sicuti de jure non possumus nec debemus, intendit nec vult aliquis nostrum in parlamento dum de hujusmodi materiis agitur vel agetur, quomodolibet interesse, sed nos & nostrum quemlibet in ea parte penitus absentare, jure paritatis nostrae, & cujuslibet nostrum interessend. in dicto parlamento, quoad omnia & singula in ibi exercenda, nostris & eorum cujuslibet statui & ordini congruentia, in omnibus semper salvo. Ad hoc insuper protestamur & nostrum quilibet protestatur, quod propter absentiam non intendimus nec volumus, nec nostrum aliquis intendit, nec vult, quod processus habiti, & habendi in praesenti parlamento super materiis antedictis, in quibus nec possumus, nec debemus, ut praemittitur, interesse, quantum ad nos, & nostrum quemlibet attinet, futuris temporibus quomodolibet impugnentur, infirmetur, seu etiam revocentur.

This was read in full parliament and enrolled at the request of the prelates, by the king's command and assent of the lords temporal and commons. Here the protestation saith (*de jure interesse non debemus*) but I think it intends that they could not be present by reason of the common law, and by reason of an ordinance made at the council at *Westminster*, in 21 H. II. by which all clergy-men were forbidden, *agitare judicium sanguinis*, upon pain to be deprived both of dignities and orders. For surely as I think, they might otherwise have been present both by the common law, and by the law of God. But by such their long constant absence, even from our first parliaments upon record, the lords temporal have only heard and determined all matters concerning capital offences, which hath continued in them so long, that it is become their right, &c. So that now it will be a wrong unto them the lords temporal, if the bishops do any way meddle with such judicatures, either touching the answers, the replies, the proofs, or the judgment. For where they may not adjudge, they may not do any thing as a judge, that doth conduce to judgment. And therefore as heretofore they would be absent, now they cannot be present whilst the matter is in hand, but are to be absent altogether dum de hujusmodi materiis agitur, for some or other matter may hap-

pen to be voted in their presence concerning the answer, replication, &c. or concerning the form of judicature herein: And by the voices of the spiritual lords that vote may pass against the major part of the temporal lords, who should sustain wrong therein.

Can they be present, and not vote?

I know that at all assizes and sessions, divers of the clergy are present till judgment be given in such cases; but their presence cannot prejudice the judge at the assizes by vote, as in parliament. And at sessions the lay and clergy are equally in authority to hear and determine.

Eodem anno 11 R. II. a special act passed at the request of the commons, to make good those appeals and judgments, notwithstanding that the spiritual lords *pur benefit & salvation de leur estate*, cap. 3. & in *parl. roll*, n. 28.

This act, I conceive, was occasioned by the clause in the said protestation of the prelates; *Ad hoc insuper protestamur, &c. quod processus habiti & habendi in praesenti parlamento super materiis praedictis, in quibus nec possumus, nec debemus interesse, ut praemittitur, iquantum ad nos attinet futuris temporibus non impugnentur*, &c. for there is no such act to make good any former judgment, notwithstanding their absence.

And 2 *H. V.* upon the petition of the earl of Salisbury, the king and lords temporal adjudged the judgment against his father in parliament, 2 *H. IV.* to be good, notwithstanding that it was rendered without the consent of the lords spiritual, which yet the said earl alledged as error in his petition; so that by the judgment of the whole house, neither the presence nor absence of the spiritual lords is necessary in such judgments.

In 21 *R. II.* the first petition that the commons offered was, that before this time many judgments and ordinances made in the time of the king's ancestors in parliament, have been repealed because the clergy was not present in parliament at the making of the judgments; and therefore they desired that the clergy might make a proctor with a sufficient power to consent in their wants, unto all things and ordinances to be done in this parliament, *numb. 9.*

Whereupon the prelates and clergy being severally examined, deputed for them all *Tho. Piercy*.

But in antient times (in *libro Mailcefs*) *numb. 9.* which hath written somewhat largely of this parliament; it is said, the pardons granted to the earl of Arundel, were first repealed by the assent of the prelates; for which he blames them much, saying, *Dederunt ergo locum praelati iudicio sanguinis in hoc facto, ita quod dubitatur a pluribus, si incurrunt irregularitatem pro negotio memorato, unde contigit quod propter istud minus peccatum consequentur, nam exactum est ab iis, vellent, nolent, ut laicam personam constituerent, ad ju-*

dicium sanguinis dandum in dicto parlamento, si necesse foret, & occasio emergeret.

I have perused all judgments and ordinances in parliament, and do not yet find one, whereunto any exceptions were taken for the absence of the prelates and clergy.

I find an exception to the judgment of the exile, in 15 *E. II.* for that it was made without the assent of the prelates, who were present, and protested in writing against it. And one of the errors whereupon it was repealed, is, for that it was made without the assent of them, who were peers of the realm in parliament. But this repeal was *per durefs & force, &c. prout 1 E. III. c. 2.* So as this cannot be alledged for a legal precedent.

5 *H. IV.* The earl of Northumberland came before the king, the lords and commons in parliament. The lords made protestation that the judgment belonged to them only, &c.

The petition being read before the king and the said lords, as peers of the parliament (unto whom such judgments do of right belong) considering, &c. adjudged that it was neither treason nor felony, &c.

Note, That all this parliament, the bishop of London was chancellor, and he, as chancellor, delivered the opinion of the lords when they had acquitted the said earl of treason. Whereby it seems that he and the other bishops were present at the trial of life and death. Wherefore though the record doth here say, the lords, indefinitely, we must understand the lords temporal only; especially since they claimed the said judgment to belong to them.

In 4 *E. III.* judgment was given by the earls, barons, and peers, as judges in parliament in point of treason, where the prelates are not named; and therefore understood of the temporal lords only. This will be explained by the next of 7 *H. IV. rot. process. coram domino rege, &c.*

The king commanded the lords temporal, peers of this realm, to advise what process to make, and what judgment to render against the earl of Northumberland and the lord Bardolph. The lords advised thereupon, and reported their opinions to the king. The said lords, peers of the realm, by assent of the king, ordain, that proclamation should be made for the said earl and lord Bardolph to appear, or else to be convicted by award of the peers in parliament.

The king did farther demand the opinion of the said lords temporal touching the archbishop of York; unto whom the said lords temporal said, &c.

The commons prayed the king that they might have cognizance, &c. whereupon, by advice of the lords temporal, the returns of the former proclamations were made at the parliament door for the said earl and lord to appear.

By advice of the said lords temporal, the returns of the former proclamations were examined, and the said lords temporal considered of the errors therein.

By the said lords temporal, with the assent of the king, by their authority, new proclamation is granted, the return whereof is read in full parliament before the king and the said lords temporal.

Whereupon, the said lords temporal then being in the said parliament, by advice and assent of our lord the king, by their authority in parliament, awarded the said, &c. convict of treason.

Here all was done by the lords temporal, from the first beginning of the trial until the judgment, and yet the judgment is said to be in full parliament, notwithstanding the spiritual lords are not once mentioned, nor intended to be present at any time, whilst the matter of treason was handled.

§. 5. Touching the presence of the commons in cases capital.

I observe the presence of the commons to be necessary at the parties answer and judgment in cases capital.

Now one reason for the king's assent, and the commons presence in such judgments, may be this. Both king and people are to be satisfied for the death of the subject; therefore all trials for life and death, are publick in the full assembly of the court; and how can it be said in full parliament, when the commons, one of the states, are absent?

For this purpose the court of requests (called *camera alba*) was prepared for such trials, where both lords and commons might meet more conveniently. Yet though the commons were present at such times, they had no voice there. But at their return to their own assembly, they considered among themselves, if the proceedings were legal; and might come again and shew it, and require a rehearing of that cause; as they did at the judgment of the duke of Clarence, 18 E. III.

Nor are the commons to be present when the lords do consider of the delinquent's answer, and the proofs, and do determine of their judgment.

The precedents are these.

1 R. II. Gomeniz and Weston were brought before the lords and commons *seauts a la blanche chambre*, and answered on Friday, 27 Novemb. and there they were delivered to the constable of the tower, who was commanded to bring them again the next morning. In the mean time, the earls, barons, and baronets assembled, and advised from the time that the said answers were given in parliament on Friday, until part of Saturday to the hour of three, of the things touching the answer aforesaid, and then the prisoners were brought in to the parliament.

20 R. II. Rot. de pardonatione Haxey. 7 Febr. anno praedicto, praedictus Tho. Haxey coram nobis & omnibus dominis parlamenti nostri existentibus in alba camera adductus fuit & billa praedicta coram praefato Thoma ibi-

dem, per praeceptum nostrum lecta fuit, & quaesitum fuit per charissimum avunculum nostrum ducem Aquitan. & Lanc. seneschallum Angliae, a praefato Thoma, si ipse dictum praefatum communibus tradidit.

5 H. IV. The earl of Northumberland was brought to his trial on Wednesday; then the commons were present; but I do not find that they were present with the lords between Wednesday and Friday, when the lords advised on the earl's petition. This record mentions not where the assembly was.

7 H. IV. After the lords had awarded proclamation against the earl of Northumberland, and the lord Bardolph to appear at a day, or judgment to be given; the commons not being acquainted therewith, they came and prayed the king, they might have cognizance what was done touching the said rebellions of Salop, and elsewhere within the realm; whereupon, new proclamations were made, and the subsequent proceedings were done in full parliament, in presence of the commons; and the record saith, upon the request of the commons.

A question hath been often asked, Whether the commons did heretofore sit at conference with the lords? Which I cannot very well resolve; but verily believe, that at all these arraignments the commons did sit with the lords.

1 Richard II. Gomeniz and Weston were brought before the lords and commons sitting in the white chamber. The words are, *devant les seigneurs avant dits en plein parlement.* &c. But the commons are here intended by the words *en plein parlement.* And so was the commons demand, that they may be tried before the lords.

No other records speak whether they did sit or stand.

In judgments on misdemeanors.

The presence of the commons is not necessary, unless they impeach a delinquent, prout 50 E. III. and then they were present at all the answers of those whom they impeached, and demanded judgment.

And when the lords had rendered their judgment against the lord Latimer, to be prisoner with the marshal, and to make fine and ransom to the king, the commons prayed the king, he might also be put out of all his offices, and especially from being privy counsellor: Which the king granted.

And when the lords had determined one part of the complaint of the commons against William Ellis, touching a wrong done to certain Scottish merchants; the commons prayed a general enquiry might be made of the residue whereof they complained; which the lords granted.

And when the lord Nevil answered, they required that one Richard Love might be examined, to prove that which the said lord denied, and they departed; but two of the commons remained, and heard the examination,

and told the lords, that the said *Richard* had related it to the commons otherwise the day before, which the said *Richard* denied. Then all the commons came and justified it again, and thereupon the said *Richard Love* confessed it, and, on their demands, was committed.

This shews what interest they have in their own impeachments.

So in 10 R. II. when the commons impeached the lord chancellor, they were present at his answer, and so often replied, and enforced his oath against him, and required him to be committed, and so he was before judgment, but bailed presently.

But if the commons do only complain, and do neither impeach the party in writing, nor by word of mouth in open house, nor demand trial to be in their presence; in these cases it is in the election of the lords whether the commons shall be present or not.

And therefore when they complained of *Alice Peirce*, 1 R. II. the lords deferred her trial until the departure of the parliament, that is, till the commons had leave to depart.

And if the commons presence be not necessary in such cases where they complain, much less is it wherein they complain not; yet they have been present when they did not complain; but that was upon an extraordinary cause.

7 R. II. A fishmonger exhibited his complaint, to the commons against the lord chancellor, and afterwards to the lords in full parliament, in presence of the commons. But they were present no doubt at the lord chancellor's request, that he might clear himself in publick of the slander, and so he did.

The presence of the judges.

In cases capital, the judges are to be present also, otherwise it is not a full court; but they have no voice. And though there be divers precedents that complain of the prelates, *prout* 21 R. II. and 2 H. V. and this last of the commons, yet there is not one precedent that finds fault with their absence in these cases; for they are not *trahere cum caeteris magnatibus*, but *cum caeteris de concilio*.

Here may be objected that which *Tresilian* and other judges answered to one of the king's questions, 11 *Richard* II. touching the judgment of *Michael de la Poole*, that the same justices and serjeant would not give the same judgment, because it seemed to them, that the same is revocable, as erroneous in every part. *Vid.* print. stat. 21 R. II. c. 12. *Tresilian* was much mistaken, as much as in the other answers, whereby he determined that to be treason; and so here he gave his advice, not his consent; and yet he saith, he gave his consent. Read but a little further, and you shall find in the very same place, as followeth; *Which questions and the answers of the same, as well before the king and lords, as before the commons, were read and perceived; And it was demanded of all the*

states of the parliament, how they thought of the answers? And they said, that they thought that the justices made and gave their answers duly and lawfully, as good and lawful liege people of the king ought to do. And in the same manner Sir Thomas of Skelton, learned in the law, and William Hankeford, and William Brenchley, the king's serjeants, being demanded by the king, of their advice in this behalf, said, That the answers were good and lawful. And that they would have given the same answers, if the said questions had been demanded of them. And my lord William Thirning, chief justice of the common bench, said, That the declaration of treason not declared, belongeth to the parliament; but if he were a lord or a peer of the parliament, if he had been demanded, he would have said in the same manner. And in like manner, said my lord William Rikehyl, justice of the common place, and after the coming of my lord Walter Clopton, chief justice, he said in like wise. Wherefore the said answers be judged and affirmed for good and sufficient in the said parliament. Whereupon the king by the assent of the lords spiritual and temporal, and the procurators of the clergy, and the said commons, and by advice of the said justices and serjeants there being, it was awarded and adjudged, &c.

Here you see the manner of the judges assent, *viz.* their advice only. Nor shall you find their assents to any statute; yet the judges have ever used to be present at the trials in parliament upon life and death.

5 H. IV. The king delivered the earl of *Northumberland's* petition to them. And at the trial of any peer out of parliament, the judges are ever present on that day; and their presence is necessary for their counsel to the lords; but their assent is not necessary to the judgment.

S. The manner how the lords resolve on their judgment.

How this was antiently, appears in the appeals, 21 R. II. touching the death of *Simon Burley*, *viz.* It was demanded of every lord, who was present at the said parliament, his advice of the said *Simon* touching his crime.

Eodem anno, in the print. stat. 21 R. II. c. 12. the judges opinions were demanded in the same manner; beginning with the serjeants, &c. and so ascending to the chief justice.

And at this day the question is put by the chancellor or lord-keeper, and the puisne baron answers first, *content*, or *not content*; and so the lords in order. But their lordships do first debate the judgment amongst themselves, and the question is out of that which seemeth to be most generally agreed on.

In the judgment itself is to be considered,

1. Whether it be *secundum & non ultra legem*.
2. By whom to be demanded.
3. By whom to be rendered.

Touching

Touching the first.

Judgments in parliament for death, have been strictly guided *per legem terrae*; otherwise they would not have judged the earl of *Kent*, the king's own uncle, to be drawn, hanged and beheaded, might it be left to their discretion. *Vide literas Ed. III.* to the pope, speaking of this earl's judgment by the parliament, for treason; *cui sententiae subductis tamen quibusdam opprobriosis, & in detestatione tanti sceleris, de rigore legis nostri regni infligenda erat, dolentes acquievimus*, 4 *E. III.* But the roll is lost.

The lords judged *Mortimer* to be drawn and hanged as a traitor, 4 *E. III.*

Simile pro Simone de Bereford, n. 2.

Ibidem, numb. 3. They judged *John Mau-travers* to be drawn, hanged, and beheaded.

1 *R. II.* *Wesston* adjudged a traitor for delivering up of castles, forts, &c.

And so *Jo. lord Gomeniz*, a German, was adjudged to die; but because he was an alien, and a banneret, and was not the king's liegeman, he should be beheaded; that being the death used in Germany to gentlemen.

11 *R. II.* *Simon de Burley*, the earl of *Arun-del*, and others, were adjudged to be drawn, hanged and beheaded for treason. They differ something, yet herein they agree, that the opprobrious death of a traitor, is, to be drawn and hang'd; which the parliament could not alter, nor own in their judgments against the king's own uncle. It was *per legem regni infligenda*. The king might pardon all, and usually did, except beheading of the nobility of his own blood, and of later times, to all noblemen.

As the parliament could not dispense with, nor omit any part of the judgment on traitors, so they could not add more than the law required. And this may appear by their judgments of forfeitures of the parties estate.

The parliament, 4 *E. III.* spoke nothing what *Mortimer* should forfeit to the king: they well knew the law could give the king all his lands, in possession, reversion, or service. *Vide* the restitution of 28 *E. III.* num. 10.

The ordinances in 50 *E. III.* num. 35. against women which shall make suit, &c. to the king; against *Alice Peirce* by name, is upon pain of as much as she can forfeit, and to be banished. But had it not been for the former ordinance, the lords would not have given any such judgment against her; her offence being only for procuring favour to her friends from the late king, contrary to a former order of council.

11 and 21 *R. II.* The lords adjudged the forfeitures to the king, of some convicted on the appeals, greater than the law will give; but they passed special acts in each parliament to confirm both the judgments and forfeitures.

2 *H. IV.* n. 30. The lords adjudged and declared the earls of *Kent*, *Salisbury*, and others to be

traitors, and to forfeit, as the law of the land willeth.

7 *H. IV.* They adjudged the earl of *Northumberland*, and the lord *Bardolph* to forfeit for treason, all their lands in their own demesne, or where others were seized to their use.

And so in fines and amerciaments, the judgments antiently were indefinite, prout 42. *E. III.* numb. 26. *John de Lee* is committed to the tower, there to remain till he hath paid fine and ransom to the king, and at the king's will and pleasure.

50 *E. III.* *Richard Lyons* is awarded to prison at the king's will, and to be put to his fine and ransom according to the quality of his trespass; who being brought before the lords, they told him, his ill deeds were so great, that he had not wherewith to make satisfaction; and he submitted to the king's grace: and the lords awarded all his goods to be seized, and his body to be in prison at the king's will.

Eodem anno, the lord *Latimer* to make fine and ransom at the king's will, numb. 28.

Item, *William Ellis* the like, num. 32.

John Peach the like, num. 33.

Cavendish awarded 7 *R. II.* to pay damages to the chancellor, and to remain in prison until, &c. and the king *de fine suo competenti sibi inde debito*; but not set down how much to the king.

These fines were not put in certain, for that the law limits them to the king's will: But no doubt but after the judgment, the lords did rate them; as may be gathered out of *Richard Lyons*; where, after judgment, they called him before them, to consider, it seems, at what rate to tax the same; and they found it not sufficient.

And in antient court-barons, the amerciaments were ever assessed after the presentments.

In the *Star-chamber*, all fines were usually mitigated after the censure, and that court had *antiqua vestigia magni consilii*.

I hold that antiently the fines were often rated or taxed: And if the lords may mitigate a fine, a *major*, they may tax it after the judgment, the certainty not being then specified.

Judgments for satisfaction.

In complaints of extortion and oppression, the lords awarded satisfaction to the parties wronged, which sometimes was certain, sometimes general, but always *secundum, non ultra legem*.

42 *E. III.* numb. 27. Full restitution was made unto *William Latimer* of the wardship and marriage of the heir of Sir *R. Latimer*, whereof he was ousted by dures by *John de Lee*. But this was done by a great council *per commandment du roy*, after the judgment.

William Ellis, 50 *E. III.* awarded to pay to *Botheil* and *Cooper* 20 l. a piece, for their damages, num. 32.

John

John Peach, num. 33. awarded *que il face recompence a les parties compl. de lui pour les extortions issint prizes.*

Jo. Nevil, num. 34. is awarded to make restitution to the lady *Ravenham* in certainty for an oppression done to her, whereof the commons complained.

7 R. II. The parliament referred the base accusation of *Cavendish* against the lord chancellor; to be heard and determined by the justices, in such sort as if the parliament had determined the same. And the justices adjudged him convict of slander, and that the lord chancellor should recover his damages, which they taxed at a thousand marks, and that he be imprisoned until he had satisfied the chancellor; and the king *pro fine competenti sibi inde debito.*

The judgment against *Alice Peirce*, anno 1 R. II. was, that if she had purchased any lands by force or duress, *soit il par fine*, or deed *en pais*, or deed enrolled, or otherwise, that her purchase be held for none, and the parties who hold themselves aggrieved, have their process against her in chancery, and by advice of the grand council, let right be done to the parties, and restitution made according as the case requireth, so as the purchases made *bona fide*, be not undone or annulled any way.

References to the common law.

Nor could the lords judge any complaint of private persons, where the party might have his remedy at the common law; *prout Botbeil & Cooper* anno 50 E. III. accused *William Ellis* for extorting seventeen nobles from certain merchants of *Pruse*; and also for their wrong imprisonment, by the false suggestion of *William Ellis* to the king. And the lords referred the taking of seventeen nobles to the common law. But upon the examination of the imprisonment, it was proved, that *Ellis* did write his letters to one of the king's bed-chamber, falsely suggesting against *Botbeil* and *Cooper*, which letters were shewn to the king, and his majesty then commanded them to be committed. This the lords expounded to be false suggestion in *Ellis*. The king himself judged him for the same. Had that point been cleared in the statute of false suggestions, haply the lords would have referred it to its proper place.

So also, anno 5 R. II. the lords referred the accusation of *Clynedon*, to be tried at the common law.

2. *Touching the demand.*

That verily belongs to the party at whose suit it is; to the king's counsel for the king, if the articles were *de part le roy*; and to the commons, against an impeached delinquent.

3. *By whom judgment ought to be rendered.*

It appeareth plainly by many precedents, that all judgments for life and death, are to be rendered by the steward of *England*, or by the steward of the king's house; and this is the reason why at every parliament the king makes

a lord steward of his house, though he hath none out of parliament. And at such arraignment the steward is to sit in the chancellor's place: And all judgments for misdemeanors are given by the chancellor, or by him who supplies the chancellor's place.

CHAP. VI.

The precedents for life and death.

ANNO 1 R. II. *John* lord *Gomeniz* and *William Weston* were brought by the constable of the tower before the lords in full parliament, sitting in the *white chamber*; where they were severally arraigned at the commandment of the lords, by *Richard le Scroop*, chief steward of the house of our lord the king, in manner following:

Here the lords commanded the arraignment of certain earls, peers of the realm; they did not appoint the steward to do it: it belonged to his office.

ANNO 20 R. II. Sir *Tho. Haxey* was arraigned of high treason before the king, the lords and commons in full parliament, in *alba camera*, by the duke of *Lancaster seneschallum Anglia*, and the judgment rendered by him.

ANNO 21 R. II. All those judgments on the appeal were rendered *per seneschallum Anglia*. The records of E. III. and H. IV. are silent herein, by whom the judgment was rendered.

It may be objected, that anno 5 H. IV. the lord chancellor kept his place at the trial of the earl of *Northumberland*, because he did deliver the opinion of the lords. That could not properly be called a trial; for it was upon the earl's own petition. And if it were resolved whether it were felony or treason, it should have been done by the steward, sitting in the chancellor's place. Neither doth it appear by the record, that the chancellor kept his place, though he afterwards delivered the opinion of the lords.

So likewise, anno 1 Car. Febr. 6. the lord keeper kept his place when the articles of treason were read against the earl of *Bristol*; but he did not arraign him. Then they were read, and his answer heard by the appointment of the house, and some witnesses examined also, to the end they might understand the true nature of his offence, and then to declare how, and in what manner to proceed against him for the same. The spirituality did not deliver their opinion therein. To conclude, all records that are (which mention by whom the delinquents in cases capital were arraigned) do say that it was by the steward of *England*, or of the king's house. And in remembrance of this, a lord steward is appointed at every trial of a peer of parliament.

Touching judgment rendered by the chancellor in cases of misdemeanors, it is needless to recite any precedents: only this I will say, the chancellor never gave judgment on life and death, and the steward never on misdemeanors.

And though there be precedents of judgments given by the steward of *England* in parliament,

prout

prout 20 & 21 R. II. yet I have seen none of the judgments on the peers rendered by the steward of the king's house; and the reason may be, for that there was antiently a *seneschallus Angliae*. *Quaere tamen* whether the steward of the king's house, being a peer, may give judgment on a peer or not? I think he may, if there be no steward of the house constantly made every parliament, though but during the sessions. The last considerable thing in judicature is,

CHAP. VII.

The execution of the judgment.

AND first in capital offences, I have seen but two precedents thereof in the parliament rolls.

The first is, 4 E. III. which begun on Monday after the feast of St. Katherine. There were long articles exhibited against Mortimer for treason, and he was adjudged to die for treason; and thereupon, faith the record, commandment was given to the earl marshal to execute the judgment; and also to the mayor, aldermen, and sheriffs of the city of London, and to the constable of the tower, and likewise to them who had the guard of the said Mortimer, to be aiding to the said earl marshal, to do the said execution. The which execution was done and performed upon Thursday, next after the first day of the parliament, which was the 29th day of November.

Ibidem num. 2. Judgment was given on Simon de Bereford, to be drawn and hanged: And thereupon it was commanded that the marshal should do execution near the tower of London. And the said earl of Arundel was beheaded on the same day. The earl of Nottingham, one of the lords appellants, was lord marshal at that time, and therefore his deputy did execution.

Item, The earl of Warwick being adjudged to die, the king did pardon the execution, and granted him his life, *viz.* that he should remain in perpetual prison out of England, in the isle of Man, &c. and that he be at sea on his passage before the end of one month. And thereupon he was delivered to monsieur William le Scroope, and to monsieur Stephen his brother, to bring him safely to the said isle of Man, &c. The earl marshal was commanded to do execution on a peer, and the marshal on a commoner. The command no doubt issued from the lords, with the king's assent herein.

Thus much touching execution *quoad mortem*.

In misdemeanors, the greatest corporal punishment hath been imprisonment. I find no other in antient parliaments; but who was the officer to carry the delinquent to prison is not recorded, save he to whose custody he was committed, *prout* 42 E. III. John de Lee was committed to the tower, & *dit fust a monsieur Aleyn de Buxhull, constable de la tower, quil preist garde de lui*.

Anno 50 E. III. numb. 28, & 29. The lord Latimer is awarded to prison, *desire en guard*

du marshal; and afterwards upon mainprise of divers earls, suffered to go at large. So it seemeth that first he was committed, and delivered to the earl marshal immediately.

Primo R. II. William Fitz-Hugh was committed to the tower, but it appeareth not who carried him thither. At this day the lords have used to impose some corporal punishment on misdemeanors, *prout Flood*.

And at this day if a peer be committed to prison, the gentleman-usher hath the charge of him thither, and the serjeant attending on the great seal, *prout anno* 18 Jac. 16. Febr. the earl of Berks was sent to the Fleet by the gentleman usher, for forcibly thrusting the lord Scroop in open house.

Anno 21 Jac. 13. Maii. The earl of Middlesex was committed to the tower, and a warrant given to the gentleman usher to carry him thither.

Anno 1 Car. In the parliament begun 6 Febr. the gentleman usher was commanded to bring the earl of Bristol.

But if a commoner be committed, the serjeant at arms attending on the great seal doth usually carry him to prison, and he also hath the charge of him, and to see any corporal punishment inflicted on him.

Anno 18 Jac. Wright and two serjeants at mace, who had arrested a servant to the — were censured to ride with papers on their heads, for their wilful contempt and scorn of the privileges of parliament, and for that the serjeant at arms did not see the whole punishment executed on them, he himself was committed.

CHAP. VIII.

For recovery of damages, or restitution to the party aggrieved.

ANNO 50 E. III. Botheil and Cooper had each of them twenty pounds awarded for their damages; and it is not there declared how they should recover the same.

In the same year John lord Nevil, upon complaint of the commons, is awarded to make restitution to the executors of the lady Ravensham; neither when the same is to be restored, nor the manner how the same shall be recovered, is declared.

In those two cases, I conceive the parties are to have their remedy (the parliament being ended) in the chancery, and not in any other inferior court at the common law: But the lords in parliament may direct how it shall be levied.

Anno 1 R. II. The lords adjudged Alice Peirce to forfeit all her lands and goods to the king; and notwithstanding this forfeiture, if she hath purchased any lands by force or duress, it shall be void, and the party grieved to have his remedy by process in the chancery, and by advice of the lords of the council, let right be done and restitution made.

Anno 7 R. II. John Cavendish was awarded to pay a thousand marks to the lord chancellor for his damages, and to remain in prison until he had paid it.

OF THE
ORIGINAL
OF
Ecclesiastical Jurisdiction
OF
TESTAMENTS.

OF THE
ORIGINAL
OF
Ecclesiastical Institutions
OR
THE STAMENTS

OF THE ORIGINAL OF Ecclesiastical Jurisdiction OF TESTAMENTS.

C H A P. I.

The intrinsecal jurisdiction not given to the church by the civil law.

THE jurisdiction of testaments being either intrinsecal or extrinsecal, (that is) either touching probate, or recoveries of legacies: First, for the intrinsecal; It is clear that it came not to the bishop by imitation; or otherwise, from the imperial civil law; For by the elder part of that law, regularly the probate or aperture of wills was before the ^a *praetor*, and afterwards the obsignation, insinuation, and probate of them in *Rome*, was before the ^b *magister census*, or *apud officium censuale*, as it were before the barons of our exchequer; and that continued into later time. And the same officer by the name of ^c *γενικός*, or *generalis* in *Constantinople*, had the same authority. But also afterwards as well the *questor's* seal, as that of the *generalis*, became to be used at the obsignation, and his authority also in the probate or aperture. And the emperor *Leo* ^d about the year 890. transferred all that herein belonged to the *generalis*, into the *questor's* place; yet so, that some other civil magistrates had the like authority. And what was done before these in *Rome* and *Constantinople*, was in other cities before their chief governors, as *defensores* or *praesides*. Neither was the church permitted to have to do

with the insinuation of testaments, but expressly forbidden by a rescript ^e of the emperor *Justin*: Nor is any thing that gives it, either among the novels of the *Greek* empire, or in the *Lombarda*, or *capitulares*, which have ^f been reputed as parts also of the imperial law.

C H A P. II.

Nor by the canon law.

Neither in any general council, or other part of the received canon law, dorth any testimony occur, that gives the church this intrinsecal jurisdiction. But in the fourth council ^g of *Carthage* holden in the year 398. it was ordained, *Ut episcopus tuitionem testamentorum non suscipiat*. And this being then established by two hundred and fourteen bishops, was afterwards made a part of ^h the decrees, or canon law, collected by *Gratian*, and published and authorized by pope *Eugenius* III. about 1150. and the gloss upon that canon interprets *tuitio* for aperture or probate. So also pope ⁱ *Innocent* IV. understands it: *publicatio* (saith he) *fieri non debet apud episcopum*; and he vouches that law, ^k *consulta divalia tit. de testament.*

^a ff. test. quemadmodum aperiant. per tor. Et vide etiam auth. 74. §. sit igitur licentia.

& tit. de testam. l. 23. consulta divalia. & C. Theodos. lib. 4. tit. 4. l. 4. ubi visendus interpres vetus.

Cujacius, & videtis gloss. Græcobarb. Meursii in γενικός.

^d Novel. 44. formulas vet. testam. aperiendorum, videtis J. Paul. sentent. recept. l. 4. tit. 6. & Marculph. formul. l. 2. c. 37. & 38.

^e C. de episc. & cler. l. 36. repetita.

^f C. de episc. & cler. l. 36. repetita.

^g Dist. de secular. negotiis, cap. 5.

^h Tit. de instrum. edit. §. ostendit. 34. vid. D. D. c. nos quidem, & c. si haeredes, extra. tit. de test. & Lin-

wood de test. c. item. §. infim. & cap. stat. §. approb.

ⁱ Ad c. nos quidem.

^k Ad c. nos quidem.

to prove it. *Speculator, Hostiensis*, and others of the same time, and generally the rest that follow them, make the civil law only the square of the jurisdiction of the probates; and so it is truly affirmed in our books, that the probate belongs not to the church¹ by the spiritual law, neither is any such thing given by any later^m bull, or decretal from the bishop of *Rome*.

CHAP. III.

The extrinsecal jurisdiction by the civil law, in whom?

FOR the extrinsecal jurisdiction that gave recoveries of legacies; By the imperial civil law, where the legacies were *in pios usus*, theⁿ bishop of the diocese sometimes by himself, sometimes with the civil magistrate, provided for the execution of the testator's meaning: otherwise the jurisdiction of legacies, and what else falls under testamentary disposition, was and^o is, the magistrate's only.

CHAP. IV.

In whom by the canon law.

BUT by the canon law, the general care of execution of testaments is committed to the bishop: Yet I find not any canon to that purpose received into the body of that law, now in authority, before the time of the decretals; which have out of some council of *Mentz* these words; *Si haeredes iuxta testatoris non impleverint, ab episcopo loci illius omnis res quae eis relicta est canonice interdicatur, cum fructibus & caeteris emolumentis, ut vota defuncti impleantur.* Out of what council of *Mentz* this is taken, I have not yet learned; but in the same syllables it occurs in^a *Burchard*, that lived about six hundred years since, with the marginal note of, *ex concilio Moguntino*. What other texts are, touching the power of the canons over performance of testaments, have reference to that course ordained by the civil law, where any thing was given *in pios usus*, not to a general jurisdiction; for so is the canon *nos quidem extr. tit. de testam.* Neither is that canon *ultima voluntas in c. 13. q. 2.* taken out of *St. Gregory*, otherwise to be understood, if you interpret it as you ought by those^r places of *Gregory* whence it is taken; but the canonists generally upon that canon *si haeredes*, take it, that *executio testamentorum ad episcopos spectat*. And so those old ones, pope *Innocent IV. Bernard*, and others of the rest, deliver; and the^t later follow them, yet they commonly restrain it (and that in practice in other states) to legacies given *in pios usus*. And in the council of *Trent*, where twice the bishops power over testaments is provided for, nothing is spoken of but commutations of legacies, and of such as are given *in pios usus*.

Yet from antient time both the intrinsecal and extrinsecal jurisdiction of testaments made of personal chattels in *England*, hath been, and is, in the church, except in places where special custom excludes it. The original whereof being not sufficiently found in either of these laws (the civil and canon) divers parts of which according to the various admission of several estates have been much dispersed through christendom, and some remain now exercised by imitation among us; it rests, that disquisition be made for it in the monuments of the kingdom, that according as they together with the canons afford light, some conjecture may be had touching the antiquity and ground of it.

CHAP. V.

Of the intrinsecal jurisdiction in the Saxon times.

THE eldest testament that I have seen made in *England*, is that of king *Edgar's* time, made byⁿ one *Birbtric* a gentleman or thane (it seems) of great worth, and his wife *Elswith*, wherein they devise both lands and goods; and in the end of the will says her husband. *And ic bisce pop goter lufan mine leofan hlaford. ꝥ he ne þærge þaenig man unceþne cwide aþence; And I pray for God's love, my leefe lord, that he do not suffer that any man our testament do break.*

It may perhaps thence be collected, that the protection or execution of this testament was within the jurisdiction of the lords court, as also the probate; and that especially, because divers lords^s of manors have to this day the probate of testaments by custom continued, against that which is otherwise regularly settled in the church. But the same testament being for lands as well as for goods, it may be that this clause had reference to the lord in regard of the land only, (to the alienation of which, his assent might be requisite) or to denote him for the testator's best friend, as one chosen overseer of his will. And indeed he desires all other good people to see his will be not broken. Which makes me only offer it, as what another man's fancy may work on. But I conceive not out of it enough to prove either way any thing touching the jurisdiction of testaments.

Nor in the *Saxon* times appears any thing that can sufficiently direct us to know, how it was exercised here, unless out of that example of *Siwerth* of *Durham's* testament, in the^v book of *Ely*, you may collect, that the probate was supplied in the life-time of the testator by inrollment, or leaving an indented copy of it with the alderman or sheriff of the county, in whose county-court the most of proceedings of temporal justice, and of the spiritual also (for the bishop sat with him, as in his consistory) were in the *Saxon* times; for so much perhaps may be conjectured out of it, as we faithfully here relate it. *Siwerth* in king *Ed-*

¹ 2 R. III. test. 4. 11 H. VII. 12 b.

^m Quod discimus ex Bullarii summa quam edidit S. Guaranta. ⁿ C. de episc. & cler. l. 28. nulli. & l. 37. si quis ad declinand. authentic. 135. c. 10. & vid. c. 11. ^o ff. de petit. haered. & tit. de legat.

^p Extr. de test. c. 6.

^q Lib. 15 c. 34.

^r Videtis Greg. lib. 3. epist. 9. & lib. 9 epist. 20. ^t Vid. Gonzal. Suarez Prax. eccles. Lam. 2. praelud. 2. §. 44. & Zerula prop. episcop. verb. leg. ad quaelq. 9.

^s Sess. 12. de reform. c. 6. & sess. ult. de reformat. c. 4

^v Lamb. peramb. Cant. p. 548.

^w Henloe's case, 9 rep. 37. b.

^x In Biblioth. Cottoniana.

gar's time, lying sick at *Lindane* in the Isle of *Ely*, makes his testament, and sends for *Brithnotb* abbot of *Ely*, and divers of the monks, and others of the gentry; and the abbot writes the testament in *tribus chirographis, coram* (so are the words of the book) *cunctis fecit recitari, lectumque fecit incidi, unamque partem chirographi retinuit Siferthus, alteram autem dedit abbati, tertiam vero misit statim per praefatum Brithelmum* (that was one of the gentlemen of the country then present) *Ailwino aldermano, qui tunc temporis degebat in Ely, & petiit ab illo ut suum testamentum stare² concederet, quomodo abbas illud scripserat, & ordinaverat apud Lindane coram praedictorum testimonio virorum.*

Cum itaque Ailwinus alderman hoc audisset, & chirographum vidisset, remisit illico ad eum Wlinothum de Stowe cum Brithelmo, sci scitatusque est ab eo quid aut quomodo vellet de testamento suo: qui mox per eosdem renuntiavit ei, sic suum testamentum absque omni contradictione vel mutatione se velle stare, sicut praefatus abbas illud in chirographo posuerat. Quod ut Ailwinus alderman audivit, totum concessit, ut staret sicut ipse Siverthus testatus erat. But indeed, in it lands lying in *Durham* were devised to the abbey; and so, it was not only of personal chattels.

The Saxon laws are very silent of any thing touching testaments; and we must remember, while we think of that example of *Siverth* of *Durham*, that the ecclesiastical and temporal courts of common justice, held as one by the sheriff and bishop, were not severed, as now, into the consistory, and county-court, until the conqueror did it by a law yet remaining, and elsewhere published³.

In what intercedes for this time, until about *H. II.* I find not any testimony that gives light to this purpose. As the Saxon laws, so those of the conqueror, and of *H. I.* and *H. II.* mention nothing that tastes of either kind of jurisdiction of testaments only, a charter of *H. I.* extant in *Matth. Paris*, and in the red book of the exchequer this occurs. *Si quis baronum vel hominum meorum infirmabitur, sicut ipse dabit, vel dare jusserit, pecuniam suam, ita datam esse concedo.* This may perhaps seem to denote, that the king's court determined of legacies, especially of the king's tenants. But indeed it proves not so much. But the eldest passage that proves clear enough here, is that which makes the intrinsecal jurisdiction to have been in the church, and the extrinsecal in the king's court; I mean that which is found in the treatise attributed to *Randal* of *Glanvill* chief justice under *H. II.* where he says, that if a legacy be detained, the executors or other friends of the testator, were to get the king's writ to the sheriff, commanding, *quod iuste & sine dilacione facias stare rationabilem divisam* (that is, the bequest or legacy) *N. sicut rationabiliter monstrari poterit quod eam fecerit, & quod ipsa stare debeat, &c.* And it is plain

by the words there preceding and subsequent, that it hath reference to moveable or personal possessions, not to lands. So that it seems clear by that in *H. II.* his time, the jurisdiction of personal legacies was in secular courts. But if the issue in secular courts upon that writ came to be, whether the testament where true or no, or well made, or whether the thing demanded were in fact bequeathed, *tum* (says he) *placitum illud in curia christianitatis audiri debet, & terminari, quia placitum de testamentis coram iudice ecclesiastico fieri debet, & per illorum qui testamento interfuerint testimonia secundum juris ordinem terminari*: that is, as it must be understood, that upon issue of bequeathed or not bequeathed, of testament made, or no testament, the trial must have been otherwise than by the practice of the later^c law, wherein the testament is traversable, and the traverse triable in the king's court by certificate to the temporal court from the ecclesiastical, as at this day, of institution, bastardy, and profession in religion, and the like; And thence may it be well concluded, that at this time by the practised law, the probate or the intrinsecal jurisdiction was in the church; as the institution, bastardy, and profession, are to be certified, because within the bishop's jurisdiction. Some recorded testimonies remain of the first and third, and the nature of the marriage or cohabitation (that directs in the second) is to be judged of only in the spiritual courts. So the validity of the testament, or the truth of this or that particular legacy was to be certified from the spiritual court, because the probate had there proceeded, and the copy there remaining was most authentick; otherwise to what purpose should they have sent to the spiritual court in such a case?

But on the other side, as in the case of institution, profession, and bastardy, the consequences of them, (which are objects of their extrinsecal jurisdiction,) as descent, exclusion from inheritance, gaining it by a descent cast, or legal making a church full, or the like, are determinable only at the common law; so the consequences of a testament, that is, the recoveries of legacies, and such like, as it seems by that writ, were in the temporal, not in the spiritual court. I know the authority of that treatise is suspected, and some of the best and antientest copies having the name of *E. de N.* which, I have heard from diligent searchers in this kind of learning, affirmed to have been sometimes, *E. de Narbrough*, and not *R. de Glanvilla*, it hath been thought to be another's work, and also of later time. But, as on the one side, I dare not be confident, that it is *Glanvill's*, so I make little question, that it is as antient as his time, if not his work. The *teste* of the precedents of writs under his name, the language, especially the name of *justitia*, always for that which we now from antient time call *justitarius*; (and *justitia* was so used in writers under *H. II.*) and the law delivered in

² In lib. concessisset.

³ V. Spicleg. in Eadmerum.

^b Lib. 7. cap. 6. & 7.

^c 29 Ed. III. 33. a. 44 Ed. III.

16. a. Perk. 493. 22 H. VI. 52.

^d Ita Jo. Salisbur. de Nugis Curial. lib. 5. cap. 15. & 16.

it tasteth not of any laterage And howsoever it comes to pass, the *regiam majestatem* of Scotland published by command of David the first, under the time of our Hen. I. hath for the most part the same syllables with this supposed *Glanvill*, and expressly * the very passages and the writ that we have now here noted for testaments.

That extrinsecal jurisdiction of those times in the secular Courts, was perhaps denoted by those words in the testament of *Theobald* archbishop of *Canterbury* under king *Stephen*,^c *Supremis* (saith he) *deficientium voluntatibus suum accommodant jura favorem*, where he devotes only personal things and uses. I think, *jura* is rather to be taken for the common law, than the spiritual, which is, in the most usual phrase of that time, designed by *canones*.

In this time of *Hen. II.* divers fierce controversies fell between the law and spiritual jurisdiction, and the particulars of them are largely related at the end of *Quadriologus*, in *Gervase* of *Dover*, in *Roger* of *Wendover*, in *John* of *Salisbury*, and *Matthew Paris*, but in him most abruptly; yet not the least mention is in them touching any matter of this jurisdiction; And in the main cases of our spiritual courts depending under *H. II.* and sent by appeal to *Rome*, which yet remain in the epistles of *John* of *Salisbury*, there is not one that touches upon either of these jurisdictions of testaments in the church; But indeed there is one that may seem somewhat to prove for that which we note out of *Glanvill*, concerning the intrinsecal jurisdiction at that time in the temporal court: For in an appeal sent to pope *Alexander* the third, the case, as *John*^f of *Salisbury* relates it, was, that one *Richard de Anastia* in foro secularium iudicium petitionem haereditatis ad bona avunculi obtinenda instituit, against *Mabile de Franckville* being daughter to *William* of *Sackvill*, to whom the plaintiff was nephew by his sister: and the point of the issue between the daughter here and the nephew, being upon the bastardy of the daughter, the spiritual court had the trial of it. If (*bona*) here be understood for chattels, as in our law it is, and so restrained, then was this *petitio haereditatis*, as a suit for *Sackvill*'s goods, grounded also, as it seems, upon a testament of his: for in the relation of the case also, *Richardus insistebat*, says the author, *institutioni avunculi, petitionem haereditatis instituens*; and on the other side, *Mabile maxime patris novissimae voluntati innitebatur*: which shews, that here was a testament in the case, and a suit for what was challenged by it in the temporal court. But *haereditas* and *bona*, it is likely, included here (as by the civil law) all possessions of the ancestor, both real of inheritance, and personal, that is, the *universum jus defuncti*, and not only our inheritance; Although it doth also amongst some^g civilians denote no more, if at least they understand aright what they say, while they write, that

consuetudo est in Anglia qua primogenitus succedit in omnibus bonis: and in this case, if the issue had been upon the truth of the testament, as it was upon the bastardy, it had been referred also to the spiritual judges.

C H A P. VI.

Whence Lindwood thinks the jurisdiction intrinsecal came to the church.

BY what is before delivered, it appears, that the intrinsecal jurisdiction, or probate was in the church; and that by express testimony, as antiently as the time of *H. II.* and by all probability it was in settled use before that time, being spoken of in that treatise called *Glanvill*'s, as a known course of proceeding; although indeed yet I could never see an express probate in any particular case, elder than about *H. III.* But the beginning or course of this intrinsecal jurisdiction in the church, is not for ought I have yet learned, extant: However *Fairfax* tells us,^h that it was by an act of parliament, which perhaps he took from that of *Lindwood*; *Haec libertas (ecclesiae) quoad approbationem hujusmodi* (saithⁱ *Lindwood*) *fundatur super consensu regio, & suorum procerum (in talibus) ab antiquo concessio*. Where he means by *in talibus*, their power of committing of administration of intestates goods, as it is plain by his quotation of that constitution of archbishop *Stratford*, *tit. de immunitate eccles. c. accidit. novitate perversa §. quidam etiam*. That power was given, as I guess, by parliament in king *John*'s time: but thereof more in due place. And *Lindwood* addeth, *item fundatur super consuetudine in ea parte de scientia regum Angliae, diutius conservata*: Which is indeed, that it is founded upon the common law or customary law of the kingdom; or that it hath like antiquity or original as other parts of the common law, that is, immemorial custom. For tho' it be exercised according to the civil and canon law in the spiritual courts, with some reference had to the customs of *England*; yet it is clear, that the power which the spiritual courts have to exercise it, is merely by the common law; although we find not when it came first to them, no more than we find divers of our settled courses and maxims in the common law; touching which yet we can without much difficulty prove, that at such or such times they were not in practice; as perhaps in the more antient ages, this was not in these courts. But that it was originally belonging to the crown, that is, to the temporal courts, which are all, and ever were derived from the dignity royal, is affirmed also, (as in that cited in *Hensloe*'s case, out of *Jocelin*'s history of the archbishops of *Canterbury*), in a writ^k 2 *H. V.* that prohibiteth the archbishop of *York* to call the executors of the tenants of *St. Leonard*'s hospital to prove their wills before him; because as the words are, *placita de cognitionibus scriptorum in regno nostro*

* *Regiam majestatem* lib. 2. cap. 38.

^c *Jo. Salisbur. epist. 57.*

^f *Epist. 89.*

^g *Barth. ad tit. de summa tr. l. 1. num. 42.*

^h 2 *R. III. tit. testam. 4.*

ⁱ *Tit. de test. c. stat. verb. ecclesiae libert.*

^k *Cod. ms. hosp. S. Leonardi in biblioth. Cottoniana.*

Angl. ad nos, coronam & dignitatem nostram specialiter pertinent: and also they had, time out of mind, used to prove them before the masters and brothers of the hospital. Here we see the testaments reckoned as other evidences, the trial and consufance whereof belongs only to the temporal courts: and at this day by special custom, many lords of manors have like probate in their courts baron.

By the way, for that which *Fairfax*, and others following him, tells us, that in all other countries the probate belongs to lay-judges, he is deceived, and deceives his readers. Indeed, in the most places of other states it belongs to the lay-judges; but in *France*^m generally the spiritual judges, both before *Fairfax* his time and since, had this jurisdiction of probate, and so have had without controversy ever since: the disputations about it, and other parts of jurisdiction had with some clergymen, by *Coniers* attorney general to *Philip Valois*, and *Peter Dreux* in behalf of the duke of *Bretagne*, at such time as the clergy had there so extended their jurisdiction, *que les fauxbourgs estoient trois fois plus grands que la ville*, as *Pasquier* speaks of them.

CHAP. VII.

Testimonies of king John and Henry III's time, that may serve to prove the extrinfecal jurisdiction then in the temporal courts.

FOR the extrinfecal jurisdiction, as it seems by *Glanvill* and other testimonies, that it was in the king's courts under *H. II.* and so by all probability before; so out of other records of following time, somewhat may perhaps be collected to prove, that it continued long in them; as out of the patent of king *John* for *Oliver of Rockford's* testament, *Sciatis*ⁿ (lays the king) *nos concessisse testamentum Oliveri de Rupe forti sicut rationabiliter conditum est, & apud S. Florentiam veterem & Rupem fortem scriptum & ordinatum. Quare volumus & firmiter præcipimus quod nullus executorum testamenti ipsius impediatur, quin illud sicut rationabiliter conditum est, faciant.* Then out of that of *Peter de Roches* bishop of *Winchester*, and chief justice of *England*, touching the will of *Adam of Gurdun*; *Rex*^o *dom. P. Winton. episc. justic. Angl. &c. Mandamus vobis quod teneri facias testamentum Adae de Gurdun quod fecit de rebus suis mobilibus & omnibus aliis in lege secundum dispositionem testamenti, excepta terra quam de dominio nostro habuit septimo Augusti. Teste meipso.* This expressly gives some legal execution of a testament, made of personal things, unto the chief justice of *England*. And in *5 H. III. Robert of Lexington* having the possession of all the goods of *Philip de Uletott* the testator, a writ goes

out to him to pay *William earl of Salisbury* a debt of ninety marks out of them, and that the rest should be delivered to the executors *ad faciendum testamentum*; and another writ was sent, that he should, *per visum & testimonium execut. fell. all Uletott's goods, & denarios quos inde fieri feceritis, salvo faciatis reponi sub sigillo vestro & sigillo executor. prædict. donec aliud mandatum nostrum inde habueritis.* And in *7 H. III.* a writ is directed to the sheriff of *Lincoln*, reciting, that whereas it appeared, that *Richard Fitz-Dune* died not intestate, *Ideo tibi præcipimus, quod omnia catalla ipsius Richardi in manum nostram capta in balliva tua, sine dilatione habere facias priori de Noketon*, and other executors of his testament *ad faciendum inde rationabile testamentum*: and other like writs occur in the rolls of king *John* and *H. III.*

CHAP. VIII.

Suits of legacies personal in the spiritual court from the beginning of Henry III. Of the beginning of that course.

BUT however it may seem by those testimonies, that the temporal courts had some extrinfecal jurisdiction of testaments in the time of king *John* and *H. III.* it is clear, that in the beginning of *H. III.* suits for legacies personal were in the spiritual courts, and that, it seems, from custom settled in practice of the former times that were then newly passed. And perhaps it might be in the more antient times *fori mixti*, and as well exercised in the one, as in the other court; as we have elsewhere shewed of the more antient jurisdiction of tythes; Or it may be, that those writs in the former chapter, and the like, were but in case of tenants being testators, upon whose deaths all their goods were to be seized by the sheriff, or other such officer, and the debt (if any were) paid to the king, & *residuum relinquebatur executoribus testamenti defuncti*, as the words are, both of the charters of king *John* and *H. III.* And perhaps by that chapter of the charter those writs may be interpreted, and *faciatis teneri testamentum* may be but only an moving of the king's hands from the goods, that so the executor might perform the testament; For that the spiritual court did from the beginning of *H. III.* exercise a jurisdiction for recovery of legacies, is infallibly proved by¹ cases of 2, 4, 6, & 8 *H. III.* and the attachments upon prohibitions extant in records of that time, are, *quare secutus est placitum in curia christianitatis de catallis quae non sunt de testamento vel matrimonio*; and many such more are both in the rolls and in *Matth. Paris*. It appears also in 2 *H. III.* in the case of *Simon Fitz Simon*, that even that suit for devisable land being devited, was thought to be good in the spiritual court *ex*

¹ Hensloe's case, apud v. cl. Ed. Coke par. 9. fo. 37, 38, 48.

videlicet testam. Leolodi abbatris Floriani Helgundi initio.

² Claus. 5 H. III. part. 2. m. 7. & 15.

³ Claus. 5 H. III. part. 2. m. 7. & 15.

⁴ Claus. 5 H. III. part. 2. m. 7. & 15.

⁵ Claus. 5 H. III. part. 2. m. 7. & 15.

⁶ Claus. 5 H. III. part. 2. m. 7. & 15.

⁷ Claus. 5 H. III. part. 2. m. 7. & 15.

⁸ Claus. 5 H. III. part. 2. m. 7. & 15.

⁹ Claus. 5 H. III. part. 2. m. 7. & 15.

¹⁰ Claus. 5 H. III. part. 2. m. 7. & 15.

^m Choppin. de dom. Franciae lib. 2. pag. 230. edit. 1588 &

ⁿ Patent. 3 reg. Johan membr. 6.

^o Rot. claus. 16 Joh membr. 22.

^p Claus. 7 H. III. part. 1. membran. 16. idem id ipsum est quod habetur in commen-

^q Cap. 15. magn. cart. quam etiam donavit Julian. rex, uti videri est apud Matth. Paris.

^r H. III. ibid. 17. 8 H. III. ibid. 19.

^s Mich. 16 & 17 H. III. rot. 15. Sec. &

^t Mich. 16 & 17 H. III. rot. 15. Sec. &

^u Mich. 16 & 17 H. III. rot. 15. Sec. &

^v Mich. 16 & 17 H. III. rot. 15. Sec. &

causa testamentaria, as if *laicum feudum ver- sum esset in catallum*, until the devisee had recovered it; and after the recovery, *iterum incipiebat esse laicum feudum* — as ^u *Bracton* says, where his printed copy is exceedingly corrupted. But it was clear law in the time of this *Bracton*, who was a judge in the common pleas in the later part of *H. III.* that *locum non habet probatio in causa testamentaria si catalla legentur & inde agatur in foro ecclesiastico*; and he reckons that of testaments *inter spiritualia, & spiritualibus annexa*, which agrees exactly in the known and practised consultations in the ^y register, *placita de catallis & debitis, quae sunt de testamento & matrimonio, ad forum ecclesiae specialiter dignoscimus pertinere, &c.* And although in case of legacy, as in case of tythes, the jurisdiction that gave the recovery of them, was sometimes in the one, sometimes in the other court, before it was restrained to the spiritual only; yet it seems by those cases of *Henry III.*'s time, which are testimonies beyond exceptions, that the spiritual jurisdiction over legacies, was long before in practice; otherwise I guess that exception *de testamento, & de matrimonio*, had not been so familiar in the prohibitions of that age. And notwithstanding those cases out of the records of king *John* and *H. III.*'s time, the temporal court not only prohibited not the spiritual court, especially in *H. III.*'s time, but also had not any conulance of suits for personal legacies; for neither have I ever met with any suit in that kind in the plea rolls of *H. III.* or king *John*, or *Richard I.* (but very few are extant of the time of the two last) neither doth *Bracton* admit any such thing. And the author of *Fleta* in the time of *E. I.* tells us expressly, ^z *de causa testamentaria sicut nec de causa matrimoniali curia regis se non intromittet.* But the beginning of that practice of the extrinsecal jurisdiction in the spiritual court, is even as difficult to find, as that other of *probates.* *Lindwood* tells us, that ^a *libertas quoad secundum, scilicet, puniendum impediens, quominus testamenta & ultimae voluntates defunctorum procedant, ortum habet a privilegiis etiam in ea parte concessis, & a consuetudine similiter de scientia regum Angliae diutius observata*: and further, *potuit* (saith he) *habere ortum* out of those ^b laws in the code that

made the bishop a protector of legacies *in pios usus.* It might be also in regard of the purpose of those laws in themselves. And it were no great wonder, that the ecclesiastical court might have gained jurisdiction over all personal legacies under colour of such as were given *in pios usus.* But perhaps it will not be admitted for probability enough, that any part of the code being of the imperial or civil law, was ever so received here in *England*, as that it could induce any alteration touching the jurisdiction of the crown, that is, touching this extrinsecal jurisdiction, which (as is shewed) did belong to the temporal courts. But whosoever will not admit of any such conjecture, must yet remember, that presently from king *Stephen*'s time, when the civil law was new born into the light, it having lain forgotten by the space of six hundred years before in the western empire, the code and other parts of that law were familiarly read by our *English* lawyers; and I think as well by our common as canon laws; to omit that case of *Mabile* of *Franchewille*, wherein, it seems, a special regard was had to the civil ^c law, that permits not a meer bastard and succession *ex testamento* against a lawful heir of blood; for otherwise, how could *Richard* the uncle's institution, as it seems by a former will have made colour of right for him, against the later will which *Mabile* pretended, unless he relied upon her being a bastard. But I should think it probable enough, that the original of this jurisdiction for legacies, was out of the canon law, and that especially from that canon *Si haeredes, &c.* before cited. For although the decretals, wherein it stands now authorized for a general law, were first published but in ²⁴ *H. III.* by *Gregory IX.* and that we see, by infallible testimony already brought, that legacies before that time, were recoverable in the spiritual court, yet by likelihood that very canon was inserted in all, or some of those eight more antient compilations of the canons authorized by some former popes; (which is the more probable, because we find it also in *Burchard*) and so it might be, long before sufficient ground of this extrinsecal jurisdiction in the ordinary; but I sought here for authority, more than I durst be bold in conjectures, which I leave to every man's judgment.

^u Lib. 5. tract. de exceptionibus, cap. 12. p. 409. b.
lib. 2. cap. 57. §. executor.
ad declinandum, 37, &c.

^a Ad tit. de testam. c. statut. verb. ecclesiast. libertat.
^c C. de natur. liberis. l. 2. matr. & authent. 89. &c.

^x Idem. fol. 407. b.

^y Register. orig. fol. 48. &c.

^z Fleta

^b De episc. & cler. l. nulli. 38. & l. si quis



OF THE

Disposition or Administration

OF

INTESTATES GOODS.

C H A P. I.

In whom it was in the time of the Saxons.

IN the Saxon times it was in the lord of him that died, (understand the chief lord) in case the intestate were a tenant, and died at home in peace: but in case he were no tenant, or died in his lord's army, then it was (it seems) as other inheritance, under the jurisdiction of that temporal court within whose territory the goods were. This may be proved out of the laws of that time, which ordain, that upon the death of an intestate, (whom they call cýðeleare,) the lord ^d is only to have the heriots due to him, which are also appointed by ^e the laws of the same time, *that by his* (the lord's) *advice or judgment his* (the intestate's) *goods be divided among his wife and children, and the next of kin, according as to every one of them of right belongs,* that is, according to the nearness of kindred, if no children or nephews from them be; for it must, I suppose, be understood, that the succession was such, that the children excluded all their kindred, and of their kindred the next succeeded, according to that in Tacitus ^f of his *Germans*, whose customs were doubtless mixed with our *English Saxons*, *Haeredes*, says he, *successoresque sint cuique liberi, & nullum testamentum*. But it seems, christianity afterward brought in the free power of making testaments amongst them, *si liberi non sunt, proximus gradus in possessione, fratres, patrum, avunculi*.

But this is expressed only in case the tenant died at home and in peace; for if he died in his ^g lord's army, both the heriot was forgiven, and the inheritance both of goods and lands was to be divided as it ought, which was, it seems, by the jurisdiction of the temporal court, within whose territory the death or goods were; for in that case, it is not said, that the lord's judgment was to be used, but that the heirs should divide all; or, as the words in the Confessor's law are, *habeant* ^h *haeredes ejus pecu-*

niam & terram ejus sine aliqua diminutione, & recte dividant inter se; where the right of the heir both to lands and goods is expressly designed, but the judge that should give it them not mentioned. Therefore it seems, it remained as other parts of the common law, under the temporal jurisdiction, as by the ⁱ civil law it is under the *praetors*.

C H A P. II.

In whom after the Normans until king John's time.

UNtil king John's time it seems the jurisdiction over intestates goods was, as of other inheritance also, in the temporal courts; yet no sufficient testimony is found to prove it expressly; only when the common laws of those times speak of intestates, they determine the succession by like division as those of the Saxon times. In laws attributed to William I. ^k we read, *Si homo moriatur sans devise, si departent les infants l'erite inter sei per ovell*. And afterwards in H. I.'s ^l laws, *Si quis baronum vel hominum meorum praeventus vel armis vel infirmitate pecuniam suam nec dederit, nec dare disposuerit, uxor sua, sive liberi, aut parentes, & legitimi homines sui pro anima ejus eam dividant, sicut eis melius visum fuerit*. Here is the first mention, as I remember, of any thing occurring in our laws or histories, of the disposition of the intestates goods, *pro anima ejus*, which indeed might have been fitly subjected to the view at least of the church. But no mention as yet being of any ecclesiastical power that tends that way, I rather think that heretofore no use or practice was of administration committed, direction given, or meddling with the goods, by the ordinaries; but all was by the friends or kindred *juxta consilium discretorum virorum*, as the words are in ^m the

^d Canuti, leg. cap. 68.^e Ejsund leg. cap. 68.^f De moribus Germanorum.^g Canut. legibus, cap. 75.^h Leg. Ed. Confess. cap. de heretochiis.ⁱ ff. tit. de bonorum possessione.^k Adjiciuntur Ingulpho Crolandensi inf.

in bibliotheca Cottoniana.

^l Apud Matth. Paris.^m Will. Neubrig. hist. l. 3. c. 22.

statutes made for such as should die in the holy war with *Richard I.*

Neither doth that of *Glarvill*, which was written under *H. II.* tell us of any thing of the ordinary's power in this case, although it hath express mention of testaments, and the churches jurisdiction of them. Indeed we there find, that if no executor be named, then ⁿ *possunt propinqui & consanguinei testatoris*, take upon them the executorship, and sue in the king's court against such as hinder the due payment of legacies; which also agrees well enough with that before cited out of the laws of *H. I.* Neither is there in *Gualter Mapes* his *apocalypsis* (being a bitter satire against the abuses of the spiritual courts in *Henry II.*'s time) nor in *John of Salisbury*'s epistles, that have many particulars of the exercised jurisdiction of the church, any thing occurring, that touches upon any ecclesiastical powers of this nature.

CHAP. III.

In whom after the time of king John.

BUT in that charter of liberties both for the church and laity made to the baronage of *England* in the seventeenth of king *John* in *Reiningmead*, an express ordinance is, *that if any freeman died intestate, his chattels were to be disposed of by the hands of his next of kin, by the view of the church, that is, direction and advice being thereto given by the ordinary, as I understand, saving to all creditors their debts:* The words of it were, *Si aliquis liber homo intestatus decesserit, catalla sua per manus propinquorum, parentum, & amicorum suorum, per visum ecclesiae distribuuntur, salvo unicuique debitum, quae defunctus eis debebat.* That charter of king *John* is almost the same syllables with the common one that we now use, by the name of the *grand charter* of 9 *H. III.* exemplified by the king's patent of 28 *E. I.* But this of intestates, and two or three other chapters for the subject's liberty, are more in that of king *John*'s, than is found in the exemplification of 28 *E. I.* However *Matthew Paris* and *Roger of Wendover* when they speak of *H. III.* granting it, so refer their readers to this of king *John*, that they tell us, that that of *H. III.* was the self same in every particular; and therefore omit the repetition of it. And indeed, although in the common printed *magna charta* of *H. III.* and in the roll also of 28 *Ed. I.* in the tower, where the exemplification is, this ordinance touching intestates be wanting, yet in very many of the antientest ^p manuscripts of the old statutes, that of *H. III.* hath the same words as we have here transcribed it from king *John*'s, and that in the same place of his charter as that in king *John*'s, that is, between the the eighteenth chapter, *Si quis tenens, &c.* and the nineteenth, *Nullus constabularius, &c.* And it is to be understood, that the great-

est prelates of the clergy of that time, as *Canterbury*, *London*, *Winchester*, *Pandulphus* the pope's nuncio, the master of the *Temple*, and divers other bishops were on the king's part, when that of king *John* was granted. And it is probable enough, that when they saw that a charter of liberties must of necessity be granted to the baronage, they so wrought also, that they might insert this one for the advantage of their episcopal government. And they had good colour to think and persuade, that some such thing was fit for them, in regard it was now clearly taken, that some distribution was to be made *pro anima intestati*, the care of souls being the chiefest part of their common pretences for increase of their power and greatness. And hence I suppose, it soon came to pass, that the next of kin had the power of disposition committed by the ordinaries, and that in letters or otherwise, by virtue of that *per visum ecclesiae*, which was, I think, the textual ground of right of committing of administration by the clergy. This of king *John*'s being iterated in *H. III.*'s charter (however omitted in the exemplification) was it seems that provision spoken of in cardinal *Othobon*'s legatins, *Proinde super bonis decedentium ab intestato* ^q (so are the words) *provisionem, quae olim a praelatis regni Angliae cum approbatione regis & baronum dicitur emanasse, firmiter approbantes, districte inibidemus, ne praelati vel alii quicunque bona intestatorum quocunque modo recipiant, vel occupent contra provisionem praedictam.* What provision is it more likely that this was, than that of the grand charter both of king *John* and *H. III.*? And the words *a praelatis dicitur emanasse*, justifies what we have conjectured of the purpose of the prelates, when they saw they could not but yield with the king, to an establishment of laws, by that charter, made indeed in a parliament of that age. The same I suppose that which is meant in the ^r constitution of archbishop *Stratford*, where it is taken for granted, that the church's power of disposition of intestates goods *pro salute animarum & in pios usus*, was a thing *consensu regio, & magnatum regni Angl. tanquam pro jure ecclesiasticae libertate ab olim ordinatum, &c.* Where *Lindwood* modestly confesses, that he could not find in what king's time this ordinance was made. But *Johannes de Athona*, upon that of *Othobon*, though he rightly calls that provision, *provisio parliamentalis*: yet most ignorantly and ridiculously ^t tells us, *that the provision there understood, is the statute of Westminster, 2. cap. 21. cum post mortem*; which he makes also to have I know not what reference to the statute of *Glocester*. But this slipped from him either in a dream, or through the utmost neglect of those infallible characters of truth, that the denoting of times affords us. For that legatin of *Othobon* was made in *London* in ^v 53 *H. III.* and at such

ⁿ Glanvil. lib. 7. cap. 6.

^o Reperiuntur seorsim saepius exemplaria illius diplomatis, & penes Matth. Paris, Rogerum Wendover ms. & Thom. Rudburne ms. extant sed in archivis non extant.

^q Cap. cum mortis incerta.

^r Provinc. constitut. tit. de immunitate ecclesiae, c. accidit novitate, §. quidam etiam.

^s Praeter annales obvios, Linwood tit. de constitutionibus, c. quia incontinencie verb. Othoboni.

^t Manuscriptum nostr. de magn. char. cap. 16. in fine

^v Jo-

time as that provision was yet extant in the *magna charta*, used by our lawyers. But the statutes of *Westminster* the second, and of *Glocester* were under *E. I.* the one in the sixth, the other in the thirteenth of him; How then could *Othobon* think of it in his *legatin*, or could *John de Athona* have thought so, if he had allowed the title of his gloss, which supposes in the point, that the constitutions of *Othobon* were published in the year 1248. which had it been in 1268. had agreed with truth? But doubtless the numeral letters of *MCCCLXVIII* were transposed into *MCCXLVIII*. and thence only that error.

C H A P. IV.

How that so granted by king John's charter in parliament hath continued in practice.

AFTER that law of the seventeenth of king *John*, it seems the next of kin disposed of intestates goods by the testimony and direction of the church; for so *per visum* denotes. As we see in *per visum proborum & legalium hominum* in writs of summons, and the like. But I have not seen any practice of it testified in king *John's* time. And under *H. III.* however it were omitted in his charter at the exemplification, the same *visus ecclesiae* continued; so says *Bracton*^u that then lived, and was a judge of that time; *Si liber homo intestatus & subito decesserit, dominus suus nil intromittat de bonis defuncti, nisi de hoc tantum, quod ad ipsum pertineret, (sc. quod habeat sum heriot.) sed ad ecclesiam & amicos pertinebit executio bonorum.* Yet it seems also, that (notwithstanding the right of the church thus ordained, and the succession of next of kin so included in the ordinance,) both the lords in some places, according to their former right, still usurped some power over the disposition of intestates goods, against the will of the ordinaries; and on the other side also, the ordinaries, instead of giving direction for a true disposition of such goods, got possession of them, and committed them often, or at least too great a part of them, to the use either of themselves, or of the church, and so defrauded those to whom, by the right of natural succession, they pertained. For that of the lords, *Bracton* his noting it as a thing denied them, compared with what we find among articles granted in the synod of *London* held under *Boniface* archbishop of *Canterbury* in 42 *H. III.* proves it. Item, *quod mortuo* (so is the^w article) *laico sine testamento, non capiantur bona ipsius in manus dominorum, sed inde solvantur debita ipsius, & residua in usus filiorum suorum, & proximorum indigentium, pro salute animae defuncti, in pios usus per ordinarios committantur, nisi quatenus fuerit domino suo obligatus.* Here we see by the way plainly, that the distribution in pios usus, was the devising them among the next of kin, according to their nearness and want; not an employing them to

other uses, at the ordinary's arbitrary disposition. But also that the ordinary did in this age sometimes usurp the goods of intestates against the next of kin, is enough proved out of that *legatin* constitution of *Othobon, cum mortis incerta, &c.* where it was ordained as you see before; so in the words of it, that they should not dispose of them otherwise than according as that grant was in the grand charter; that is, to the benefit of the next of blood. But the ordinaries had about this time, against the intent of that charter, so abused the right of succession, that it was related^y for a constant truth, that the custom in *Britannia* was, that *tertia pars bonorum decedentium ab intestato in opus ecclesiae & pauperum dispensanda, &c.* as *Innocent IV's* words are, who lived and wrote in the time of *H. III.* What other ground, than the ordinary's ill dealing with the next of blood, was for that *tertia pars*, I conceive not. Unless the pope had some such other testimony touching it, as we find in an old manuscript volume, titled,^x *statuta synodorum*, written in an hand of near seven hundred years since, being a collection out of the fathers and old councils, made, as it seems; by some *Briton* or *Irishman*, as we have elsewhere conjectured. In that *statuta synodorum* occurs, *Orig. in lib. de haereditibus. Pater moriens det tertiam partem filiis, & tertiam Caesari, & tertiam ecclesiae. Si non habuerit ecclesiam, det pauperibus, & si non habuerit Caesarem nec ecclesiam, dividat inter filios & pauperes.* But what author this is cited out of, I am equally ignorant, as I know not at all who was the author of the whole collection, or whence he had many other of his authorities. And other things that volume hath out of some old synod of *Ireland*, which makes to our present purpose, if the canons of that synod had been at all binding in this state. And it was no such wonder, that some such practice might be under *H. III.* for since also, in the time of *E. III.* the church so usurped in their jurisdiction of probates, that they made the executors wait on their officials at uncertain and remote places, and then also put them, at times, to the ransom of the fourth or fifth part of the testator's goods, before they would give them probate; which was complained^z of in parliament amongst the grievances of the commons.

C H A P. V.

Of that of bona intestatorum in manus domini regis capi solebant.

FOR that of *bona intestatorum in manus domini regis capi solebant*, for which is cited^a the close roll of 7 *H. III. rot. 16.* it is also most true, if rightly apprehended. All that appears in the record is, that the king wrote to the sheriff of *Lincoln*, that *constat nobis per inquisitionem nobis missam sub sigillo Stephani de Segrave, quod aliorum proborum & legalium hominum, quod Richardus filius Dunae non obiit intestatus*, and therefore he commands, that the

^u *Bracton*, lib. 2. de acq. rer. dom. cap. 26. sect. 2.

ms. an. 1257. ^y *Innocent IV.* tit. de simonia, c. ad apostolicum.

^z *Rot. parl.* 21 *E. III.* art. 51. & consule, si vis rot. parl. octab. Purif. 25 *E. III.* art. 36. in archivis.

case apud v. cl. Ed. Coke part 9. fol. 38. b.

^w In annal. *Burtonensis coenobii* penes v. cl. Thom. Allen Oxoniens.

^x Ms. in thesaur. *Cottoniano*, c. 31. de divisione

^a *Henloe's*

sheriff should deliver all the goods of the said *Fitzdune*, in *manus nostras capta*, to the prior of *Noketon*, and others his executors, *ad faciendum testamentum*: neither are there any words that tell us of any *capi solebant*, or that these were taken in regard of dying intestate only. Indeed it appears not sufficiently in the writ, why they were taken; but it is most probable, that the seizure was for some debt due to the crown from the intestate, which afterward not appearing, or being satisfied, or it appearing that the executors by the taking upon them the execution of the testament, would subject themselves to the payment of it, it was fit enough to amove the king's hands, and deliver all over to the executors. He that well considers the statute of *magna charta*, cap. 18. *si quis tenens*, and compares it with that of *Bracton*, where he tells us, that the law was clear, that if any man died indebted to the king, the sheriff might ^b *imbreviare*, & *attachiare catalla defuncti*, will soon see the probability of this, howsoever the words of the statute are only of the king's tenants. And it concludes also, as if it were only in case of the death of a testator, in regard of *relinquatur executoribus ad faciendum testamentum defuncti*. But plainly, that *ad faciendum*, &c. hath equal reference to the intestates as to testators: for no name of an *administrator* being then usually known, all were called executors that meddled with the intestates goods; and those executors were *executores qui faciebant testamentum*, that is, which instead of the intestate ^c did take such order after his death with his goods, as they thought he would have done if he had made a testament. Which may be conceived also out of the use remembered in that time, wherein sick men being unable, neither having time to express their meaning, chose out some friends that might be *super* ^d *hoc expressores* & *executores*; Which friends appointing of legacies (as if the intestate had given them) and making disposition of intestates goods, were as testaments of those intestates; and they did truly, as executors, *facere testamentum defuncti*, in which sense it might be spoken of any executors or administrators that intermeddled in those times. And many writs occur in the close rolls of king *John* and *H. III.* that have expressly in them the moving of the king's hands from the goods of the dead, when the seizure had been only for the debts to the crown, according to the statute of *magna charta* (which in substance is the law at this day) and *Bracton*. By reason whereof, I see not cause enough, why we should understand that of *H. III.* to prove any such thing, as a custom of the king's disposing or seizing of the intestates goods, especially in regard that in the passages of the law, lawyers, and records of that time, no mention is of any thing that affirms it to be a custom, or touches it as a common use.

But admit that in *Fitzdune's* case it had been so, that the taking of the goods into the king's hand, had been because of his dying intestate only. It may therefore be accounted rather as a particular of the irregular practice of that time, than any example to prove a custom. And whosoever is but acquainted with the course of the records of king *John* and *Henry III's* time, must soon see writs enough that agree not so much as with any settled course of law, but taste rather of some sudden or arbitrary course of granting them. Indeed some two years before that of *Fitzdune*, there is an example in *Bedfordshire*, that might seem more fully to prove what is collected out of the other. The writ is thus, ^e *Rex vicecom. Bedford. salutem. praecipimus tibi quod blada & catalla quae fuerunt Roberti de insula & Rossiae uxoris ejus defuncti. in Waball & Brokeberge arestari facias & salvo custodiri, donec discussum fuerit in curia nostra ad quem catalla illa pertinent, & aliud inde praecipimus.* But this is often enough seconded with other examples that have for the most part a mention of the defunct's debts to the crown, that it cannot otherwise be understood, but either as founded upon that law of seizing upon the goods for debt to the crown by prerogative, or as an example (amongst many of other kinds) that discovers a more arbitrary course sometimes in proceeding, than later time hath permitted. And according to one of those ways (but the first, that is upon the statute of the grand charter is the fittest and most probable) must that also be interpreted, where ^f *H. III.* sends a writ to the sheriff of *Rutland*, to command him, that notwithstanding that *Robert de Weston*, a parishioner of *Weston*, were drowned, and died intestate, he should yet *facere Willielmo de S. Lando* (that is, to the parson of the parish) *habere nomine ecclesiae suae id quod ad eum pertinet, habendum de catallis quae fuerunt praedicti Roberti, secundum consuetudines partium illarum*: that was for the mortuary, which properly, and under that name, then was determinable in the spiritual court.

But surely we must conclude, that if there were any such practice by the officers of the crown in the time of *H. III.* to seize intestates goods generally, it was not so much the law of the time; for if so, the records could not be but as full of examples of it, as the time was of the death of intestates, which questionless were very many; But some such temporary usurpation, as in 31 *H. III.* pope *Innocent IV.* here had for a while executed by his ministers, the *Franciscans* and *Dominicans*, in not only getting into his own hands, but also to his own use, all the goods of the clergymen that died intestate, through *England*, which, as *Matthew Paris*, ^g that then lived, relates it, *cum audisset dominus rex, detestans Romanae curiae augmentosam & multiplicem avaritiam, hoc fieri pro-*

^b Bracton. lib. 2. de acq. rerum dom. cap. 26. §. 2. peritos, videlicet Zebulam prax. episcop. verb. legatum. §. 82. ubi de pontificia constitutione de intestatis edit. Londinenf. memb. 8. ^c Marth. Paris. fol. 559. edit. Londinenf.

^e Ita facere testamentum nomine defuncti sumitur apud canonici juris

^d Mos iste reperitur apud Marth. Paris. histor. major. pag. 982.

^f Claus. 5 H. III. part. 2. memb. 3. ^g Claus. 17 H. III.

hibuit, comperiens illud ad damnum regni & suum redundare praejudicium. Afterward in the time of *Ed. I.* it appears by the statute of *Westm. 2. cap. 21. cum post mortem, &c.* that the goods of intestates did come *ad ordinarios disponenda*; which agrees with that of *Bratton* before cited, and iterated in the same syllables in *Fleta*,^h which was written under *E. I.* and the disposition of intestates goods was enquired after in those daysⁱ amongst articles of ecclesiastical jurisdiction. And afterwards by the statute of *31 E. III.* the ordinary was compelled to commit the administration of intestates goods to the next of kin. After which statute the name of *administrator* was common as their office; and by that name such to whom the ordinary committed were sued, although be-

fore that time they were sueable by the name of^k executors, and perhaps also by the name of *administrators*:^l But that name is scarce found (as I think not at all) given a defendant to an action brought before seven years after the statute of *31 E. III.* And in the parliament rolls of *17 E. III.* the administrators are designed only by the *ceux que sont per l' evesque ordines en lieu des executors*, where a petition is offered^m by the commons, that such might have the like actions as their intestates; But the king answers, *Quant a ceux qui devient intestate le roy voet que l' evesque ait action en tiel case depuis que il doit responder as autres.* But from that of *31 E. III.* saving only the alteration by *21 H. VIII.* the law hath continued uniformly to this day.

^h *Fleta*. l. 2. c. 57.

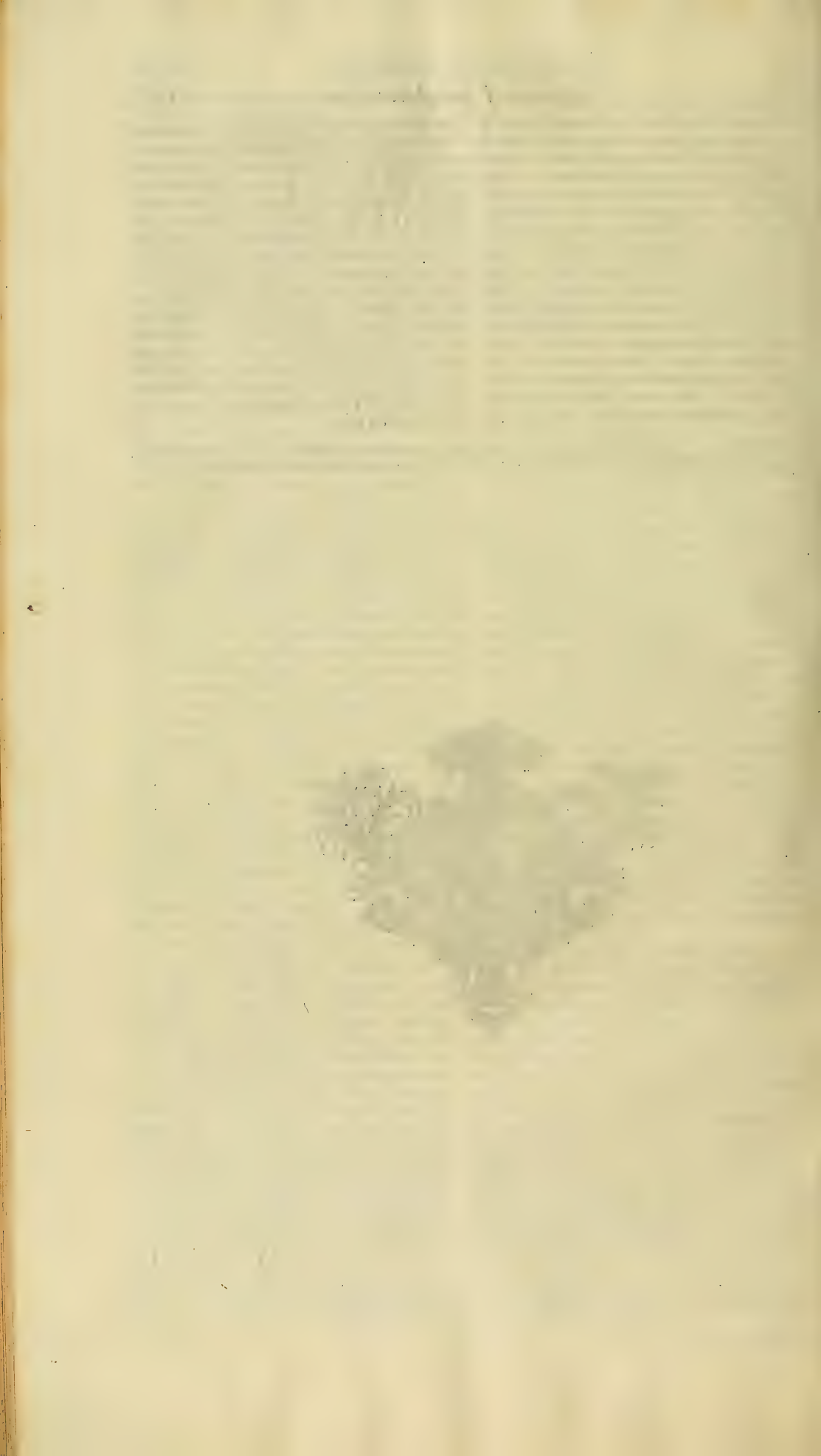
ⁱ Quod videri est in cro. Wigorn. ecclesiae in biblioth. Cott. sub initio *E. I.*

^k *38 E. III.* fol. 21.

^l *Videbis* 24. *E. III.* fol. 54. sed & plura in vir. cl. *E. Coke*, par. 5. fol. 82. & par. 9. f. 39. & 40. & 19 *Ed. III.* tit. *covenants*. 24.

^m *Quindena Pasch.* 17 *E. III.* artic. 50.





A
L E T T E R

T O

Mr. Augustine Vincent,

Rouge-Croix, pursuivant of arms, concerning his
Discovery of Errors.

VOL. III.

10 K

T O

LETTER

TO

Mr. Augustine Vincent

Author of the "History of the
Republic of France"

T O

My singular good F R I E N D,

Mr. Augustine Vincent.

YOUR favour, Sir, in sending me your sheets, as they were done off, not only gave me the benefit of an earlier instruction, but made me willing also, thus far, to return you my censure. Had you travelled only through the common road so over trodden by the quiet patience of vulgar fancies, bred first by easy belief, and still retained for want of accurate examination, I had utterly declined it, otherwise I must either have taxed you, or, against mine own heart, flattered you. I shall now do neither; your journey herein hath been through the right way to truth; and although it be indeed a very rugged one, *dumas inter & aspera*, yet you pass in it happily. So familiar have you made it to your self, by the frequent use of it! Your guides appear to have been exceeding *industry* in reading, and curious *diligence* in observing, not only the published authors which conduce to your purpose; but withal the more abstruse parts of history which lie hid, either in private manuscripts, or in the publick records of the kingdom. In your helps taken from published authors, you shew both a full store of them, and a judicious choice in the use of them. And the manuscripts that have herein been turned by your hand, are a singular testimony of your careful inquiry before you resolve, and how far you are from being tainted with that lazy heresy of some, who must of necessity allow the compositors and press-men for the best authors, while they think nothing worthy the reading, but what is printed. As if the press gave first authority to whatsoever hath been written, and justly denied it to all books until they had past there! You know what a deficiency must thence come into the knowledge of history, (whereof your corrections are a part) and much more I think into the knowledge of the history of *England*, than of any other state whatsoever; for such antient pieces of the history of other states, as being worthy of light, were preserved only in written copies, are of late for the most part made publick by divers learned men, that have vouchsafed their labours in giving further light in that kind of learning. But for *England*, howsoever we have indeed in print, some good and

select old authors of our story, through the benefit of a few worthy men that have affected that way to appear beneficial to their country; yet the number of our historical materials, which being of singular use, remain still only in manuscript, makes them all that are publick seem little more than as a handful well gathered, where there might be a plentiful harvest; As it is plain by that great store, in those so well furnished libraries of Sir *Robert Cotton*, and of *Bennet college* in *Cambridge*, besides divers of singular worth in his majesty's libraries at *St. James's*, in that of the archbishop of *Canterbury*, of the earl of *Arundel*, the publick one at *Oxford*, with Mr. *Clarencieux's*, Mr. *Allen* of *Glocester-hall*, and in some other libraries of less note in *Oxford*, *Cambridge*, *London*, and elsewhere in this kingdom. But your diligence this way appears full, in the use, especially of Sir *Robert Cotton's*, wherein almost nothing of this kind is wanting that may be had in any of the rest, and the plentiful store of it is (as his humanity in communicating) absolutely incomparable. For your so often taking help from the records, or publick acts of the state; you have therein as well taught the right way, for such as shall collect a store for the new writing of any part of our story, as in this particular, to so good purpose, gone through it. Those publick acts are a just touch for the trial, and a large treasury, for the increase of what we receive in our common histories, as well of the later as elder times. For, except only the annals of queen *Elizabeth*, and the life and reign of king *Henry VII.* lately set forth by learned men of most excellling abilities, we have not so much as a publick piece of the history of *England*, that tastes enough either of the truth or plenty that may be gained from the records of this kingdom. And amongst the old monks, who have left us our best annals of the more antient time, there are but very rare examples of any use of them. Only, and I remember, in *Henry* of *Knighthon*, a canon of *Leicester*, and in the author of a very good ms. annal in the university library at *Oxford*, beginning in the year *MCCLIX.* and ending in *Henry V.* it appears that they had a special care to be informed from some par-

parliament rolls of the times of *Richard II.* and *Henry IV.* Neither have I met with another among them that deserves so much praise that way. But whatever our own country men have herein performed; there is sufficient example also for direction to this kind of use, of records, or publick acts, in the best historians of other states. *Polybius*, *Livy*, *Suetonius*, and *Tacitus*, made special use of the publick tables and records of *Rome*, and thence have they their most certain materials, which were preserved (as ours, chiefly in the tower, and the rolls) at their temple of the nymphs, and at that of liberty, on the *Aventine*. *Thucydides*, it appears, did so in his *Greek* history. And in the later times, the diligence of *Sigonius*, in his *de regno Italiae*; and of *Mariana* also, it seems, in his *Spanish* history, hath been, in this course, singular; as also of *Cherubino Ghirardacci* his history of *Bologna*; of *Prudentio de Sandoval*, in his additions to some old writers of *Spain*; of *Francisco de Piza*, in his history of *Toledo*; of *Melchior Goldastus*, in his plentiful collections out of the records of the empire; of *Augustine du Paz*, in his genealogick history of the dutchy of *Bretagne*; of *Gilles Brie* in his history of the earls and dukes of *Alençon*, of *G. Herwart von Hohenburg*, lord chancellor of *Baviere* against friar *Bzovius*; besides some others that occur not. But what a world of historical matter both of our church and state, lies hid in the records kept in the several offices of the exchequer, in the tower with you, in the chapel of the rolls, in the paper chamber, (which is also an office of records of state) in the journals of parliament, in the registers of the archbishop of *Canterbury*, *Winchester*, *Lincoln*, and in some other places of obscurer name, whereof there is not so much as any memory in our common histories. In *France* also, they have an exceeding number of records of what passed between the *English* and *French*, from the time of our king *Stephen*, and their *Philip I.* which falls about *MCLXX.* until our *Edward VI.* and their *Henry II.* as they are noted by *du Tillet*, with direction to the several bags and boxes wherein they are kept. Of many of them we have doubles here in *England*. But doubtless monsieur *du Chesne*, might have made such use of them in his late history of *England*, *Scotland*, and *Ireland*, published in *French*, as that both his diligence (which yet deserves thanks) might have seemed much greater, and we also might have been satisfied in more particulars of those originals, which *du Tillet* hath remembered by the general heads only. And to labour with the fancy of a fairer language, or better order for the composition of our story, or any part of it (as divers have done) without the careful searching of these kind of helps, is but to spend that time and cost in plaistering only, or painting, of a weak or poor building, which should be employed in provision of timber and stone for the strengthening and enlarging it. But for yourself, Sir, not only your choice, but your employments

drew you to the use of such records, as concern this historical draught of succession, in the greater nobility. And the many passages which you rectify by them, besides your intension of such as are of singular moment also to other purposes, are a most copious testimony, as well of your industry and judgment, as of the worth and usefulness of them in general.

Thus much for my censure. But also as I passed through your sheets, I thought of somewhat that is not unfit perhaps here to note to you. You have judiciously brought in the example of Sir *John Talbot*, his being lord *Lisle*, *ratione dominiis maneris de Kingston-Lisle*, to prove that a legal seisin of a lordship, territory, or castle, as of *Arundel* castle, may be a sufficient and necessary cause of a dignity in the person that is seised of it, although regularly it be otherwise with us. See *11 Hen. IV. fol. 1.* and *Stratham* in *tit. parliam. 1.* But also in the ecclesiastical barons, or lords spiritual of this kingdom, especially before the dissolution of monasteries, there is a most full testimony that justifies as much. For it concerns me something to maintain it, having long since published the parliament rolls to this purpose for *Arundel* castle, and affirmed it. Plainly those abbots, who with their successors in antient time were constantly barons of parliament, were all, or were legally supposed to be so, only by reason of their seisin of whole baronies, or of lands held *per baroniam*, which were the bodies of their baronies. For although every not exempted abbot, with his convent (by a procurator for the convent) had place in the convocation of the clergy, yet none of them, beside such as held baronies, had a continuing and settled right to place in the upper house of parliament. So the abbot of *Westminster*, of *Glastenbury*, of *Saint Albans*, of *Bury*, of *Abingdon*, divers others, by reason of their baronies, were parliament lords; Which is enough justified by that of the abbot of *Leicester*, who was discharged by *Edward III.* his patent granted to him, and his successors, from coming or being called to any parliament, by reason chiefly that he had not a whole barony, or held not *per baroniam*, as it is with you in *rot. parl. a. 26 Ed. III. part. 1. mem. 22.* The abbot of *Leicester*, to whom that grant was made, by *Ed. III.* was *William de Cloune*, who is upon this occasion remembered in *Henry of Knighton*; *Cartam quoque*, saith he, *de non veniendo ad parlamentum pro se & successoribus suis de rege adquisivit*, which is not enough intelligible without the roll, that fully expresseth the reason of it. To the same purpose, is that most observable example of the abbot of *Saint James* by *Northampton*. He was summoned to the parliament at *Tork*, in *12 Ed. II.* and being sick, makes one *Henry of Blyfeworth*, a canon of his house, his proxy in parliament. The proxy coming up, goes first to the chancery, to enquire there whether his lord were summoned, *per simplex breve*, or *per registrum cancellarie* (as the relation is made by the proxy himself,

self, in the lieger of the abbey, fol. 222.) and there he finds, that of late this abbot's name had been entered among the spiritual lords of parliament; whereupon he makes suit to the master of the rolls, to raze out the name, *desicut nunquam antea irrotulatum fuit, & desicut idem abbas nihil tenet de rege in capite, nec per baroniam, sed in puram & perpetuam elemosynam*. But the master of the rolls justly refused to do it. The proxy therefore, considering with himself, that if he either appeared in the upper house to excuse his lord, according to his letters of proxy, or offered these reasons there, to shew he should not at all appear, he might prejudice the abbot, (for an excuse for sickness had admitted him a lord of the parliament; and, the king having sent for the abbot by writ, he could not in the house avoid appearing, either in person, or by proxy) first purposes to exhibit his bill to *Thomas earl of Lancaster*, high steward of *England*, shewing him that his abbot's name was lately inrolled in the chancery, among the spiritual lords, *que sont summons* (so are the words in the bill that he had drawn) *per la reson quils teignent en chief du roy ou per baronie*, and that his abbot neither held in chief, nor by barony of the king, concluding with a petition, that he would be pleased to take order that his name might be razed out, and himself for the present excused. But upon better advice, apprehending that this course might give some distaste to the lord chancellor, being then *John de Hotham*, bishop of *Ely*, and the master of the rolls, who might cross him in his purpose, he exhibits a bill in the abbot's name to the lord chancellor in these words: *Abbas sancti Jacobi extra Northampton, irrotulatur de novo in cancellaria domini regis inter citandos ad parlamentum, & non tenet per baroniam, nec de rege in capite, sed tantum in puram & perpetuam elemosynam, & nec ipse abbas, nec praedecessores sui, unquam in cancellaria irrotulati fuerunt, nec ad parlamentum citati huc usque, unde idem abbas petit remedium*: To which bill the answer and decree was, that *dominus cancellarius, cum suo consilio de cancellaria, ordinavit quod nomen praedicti abbatis a registro cancellariae deleteretur*, as the relation says, *& ita pluribus circumspēctis idem abbas est absolutus*. But his name remains yet in the back of the close roll, where the summons to that parliament is entered, *dors. claus. 12 Ed. II. membr. 11*. But for that which he spake in his bills of a tenure in chief, I understand not why he used it, more, than because he would make him clear of any tenure that was temporal. For a tenure in chief alone was not cause enough of being a lord of the parliament. And howsoever all temporal lords of parliament with us now derive their chief original, either from creation by patent, or summons by writ, yet unless it were the abbot of *Tavistock*, to whom *Henry VIII.* (in *Richard Banham* being then abbot) granted for ever, *quod sit unus de spiritualibus & religiosus dominis parliamenti*, I

find not that in the elder times, any of those lords spiritual, had other original, of their being constantly barons of parliament, than solely from their seisin of baronies. That of *Tavistock*, is in *rot. pat. 5 Hen. VIII. part. 2. mem. 22*. And plainly those parliament abbots, and the prior of *Coventry*, and of *St. John's*, sat not in parliament, because they were abbots and priors, (for so every abbot and prior might have challenged a like dignity) neither was the being mitred, or exempt, the cause of their right to place in parliament (as some seem to have mistaken) but because they were tenants *per baroniam*, and thence barons; as also upon like reason only, even in the first parliament of queen *Elizabeth*, the abbot of *Westminster* sat. The same might be said of the antienter bishops which were before *Henry VIII.* of whom those passages in *Stamford, lib. 3. cap. 1.* and in *7 Henry VIII. Kelway, fol. 184.* in the case of doctor *Standish*, are to be understood. And when all the bishops and parliamentary abbots, and priors of the province of *Canterbury*, protested for the right of pairalty in the parliament, upon their absenting themselves, when the proceeding was upon the appeal brought by *Thomas duke of Gloucester*, and others against *Alexander archbishop of York*, *Robert de Vere duke of Ireland*, and others, under *Richard II.* they altogether affirmed, that *de jure & consuetudine regni Angliae*, all bishops, abbots, priors, and other prelates whatsoever, *per baroniam de domino rege tenentes*, were peers of the parliament, and from that tenure by barony (which *Matthew Paris* and *Roger of Wendover* say, *William I.* began amongst them) they challenge their being barons; as you may see in *rot. parl. 11 Rich. II. part. 1. mem. 2. art. 34.* and with that *Camden Brit. pag. 123.* and in the *English, pag. 170*. But also there is a singular testimony of *11 Hen. II.* to this purpose in a ms. life of *Thomas Becket* archbishop of *Canterbury*, written by *William Fitz-Stephen*, a monk of *Canterbury* in *Becket's* time. The archbishop being accused before the whole baronage of *England*, or the *generale concilium* of the barons, at *Northampton*, which were summoned thither as lords to the parliament, by the king's writ or proclamation, as it seems, of an injustice done in his court baron of *Pugham* in *Sussex*, and also of his contempt in not appearing, nor excusing his appearance, having been called by the king's process to his answer; the court (himself being now present, after due examination of the cause) found him guilty, and resolved that he was to be censured with no less than the forfeiture of his whole personal estate. But indeed this part of his case is variously reported by *Gervasius Dorobornensis*, *Roger of Hoveden*, *Matthew Paris*, the author of *Quadrilogus*, and the rest that have written his fortunes. However, they all agree that he was censured. But, saith *Fitz-Stephen*, there was a great difference among the lords, whether the sentence should be given from the mouth of a spiritual or of a temporal lord. The

temporal lords declining the pronouncement of the sentence, for fear (doubtless) of the pope's against them; and upon the like reason, questionless, the spiritual lords. But the spiritual lords, in the disputation, professed that they were there only as barons, and under that name were peers in the judgment, and not as bishops; which infers, that their pretence of their being barons, was from their possessed baronies, and not from any personal character of the title of *baron*, in which they were otherwise invested. The words of the author are worthy observation. *De proferendo judicio distantia fuit inter episcopos & barones; utrisque alteris illud imponentibus; utrisque se excusantibus. Aiunt barones; Vos episcopi pronuntiare debetis sententiam, ad nos non pertinent. Nos laici sumus, vos personae ecclesiasticae, sicut ille. Consacerdotes ejus, coepiscopi ejus. Ad hoc aliquis episcoporum; Immo vestri potius est hoc officii, non nostri. Non enim est hoc judicium ecclesiasticum sed seculare; non sedemus hic episcopi sed barones; nos barones, & vos barones, pares hic sumus.* But at length, the king being displeased with this controversy, Henry of Blois bishop of Winchester, pronounced the sentence against him. And as those bishops generally were barons, by reason of their temporalities, being baronies, so the bishops of *Durham* are titled *counts de paleis*, or *counts palatine*, or *earls palatine* in our books, because in their temporalities, from whence they have this their dignity of earl palatine, as a title annexed, they have a county palatine. See 17 Ed. III. fol. 36. pl. 4. And some conceive that the beginning of it in the bishops of *Durham* was from *Hugh* of *Pusaz*, as if that which is commonly taken for his being made earl of *Northumberland*, had been only the giving him the territory of *Durham* as an earldom, and annexing it to the bishoprick for ever, to which purpose read *Guil. Neubrigens. de reb. Anglicis, lib. 4 cap. 5.* and compare it with that monseigneur du Chesne hath of it in his history of *England. liv. 12. pag. 538.* But indeed also in the more elder times, in the dignity of the temporal barons, the regard had to their possessions, being baronies and counties, was a singular cause of their bearing the titles of them. Therefore (although I doubt not, but that also in those elder ages, there were temporal barons of parliament, by the favour of the king's writ only, without baronies, as at this day) *comitatus integer*, and *comes*, and *baronia integra*, and *baron*, are as *conjugata* in the grand charter, and in the statute of *Westminster 2. cap. 46.* where both temporal and spiritual lords are expressed, by their holding of real baronies, in the passage touching the chamberlain's fees at their doing of homage; which (with the rest of all the chapters of that parliament) I have by me in *French* verse of that age, thus;

*Les chamberlains, le roys
De formes eyent tot voirs,*

*Des erceveskes nomeement,
E des eveskes ensfement,
E des abbes, & priors,
E autres des esgilifes governors,
De contes, e de barons graunz
Entere baronie tenanz,
Renable fin, k' a luy frunt, &c.*

So *Bracton, lib. 2. cap. 34.* supposes, it seems, that a legal possession of the *caput comitatus*, and *caput baroniae*, had always joined with it the title and dignity of earl or baron; and real inheritance only is an earldom in 23 H. III. tit. partition 18. See *Camden* also, *Brit. p. 447.* in *Shropshire*, and in his *English* 591. And in some of our later books a barony, or the tenure by barony, is mentioned as the main cause of the dignity. See for that 22 E. III. fol. 18 a. 48 E. III. fol. 30. b. Not to insist here upon that tradition out of antienter testimony, that thirteen knights fees, and one third part, made a barony, and that such a barony made a baron in the elder ages. So *Hugh Poore*, under king *Stephen*, by possession of the county of *Bedford*, was earl of it, having disseised *Milo Beauchamp* of the earldom, as it is in *gesta regis Stephani, pag. 953.* Neither is any thing more common than *conferre comitatum*, or to give the body of a county, for the making of an earl, in the old annals of *England*. And at this day also, the reliefs of earls or barons, are paid according to the grand charter, by the real *comitatus* or *baronia*, and their other possessions, and not with any relation to their titles of mere personal creation; which in this case is most observable. For that matter, there is a singular example in the payment of reliefs, after the death of *Roger* earl of *Rutland*, by *Francis* now earl, his brother and heir, for the several baronies of *Belvoir*, *Hamelake* and *Trusbut*, entered as I remember, in *Trin. 13. Jac. Ex part. rememorat. thesaur.* in the exchequer. To conclude. Was not also queen dowager *Adeliza* truly countess of *Arundel*, by reason of her possession of the castle, although her greater name of queen prevented her being called so? All agree she had the castle assigned her for her dower, by king *Henry I.* but also she had the earldom as a concomitant with it. *Adeliza* (saith *Matthew Paris, pag. 102.*) *castellum de Arundel & comitatum a rege Henrico pro dote habebat.* Why did not this make her countess, much more than the grant of the county of *Lincoln* by *Robert* of *Quincy*, to his sister *Hawise*, made her countess of *Lincoln* under *Henry III.*? For *comitatus* referred to a county or shire, may denote the profits without the dignity; but what *comitatus Arundel* can mean other than the earldom and dignity of earl or countess, I understand not; Which is also considerable in that of *Richmond*, being no more in law a county or shire, than *Arundel* is. But *Polydore* and some other take *comitatum* there for the county of *Sussex*, which was called also the county of *Chichester*, as you may

may see in *Sarisburiens. epist.* 15. Divers other particulars might be added; but out of this it sufficiently appears, that nothing is clearer, than that it fully stands and agrees with the ancient reason and law of this state, that the seisin of the body of an earldom, barony, or like possession, may be, as in the example of *Arundel* castle, sufficient cause of the dignity in the person denominated from it. To this purpose also, in the most of foreign states, the possession only of *feuda regalia*, or *fabnleben*, as they call them in the empire, as of the bodies of dutchies, counties, baronies, may give the titles of dukes, counts, or barons to the possessors, without personal creation. Of that matter the feudists plentifully enough; you may see *Bocer. de qualit. & different. feud. cap. 3. num. 19. & seqq. Vulteius de feud. cap. 8. Alvarottus, Jacob. de Belviso*, divers others of them; besides *Bartol. ad lib. 1. c. de dignitat. Tiraquell. de nobilitate, cap. 6. Petr. Tritzius de nobilitate ad conclus. 16.* and such more. And it is agreed clearly, I remember, among some foreign lawyers, especially of the empire, that *praelati ratione temporalium dominiorum, quae a Caesare habent, principes vel comites esse possunt*; which is in substance the same which I have said of our abbots and archbishops. For that matter, I refer you to *Andr. Gail. practic. observat. lib. 1. obs. 30.* And the very seisin of abbays in *France*, antiently gave the title of abbots to some lords and gentlemen, that had them by the king's grant, as it appears in *Almonius de gest. Franc. lib. 5. cap. 34. & 42.* So the bishops of *Rheims, Laon*, and the rest of the ecclesiastical peers of *France*, have their honour of pairalty, from the possessions of their bishopricks. And *John* duke of *Bretagne* created *Sir John de Beaumanoir*, being lord du *Bois de la Motte*, and of *Tremereuc*, a banneret, *a luy & a ses successeurs seigneurs des dits lieux*, as the words of his patent are transcribed in *Augustin du Paz*, pag. 721. and the patent was lately allowed and registered in the parliament of *Rennes*. So when the county of *Alençon* was made a dutchy, by *Charles VII.* in the year mccccxv. it was granted to *John* the earl of it; *dictum Joannem consanguineum nostrum & suos in ducatum succedentes duces appellari*; as you read in *Brie* his history of the earls of *Alençon* and *Perche*, liv. 5. cap. 8. Infinite like examples are to this purpose; but of this matter here, perhaps thus much is too much. As this I have thought of in your passages touching the earls of *Arundel* and *Sussex*, for an addition to your reasons of so just a conclusion, so in them of *Oxford*, I shall add here three sons at once, which are omitted in the descents of that most noble family. Besides those which are given to *Robert de Vere*, (that was earl both under *H. III.* and *Ed. I.*) and the lady *Alice* his countess; they had *Gilbert, Philip*, and *John*, which being all three together students in the university of *Paris*, were, upon request of the earl and countess, commended to the favour and prote-

ction of pope *Martin IV.* by *J. Peckham*, archbishop of *Canterbury*, about the year mcccxxx. His letters of commendation are preserved in his register, and they are the only testimony, as I think, of these sons of that house, and such a one also, as is not without good expression of honour both to them and their family. I have here transcribed them to you.

Sanctissimo in Christo patri ac domino Martino Dei gratia sacrosanctae Romanae ac universalis ecclesiae summo pontifici. frater J. Sc. cum filiali reverentia pedum oscula beatorum. Inter magnates Angliae, sancte pater, comes Oxoniae & comitissa nobiles genere, nec minus nobiles honestate, morum privilegiis praeclarius refulgentes, tres inter caeteros liberos, Gilbertum, Philippum, & Johannem divinis obsequiis devoverunt in ordine clericatus Parisius jam studentes, qui praedictis suis parentibus non minus moribus quam genere, ut communi testimonio asseritur, se confirmant. Quia igitur plantulae tam eximiae in columnas ecclesiae utiles, juxta condescendentiam sui status, non poterint faciliter excrecere, nisi rore apostolicae benevolentiae clementius irrigentur, propter Militi curas, quibus ipsorum parentes hinc noscuntur temporibus pregravari, meam rogarunt sollicitudinem, ut quod oculata fide decidi de praedictis nobilitatis suae filius, vestrae, veraci testimonio, suggererem pietati. Quocirca obsequium altissimo in hac parte pii fructus me parare existimans, ex radicibus bonae spei vobis. Significo, pater sancte, quod si praedictos pueros dignemini clementiae vestrae privilegiis honorare, aedificabitis Angliae militiam, consolabimini clerum, altissimo parabitur honorem, & plures nobiles animabitis ad studium, & nonnullos ab illicitis beneficiorum ecclesiasticorum occupationibus retractetis, quibus desperatio nanciscendae apostolicae gratiae occasionem praebuit in talibus delinquendi. Custodiat dominus, Sc. Script. nonas Augusti,

Besides also in the earls of *Northumberland*, I find one omitted by all men, which should come between *Walcher*, bishop of *Durham*, and *Robert Mowbray*; that is, *Aubrey* or *Albry*. For in *Turgotus* prior of *Durham*, you shall read, post mortem *Walcheri* episcopi *Dunelmensis*, rex *Willielmus primus* dedit comitatum *Northumbriae* *Albrio*, qui donum *Waltheof* de ecclesiae de *Tinmouth*, &c. Were there not also earls of *Wallingford* antiently? *Malmesbury hist. novel. lib. 2. p. 104.* says, that *Robert* earl of *Glocester*, went from *Arundel* to *Bristol*, occurrente sibi, medio itineris, *Briano filio comitis de Wallingford*: The same person is afterward mentioned, pag. 105. and called, *Brianus filius comitis, marchio de Wallingford*. I conceive this *Brian* to be the same man which is called *Brientius* in that office, cited by *Mr. Camden, Brit. pag. 204.* But this I only offer to your consideration, as what I enough understand not. However, you know, *marchio* was in those ages used sometimes for comes,

comes, or some other great lord, and not as it is a distinguished dignity, in the later times. As you see in the letters of pope John XV. in *Malmesbury de gestis regum, lib. 2. cap. 10.* where Richard earl of Normandy, is called *marchio*, and in John of Salisbury, his *de nugis curial. lib. 6. cap. 16.* the lords marchers of Wales, are stiled *marchiones*. That Brian is called *Brienus filius comitis, in gesta regis Stephani*, in the histories of Normandy, p. 947. and the context both there and in *Malmesbury* may be taken, as if he had been son to Robert then earl of Gloucester. Out of Matthew Paris also, and Matthew of Westminster, I see it is conceived that Baldwin de Ripariis, or Rivers, being earl of Devonshire, was created earl of the isle of Wight by king Henry III. in the year MCCXL. The words of the monk are, *comitatu Vectæ investivit*; But is it not most likely, that they meant there only the earldom of Devonshire, to which he was heir? As the earldom of Pembroke was called of *Striguil*, that of Derby of *Tutchebury*, and other in like fashion; so the earls of Devonshire, being lords of the isle, were called earls of it. It is most sure, that before him, his grandfather William de Vernon, was called also earl of the isle of Wight, as we see expressly in Roger of Hoveden, in Rich. I. pag. 420. lin. 60. And to have a new investiture in those elder times, as a livery to an hereditary earl, is not strange. Neither is the isle of Wight called *comitatus* afterwards, but *dominium*; as you see frequently in the records that concern especially Isabel countess of Albemarle, and daughter to this Baldwin. Nor is any other of his name called earl of the isle, as by a name distinguished from that of Devonshire; and so du Chesne well stiles this Baldwin (speaking of his death) *Bardovin comte de Dens* (meaning Devonshire) *vulgairement dit de l' isle, hist. 13. pag. 647.* In the earls of Chester, to that you speak of Ed. II. his granting of the earldom of Ponthieu and Monfranch, to prince Edward (afterward Ed. III.) I add, that this title came first to England through queen Eleanor, wife to Edward I. who was heir to that earldom, so that it was in prince Edward, son to Edward I. as heir to his mother; and he is, I remember, in the register of archbishop Winchelsey, stiled by it in letters directed to him, thus; *Florenti adolescenti nobilissimo domino Edwardo, nato illustris regis Angliæ, principi Walliæ, comiti Cestriæ, Pontivi & Montis Trollii.* And for this dignity joined with the crown of England, see especially du Chesne, in his French history, liv. 14. pag. 681. and liv. 15. pag. 756. and Brie in the history of the house of Alençon, pag. 124. liv. 135. That Guichard de Angle made earl of Huntingdon by Rich. II. is, in Thomas of Walsingham, called Giscardus de Angolismo, and in du Chesne, messire Thomas de Angle comte de Hosiidune (for Huntingdon, as Frossart also hath it) which shews both how necessary the rolls are, which you have used, to be sure of the name, and how soon common stories may deceive their readers. So in Monstrelet, Henry (afterwards Henry IV.) is

called *duc d' Herodie*, for d' Hereford, in the alliance betwixt him and Lewis duke of Orleans, which is as ill interpreted by Herefredine for Herefordiae, in the margin of du Chesne, pag. 981. So le comte d' Arli occurs for the earl of Derby, by a like mis-writing, in the story of monsieur de Boucicant, pag. 65. and le comte d' Orset, for the earl of Dorset, in Juvenal's history of Charles VI. pag. 534.

In the viscounts also, I observe to you that the viscounty of Beaumont in France (consisting of divers baronies, as Fresnay, saint Susanne, Powenne, Semblancy, and others) soon after the lord Beaumont was made viscount under the great seal of England, was granted, it seems, to him under the great seal of France by king Henry VI. it being supposed to be forfeited upon a rebellion of John de Valois the second of that name, duke of Alençon, whose father had that viscounty by marriage with Mary, daughter of John V. duke of Bretagne. For the copy of a grant to that purpose (which had been signed by the king) and dated at Shene, 18 Jan. 19 Hen. VI. or 1440. being examined by the original, and written in that time, was by a most worthy gentleman of this family communicated to me. And besides the reasons given in the patent, out of the deserts of that lord Beaumont; it is added, that out of the same viscounty, *Nostre dit cousin & ses progeniteurs anciennement, sont extraiz & eulx & lui en ont port de tout temps & encore meismes en porte les armes.* And in substance it hence falls out, that the dignity of our first viscount was thus intended, for feudal or real, as our dukes, earls, and barons, antiently were. But what the forfeiture of the duke of Alençon at that time to the king of England was, I fully enough conceive not, neither is there any thing in our rolls of France that will help. The duke of Alençon was that year in rebellion against Charles VII. king of France; and the French stories, as I remember, suppose him not at all deprived of any of his possessions by either king, until making alliance with the English against the French, he was condemned of treason about seventeen years afterwards. Concerning him and his forfeiture herein, beside the stories, you may see Augustin du Paz in his lords de la Guerche, and de Povence, and Brie in the earls of Alençon, liv. 5. cap. 8. But also in that copy of the patent (which I say was, if it were at all, under the French seal, because the king's stile in it is, *roy de France & d'Angleterre*) the words touching the forfeiture go thus; *La visconte de Beaumont, &c. confisque envers nostre majeste royall, par la rebellion & desobeissance de Jehan soy disant duc d' Alençon, laquelle a tenue par don royall seu nostre treschier & trespasseur ucle Jehan en son vivant duc de Bedford, & par son trespassement retournee a nostre main par reversion.*

And it seems, that it should be understood, that when this John duke of Alençon was taken prisoner by the duke of Bedford, at the battel of Vernueil, Henry VI. king of England, as king of France, had given the duke

of *Bedford*, being regent, this dutchy ; which by the pretence of this patent, continued in him during his life. For also it is certain, that in the records of the house of *Alençon*, there are letters of the duke of *Bedford* with this title, *Jean, regent du royaume de France, duc de Bedford, d'Anjou, & d'Alençon, comte de Maine*, as it is observed by *Giles Brie*, liv. 5. chap. 9. pag. 321. who tells us also, that he stiled himself carl of *Perch*, being another title of the dukes of *Alençon*. This shews, that notwithstanding the exceeding great ransom which the duke of *Alençon* paid for his liberty,

yet his possession were supposed on our part justly seized on by the *English* regent, and among them this viscounty of *Beaumont*, which was since by *Francis* the first made a dutchy also, and a pairy in *Charles* of *Bourbon*, first duke of *Vendosme*, who had the viscounty in marriage with *Frances*, daughter to *Rene*, duke of *Alençon*, being dutchess Dowager of *Longueville*. But I weary you with length, and while I have thus freely given you my censure, I may deserve an ill one: I end therefore, only subscribing myself,

From the Temple,
M.DC.XXII.

Your affectionate Friend,

JOHN SELDEN.



A N
A R G U M E N T,

Concerning the

B A R O N I E S

O F

GREY and RUTHEN.

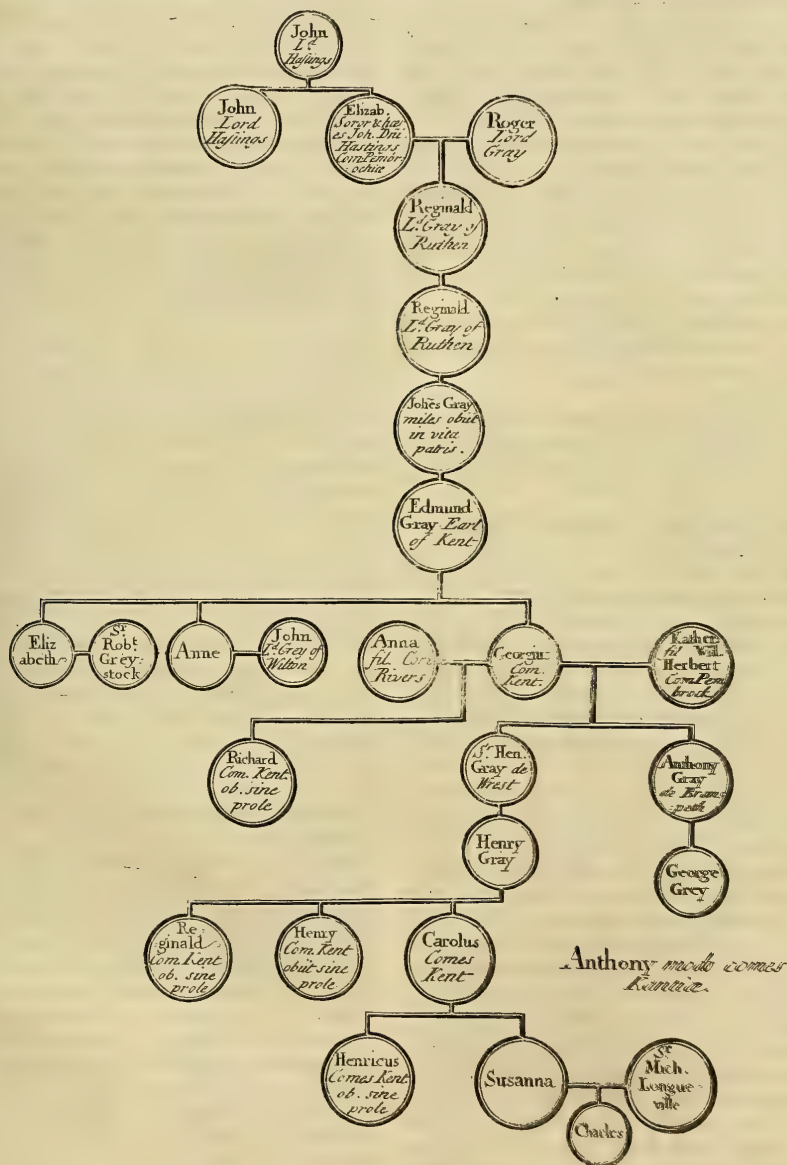
ARGUMENT

IN FAVOR OF

GREY AND RUTHEN

CONCERNING

The Baronies of Grey and Ruthen.



Reginald, was summoned by the same name, and had issue Sir *John Grey*, who had issue *Edmund Grey*; Sir *John Grey* died; after *Reginald* died; *Edmund* was summoned to parliament 20 *Hen. VI.* by the name of *Edmund de Grey de Ruthen, chivaler.* 5 *Ed. IV.* *Edmund* was

was created earl of *Kent*, to him and the heirs males of his body. He had issue *George*, *Elizabeth* married to *Sir Robert Greystock*, and *Anne* married to *John* lord *Grey* of *Wilton*, whose issue continued till of late. *Edmund* died, *George* succeeded in the honours, and had issue by two wives: By his first wife *Anne*, the daughter of *Richard Woodville*, earl *Rivers*, he had issue *Richard*; and by his second wife *Katherine*, daughter of *William Herbert*, earl of *Pembroke*, he had issue *Sir Henry Grey*, and *Anthony Grey* of *Branspeth*. *George* died, and *Richard* possessed the honours, and sat in six several parliaments, and died without issue. *14 Eliz. Reginald*, son of *Henry*, and grandchild of *Sir Henry*, is declared earl of *Kent*, under which *Sir Henry*, the petitioner, claimeth as heir general, prout &c. *Anthony*, now earl of *Kent*, claimeth the baronies as heir male.

The question is, whether they belong to the earl of *Kent*, or the petitioner?

The principal question will be, whether a barony by writ, being once involved into an earldom, may be afterwards transferred into another family, by a daughter and heir, and the earldom continue in the male line?

The petition of *Charles Longueville*, cousin and next heir to *Henry* late earl of *Kent*, lord *Hastings*, and *Ruthen*

Sheweth,

That *Reginald Grey*, your petitioner's ancestor, whose heir he is, was seized to him and his heirs, in fee and right of the dignity of lord *Hastings* and *Ruthen*.

Prayeth to receive his writ of summons to sit in this parliament.

To this my lord of *Kent*, who is heir male of the same *Reginald*, and of *Edmund* first earl of *Kent*, saith, that the honours belong unto him.

1. He excepteth to the petition as mistaken.

2. If the petition be not mistaken, yet the ordinary rules of the common law, are not to be observed in this case, and if they were generally to be observed, the petitioner nor himself, can have no right.

3. That he hath right to the dignities by the law and custom of honour, and that the law of the land doth warrant his right.

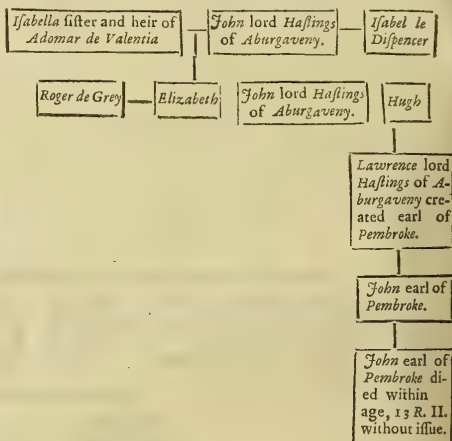
1. The petitioner is mistaken. For whereas the petitioner claimeth the baronies of *Hastings* and *Ruthen*; he saith, that the title of lord *Hastings*, or stile thereof, is inherent in the blood, and was in the blood of *Reginald*, lord *Grey* of *Ruthen*. But the barony in reality, was the barony of *Aburgavenny*, but he never sat nor was he summoned to parliament by that name. It had been material to *Reginald* lord *Hastings*. For *Aburgavenny*, being a barony temp. *H. III.* and the title and dignity of lord *Grey*, being created by writ 18 *Ed. II.* 109 years after, and the addition of *Ruthen* added 28 *Ed. III.* to *Reginald*, if he had sat as lord *Hastings* of *Aburgavenny*, he had had precedence, and so had the successors of him, if they had sat in parliament by such barony.

18 *Ed. II.* *Roger Grey* was first summoned

to parliament by the writ directed *Rogero de Grey*. He married *Elizabeth* the sole daughter and heir of *John* lord *Hastings* of *Aburgavenny*. He was summoned into all parliaments after, by the name of *Rogero de Grey*, and died 27 *Ed. III.*

28 *Ed. III.* *Reginald*, the son of *Roger*, and the heir of him and *Elizabeth* his wife, was summoned to parliament, and the writ directed *Reginaldo de Grey de Ruthen*, and not by the name of lord *Hastings*. And if he had had the barony of *Hastings*, he had had the precedence, as it happened temp. *Ed. IV.* in the case between *Sir Richard Fines* then lord *Dacres*, and *Humphry Dacres*. *Richard* was created lord *Dacres*, the barony of *Dacres* being void by the attainder of the then last lord *Dacres*, *Richard* by vertue of his creation took the old place. And if a creation give him priority, much more should *Reginald* lord *Grey* have had priority, who was heir, if he had had more than the stile of lord *Hastings*.

Note, That *Elizabeth* was sole heir, therefore, *Reginald* had as good right as the petitioner, but he had not the barony, either for that, 1. It could not descend to a woman; or, 2. For that it drowned in the earldom of *Pembroke*.

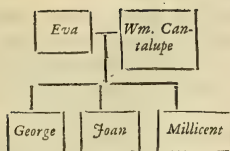


Note, that *Elizabeth* had it by a *possessio fratris*.

As to the barony of *Ruthen*, I do not find that ever *Roger* had it. The castle and manor he had by a fine levied by his father *John* lord *Grey* of *Wilton*, 17 *Ed. II.* and it may be it was held by a barony. But it doth not follow that he was therefore a baron of parliament. It is a rule, that an honour or barony, or a tenure by barony, doth not enforce a conclusion that the possessed is a baron of parliament.

2 *Ed. I.* A partition was made of the manors and lands of *Aburgavenny*, and *Haverlingworth*, between *Hastings* and *Zouch*, the coheirs of *George Cantalupe*; they were held by barony, and severally allotted, yet the owners were not barons, for *Eva* wife of *William Cantalupe*, was proprietor of the barony of *Aburgavenny*, and had issue

Eva



George died without issue, Joan married Henry baron de Hastings, and had Aburgaveny, Millicent married to Eudo de Zouch, and had Haveringworth. The partition made them not barons, for John baron de Hastings, owner of the barony of Aburgaveny, was never summoned to parliament by the name of lord Aburgaveny, but lord Hastings. Reginald, lord Grey de Ruthen, was his cousin and heir, and possessed that manor, but never had the title. Reginald sold it to William Beauchamp, who was after summoned to parliament, and held the honour and place, but by the king's special limitation. By the attainder of Rich. III. the castle and manor came to Hen. VII. Yet the Nevils continued to have the honour of the barony, and it came to Henry Nevil, who 29 Eliz. had issue Mary his sole daughter, married to Sir Thomas Fane, but she never had the barony, although the matter came a judicial discussion in parliament.

The barony came not by the castle, or by tenure, but by writ, and the first summons of parliament was the year after the death of his father, who died 17 Ed. II. 18 Ed. II. Roger was summoned to parliament, but not as lord Ruthen, the summons was Rogero de Grey, and so he was summoned, *claus.* 19. Ed. II. *m.* 27. *dors.* and so 20 Ed. II. 1 Ed. III. 2 Ed. III. 3 Ed. III. 4 Ed. III. 5 Ed. III. and all the other parliaments till 27 Ed. III. so long as he lived.

Ch. 28 Ed. III. *m.* 26. came in the first mention of Ruthen; it was upon this occasion. Roger being dead, Reginald was his son and heir, and the lord Grey of Wilton, was called Reginald, so being two Reginalds, the writ to the lord Grey of Wilton, was Reginaldo de Grey seniori, and to the other, Reginaldo de Grey de Ruthen, and so it was *cl.* 29 Ed. III. *m.* 8. *dors.* which was only a distinction of names, and not a real part of the honour; and since that time, the writs went so, both to that Reginald, and his son Reginald, and so to Edmund, till 5 Ed. IV. that Edmund was created earl of Kent. And after 6 Ed. IV. *m.* 1. Edmund was summoned by the name of earl of Kent only, no mention being made of Hastings nor Ruthen.

Collection.

1. The right name of the honour is lord Grey.
2. The name of Ruthen is only an addition upon the occasion aforesaid, introduced 28 Ed. III.
3. That Hastings is only a style or appellation, which went along with the other honours, but they never had place or voice in respect thereof.

2. Petitioner hath no right.

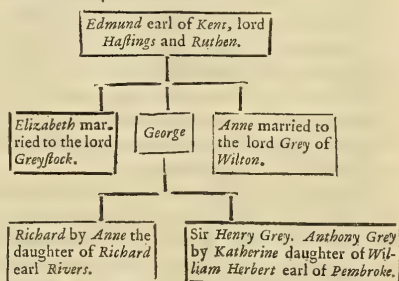
Admit the baronies real, and not appellations, and not conjoined to an earldom.

Admit the petition well, and not mistaken, as to the dignities, yet the petitioner is barred to have them, for he is not heir to Richard who once had them.

I confess the petitioner is heir general of the last earl Henry, and so of Charles his grandfather, and Henry and Reginald his great uncles, but as his claim is as heir general of the first Reginald 28 Ed. III. I must vary from him. I may admit him heir general to the first Reginald, but not to those dignities, for that if the rule of common law be strictly observed, neither the petitioner, nor my lord of Kent, can claim them, as the case is.

The reason is, it is a rule in the common law, He that will make himself heir to an estate of fee simple, must be heir to him who was last actually seised thereof. But Reginald the son of Henry Grey, the son of Sir Henry Grey, being of the half blood to Richard earl of Kent, lord Hastings, and lord Grey of Ruthen, could not be heir to Richard, *ergo*, neither can the petitioner who claimeth under Sir Henry, Reginald, &c.

The pedigree is thus.



Richard was earl of Kent, 20 Hen. VII. and actually seised of the honour, sat in parliament 1 Hen. VIII. 4 Hen. VIII. 5 Hen. VIII. 6 Hen. VIII. 7 Hen. VIII. and 14 Hen. VIII. 1522.

He having sat in six parliaments, could not but be actually seised and possessed of the honours, and then could not the same descend to Sir Henry Grey, the petitioners ancestor. It being a rule in the first chapter of Littleton, §. 8. That if a man be seised of land in fee simple, and hath issue a son and a daughter by one *venter*, and a son by another *venter*, and die, and the eldest son enter and die without issue, the daughter shall inherit, and not the younger son, yet the younger son is heir to the father, but not to the brother. Richard earl of Kent, lord Hastings and Ruthen sat in parliament, and was in actual possession thereof, and was of half blood to Sir Henry, therefore neither Sir Henry, nor any claiming under him, can by the ordinary course of law, inherit.

Object. Co. Litt. 15. *b.* & 3. *Co.* 42. *a.* Ratcliffe's case. There can be no possession of dignities, but such as descendeth, as to be a duke, earl, baron to a man and his heirs, and then the brother by the half blood, being heir to the father, shall inherit the dignity inherent to the blood, as heir to him who was first created noble.

Ref.

Respons. 1. This is my lord Coke's own collection, which under favour I may deny, having both authority and reason for it. 48 *aff. 6.* *Ralph Everden* brought a writ out of the *Chancery* commanding the justices to discharge him of the oath of a juror at the assizes, for that he was a baron, the justices examined if he held by barony, and if he and his ancestors came to parliament as barons, and if so, it was allowed. By which it appeareth, that the coming to parliament is possession, as 3 *Hen. VII. 5.* *Pere mort seisi del advowson en gros, si eigne fits present, ceo fuit possessio fratris*, and the sister shall inherit, if he present not, then the younger brother may inherit; yet the presentment is not the advowson, but the fruit of the advowson. So the sitting in parliament is the possession and fruit of the barony.

Possession may be had of that which is inherent in blood. Homage *auncestrel* draweth to it warranty and acquittal, if the lord have received the homage, *i. e.* if the tenant hath done unto the lord, homage. And it is called homage *auncestrel*, because of the continuance which hath been by title of prescription in the tenancy, in the blood of the tenant; and also in the feigniori, in the blood of the lord. *Litt. §. 143, 144.* And if possession can be had of homage *auncestrel*, which is to swear to be faithful and perform services, much more of dignities with place in parliament, and privileges in commonwealth, as not to be arrested, and not to be sworn in juries.

Edmund had issue two daughters, *Elizabeth* and *Anne*, and they cannot have the dignities, for they are not divisible. 23 *Hen. III. Fitz. tit. partition. 18. Nota.* If the earldom of *Chester* descend to coparceners, it shall be divided between them as other lands, and the eldest shall not have the feigniori and earldom entire to her self, *quod nota*, adjudged *per totam curiam. Co. Litt. 165. a.* By the earldom, is understood the possessions of the earldom, for the dignity, the king shall have it in his power, for the incertainty, to confer upon which of the daughters he pleaseth. And this hath been the usage since the conquest, as it is said. But where there is but one daughter, there the dignity shall descend to that one daughter, for there is no incertainty, and so it was in the case of *Sampson Leonard*, who married *Margaret* the only sister and heir of *Gregory Fines*, lord *Dacre* of the *South*, and in the case of *William* lord *Rofs*.

2. There is no legal difference, as to this point of *possessio fratris*, between one heir and more coheirs. All I in this point of the argument labour for, is, that by the ordinary rules of common law, the petitioner is barred, and then we have no more to do with his petition.

Though the daughters cannot have it when they are married, but the king hath the disposal, yet it is a bar to the petitioner; As if a man seised of lands in fee, hath two sons, the eldest is attainted, and then the father dieth, the king shall have the land, and not the younger, for the elder is an impediment; but if the elder

hath died before the father, then the younger should have had the lands by descent. *Dyer. 274. pl. 40, 41.* So the two daughters, if the rule of law be observed, are a bar to the younger brother, though they have it not.

3. An use or trust, is a thing of such a nature, as it is hard to come to possession, yet seeing it hath got the reputation of an inheritance descendable, a *possessio fratris* will lie of it. *Co. Litt. 14 b.*

This is sufficient to destroy the petitioner's title, but it will be satisfactory to shew that the earl of *Kent* hath good right and title to the dignities claimed, and therefore to give your lordship that satisfaction, I shall take this course.

To pretermitt the civil law, *feud. lib. 1. tit. 14. de marchia*, which doth much conduce to my lord of *Kent's* title, for doctor *Ridley* saith in his *view of the civil law, par. 2. c. 1. §. 8.* As in kingdoms, so in all dignities under kingdoms, the eldest brother is to be preferred before all his other brethren, and they successively one before another, if there be no issue left of them that go before, and the male line is to be preferred before the female. To leave this, I say, I have sufficient by the common law, to entitle my lord of *Kent* to his baronies, for these reasons.

1. The law in case of descents is not bound to the ordinary course of descents. And that there be several courses of descents, as descents according to custom, which the common law taketh notice of, and the reason in descents of honours makes for him.

2. That this inheritance of honour is a special kind of inheritance in limitation, being created by writ, without expression of any heirs, and yet it standeth with the law, that the same go to the male line.

3. It is an inheritance raised upon a consideration, which is executory, which none but the male line do perform, and therefore it belongeth to them.

4. That where an inferior honour doth annex with a superior, it is either absorpt, or doth wait upon the superior, and so the state.

5. That the custom in cases of honour is, and hath been, that inferior honours do wait upon the superior, and if such be the custom, such is the law; and if such custom be broken, it will make trouble and disquiet.

1. That the law is not bound to adjudge course of descents from father to eldest son in lands, is most apparent, and there is no reason but the like may be in other particular cases between other ancestors, where a reasonable custom doth approve of it, and hath used it; and therefore *Littleton* in his chapter of *parceners by custom §. 265.* saith, If a man be seised in fee of *gavelkind* lands, and hath divers sons and die, the lands shall descend to all the sons equally; and the reason is *§. 210.* for that, every son is as great a gentleman as the eldest, and may grow to greater honour and valour, if he hath any thing by his ancestors, or otherwise peradventure he cannot so well attain to it.

Litt.

Litt. §. 211. The youngest son shall inherit *borough English* lands; the reason is, for if he want father and mother, he is least able to help himself.

So as if there be an indifferent good reason for an alteration of the descent of inheritance, it may be altered from the ordinary course of law.

As the custom of *gavelkind* and *borough English* is reasonable, so the law doth take special notice thereof, as 1 *E. IV. 6.* The law doth take notice of the general customs as *gavelkind* and *borough English*, but not of particular customs; for the one goeth thro' the realm, and the other is the particular custom of particular limits; And here, as I shall shew hereafter in this case, the custom is in like cases, for the inferior honours to wait upon the superior, when we come to precedents.

There was at the common law an estate descendable only upon the males, before the stat. of *Westminster, 2. de donis*; That made no alteration but in alienation.

And in point of honours, Sir *John Ferne*, learned in the law of arms, collecteth out of good authors (*of generosity, p. 274.*) that cousins descending from women are said not to be of the family, the kindred and blood of the house is continued by them, but not the family. *Filii familiam paternam sequentur quoad originem, quoad nationem, quoad honores.* Notwithstanding, if the daughter be an heir to her ancestor, then to her and her issues, shall descend the coat armory, for she is in that case (the male line being ended) called the image of the ancestor, but such a coat borne by her issue is called *imperfect* in bearing, since it is not borne by that family and name to which it did originally belong.

Where, 1. by these words, (*the male line being ended*) it appeareth she shall not hold the arms, if any of the males continue.

2. The words of *the family and name* do imply the males, and this name of *Ruthen* was settled in the name of *Grey*.

2. This is a special kind of inheritance, and therefore may have a special kind of descent.

It is a special kind of inheritance, for that it is created by writ, and without words of *heirs*, and as custom hath made it an inheritance, so it will direct the descent and course of the inheritance.

Littleton, §. 1. saith, That the word *heirs*, make an estate of inheritance in all feoffments and grants; and yet that rule is not generally so to be understood, but that in certain extraordinary cases it is otherwise. As if land be given to a man and a woman in frank marriage, they have an inheritance, and special entail, *i. e.* to the man and the woman, and the heirs of their two bodies begotten; so as if the man and woman have other children and heirs by former marriages, yet no other heirs can inherit those lands so given, without the word, *heirs*, but only such as are within the special limitation and intent of the gift. 5 *H. III. Fitz. Tayle.* 28. 4 *H. III. Fitz. Formedon.* 64.

Their dignities being created by writ without the word *heirs*, are a special kind of inheritance, and the law will marshal the descent therein in such sort, that the honour shall descend upon such

heirs, as are capable to perform the consideration moving the writ; which consideration was, to give advice and counsel in parliament, which no woman can do, but must be done by males.

It is an inheritance by virtue of these words, *vobis mandamus sub fide & homagio quibus nobis tenemini.* No man shall do homage but he that hath an estate of inheritance, either in his own right, or in the right of his wife, &c. *ergo*, it is an inheritance. *Litt. §. 90.*

Before the statute of *Westminster, 2. de donis.* If land had been given to a man, and to the heirs males of his body, this was descendable upon all the heirs males, the statute only took away the power of aliening by fine and feoffment. 7 *Co. 34. b. 35. a.*

3. This kind of inheritance thus raised by writ, is raised upon a consideration executory, which none can perform but males.

The consideration is greatly material in all the king's grants.

Here I meddle not with honours created by patent made to honourable women, the king, who is the fountain of honour, may, and often hath created honourable women by patent. Therein is a manifestation of his express pleasure, that it shall be so, and apt words of creation, and words to enable the male issue in parliament to counsel.

But that a woman may have a creation by writ, I never heard of any, and it is difficult, for that which in law was never done, to be done. If the king make any such by writ, the issuing out of the writ, and directing it to such woman by name, may shew his pleasure is, that such a woman shall have such an honour; but this is no way our case. This writ was directed to a man, *Rogero de Grey*.

It is for advice and counsel, that is the consideration of the writ. *Spelman. Gloss. pag. 80. Quia, &c. super quibusdam arduis negotiis nos & regnum nostrum caeterosque proceres & magnates de eodem regno tangentibus, sine vestra & eorum praesentia nolumus expediri, &c. parliament. Westm. tenere & vobiscum super his colloquium habere volumus & tractatum, vobis mandamus in fide & homagio quibus nobis tenemini firmiter injungentes quod, &c. intersitis nobiscum apud Westm. die mensis proxime futur. vel saltem infra terminum diei subsequentis ad ultimum super dictis negotiis tractaturi & vestrum consilium impenduri, &c. & hoc nullo modo omittatis. Teste meipso, &c.* So that counsel is the consideration of the first writ, and subsequent counsel is the consideration of all the subsequent writs, and that in parliament, where a woman subject was never seen to give counsel.

A consideration is a cause or occasion meritorious requiring a mutual recompence in deed or in law, *Dyer 336. pl. 34.* As if an annuity be granted *pro consilio impendendo*, if the grantee will not give counsel, the other may stay the annuity, for that he cannot have the thing for which the annuity was granted, 9 *E. IV. 20.* So it is, if the party which ought to give counsel be disabled to do it; So it was objected in *Empson's* case, *Dyer 2. pl. 2.* who was in pri-

son for treason, but there ruled to be no disability, for he was able to give counsel, notwithstanding his imprisonment; but admitted, if he had not been able to give counsel, the annuity determined.

The consideration is executory, and an executory consideration is future and continual, as grant of an office and fee *pro exercitio ejusdem*, if the office is determined, the fee is determined, *Dyer* 336. *pl.* 34.

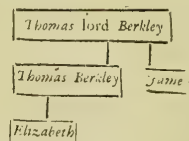
So here, if counsel cannot be had, the honour cannot be enjoyed. And it is clear that every baron of parliament is bound to give counsel. One sitting in parliament satisfieth not the consideration of the honour.

It hath fallen out, that the father hath been called by writ and not his heirs. *Reginaldus de Argentine*, summoned 25 E. I. *Ralph Fastfield* summoned the same year.

Therefore seeing there ought to be a continual consideration, and the petitioner cannot derive himself from such an ancestor as was within the consideration of the creation of the honour; for it was never seen that a woman subject did sit to give counsel in parliament, but issue males have altogether sat there; and therefore this special inheritance is to follow the consideration, which cannot be performed but by issue male, it being a rule in law, If lands be given to a man and the heirs males of his body, who hath issue a daughter, and she a son; the son shall not inherit, for that he cannot derive himself by the male line, *Litt.* §. 24. So here seeing the lady *Susan*, the petitioner's mother, could not sit in parliament, neither shall he.

Object. It hath been usual where a barony did fall upon a sole daughter and heir, and a competent inheritance to support the same, and a marriage without disparity, that the inheritance hath gone to the son of that daughter.

Respons. No difference in the reason of law, as to descents between the sole daughter, and coheirs; but I confess, where a sole barony not meeting with a greater honour, otherwise descendable, hath been in a man who left a sole daughter and heir, it hath many times fallen out, that the king hath conferred the honour upon the issue of that daughter; but that is *ex gratia regis*, not *ex vigore legis*; and it is rather a restitution or revival of an ancient honour, than right of descent; As it happened in the case of *George Nevil*, summoned to parliament by the name of lord *Aburgavenny*, who was son of *Edward Nevil*, lord *Aburgavenny*, and of *Elizabeth* the daughter and sole heir of *Richard Beauchamp*, who died 9 H. V. and was earl of *Worcester*, and lord *Aburgavenny* by writ. In which case the earldom determined by the failure of issue male, and yet *George Nevil* had not the barony in right of his mother *Elizabeth*, for *Edward* his father, husband of *Elizabeth*, was first summoned by that name in his own right, and of the grace of the king, without naming his wife. So *Thomas* lord *Berkeley*, who died 41 E. III. had issue *Thomas* and *James*, *Thomas* had issue *Elizabeth*, married to *Richard* earl of *Warwick*, yet the barony went to *James*.



James had the barony, which if the heir female had had right, should have gone to her.

The lord *Cromwell* was created by writ, and died, leaving *Maud* lady *Willoughby*, and dame *Joan* his heirs. This rested in the king to dispose, who conferred it upon *Sir Humphrey Bourchier*, who married *Joan* the younger sister, and he had it in his wife's life-time. So as it appeareth that the king being the fountain of honour, doth permit and dispose of honours to go to the heirs, or dispose them to the husbands or kindred, as he adjudgeth fit, yet this always in such cases, where there is no other who hath right to claim them. But yet it is particular grace; for if it had been *ex vigore legis*, that a sole daughter and heir, or her issue by her marriage, without disparagement, should have the honour, then had *Reginald* lord *Grey*, the son and heir of *Elizabeth*, the sole daughter of *John* lord *Hastings*, been summoned to parliament as lord *Hastings*, and had priority.

This reason most proper to this case.

4. The fourth reason is, That it is absorbent, or that *magis dignum trahit ad se minus dignum*. A barony inverted into an earldom shall always attend it.

Until the time of king *E. III.* this honour of an earl was the the greatest a subject attained unto. *Sir John Davis* in his *Irish* reports, 59. b. saith, they were *comites a comitendo principem, summi proceres, & a rege proximi*. They had counties assigned them to govern, they were *judices ordinarii*. This order began presently after the declination of the *Roman* empire, introduced into *Germany* by *Charlemagne*, and brought into *England* by the *Saxons*.

Dukes were first created by *E. III.* *Edward* the black prince. Marquess by *R. II.* *Robert* earl of *Oxford*. Viscount by *H. VI.* the lord *Beaumont*, 9 Co. 124. b. 125.

As earls were a *rege proximi*, so no doubt they did participate of the fountain from which it issueth.

The queen granted to the earl of *Rutland* the office of stewardship of the manors of *Mansfield*, *Bolsover*, and *Horsley*, and no expression of power to make a deputy. One question was, if he could make a deputy or no, being an office of skill, fidelity, and discretion; and adjudged he might, by reason of the dignity of his person, being an earl, who is to be conversant in the affairs of state, and for vicinity of blood, for they antiently were of the blood royal, and the king in all his appellations doth stile them *per nomen charissimi consanguinei nostri*, and they have high and great privileges, and a stewardship of a court baron is too mean to execute, 9. Co. 49. a. count de *Salop*'s case.

It is the nature of honour to absorb all inferior honours in superior of the same rank, be it in the greater or lesser nobility. As if an obligation

tion be made to an esquire, who afterwards is made a knight, the writ shall not be *ad respondendum* I. S. *milit. alias dict. I. S. armigero, per Danby* 32 H. VI. 29. So in the greater nobility, if a baron be made an earl, he shall be named only an earl.

So in the case of the dutchy of *Lancaster, Plowd.* 214. a. it is agreed H. IV. was son and heir of *John of Gaunt*, one of the sons of E. III. and he was also son and heir of *Blaunch*, wife of *John of Gaunt*, daughter and heir of *Henry duke of Lancaster*, so that the dutchy came unto him by his mother; but after he had deposed R. II. and assumed the regal estate, not only his honours of duke and earl, &c. were drowned, but the lands he held by his mother were, in him, in right of his crown; he could not be both duke and king.

The books to this purpose take a difference between an earl and a baron. 8 Hen. VI. 9. 10. A writ was *praeceipe* J. S. *quod reddat Johanni Lovel militi unum messuagium, &c.* *Fulthrope* demanded judgment of the writ, for he is a baron, not so named in the writ. *Babington*. There is a difference between a lord which is a baron and an earl, for where the writ is brought against an earl, or for an earl, he ought to be so named, for it is his name of dignity, and so it is adjudged.

39 Ed. III. 35. In Bre. de *ravishment de gard vers Sir Gilbert Umfravil*, it abated, for that he was an earl, viz. earl of *Angus*, not so named in the writ, for it was the name of his dignity, and he ought to be so named; and 14 Ed. III. Fitz. Bre. 278. accords in the case of the earl of *Glocester*.

The dignity of a baron is drowned by the accession of a greater honour, although the barony be greater in place and appellation, and this is proved *a posteriori per effectus*.

Every baron hath a place and voice in parliament, as a baron. A baron is created an earl; the king, who is the judge and fountain of honour and justice, doth never after summon him by the name of a baron, but of an earl only. Which were a wrong unto him, if he had any reality of the barony in him, or more than the title and style of appellation. But this is the course of all summons, and the king herein doth no wrong, for that the reality of the barony is absorbed.

If a baron be made an earl, and the barony doth continue, then should that earl have two voices or places in parliament; one as earl, and the other as baron. So of two, three, or more baronies, two, three, or more voices; but there is no such thing; therefore it of necessity follows, that after the accession of a greater or more eminent honour, there doth nothing of the inferior remain, but styles and honourable titles of appellations. For it is a rule in law, 4 Co. 118. a. *Quando duo jura conveniunt in una persona aequum est ac si essent in diversis*. And if you do allow one person to give two voices by reason of a proxy, *a fortiori*, one person should give two voices where he hath two real and distinct honours.

That the accession of a greater honour doth

merge and absorb the less, is thus proved, in that, as an earl who hath baronies, hath no more privileges really in him, as exemptions of his person from arrests, serving on juries, &c. so he hath no prejudices; For by the stat. of *mag. cart. c. 2.* the relief of an earl is 100 l. being the fourth part of his possessions by intendment, which ought to be 400 l. A baron's is a 100 marks, his possessions ought by intendment to be 400 marks, and this was the old common law, 9. Co. 124. b. Now if an earl continue his baronies really in him as distinct things, then should he pay for both 166 l. 13 s. 4 d. for so by the same rule he ought to pay, as for a knight's fee; For if a man hold his land by two knight's fees, he ought to pay 10 l. to his lord for relief, 5 l. being the relief of one knight's fee. *Litt. §. 112, 113.* And the like for honours, if they were really in an earl; but such a kind of payment was never seen, and surely it would have been, if the honours had been real.

And this doth answer the objection out of *Atton's case*, Co. 4. 118. a. put only by the counsel on the by. The stat. 21 H. VIII. c. 18. is to be taken strictly, for if a bishop be made or translated into an archbishop, or a baron be made an earl, he hath both those dignities, & come est *communement dit*, quando duo jura conveniunt, &c. *uncore il navera plusieurs chapeleyns que archevesque ou comte poient aver.*

As the style of inferior dignities are only titular in the father, so are they in the son.

32 H. VI. 28, 29. Sir *John Talbot* brought an accord of debt against *John Leversege*, and it was *praeceipe* Joh'i *Leversege quod reddat Joh'i Talbot militi seniori filio Joh'is Talbot comitis Salopiac, &c.* Exception was taken to the writ, for that the father was lord, and the son no way lord, for that the son shall not be exempted from *capias*, he shall be sworn on juries, and tried by a common jury, as is daily seen, which proves the son was not lord.

The king doth call the eldest son of an earl to parliament by summons, and in the name of the honour of barony of his father, and alloweth him that place, and he really hath it. If the honour were in the father, this could not be, for then the king should deprive the father thereof, which were a wrong unto him, or it were but a created baron, and then the place he could not have, *vid.* 31 Hen. VIII. c. 10. But this doth stand with use and custom, and therefore with law; and therefore it is apparent that the reality of the inferior honours do not continue after the accession of a superior.

Object. The earldom and the baronies are two distinct things, the earldom in *Kent*, and the baronies in *Wales*.

Respons. I know no case in law, either of lands, or profits out of lands, will parallel this case; The reason is, although the honours be several in respect of time, estate, or place, yet they are all conjoined in one blood, and it were not enough to say, because the barony of *Hastings* came by a woman, it should go by a woman. The reason is, for that a barony when it doth

doth fall, or come to any person, it doth enoble the blood; and as my lord Coke on *Litt. 15. b.* saith, The dignity is inherent in the blood, and the blood being enobled, it is to descend as the blood descendeth; And as the eldest brother is more worthy of blood than the younger; for if the middle brother purchase, and die without issue, the land shall descend to the eldest, and not to the youngest, for that the eldest *est plus digne del sanke*; So the male line is to be preferred before the female, so long as that male line doth last, in which the honour is coined; for it is more worthy of blood; and the rather, for that the honours of an earl and a baron are but of one nature, and differ only in priority and degrees.

A master of arts in the university is a degree; he comes to be a doctor in law or divinity, his degree of that he had before is drowned in the higher, and he is no more to be called a master of arts. So an utter barrister at law, and a reader of the law is called to be a serjeant, which is a farther degree, it is *ad statum & gradum*, he is no more said to be a barrister, but a serjeant at law; But these may seem to illustrate, but will not come home to the case; for a man may give over his profession, but not his blood, without the blot of attainder. *Per attainder son sank est corrupt, il est devenus ignoble*, and his dignity is determined, 4 Co. 118. b.

Object. *Les baronies sont en fee, & le earldom en tail*, the fee cannot drown in the entail.

Respons. The fee cannot drown in the entail, but the fee may be surrendered to the king.

If a man be seized of lands in fee-simple, he may surrender to the king, he is lord paramount of all.

An implied act will amount to a surrender, as if tenant for years accept a new lease, or another estate, this is a surrender in law.

So if a man that is noble will accept another degree of nobility, whereby his blood may be further enobled, this may amount to a surrender, and surely some such construction is to be made thereof, for that no inferior honours have parted from superior after they have been in one person, 'till the superior be spent and determined, can never be shewn.

5. The custom, and therefore the law in cases of descent of honours, is, when a barony by writ is once involved into an earldom, it shall wait upon the earldom, and may not after be transferred into another family, by a daughter and heir, so long as the earldom doth continue in the male line.

This point is rather matter of fact and precedent, than of law; the law doth follow the fact.

A custom is a reasonable act iterated, and continued time out of mind of man, *Dav. 32. a.* as *borough English* and *gavelkind*; So are other customs, *quia consuetudo ex certa causa rationabili usitata privat communem legem*. *Lit. §. 169.* Custom of the court, maketh the law of the court, 1 E. IV. 6.

This hath been the custom in cases of honour.

In cases of single heirs, 1. *Courtney*, earl of Devon. 2. *Fitz-Alan*, earl of Arundel. 3. *Mannors*, earl of Rutland. 4. *Clifford*, earl of Cumberland. 5. *Ratcliffe*, earl of Sussex.

and in cases of coheirs. 1. *Michael de la Pole*, earl of Suffolk. 2. *Arundel*, Oxford, Northampton, Shrewsbury, Derby.

I leave the precedents to be studied by the officers of arms.

But because I find my lord Coke in his *Litt. 165. a.* doth cite the lord Dacre's case, and the lord Ros's case, I will answer them.

Sampson Leonard, married with *Margaret* the only sister and heir of the lord Dacre, of the South, and heir of *Gregory* lord Dacre, and had the dignity. I say it was *ex gratia regis*, not *ex vigore legis*, for the reason before. And it was a single barony, and not conjoined to an earldom as these baronies are.

The case of the lord Ros, maketh strongly for my lord of Kent. The case, and the determination of it is thus:

Sir *Walter Especk*, lord of *Hamlake*, alias *Hemfley* in *Yorkshire*, died 1153. an. 18 *Stephani regis*. He gave his sister *Adeline*, in marriage with *Peter de Roos*, and the manor and castle. *Peter*, became lord *Roos*, of *Hamlake*. *Edward de Ros*, his grandchild, married *Rose* the heir of *Trusbut*, and was lord of *Trusbut Ragbie*. 1 E. IV. *Thomas*, lord *Ros*, was attainted for adhering to *H. VI.* 1 *H. VII.* *Edmund*, the son of *Thomas*, was restored, and died without issue, having two sisters; *Eleanor*, married to Sir *Robert Mannors*, and *Isabel* married to Sir *Thomas Lovel*, who died *sine prole*. Sir *Robert* and *Eleanor* had issue Sir *George Mannors*, who was summoned to parliament, and had issue *Thomas* lord *Ros*, of *Hamlake*, who, 17 *H. VIII.* was created earl of *Rutland*, to him and the heirs males of his body; *Thomas* had issue, *Edward* and *John*; *Edward* had issue, *Elizabeth*, his only daughter, who was married to the lord *Burleigh*, and had issue *William*, called lord *Ros*, and died. *John* succeeded in the earldom, had issue *Roger*, *Francis*, and *George*; *John* and *Roger* died.

The question was between *Cecil* and *Francis*.

July 1616. the late king determined the question thus.

He ordained *William Cecil* to be lord *Ros*, without addition of *Hamlake*, and to have the ancient place of the lord *Ros* in parliament and other assemblies, and the earl of *Rutland* to be lord *Ros* of *Hamlake*, *Trusbut*, and *Belvoir*, and his son and heir, according to the laudable custom, to enjoy the name of lord *Ros* of *Hamlake*, *Trusbut*, and *Belvoir*.

So that, 1. It was rather an ordination of a new honour, than a determination of the matter with the son of the lord *Burleigh*, for there was no such honour as lord *Ros*, without addition.

2. If he had right to the barony of *Ros*, he had as good right to the barony of *Trusbut*, but that rested no ways touched upon.

3. It was a new creation; for either the barony of *Ros*, and of *Ros* of *Hamlake*, are one or divers; if divers, then *Ros* was a new creation; if one, then two men had it, and that was impossible; therefore it must needs be a new creation, and then the old rested in the earl of *Rutland*, and yet doth. And so I say this may do with my lord of *Kent*.

ILLUSTRATIONS

On the first Eighteen

S O N G S

O F

Drayton's Polyolbion.

VOL. III.

TO P

TO

T O T H E R E A D E R.

PERMIT me thus much of these notes to my friend. What the verse oft, with allusion, as supposing a full knowing reader, lets slip; or in winding steps of personating fictions (as some times) so infolds, that sudden conceit cannot abstract a form of the clothed truth, I have, as I might, illustrated. Brevity and plainness (as the one endured the other) I have joined; purposely avoiding frequent commixture of different language; and whenever it happens, either the page or margin (especially for gentlewomens sake) summarily interprets it, except where interpretation aids not. Being not very prodigal of my historical faith, after explanation, I oft adventure on examination and censure. The author, in passages of first inhabitants, name, state, and monarchick succession in this isle, follows Geoffrey ap Arthur, Polychronicon, Matthew of Westminster, and such more. Of their traditions, for that one so much controverted, and by Cambro-Britons still maintained, touching the Trojan Brute, I have (but as an advocate for the muse) argued; disclaiming in it, if alledged for my own opinion. In most of the rest, upon weighing the reporter's credit, comparison with more perswading authority and synchronism (the best touch-stone in this kind of trial) I leave note of suspicion, or add conjectural amendment: As, for particular examples, among other, in Brennus mistook by all writers of later time, following Justin's epitome of Trogus ill conceived; in Robert of Swapham's story of king Wulpher's murdering his children; in Rollo, first duke of Normandy his time; none of them yet rectified (although the first hath been adventured on) by any that I have seen; and such more. And indeed my jealousy hath oft vexed me with particular inquisition of whatsoever occurs, bearing not a mark of most apparent truth, ever since I found so intolerable antichronisms, incredible reports, and bardish impostures, as well from ignorance as assumed liberty of invention in some of our antients; and read also such palpable fauxeties of our nation, thrust into the world by later time; as (to give a taste) that of Randal Higden affirming the beginning of wards in 6 Hen. III. Polydore's assertion (upon mistaking of the statute of 1 Hen. VII. that it was death by the English laws for any man to wear a vizard, with many like errors in his history, of our trials by twelve shives, coat of the kingdom, parliaments, and other like; Bartol's delivering the custom in this isle to be, ^a quod primogenitus succedit in omnibus bonis; the Greek Chalcondylas his slanderous description of our usual form of kind entertainment to begin with the wives courteous admission to that most affected pleasure of lascivious fancy^b, (he was deceived by misunderstanding the reports of our kissing salutations, given and accepted among us with more freedom than in any part of the southern world, erroneously thinking, perhaps, that every kiss must be thought seconded with that addition to the seven promised by Mercury, in name of Venus, to him that should find Psyche; or as wanton as Aristophanes his *Μαρδαλωτῶν*;) and many untruths of like nature in others. Concerning the Arcadian deduction of our British monarchy; Within that time, from Brute, supposed about CIO. CIO. DCCC. L. of the world (Samuel then judge of Israel) unto some LIV. before Christ (about when Julius Caesar visited the island) no relation was extant, which is now left to our use. How then are they, which pretend chronologies of that age without any fragment of authors before Gildas, Taliesin, and Nennius, (the eldest of which was since D. of Christ) to be credited? For my part, I believe as much in them, as I do the finding of Hiero's shipmast in our^c mountains, which is collected upon a cor-

^a Ad C. de summ. trinit. l. i. num. 42.

^b Unum blandientis, ad pulsus lingue longe mellitum. Apuleius de aur. asin. 6. And you may remember (as like enough he did) that in Plautus Curcul. Qui vult cubare pangit saltem suavius, and such more in other wanton poets, with the opinion of Baldus, that a kiss in those southern nations, is sufficient consent to imperfect espousals, nothing of that kind, but copulation, with us and our neighbouring Dutch being so.

^c Er nis

ὑπὸ τῆς Βελτavianas, ἀπὸ τοῦ Βελτavianis, quae nempe verior videtur lectio.

rupted place in Athenaeus, cited out of Moschion; or, that Ptolemy Philadelph sent to Reutha king of Scots some CLO. D. CCCC. years since, for discovery of this country, which Claude Ptolemy afterwards put in his geography; or that Julius Caesar built Arthur's hofsen in Stirling sheriffdom; or, that Britons were at the rape of Hesione with Hercules, as our excellent wit, Joseph of Exeter, (published falsly under name of Cornelius Nepos) singeth: which are even equally warrantable, as Ariosto's narrations of persons and places in his Rowlands, Spencer's elfin story, or Rablais his strange discoveries. Yet the capricious faction will (I know) never quit their belief of wrong; although some Elias, or Delian diver, should make open what is so enquired after. Briefly, until Polybius, who wrote near CLO.DCCC. since (for Aristotle *περὶ κόσμου* is clearly counterfeited in title) no Greek mentions the isle; until Lucretius (some C. years later) no Roman hath expressed a thought of us; until Caesar's commentaries, no piece of its description was known, that is now left to posterity. For time therefore preceding Caesar, I dare trust none; but with others adhere to conjecture. In antient matter since, I rely on Tacitus and Dio especially, Vopiscus, Capitolin, Spartian, (for so much as they have, and the rest of the Augustan story) afterward Gildas, Nennius, (but little is left of them, and that of the last very imperfect) Bede, Asserius, Ethelwerd (near of blood to king Alfred) William of Malmesbury, Marian, Florence of Worcester, (that published under name of Florence hath the very syllables of most part of Marian the Scot his story, fraught with English antiquities; which will shew you how easily to answer Buchanan's objection against our historians about Athelstan's being king of all Albion, being deceived when he imagined that there was no other of Marian but the common printed chronicle, which is indeed but an epitome or defloration made by Robert of Lorrain, bishop of Hereford under Hen. I.) and the numerous rest of our monkish and succeeding chronographers. In all, I believe him most, which freest from affection and hate (causes of corruption) might best know, and hath, with most likely assertion, delivered his report. Yet so, that, to explain the author, carrying himself in this part, an historical, as in the other, a chorographical poet, I insert oft, out of the British story, what I importune you not to credit. Of that kind, are those prophecies out of Merlin sometimes interwoven: I discharge myself; nor impute you to me any serious respect of them. Inviting, not wresting in, occasion, I add some time what is different from my task, but such as I guess would any where please an understanding reader. To aid you in course of times, I have in fit place drawn chronologies, upon credit of the antients; and for matter of that kind, have admonished (to the fourth canto) what as yet I never saw by any observed, for wary consideration of the Dionysian cycle, and mis-interpreted root of his dominical year. Those old rhimes, which (some number) you often meet with, are offered the willing, both for variety of your mother tongue, as also because the author of them, Robert of Gloucester, never yet appeared in common light. He was, in time, an age before; but in learning and wit, as most others, much behind our worthy Chaucer; whose name by the way occurring, and my work here being but to add plain song after muses descanting, I cannot but digress to admonition of abuse, which this learned allusion, in his Troilus, by ignorance hath incurred.

I am till God mee better mind send
At dulcarnon right at my wits end.

It is not Necham, or any else, that can make me entertain the least thought of the signification of dulcarnon to be Pythagoras his sacrifice, after his geometrical theorem in finding the squares of an orthogonal triangle's sides, or that it is a word of Latin deduction; but indeed by easier pronunciation it was made of *قوس القرنين* i.e. two horned: which the Mahometan Arabians use for a root in calculation, meaning Alexander; as that great dictator of knowledge, Joseph Scaliger, (with some antients) wills, but, by warranted opinion of my learned friend Mr. Lydyat, in his *emendatio temporum*, it began in Seleucus Nicanor, twelve years after Alexander's death. The name was applied, either because after time that Alexander had persuaded himself to be Jupiter Hammon's son, whose statue was with ram's-horns, both his own and his successor's coins were stamped with horned images; or else in respect of his

his two pillars erected in the east as a ^d nihil ultra of his conquest, and some say because he had in power the eastern and western world, signified in the two horns. But, howsoever, it well fits the passage, either, as if he had personated Creseid at the enterance of two ways, not knowing which to take; in like sense as that of Prodicus his Hercules, Pythagoras his Y, or the logicians dilemma expresses; or else, which is the truth of his conceit, that she was at a nonplus, as the interpretation in his next staff makes plain. How many of noble Chaucer's readers never so much as suspect this his short essay of knowledge, transcending the common road? And by his treatise of the astrolabe (which, I dare swear, was chiefly learned out of Meshahalah) it is plain he was much acquainted with the mathematicks, and amongst their authors had it. But, I return to myself. From vain loading my margin, with books, chapters, folios, or names of our historians, I abstain: Course of time as readily directs to them. But, where the place might not so easily occur (chiefly in matter of philology) there only (for view of them which shall examine me) I have added assisting references. For most of what I use of chorography, join with me in thanks to that most learned nourice of antiquity,

* τὸν τις ἐξ ἑτηλθεῖ νόστον
Τιμᾶ ἀνὴρ ἀγαθός, —————

my instructing friend, Mr. Camden, clarencieux. From him, and Girald of Cambria, also comes most of my British: And then may Mercury and all the muses deadly hate me, when, in permitting occasion, I profess not by whom I learn! Let them vent judgment on me which understand: I justify all, by the self-author's cited, crediting no transcribers, but when of necessity I must. My thirst compelled me always to seek the fountains, and by that, if means grant it, judge the river's nature. Nor can any, conversant in letters, be ignorant what error is oft-times fallen into, by trusting authorities at second hand, and rash collecting (as it were) from visual beams refracted through another's eye. In performance of this charge (undertaken at request of my kind friend the author) brevity of time (which was but little more than since the poem first went to the press) and that daily discontinued, both by my other most different studies seriously attended, and interrupting business (as enough can witness) might excuse great faults, especially of omission. But, I take not thence advantage to desire more than common curtesy in censure: nor of this, nor of what else I heretofore have published, touching ^e historical deduction of our ancient laws, wherein I escape not without tax.

Sunt quibus in verbis videorque obscurior, hoc est,
Evandri cum matre loqui, Faunisque Numaque,
Nec secus ac si auctor Saliaris carminis essem.

I have read in Cicero, Agellius, Lucian's lexiphanes, and others, much against that form: But withal, this later age (wherein so industrious search is among admired ruins of old monuments) hath, in our greatest Latin criticks, Hans Douz, P. Merula, Lipsius, and such more, so received that Saturnian language, that, to students in philology, it is now grown familiar; and (as ^f he saith) verba a vetustate repetita non solum magnos assertores habent, sed etiam afferunt orationi majestatem aliquam, non sine delectatione. Yet for antique terms, to the learned, I will not justify it without exception, (disliking not that of Phavorin, vive moribus praeteritis, loquere verbis presentibus; and, as coin, so words, of a publick and known stamp, are to be used) although so much, as that way I offend, is warranted by example of such, of whom to endeavour imitation, allows me more than the bare title of blameless. The purblind ignorant I salute with the English of that monitory epigram

—† εἰ εἰ γε πάμπαν
Νῦν ἐφ' οὖς μεσέων, εἴπον ᾧ μὴ νοῆς.

^d Christman. comment. in Alfragan. cap. 11. Lyfimachi cornuum apud Cael. Rhodigin. antiq. lect. 20. cap. 12. hic genuina interpretatio. ^e Of whom even every ingenious stranger makes honourable mention. Co. item vero illum palatinum R. Vitum Basingstochium (cujus historiae magnam partem quasi Βεργαζιου & chorographica subitricio pleraque ad antiquitatis amussim, ab eruditissimo hoc suo populari accepta, ne dicam suppilata, est) adeo inhumanum fuisse miror, ut bene merentem non tam libenter agnoscat, quam clariss. viri syllabis & inventis codicem suum saepius perquam ingrate suffarcinet. Atque id fere genus plagiariorum, rudes omnino, & αἰετός, & vernaculos nimirum nostrates iam nunc imponere sarcinam video indignanter & ringor. ^f Janus Anglorum. ^g Quintilian. [†] If thou hast no taste in learning, meddle no more with what thou understandest not.

Reprehension of them, whose language and best learning is purchased from such volumes as Rab-lais reckons in St. Victor's library, or barbarous glosses,

Quam nihil ad genium, Papiniane, tuum!

or which are furnished in our old story, only out of the common polychronicon, Caxton, Fabian, Stow, Grafton, Lanquet, Cooper, Holingshed, (perhaps with gift of understanding) Polydore, and the rest of our later compilers; or, of any adventurous Therfites daring find fault even with the very graces, in a strain

Cornua quod vincatque tubas——

I regard as metamorphozed Lucian his looking out at window; I slight, scorn, and laugh at it. By paragraphs in the verses you know what I meddle with in the illustrations; but so, that with latitude, the direction admonishes sometimes as well for explaining a following or preceding passage, as its own. Ingenuous readers, to you I wish your best desires; Grant me too, I pray, this one, that you read me not, without comparing the faults escaped; I have collected them for you. Compelled absence, endeavoured dispatch, and want of revises soon bred them. To the author, I wish (as an old cosmographical poet did long since to himself.)

————— * Ἀλλὰ ὦ τοῖς ὕμνων
 Αὐτῶν ἐκ μακρόρων ἀντάξιον ἐν ἀμοιβῇ.

To gentlewomen and their loves, is consecrated all the wooing language, allusions to love passions, and sweet embracements feigned by the muse amongst hills and rivers. Whatsoever tastes of description, battle, story, abstruse antiquity, and (which my particular study caused me sometimes remember) law of the kingdom; to the more severe reader. To the one, be contenting enjoyments of their auspicious desires: To the other, happy attendance of their chosen muses.

* That the godlike sort of men, may worthily guerdon his labours.

From the Inner Temple,
 May, ix. CIO. IOC. XII.



ILLUSTRATIONS

ON THE

First Eighteen SONGS

OF

Drayton's Polyolbion.

Illustrations on the first Song.

IF in prose and religion, it were as justifiable, as in poetry and fiction, to invoke a local power (for antiently both *Jews*, *Gentiles*, and *Christians*, have supposed to every country, a singular ^a genius) I would therein join with the author. Howsoever, in this and all ἐκ Διὸς ἀρχόμεθα, *God afore* ; and so I begin to you.

§. As Amphitrite clips this island fortunate.

When pope *Clement VI.* granted the *fortunate isles* to *Lewis earl of Cleremont*, by that general name (meaning only the seven *Canaries*, and purposing their christian conversion) the *English* ambassadors at *Rome*, seriously doubted, ^b least their own country had been comprised in the donation. They were *Henry of Lancaster*, earl of *Derby*, *Hugh Spencer*, *Ralph*, lord *Stafford*, the bishop of *Oxford*, and others, agents there with the pope, that he, as a private friend, not as a judge or party interested, should determine of *Edward III's* right to *France*. Where you have this embassy in *Walsingham*, ^c correct *regnum Angliae*, and read *Franciae*. *Britain's* excellence in earth and air (whence the *Macares*, ^d and particularly *Crete*, among the *Greeks*, had their title) together with the pope's exactions, in taxing, collating, and providing of benefices (an intolerable wrong to laymens inheritances, and the crown revenues) gave cause of this jealous conjecture ; seconded in the conceit of them, which derive *Albion* from ἁλὲς, *happy* ; whereto the author in his title and this verse alludes. But of *Albion*, more presently.

§. Amongst whose iron rocks grim Saturn yet remains.

Fabulous *Jupiter's* ill dealing with his father *Saturn*, is well known ; and that after deposing him, and his privities cut off, he perpetually imprisoned him. *Homer* ^e joins *Japet* with him, living in eternal night about the utmost ends of the earth ; which well fits the more northern climate of these islands. Of them (disperfed in the *Deucalidonian* sea) in one most temperate, of gentle air, and fragrant with sweetest odours, lying towards the northwest, ^f it is reported, that *Saturn* lies bound in iron chains, kept by *Briareus*, attended by spirits, continually dreaming of *Jupiter's* projects, whereby his ministers prognosticate the secrets of fate. Every thirty years, divers of the adjacent islanders with solemnity for success of the undertaken voyage, and competent provision, enter the vast seas, and at last, in this *Saturnian* isle (by this name, κελύειν πέλαιος, the sea is called also) enjoy the happy quiet of the place ; some in studies of nature, and the mathematicks, which continue ; others in sensuality, which after xxx years return perhaps to their first home. This fabulous relation might be, and in part is, by chymicks, as well interpreted for mysteries of their art, as the common tale of *Daedalus* labyrinth, *Jafon* and his *Argonauticks*, and almost the whole chaos of mythick inventions. But neither geography (for I guess not where or what this isle should be, unless that *des* ^g *Macracons* which *Pantagruell* discovered) nor the matter-self permits it less poetical (although a learned *Greek* father ^h out of some credulous historian, seems to remember it) than the *Elysian* fields, which, with this, are always laid by *Homer* about the

^a Rabbini, ad 10. Dan. Macrob. saturnali. 3. cap. 9. Symmach. epist. 40. lib. 1. D. Th. 2. dist. 10. art. 3. alii.
burienf. a. xvii. Ed. III. ^c Hypodigma Neutriae sub anno MDCCCXLIV.
^d I. 2. c. 7. ^e Iliad. β. & Hesiod. in Theogon. ^f Plutar. de facie in orbe lunae, & l. de defect. oracul.
^g Clem. Alexandrin. Stromat. 5. Odyss. A. Iliad. β. ^h Rob. Avef.
ⁱ Pompon. Mela, ^k Rablais.

ῥέπειτα πέπειτα γαίης, utmost ends of the earth, (upon affinity of this with the cape de Finistère, *Goropius* thinks the *Elysian* fields were by that promontory of *Spain*; vid. *Strab.* lib. γ.) a place whereof too large liberty was given to feign, because of the difficult possibility in finding the truth. Only thus note seriously, that this revolution of xxx years (which with some latitude is *Saturn's* natural motion) is especially ⁱ noted for the longest period, or age also among our *Druids*; and that in a particular form, to be accounted yearly from the sixth moon, as their new-years-day: which circuit of time, divers of the antients reckon for their generations in chronology; as store ^k of authors shew you.

§. They instantly again do other bodies take.

You cannot be without understanding of this *Pythagorean* opinion of *transanimation*, (I have like liberty to naturalize that word, as *Lipsius* had to make it a *Roman*, by turning μετεμψύχωσις) if ever you read any that speaks of *Pythagoras* (whom, for this particular, *Epiphanius* reckons among his hereticks) or discourse largely of philosophical doctrine of the soul. But especially, if you affect it tempered with inviting pleasure; take *Lucian's* cock, and his necromancy; if in serious discourse, *Plato's Phaedon*, and *Phaedrus* with his followers. *Lipsius* doubts ^l whether *Pythagoras* received it from the *Druids*, or they from him, because in his travels he conversed as well with *Gaulish* as *Indian* philosophers. Out of *Caesar* and *Lucan* inform yourself with full testimony of this their opinion, too ordinary among the *Heathen* and *Jews* also, which thought our ^m Saviour to be *Jeremy* or *Elias* upon this error; Irreligious indeed, yet such a one, as so strongly erected moving spirits, that they did never

—redituræ parcere vitæ,

spare in spending their lives which they hoped to receive again; but most willingly devote their whole selves to the publick service; and this was in substance the politick envoys wherewith *Plato* and *Cicero* concluded their commonwealths, as *Macrobius* hath observed. The author, with pity, imputes to them their being led away in blindness of the time, and errors of their fancies; as all other the most divine philosophers (not lightened by the true word) have been, although (mere human sufficiencies only considered) some of them were sublimate far above earthly conceit: as especially *Hermes*, *Orpheus*, *Pythagoras*, (first learning the soul's immortality of ⁿ *Pherocydes*, a *Syrian*) *Seneca*, *Plato*, and *Plutarch*; which last two, in a *Greek* hymn of an eastern ^o bishop, are commended to *Christ* for such as came nearest to holiness of any untaught *Gentiles*. Of the *Druids* more large in fitter place.

§. Gave answer from their caves, and took what shapes they please.

In the *Seame* (an isle by the coast of the *French Bretagne*) nine virgins, consecrate to perpetual chastity, were priests of a famous oracle, remembered by *Mela*. His printed books have *Gallicenas* vocant; where that great critick *Turneb* reads *Galli zenas*, or *lenas* vocant, the Gauls call them *Jupiter's priests* or bawds. But *White* of *Basingstoke* will have it *cenas*, vain, as interpreting their profession and religion, which was in an arbitrary metamorphosing themselves, charming the winds, (as of latter time the witches of *Lapland* and *Finland*) skill in predictions, more than natural medicine, and such like; their kindness being in all chiefly to ^p sailors. But finding that in the *Scillies* were also of both sexes such kind of professors; that there were ^q *Samnitæ*, strangely superstitious in their *bacchanals*, in an isle of this coast (as is delivered by *Strabo*) and that the *Gauls*, *Britons*, *Indians*, (betwixt both whom and *Pythagoras* is found no small consent of doctrine) had their philosophers (under which name both priests and prophets of those times were included) called ^r *samanæi*, and *semni*, and (perhaps by corruption of some of these) *samothei*, which, to make it *Greek*, might be turned into *semnothei*: I doubted whether some relick of these words remained in that of *Mela*, if you read *cenas* or *senas*, as contracted from *samanæi*; which by deduction from a root of some eastern tongue, might signify as much, as, what we call astrologers. But of this too much.

§. Whose towns unto the saints that lived here of yore.

Not only to their own country saints (whose names are there very frequent) but also to the *Irish*; a people antiently (according to the name of the ^t holy island given to *Ireland*) much devoted to, and by the *English* much respected for their holiness and learning. I omit their fabulous *Caesara* niece to *Noah*, ^v their *Bartholan*, their *Ruan*, who, as they affirm, first planted religion, before *Christ*, among them. Nor desire I your belief of this *Ruan's* age, which by their account (supposing him living ccc years after the flood and christened by *St. Patrick*) exceeded ccc. dccc. years, and so was elder than that impostor, ^u whose feigned continuance of life and restless travels, ever since the passion, lately offered to deceive the credulous. Only thus I note out of venerable *Bede*, that in the *Saxon* times, it was usual for the *English* and *Gaulish* to make *Ireland*, as it were, both their university and monastery, for studies of learning and divine contemplation, as the life of ^x *Gildas* also, and other frequent testimonies discover.

ⁱ Plin. hist. nat. 16. cap. 44.

^k Eustat. ad Iliad. 2. Herodot. lib. 2. Suid. in γῆρας. Censorin. de die nat. cap. 17.

^l Justin. Martyn. dialog. 1. 3. differt. 12.

^m Cicero. Tullian. 1.

ⁿ Johan. Euchaitens. jampridem

^o Dionys. Afro in meten. v. 570. multis n. pro arbitrio antiquorum 5 litera adeest vel abest.

^p Solin. Polyhist. cap. 35.

^q Origen. xpi Kelo. lib. 2. Clem. Alex. Strom. 2. & β. Diogen. Laert. lib. 2.

^r Festo Avieno insula sacra dicta Hibernia.

^s Girald. Cambren. dist. 3. cap. 2.

^t Affuerus Cordonnier (dictus in historia Gallica Victoris ante triennium edita de la paix, &c.) cujus partes olim egisse videntur Josephus Cartophylacus (referente episcopo Armeniaco apud Matth. Paris in Hen. III.) & Johannes ille (Guidoni Bonito in astrologia sic indigitatus) Butta-Deus.

^u In bibliothec. Floriacens. edit. per Johann. a Bosto.

§. *From which he first was call'd the hoar-rock in the wood.*

That the ocean (as in many other places of other countries) hath eaten up much of what was here once shore, is a common report, approved in the Cornish name of *S. Michael's mount*; which is *categ cōwz in clowz*; i. e. *the hoar-rock in the wood*.

§. *And our main-Amber here, and Burien trophy--*

Main-Amber, i. e. *Ambrose's stone* (not far from *Penzance*) so great, that many mens united strength cannot remove it, yet with one finger you may wag it. The *Burien trophy* is *xix stones*, circularly disposed, and, in the middle, one much exceeding the rest in greatness: by conjecture of most learned *Camden*, erected either under the *Romans*, or else by king *Arthelstan* in his conquest of these parts.

§. *Were worthy of his end, but where he had his birth.*

Near *Camel*, about *Camblan*, was ² *Arthur* slain by *Mordred*; and on the same shore, east from the river's mouth, born in *Tintagel* castle; *Gorlois* prince of *Cornwall*, at *Uther-Pendragon's* coronation, solemnized in *London*, upon divers too kind passages and lascivious regards betwixt the king and his wife *Igerne*, grew very jealous, in a rage left the court, committed his wife's chastity to this castle's safeguard; and to prevent the wasting of his country (which upon this discontent was threatened) betook himself in other forts to martial preparation. *Uther* (his blood still boiling in lust) upon advice of *Ulfen Rhicaradoch*, one of his knights, by *Ambrose Merlin's* magick, personated like *Gorlois*, and *Ulfen* like one *Jordan*, servant to *Gorlois*, made such successful use of their imposture, that (the prince in the mean time slain) *Arthur* was the same night begotten, and verified that ³ *ῥῥοι τε πολλοὶ γυναικὸν αἰεὶ νέοντες, bastards are oft-times better than legitimates*. Although *Merlin*, by the rule of *Hermes*, or astrological direction, justified, that he was conceived three hours after *Gorlois's* death; by this shift answering the dangerous imputation of bastardy to the heir of a crown. For *Uther* taking *Igerne* to wife, left *Arthur* his successor in the kingdom. Here have you a *Jupiter*, an *Alcmena*, an *Amphytryo*, a *Sofia*, and a *Mercury*; nor wants there scarce any thing, but that truth-passing reports of poetical bards have made the birth an *Hercules*.

§. *Known by one general name upon this point that dwell.*

The name *Dumnonii*, *Damnonii*, or *Danmonii*, in *Solinus* and *Ptolemy*, comprehended the people of *Devonshire* and *Cornwall*: whence the *Lizard* promontory is called *τὸ Δαμνιον ἄκρον*, *Damnium*, in *Marcian Heracleotes*; and *William* of *Malmesbury*, *Florence* of *Worce-*

ster, *Roger* of *Hoveden*, and others, stile *Devonshire* by name of *Domnonia*; perhaps all from *Duff-neint*, i. e. *low vallies* in *British*; wherein are most habitations of the country, as judicious *Camden* teaches me.

§. *Or that this foreland lies furth'st out into his Which spreads his vigorous flames—* (*sight*,

Fuller report of the excellence in wrestling and nimbleness of body, wherewith this western people have been, and are, famous, you may find in *Carew's* description of his country. But to give reason of the climate's nature, for this prerogative in them, I think as difficult, as to shew why about the *Magellanick* streights they are so white, about the cape *de buon speranza* so black, ^b yet both under the same tropick; why the *Abbyssines* are but tawny moors, when as in the *East Indian* isles, *Zeilan* and *Malabar*, they are very black, both in the same parallel; or why we that live in this northern latitude, compared with the southern, should not be like affected from like cause. I refer it no more to the sun, than the special horsemanship in our northern men, the nimble ability of the *Irish*, the fiery motions of the *French*, *Italian* jealousy, *German* liberty, *Spanish* puffed up vanity, or those different and perpetual carriages of state-government, *haste* and *delay*, ^c which as inbred qualities, were remarkable in the two most martial people of *Greece*. The cause of *Ethiopian* blackness and curled hair was long since judiciously ^d fetched from the disposition of soil, air, water, and singular operations of the heavens; with confutation of those which attribute it to the sun's distance. And I am resolved, that every land hath its so singular self-nature, and individual habitude with celestial influence, that human knowledge, consisting most of all in universality, is not yet furnished with what is requisite to so particular discovery. But for the learning of this point in a special treatise *Hippocrates*, *Ptolemy*, *Bodin*, and others, have copious disputes.

§. *Which now the envious world doth slander for a dream.*

I should the sooner have been of the author's opinion (in more than poetical form, standing for *Brute*) if in any *Greek* or *Latin* story authentic, speaking of *Aeneas* and his planting in *Latium*, were mention made of any such like thing. To reckon the learned men which deny him, or at least permit him not in conjecture, were too long a catalogue; and indeed, this critick age scarce any longer endures any nation, their first supposed author's name, not *Italus* to the *Italian*, not *Hispalus* to the *Spaniard*, *Bato* to the *Hollander*, *Brabo* to the *Brabantine*, *Francio* to the *French*, *Celtes* to the *Celt*, *Galathes* to the *Gaul*, *Scota* to the *Scot*; no, nor scarce *Romulus* to his *Rome*, because of their unlikely and fictitious mixtures; especially this of *Brute*, supposed long before the begin-

^y Carew descript. Corn. lib. 2.

² Dicitur hinc in Merlini vaticinio, *Aper Cornubiae*.

³ Euripid. *Andromach.*

^b Ortelius theatro.

^c Thucyd. a. & passim de Athen. & Lacedaem. & de Thaeis & Chalcide. v. Columell. 4. de re rustica.

cap. 4.

^d Onesicrit. ap. Strabon. lib. 11.

ning of the *Olympiads* (whence all time backward is justly called, by ^e *Varro*, unknown or fabulous) some c. c. c. c. c. and more years since, about *Samuel's* time, is most of all doubted. But (relieving my censure) I thus maintain the author; Although nor *Greek* nor *Latin*, nor our country stories of *Bede* and *Malmesbury* especially, nor that fragment yet remaining of *Gildas*, speak of him; and that his name were not published until *Geoffrey of Monmouth's* edition of the *British* story, which grew, and continues in much suspected, in much rejected; Yet observe that *Talieffin* a ^f great bard, more then c. c. years since affirms it, *Nennius* (in some copies he is under name of *Gildas*) above dccc. years past, and the gloss of *Samuel Beaulan*, or some other, crept into his text, mention both the common report, and descent from *Æneas*; and withal (which I take to be *Nennius* his own) make him son to one *Isicio* or *Hesichio* (perhaps meaning *Aschenaz*, of whom more to the fourth song) continuing a pedigree to *Adam*, joining these words; ^g *This genealogy I found by tradition of the antients, which were first inhabitants of Britain*. In a manuscript epistle of *Henry of Huntingdon* h to one *Warin*, I read the *Latin* of this *English*; *You ask me, Sir, why omitting the succeeding reigns from Brute to Julius Cæsar, I begin my story at Cæsar? I answer you, that neither by word nor writing, could I find any certainty of those times, although with diligent search I oft inquired it; yet this year in my journey towards Rome, in the abbey of Beccenham, even with amazement, I found the story of Brute; and in his own printed book he affirms, that what Bede had in this part omitted, was supplied to him by other authors; of which Giraldd seems to have had use. The British story of Monmouth was a translation (but with much liberty, and no exact faithfulness) of a Welsh book, delivered to Geoffrey by one Walter, archdeacon of Oxford, and hath been followed (the translator being a man of some credit, and bishop of St. Asaph, under king Stephen) by Ponticus Virunnius an Italian; most of our country historians of middle times, and this age, speaking so certainly of him, that they blazon his coat i to you, two lions combatant, and crowned, or, in a field gules; others, or, a lion passant gules; and lastly, by doctor White of Basingstoke, lately living at Doway, a count palatine; according to the title bestowed by the k imperials upon their professors. Arguments are there also drawn from some affinity of the Greek l tongue, and much of Trojan and Greek names, with the British. These things are the more enforced by Cambro-Britons, through that universal desire, bewitching our Europe, to derive their blood from Trojans, which for them might*

as well be m by supposition of their ancestors marriages with the hither deduced Roman colonies, who by original were certainly Trojan, if their antiquities deceive not. You may add this weak conjecture; that in those large excursions of the Gauls, Cimmerians, and Celts, (among them I doubt not but were many Britons, having with them community of nation, manners, climate, customs; and Brennus himself is affirmed a Briton) which under indistinct names when this western world was undiscovered, overran Italy, Greece, and part of Asia, it is n reported that they came to Troy for safeguard; presuming perhaps upon like kindness, as we read of betwixt the Trojans and Romans, in their wars with o *Antiochus* (which was loving respect through contingency of blood) upon like cause remembered to them by tradition. Briefly, seeing no national story, except such as *Thucydides*, *Xenophon*, *Polybius*, *Cæsar*, *Tacitus*, *Procopius*, *Cantacuzen*, the late *Guicciardin*, *Commines*, *Machiavel*, and their like, which were employed in the state of their times, can justify themselves but by tradition; and that many of the fathers and ecclesiastical p historians, especially the Jewish rabbins (taking their highest learning of cabala, but from antique and successive report) have inserted upon tradition many relations current enough, where holy writ crosses them not; you shall enough please *Saturn* and *Mercury*, presidents of antiquity and learning, if, with the author, you foster this belief. Where are the authorities (at least of the names) of *Jannes* and *Jambres*, q the writings of *Enoch*, and other such like, which we know by divine tradition were? The same question might be of that infinite loss of authors, whose names are so frequent in *Stephen*, *Athenæus*, *Plutarch*, *Clemens*, *Polybius*, *Livy*, and others. And how dangerous it were to examine antiquities by a foreign writer (especially in those times) you may see by the stories of the Hebrews, delivered in *Justin*, *Strabo*, *Tacitus*, and such other discording and contrary (beside their infinite omissions) to *Moses's* infallible context. Nay he, with his successor *Joshua*, is copious in the *Israelites* entering, conquering, and expelling the *Gergesites*, *Jebusites*, and the rest out of the holy land; yet no witnesses have they of their transmigration, and peopling of *Africk*, which by testimony of two pillars, r erected and engraven at *Tingis*, hath been affirmed. But you blame me thus expatiating. Let me add, for the author, that our most judicious antiquary of the last age *John Leland*, s with reason and authority hath also for *Brute* argued strongly.

§. Next, *Sylvius* him succeeds — —

So goes the ordinary descent; but some make

^e Ap. Cenforin. de die nat. cap. 21. Christoph. Helvici chronologiam sequimur, nec, ut accuratius temporum subductioni hoc loci incumbamus, res postulat; verum & ille satis accurate, qui Samuelis præfecturam A. M. c. c. c. d. c. c. c. l. haud iniquo computo posuit. ^f Jo. Prif. def. hist. Brit.

^g Ex vetustiss. & perpulchre ms. Nennio sub titulo Gildas. ^h Lib. de summatibus rerum qui 10. est historiarum in ms. Huntingdon began his history at Cæsar, but upon better inquiry added Brute. Librum illum, in quem ait se incidisse, Nennium fuisse obignatis ferme tabulis sum potis adserere.

ⁱ Harding. Nich. Upton de re militari. 2. ^k C. tit. de professorib. l. unica. ^l Giraldd. descript. cap. 15. ^m Camden. ⁿ Agesianax ap. Strab. lib. 17. ^o Trog. Pomp. lib. 31. ^p Melchior Canus lib. 11. de aut. hist. hum. de his plurima. ^q Origen. ad 35. Matth. ^r Procopius de bell. Vandalic. lib. 4. ^s Ad Cyg. Cant.

§. His parents only death———

From these unfortunate accidents, one * will have his name *Brotus*, as from the Greek *βροτός*, *i. e. mortal*; but rather (if it had pleased him) from *βροτής*, *i. e. bloody*.

S. He should descry the isle of Albion, highly blest;

His request to *Diana* in an hexastich, and her answer in an ogdoastich, hexameters and pentameters, discovered to him in a dream, with his sacrifice and ritual ceremonies are in the *British* story; the verses are pure *Latin*, which clearly (as is written of *Apollo*) was not in those times spoken by *Diana*, nor understood by *Brute*; therefore in charity, believe it a translation, by *Gildas* a *British* poet, as *Virunnius* tells you. The author takes a justifiable liberty, making her call it *Albion*, which was the old name of this isle, and remembered in *Pliny*, *Marcian*, the book *περὶ νόμων*, falsely attributed to *Aristotle*, *Stephen*, *Apuleius*, others; and our monk of *Bury* * calls *Henry V.*

—protecteur of Brutes Albion.

often using that name for the island. From *Albina*, daughter to *Dioclesan*^y king of *Syria*, some fetch the name; others from a lady of that name, one of the *Danuids*, affirming their^z arrival here, copulation with spirits, and bringing forth giants; and all this above cc. years before *Brute*. But neither was there any such king in *Syria*, nor had *Danaus* (that can be found) any such daughter, nor travelled they for adventures, but by their father were newly^a married, after slaughter of their husbands; briefly, nothing can be written more impudently fabulous. Others from king *Albion*, *Neptune*'s son, from the Greek *ἄλκιος*, happy, others, or from (I know not what) *Olbisus* a *Celtish* king, remembered by the false *Manethon*. Follow them rather, which will it *ab albis rupibus*, from white cliffs, whereby it is specially conspicuous. So was an isle in the *Indian* sea called *Leuca*, white, and^b another in *Pontus*, supposed also fortunate, and a receptacle of the souls of those great heroes, *Peleus* and *Achilles*. Thus was a place by *Tyber* called^c *Albiona*, and the very name of *Albion* was upon the *Alps*, which from like cause had their denomination^d

alum, in the *Sabin* tongue (from the Greek *ἄλφον*), signifying *white*. Some, much dislike this derivation,^d because it comes from a tongue (suppose it either *Greek* or *Latin*) not antiently communicated to this isle. For my part, I think clearly (against the common opinion) that the name of *Britain* was known to strangers before *Albion*. I could vouch the ^e finding of one of the masts of *Hiero's* ship, ἐν τοῖς ὄρεσι τῆς Βρετανίας, in the hills of Britany, if judicious correction admitted me not rather to read Βρετανίης, i. e. the now lower *Calabria* in *Italy*, a place above all other, I remember, for store of ship-timber, commended by^f *Alcibiades* to the *Lacedemonians*. But with better surety can I produce the express name Βρετανικῶν νήσων, *British isles*, out of a writer that^g lived and travelled in warfare with *Scipio*; before whose time *Scylax* (making a catalogue of xx other isles) and *Herodotus* (to whom these western parts were by his confession unknown) never so much as speak of us by any name. Afterward was *Albion* imposed, upon the cause before touched, expressing the old *British* name *Insulguin*, the *white isle*; Which argument moves me before all other, for that I see it usual in antiquity to have names among strangers, in their tongue just significant with the same in the language of the country, to which they are applied; As the red sea is (in *Strabo*, *Curtius*, *Stephen*, others) named from a king of that coast called *Erythraeus* (for, to speak of red sand, as some, or red hills, as an old^h writer, were but refuges of shameful ignorance) which was surely the same with *Ejau*, called in holy writ *Edom*ⁱ; both signifying (the one in *Greek*, the other in *Hebrew*) *red*. So the river *Nile*,^k in *Hebrew* and *Egyptian* called כּוֹחַ, i. e. *black*, is observed by that mighty prince of learning's state, *Joseph Scaliger*, to signify the same colour in the word Αἰγυπτῖος, used for it by^l *Homer*; which is enforced alſo by the black^m statues among the *Greeks*, erected in honour of *Nile*, named alſo expreſſlyⁿ *Melas*; So in proper names of men; *Simon Zelotes*,^o in *Luke*, is but *Simon the Canaanite*, and Γδογένης in *Orpheus* the same with *Moses*, *Janus* with *Oenotrus*; and in our times those authors, *Melancthon*, *Magirus*, *Theocrenus*, *Pelargus*, in their own language, but *Swert-earth*, *Cooke*, *Fountain de Dieu*, *Storke*. Divers such other plain examples might illustrate the conceit; but, these sufficient. Take largest etymological liberty, and you may have it from ^p *ellan-ban*, i. e. the *white isle*, in *Scottish*, as they call their *Albania*; and to fit all together, the name of *Britain* from *Wyth-inis*, i. e. the *coloured isle*, in *Welsh*; betwixt which and the *Greek*^q βυῖον, or βρεῖτιον, (used for a kind of drink nearly like our beer) I would

6 Aeneid. 6. & ibid. Ser. Honoratus.
 bell. Trojan. 5. & alibi faepius.
 7 Chronis. S. Albani.
 8 Hugo d.
 9 Περὶ τῶν ἀνελκῶν ἀκτῶν, uti Euripides in Andromacha, magis vellem, canit Dionysius Afer.
 10 Scrabo. lib. 5. & Sixt. Pompeius in *Alpym*.
 11 Diodorpho. 2.
 12 Thucydid. hist. 6.
 13 Polyb. hist. 7. qui J. C.
 14 Arabic. ap. Steph. ὁ πολ. in Εὐφρόδ.
 15 Gen. xxxvi. Num. xx.
 16 Σίττης ὁ ποταμὸς. Forte tamen Huvius Egypti, ut Hebraeis סִיטִים
 17 Festus in *Aleco*.
 18 Nebraffis, in quinquagen. cap. 49.
 19 Sophocles, Hellanicus, Archilochus, Hecataeus ap. Athenaeum dionophoro.
 20 Curmthe apud Diofcoridem lib. 1. ap. σελ. & σελ. forte ἀπὸ τῶν ἀπὸ τῶν.

* Basingstoch. lib. 1.

^u Cicer. de divinat. lib. 2.

* In Lidgat lib de

bell. Trojan, ⁵ & alibi faepius, ⁷ Chronic. S. Albani, ² Hugo de Genes, ap. Harding, cap. 3. ¹ Pausanias in Laconic,
³ Περὶ τῶν ἡερῶν ἀκτῶν, uui Euripides in Andromacha, magis vellem, quam Οὐρανὸς ἰδὲ πατρὶς μινέρετα λευκὸς τέκνεται, quod
canit Dionysius Afer. ⁴ Strabo. lib. 8. & Sixt. Pompeius in *Alpurn.* ^d Humf. Lhuid. in Breviar. ^e Moschion ap. Athen.
Dipnophor. e. ^f Thucydid. hist. 6. ^g Polyb. hist. γ. qui J. Caesarem c. ferme annos antevortit. ^h Uranus in
Arabic. ap. Steph. ^θ πῶλ. in *Eupod.* ⁱ Gen. xxxvi. Num. xx. ^j Jesai. 23. Jerem. 2. ^k Odyss. δ. — Ἀργυροτοιο
^l διήγετο — ποταμῷ. Forte tamen fluvius Egypti, ut Hebraei סַיִם בְּרַח גֵּן Gen. xv. commat. 17. ^m Pausan. Arcadic. η.
ⁿ Festus in *Aleceo.* ^o Nebrissenf, in quinquagen. cap. 49. ^p Camden. ^q Vocabulo ἑπίτονος uui sunt Aethiopes,
Sophocles, Hellanicus, Archilochus, Hecataeus ap. Athenaeum dipnophor. 10. ἀντὶ τῶν λευκῶν ὄντων ejusdem fere naturae cum Sytho &
Curmiche apud Dioscoridum lib. 8. cap. 57. & 58. forte παρὰ τὸ βῆσιν.

with the *French Forcatulus* think affinity (as *Italy* was called *Oenotria*, from the name of wine) were it not for that *βύτρον* may be had from an ordinary primitive, or else from *βειβω*, i. e. *sweet*, (as *Solinus* teaches, making *britomart* signify as much as sweet virgin) in the *Cretick* tongue. But this is to play with syllables, and abuse precious time.

§. *The city Turon built* — — —

Understand *Tours* upon *Loire* in *France*, whose name and foundation the inhabitants refer to *Turnus*, of the same time with *Aeneas*, but whether the same which *Virgil* speaks of, they know not: His funeral monuments they yet shew, boast of, and from him idly derive the word *tournaments*. The *British* story says, *Brute* built it, so also *Nennius*, and from one *Turon*, *Brute's* nephew, there buried, gives it the name. *Homer* is cited for testimony; in his works extant it is not found. But, because he had divers others (which wrongful time hath filched from us) as appears in *Herodotus* and *Suidas*; you may in favour think it to be in some of those lost; yet I cannot in conscience offer to persuade you that he ever knew the the continent of *Gaul* (now, in part, *France*) although a learned German endeavours by force of wit and etymology, to carry *Ulysses* (which he makes of *Elizsa* in *Genesis*) into *Spain*, and others before him (but falsely) into the northern parts of *Scotland*. But for *Homer's* knowledge, see the last note to the sixth song.

§. *So mighty were that time the men that lived there.*

If you trust our stories, you must believe, the land then peopled with giants, of vast bodily composition. I have read of the *Nephilim*, the *Rephaim*, *Anakim*, *Og*, *Goliath*, and other in holy writ; of *Mars*, *Tityus*, *Antaeus*, *Turnus*, and the *Titans*, in *Homer*, *Virgil*, *Ovid*; and of *Adam's* stature (according to Jewish fiction) equalling at first the world's diameter; Yet seeing that nature (now as fertile as of old) hath in her effects determinate limits of quantity, that in *Aristotle's* time (near 1100. years since) their beds were but six foot ordinarily (nor is the difference, betwixt ours and *Greek* dimension, much) and that near the same length was our *Saviour's* sepulchre, as *Adamnan* informed king *Alfred*; I could think that there now are some as great stature, as for the most part have been, and that giants were but of a somewhat more than vulgar excellence in body, and martial performance. If you object the finding of great bones, which, measured by proportion, largely

exceed our times; I first answer, that in some singulars, as monsters rather than natural, such proof hath been; but withal, that both now and of antient time, the eye's judgment in such like hath been, and is, subject to much imposture; mistaking bones of huge beasts for human. *Claudius* brought over his elephants hither, and perhaps *Julius Caesar* some, (for I have read that he terribly frighted the *Britons*, with sight of one at *Cowaystake*) and so may you be deceived. But this is no place to examine it.

§. *Of Corin, Cornwall called, to his immortal fame.*

So, if you believe the tale of *Corin*, and *Gogmagog*; but rather imagine the name of *Cornwall* from this promontory of the *Land's end*; extending itself like a *born*, which in most tongues is *corn*, or very near. Thus was a promontory in *Cyprus*, called *Cerastes*, and in the now *Candia* or *Crete*, and *Gazaria*, (the old *Taurica Cherfoneus*) another titled *Κεφάλοπον*, *ram's head*, and *Brundisium* in *Italy* had name from *Brendon*, or *Brention*, i. e. a *hart's head* in the *Messapian* tongue, for similitude of horns. But *Malmesbury* thus: *They are called Cornewallshmen, because being seated in the western part of Britain, they lie over against a born* (a promontory) of *Gaul*. The whole name is, as if you should say *Corn-wales*; for hither in the *Saxon* conquest the *British* called *Welsh* (signifying the people, rather than strangers, as the vulgar opinion wills) made transmigration; whereof an old rhimer:

The wewe that wer of hom bileved, as in Corn-
waile and Walis,

Butons ner namore pcluped, at Waleys ytwis.

Such was the language of your fathers between ccc. and cccc. years since: and of it more hereafter.

§. *The deluge of the Dane exactly to have sung.*

In the fourth year of *Brithric*, king of the west *Saxons*, at *Portland*, and at this place (which makes the fiction proper) three ships of *Danish* pirates entered; the king's lieutenant offering inquisition of their name, state, and cause of arrival, was the first *Englishman*, in this first *Danish* invasion, slain by their hand. Miserable losses, and continual, had the *English* by their frequent irruptions from this time till the *Norman* conquest; betwixt which intercede 660. years; and that less account of 660. years, during which space this land endured their bloody slaughters, according to some mens calculation, begins at king *Atheluph*; to whose

¹ Andre du Chesne en les recherches des villes 1. ca. 122.

² Solin. polyhist. cap. 35.

³ v. ap. D. Cyprianum serm. de montib. Sina & Sion.

⁴ Ευμεγέθεις & ἐπισήμενοι πόλεμον. Baruch. cap. 7. consule, si placet, Scaliger. exercitat. Becan. Becefehan. 2. Augustin. civ. Dei 15.

⁵ cap. 23. Clement. Rom. recognit. 1. Lactant. &c.

⁶ Sueton. Octav. cap. 72.

⁷ Dio Cass. lib. 8.

⁸ Polyæn. stratagemat. 11. in Caesare.

⁹ Cornugallia dicta est Henrico Huntingdonio, aliis.

¹⁰ Seleucus ap. Steph. Βρετταν. & Suid. in Βρετταν.

¹¹ A. d. cc. lxxxvii.

¹² Auda ceter lege ducentes vice 750. annos in fol. 237. Hoveden, cui prologum libro

quinto H. Huntingdon. committas licet.

¹ Goropius in Hispania. d. 4. v. Strab. geograph. 7. & alios de

² Rabbi Eleazar ap. Riccium in epit. Talmud. caeterum in hac re allegoriam

³ Περβαν. μυθ. 12.

⁴ Bed. hist. ecclesiast. 5. cap. 17.

⁵ Bed. hist. ecclesiast. 5. cap. 17.

⁶ Dio Cass. lib. 8.

⁷ Polyæn. stratagemat. 11. in Caesare.

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¹⁰ A. d. cc. lxxxvii.

¹¹ Auda ceter lege ducentes vice 750. annos in fol. 237. Hoveden, cui prologum libro

quinto H. Huntingdon. committas licet.

time Henry of *Huntingdon*, and Roger *Hoveden*, refer the beginning of the *Danish* mischiefs, continuing so intolerable, that under king *Ethelred* was there begun a tribute insupportable (yearly afterward exacted from the subjects) to give their king *Swain*, and so prevent their insatiate rapine. It was between thirty and forty thousand ¹ pounds (for I find no certainty of it, so variable are the reports) not instituted for pay of garrisons, employed in service against them, as upon the misunderstanding of the Confessor's laws some ill affirm, but to satisfy the warring enemy; but so that it ceased not, although their spoils ceased, but was collected to the use of the crown; until king *Stephen* promised to remit it. For indeed *St. Edward* upon imagination of seeing a devil dancing about the whole sum of it lying in his treasury, moved in conscience, caused it to be repaid, and released the duty, as *Ingulph* abbot of *Crowland* tells you; Yet observe him, and read *Florence of Worcester*, *Marian the Scot*, *Henry of Huntingdon*, and *Roger Hoveden*, and you will confess that what I report thus from them is truth, and different much from what vulgarly is received. Of the *Danish* race were afterward three kings, *Cnut*, *Hardecnut*, and *Harold I*.

§. *His off-spring after long expulsed the inner-land.*

^m After some *cir. d.* years from the supposed arrival of the *Trojans*, their posterity were by incroachment of *Saxons*, *Jutes*, *Angles*, *Danes*, (for among the *Saxons* that noble ⁿ *Douz* wills that surely *Danes* were) *Frisians* ^o and *Franks* driven into those western parts of the now *Wales* and *Cornwall*. Our stories have this at large, and the *Saxon* heptarchy; which at last by publick edict of king *Ecbert* was called *Engle-land*. But *John* bishop of ^p *Chartres* saith, it had that name from the first coming of the *Angles*; others from the name of *Hengist* ^q (a matter probable enough) whose name, wars, policies, and government, being first invested by *Vortigern* in *Kent*, are above all the other *Germans* most notable in the *British* stories; and *Harding*

— he called it *Engestes land*,
Which afterward was *shorted*, and called *England*.
Hereto accords that of one of our country old poets:

— *Engisti lingua canit insula Bruti.*
Britain sings in Hengist's tongue.

If I should add the idle conceits of *Godfrey of Viterbo*, drawing the name from I know not what *Angri*, the insertion of *L.* for *R.* by pope *Gregory*, or the conjectures of unlimitable phantasy, I should unwillingly, yet with them impudently, err.

Illustrations on the second song.

THE muse, yet observing her began course of chorographical longitude, traces eastward the southern shore of the isle. In this second sings *Dorset* and *Hampshire*; fitly here joined as they join themselves, both having their south limits washed by the *British* ocean.

§. *Which th' antients, for the love that they to Isis bear.*

Juba remembers a ^r like coral by the *Trogodytick* isles (as is here in this sea) and stiles it *Isidis plocamos*, *Isis's hair*. True reason of the name is no more perhaps to be given, than why *adiantum* is called *capillus Veneris*, or sengreene *barba Jovis*. Only thus: You have in *Plutarch* and *Apuleius* such variety of *Isis's* titles, and, in *Clemens of Alexandria*, so large circuits of her travels, that it were no more wonder to hear of her name in this northern climate, than in *Egypt*; especially, we having three rivers of note ^s synonyms with her. Particularly to make her a sea-goddes, which the common story of her and *Osiris* her husband (son to *Cham*, and of whom *Bale* dares offer affirmance, that in his travelling over the world, he first taught the *Britons* to make beer instead of wine) does not: *Isis pelagia*, *Isis of the sea*, after *Pausanias's* testimony, hath an ^t old coin. The special notice which antiquity took of her hair, is not only shewed by her attribute ^x of *λυσισομ* ^θ, *loose haired*, but also in that her hair was kept as a sacred relick in ^y *Memphis*, as *Geryon's* bones at *Thebes*, the boar's skin at *Tegea*, and such like elsewhere. And after this, to fit our coral just with her colour, *Ethiopicis solibus Isis furva*, *Ethiopian sun-burnt*, she is called by ^z *Arnobius*. Gentlewomen of black hair (no fault with brevity to turn to them) have no simple pattern of that part in this great goddess, whose name indeed comprehended whatsoever in the deity was feminine, and more too. Nor will I swear, but that *Anacreon* (a man very judicious in the provoking motives of wanton love) intending to bestow on his sweet mistress that one of the titles of womens special ornament, ^a *well haired*, thought of this when he gave his painter direction to make her picture black haired. But thus much out of the way.

§. *Thou never by that name of white-hart hadst been known.*

Very likely, from the soil was the old name *Blackmore*. By report of this country, the change was from a white hart, reserved here from chase, by express will of *Hen. III.* and afterward killed by *Thomas de la Lynd*, a gentleman of these parts. For the offence, a mulct imposed on the possessors of *Blackmore*, (called ^b *white-hart silver*) is to this day paid into the exchequer. The destruction of woods here bewailed by the muse, is (upon occasion too often given) often seconded; but while the muse

¹ Mariano Scot. xxxvi. c. 15. lib. & Florentio Wigorn.

² Jan. Douz. annal. Holland. 1 & 6.

³ Chronic. St. Albani. Hæstor Boet. Scotor. hist. 7.

⁴ lib 13. cap. 25.

⁵ Advers. gent. 1.

⁶ Leland ad Cyg. Cant.

⁷ Camden.

⁸ Goltz. thes. antiq.

⁹ Philostrat. in eik.

¹⁰ Lucian. in eik.

¹¹ Chronologiam huc spectantem consulas in illustrat. ad 4 cant.

¹² lib. Gothic. ap. Camden.

¹³ Polieratic. lib. 6. cap. 17.

¹⁴ J. Gower epigram. in confess. amantis.

¹⁵ Apud Plin. hist. nat.

¹⁶ Callιστομαχος & χαλλισφυρος, i. e. well haired, and pretty soored, two special commendations, dispersed in Greek poets, joined in Lucilius.

bewails them, it is *Marfias* and his countrymen, that most want them.

§. *On whom the watry God would oft have had his will.*

Purbeck (named, but indeed not, an isle, being joined to the firm land) stored with game of the forest.

Thence alluding to *Diana's* devotions, the author well calls her an huntress and a nun. Nor doth the embracing force of the ocean (whereto she is adjacent) although very violent, prevail against her stony cliffs. To this purpose the muse is here wanton with *Neptune's* wooing.

§. *That he in little time upon this lovely dame, Begat three maiden isles his darlings and delight.*

Albion (son of *Neptune*) from whom that first name of this *Britain* was supposed, is well fitted to the fruitful bed of this *Pool*, thus personated as a sea nymph. The plain truth (as words may certify your eyes, saving all impropriety of object) is, that in the *Pool* are seated three isles, *Brunksey*, *Furfey*, and *St. Helens*, in situation and magnitude, as I name them. Nor is the fiction of begetting the isles improper; seeing *Greek* antiquities tell us of divers in the *Mediterranean* and the *Archipelago*, as *Rhodes*, *Delos*, *Hiera*, the *Echinades*, and others, which have been, as it were, brought forth out of the salt womb of *Amphitrite*.

§. *But toward the Solent sea, as Stour her way On Shaftsbury, &c.* (doth ply,

The streight betwixt the *Wight* and *Hampshire*, is titled, in *Bede's* story, a sea three miles over, called *Solente*, *l. 4. hist. eccles. c. 16. Pelagus latitudinis III. millium quod vocatur Solente*; famous for the double, and thereby most violent floods of the ocean (as *Scylla* and *Charybdis*; twixt *Sicily* and *Italy* in *Homer*) expressed by the author towards the end of this song, and reckoned among our *British* wonders. Of it the author tells you more presently. Concerning *Shaftsbury* (which, beside other names, ^c from the corps of *St. Edward*, murdered in *Corfe-castle* through procurement of the bloody hate of his step-mother *Ælfrit*, hither translated, and some three years lying buried, was once called *St. Edward's*) you shall hear a piece out of *Harding*;

^d *Caire Paladoure that now is Shaftesbury
Where an angell spake sitting on the wall
While it was in working over all.*

Speaking of *Rudbudibras* his fabulous building it. I recite it, both to mend it, reading aigle for angell, and also that it might then, according to the *British* story, help me explain the author in this,

§. *As brought into her mind the eagle's prophecies.*

This eagle (whose prophecies among the

Britons, with the later of *Merlin*, have been of no less respect, than those of *Bacis* were to the *Greeks*, or the *Sybillines* to the *Romans*) foretold of a reverting of the crown, after the *Britons*, *Saxons*, and *Normans*, to the first again, which in *Hen. VII.* grandchild to *Owen Tudor*, hath been ^f observed, as fulfilled. This in particular is peremptorily affirmed by that count palatine of *Basingstoke*. He plainly said that there would be a time of this reverting of the crown. *Et aperte dixit tempus aliquando fore ut Britannicum imperium denuo sit ad veteres Britannos post Saxonas & Normannos rediturum*; are his words of this eagle. But this prophecy in manuscript I have seen, and without the help of *Albertus* secret, *Canace's* ring in *Chaucer*, or reading over *Aristophanes's* comedy of birds, I understood the language; neither find I in it any such matter expressly. Indeed as in *Merlin*, you have in him the white dragon, the red dragon, the black dragon, for the *Saxons*, *Britons*, *Normans*, and the fertile tree, supposed for *Brute*, by one that of later time hath given his obscurities ^g interpretation; in which, not from the eagles, but from an angelical voice, almost 1000. years after Christ, given to *Cadwalader* (whom others call *Cedwalla*) that restitution of the crown to the *Britons* is promised, and grounded also upon some general and ambiguous words in the eagle's text, by the author here followed; which (provided your faith be strong) you must believe made more than 1000. years since. For a corollary, in this not unfit place, I will transcribe a piece of the glo's out of an old copy, speaking thus upon a passage in the prophecy: *Henricus III.* (he means *Hen. III.* who, by the antient account in regard of *Henry*, son to *Henry Fitz-l'empresse*, crowned in his father's life, is in *Bracton* and others called the fourth) *concessit omne jus & clameum, pro se & haeredibus suis, quod habuit in ducatu Normannie imperpetuum. Tunc fractum fuit ejus sigillum & mutatum; nam prius tenebat in sceptro gladium, nunc tenet virgam; qui gladius fuit de conquestu ducis Willielmi bastardi, & ideo dicit aquila, separabitur gladius a sceptro.* Such good fortune have these predictions, that either by conceit (although strained) they are applied to accident, or else ever religiously expected; as ⁱ *Buchanan* of *Merlin's*.

§. *Then those prodigious signs to ponder she began.*

I would not have you lay to the author's charge a justification of these signs at those times; but his liberty herein, it is not hard to justify.

Obseditq; frequens castrorum limina bubo:

and such like hath *Silius Italicus* before the *Roman* overthrow at *Cannae*; and historians

^b Lucian dialog. Pindar. olymp. 7. Strab. Pausanias.

^c Malmesb. lib. 2. de pontific.

^d Camden takes this *Caire* for Bath.

^e Twin. in Albion. 2.

^f Distinct. aquil. Sceptoniae.

^g A scepter in stead of a sword first in *Hen. III's* seal, but believe

him not; the seals of those times give no warrant for it: and even in king Arthur's, Lealand says, there was a swery scepter; but that perhaps as signified, as this false.

ⁱ Hist. Scot. lib. 5. in Congallo.

commonly affirm the like; therefore a poet may well guess the like.

§. And at New-forest foot into the sea doth fall.

The fall of *Stour* and *Avon* into the ocean is the limit of the two shires, and here limits the author's description of the first, his muse now entring *New-forest* in *Hampshire*.

§. Her being that received by William's tyranny.

New-forest (it is thought the newest in *England*, except that of *Hampton-court*, made by *Henry VIII.*) acknowledges *William* her maker, that is, the *Norman* conqueror. His love to this kind of possession and pleasure was such, that he constituted loss^k of eyes punishment for taking his vengery: so affirm expressly *Florence of Worcester*, *Henry of Huntingdon*, *Walter Mapez*, and others, although the author of *distinctio aquilae*, with some of later time, falsely laid it to *William Rufus* his charge. To justify my truth, and for variety, see these rhimes, even breathing antiquity:

Game of houndes he lovede inou, and of wild best,
And * is forst, and is wodes, and mest the nitwe forst,
What is in *Suthamstire*, vor thulke he lovede inob
And asloved well † mid bestes, and † lele mid gret wou:
Woz he cast out of houle and hom of men a great route,
And ** binom their lond thaitti mile and moze thereabout,
And made it all forst and lele the bests woz to fede,
Of pouer men diserited he nom let el hede:
Therwoze therein bell mony mischebing,
And is sone was thereine †† ilote *William* the red king,
And †† is o sone, that het *Richard*, caght there is deth also,
And *Richard* is o neuu, brece there is neck thereto,
As he rod an honteth and perauentre his horse spend,
The unright ido to pouer men to such melauntre trend.

* his. † with. ‡ pastures. ** took. †† Shot by
Walter Tirell. †† his own.

But to quit you of this antique verse, I return to the pleasanter muse.

§. Her famous Bevis so wer't in her power to choose;

About the *Norman* invasion was *Bevis* famous with title of earl of *Southampton*; *Dun-eton* in *Wiltshire*, known for his residence. What credit you are to give to the hyperboles of *Itchin* in her relation of *Bevis*, your own judgment, and the author's censure in the admonition of the other rivers here personated, I presume, will direct. And it is wished, that the poetical monks in celebration of him, *Arthur*, and other such worthies, had contained themselves within bounds of likelihood; or else that some judges, proportionate to those^m of the *Grecian* games, (who always by publick authority pulled down the statues erected, if they exceeded the true symmetry of the victors) had given such exorbitant fictions their desert. The sweet grace of an enchanting poem (as unimitable *Pindar*ⁿ affirms) often compels belief; but so far have we the indigested reports of barren and monkish invention expatiated out of the lists of truth, that from their intermixed and absurd fauxeties hath proceeded doubt; and, in

some, even denial of what was truth. His sword is kept as a relic in *Arundel* castle, not equalling in length (as it is now worn) that of *Edward III's* at *Westminster*.

§. And for great Arthur's seat her Winchester Whose old round table yet, &c. (prefers

For him, his table, order, knights, and places of their celebration, look to the fourth song.

§. When Portsey weighing well the ill to her might grow.

Portsey an island in a creek of the *Solent*, coming in by *Portsmouth*, endures the forcible violence of that troublesome sea, as the verse tells you in this fiction of wooing.

Illustrations on the third song.

Discontinuing her first course, the muse returns to *Somerset* and *Wiltshire*, which lie betwixt the *Severn* and *Hampshire*, as the song here joins them:

§. From Sarum thus we set, removed from whence it stood.

Old *Salisbury*, seated north-east from the now famous *Salisbury*, some miles distant, about *Richard coeur de Lion's* time, had her name and inhabitants, hither translated, upon the meeting of *Avon* and *Aderborn*; where not long after she enjoyed, among other, that glorious title of admiration for her sumptuous church-buildings. Of that, ° one of my authors thus:

———— in the yeare of grace
Twelf hundred and to and twenti in the baire place
Of the noble *Dunstre* of *Salisbury* hij leide the verke ston
That me not in *Christindom* bairoze work non.
Her was *Dandulf* the Legat, and as hept of echon,
He leide biue the verke stones: as woz the *Dope* put on.
The other woz ure * yonge King, the thridde as me sepe
Woz the gode Erle of *Salisbury* *William* † the *Longespe*,
The berth woz the *Contesse*, the biste he leide tho
Woz the ‡ *Bishop* of *Salisbury*, and he ne leide na mo.

* Hen. III. † *Willielm. de longa spatha*. ‡ *Richard Poore*.

This work then began, was by *Robert* of *Bingham*, next succeeding bishop to that excellency, profecuted.

§. Hath worthily obtain'd that Stonehenge there should stand.

Upon *Salisbury* plain stones of huge weight and greatness, some in the earth pitched, and in form erected, as it were circular; others lying cross over them, as if their own poize did no less than their supporters give them that proper place, have this name of *Stone-henge*;

*But so confused that neither any eye
Can count them just, nor reason reason try,
What force brought them to so unlikely
(ground.*

As the noble *P Sidney* of them.

No man knows, faith ^a *Huntingdon*, (making them the first wonder of this land, as the author doth) how, or why they came here. The

^k Math. Paris post Hen. Huntingd, and under Will. II. it was capital to steal deer.

^m *ἐκείν.* ⁿ *Olymp. α & Nem. ζ. σφαιρα δὲ κλέειναι παρὰ γούνα μόνους.*

¹ Rob. Glocest.

^m *Ἐλλανοδίκας* Lucian.

^o Rob. Glocestrenf.

^p In his sonets.

^q Histor. lib. 1.

cause

cause thus take from the *British* story. *Hengist*, under colour of a friendly treaty with *Vortigern* at *Amesbury*, his fallhoods watchword to his *Saxons* (provided there privily with long knives) being nime's youn jexer, take your swords, there traiterously slew cō. lx. noble *Britons*, and kept the king prisoner. Some xxx. years after king *Ambrose* (to honour with one monument the name of so many murdered worthies) by help of *Uterpen-dragon's* forces, and *Merlin's* magick, got them transported from off a plain (others say a hill) near *Naas* in *Kildare* in *Ireland*, hither, to remain as a trophy, not of victory, but of wronged innocence. This *Merlin* perswaded the king that they were medicinal, and first brought out of the utmost parts of *Africk* by giants which thence came to inhabit *Ireland*. *Non est ibi lapis qui medicamento caret, not one of the stones but is good for somewhat in physick*; as in *Merlin's* person *Geoffrey of Monmouth* speaks; whose authority, in this treacherous slaughter of the *Britons*, I respect not so much as *Nennius*, *Malmesbury*, *Sigebert*, *Matthew of Westminster*, and others, who report it as I deliver. Whether they be naturally solid or with cement artificially composed, I will not dispute. Although the last be of easier credit; Yet I would, with our late historian *White*, believe the first sooner, than that *Ulysses's* ship was by *Neptune* turned into one stone, as it is in the *Odyssæis*, and that the *Egyptian* king *Amasis* had a house cut out in one marble (which, by *Herodotus's* description, could not, after the workmanship, have less content than cō. cō. ccc. xciv. solid cubits, if my geometry fail me not) or that which the *Jews*¹ are not ashamed to affirm of a stone, with which king *Og* at one throw from his head purposed to have crushed all the *Israelites*, had not a lapwing strangely pecked such a hole through it; that it fell on his shoulders, and by miracle his upper teeth suddenly extended, kept it there fast from motion. It is possible they may be of some such earthy dust as that of *Puzzolo*, and by *Ætna*, which cast into the water turns stony, as *Pliny*, after *Strabo* of them, and other like, remembers. And for certain, I find it reported, that in *Caernarvan* upon *Snowdon* hills, is a stone (which miraculously somewhat more than lx. years since, raised itself out of a lake at the hill's foot) equaling a large house in greatness, and supposed not moveable by m. yoke of oxen. For the form of bringing them, your opinion may take freedom. That great one which *Hercules*² is wondered at for the carriage, was but *αυχαῖος*, a cartload, which he left for a monument in *Otranto* of *Italy*; and except *Geoffrey of Monmouth*, with some which follow him, scarce any affirm or speak of it, nor *Nennius*, nor *Malmesbury*; the first living somewhat near the supposed time.

§. *Betweenst the Mercian rule, and the West Saxons reign.*

So thinks our antiquary and light of this kingdom; that, to be a limit of those two ancient states, sometime divided by *Avon*, which falls into *Severn*, *Wansdike* crossing the shire westward over the plain was first cast up. *Wodensdike*, the old name is supposed from *Woden*; of no less (if not greater) esteem to the *Saxons*, than *Arfaces*, *Pelops*, *Cadmus*, and other such to their posterity; but so, that, I guess it went but for their greatest God *Mercury* (he is called rather *Woden*, from *win*, that is, gain by *Lipsius*) as the *German* and *English* antiquities discover. And very likely, when this limit was made, that in honour of him, being by name president of ways, and by his office of heraldship *pacifex*, i. e. peace-maker, as an old stamp titles him, they called it *Wodensdike*; as not only the *Greeks* had their *ἑρμῆος ἀνδρῶν τελευγλαῶνες*, statues erected for limits and direction of ways, and the *Latins* their *terminus*; but the ancient *Jews* also, as upon interpretation of *בְּמֶרְכָּבָה* * in the *Proverbs*, i. e. into an heap of *Mercury* (in the vulgar) for a heap of stones, in that sense, *Goropius*, in his hieroglyphicks, affirms, somewhat boldly deriving *Mercury* from *merc*, which signifies a limit in his and our tongue, and so fits this place in name and nature. *Stonehenge*, and it not improperly contend, being several works of two several nations antiently hateful to each other; *Britons* and *Saxons*.

§. *To hear two chrystal floods to court her, which apply.*

Willibourne (by the old name the author calls her *Willy*) derived from near *Selwood* by *Warminster*, with her creekly passage, crossing to *Wilton*, naming both that town and the shire, and on the other side *Avon* taking her course out of *Savernak* by *Marlborough* through the shire fourthward, washing *Ambresbury* and the *Salisburys* (new *Salisbury* being her episcopal city) both watering the plain, and furnished with these reasons, are fitly thus personated, striving to endear themselves in her love; and prosecuting this fiction, the muse thus adds;

§. *How that Bath's Avon wax'd imperious through her fame.*

Divers rivers of that name have we; but two of eminent note in *Wiltshire*: One is next before shewed you, which falls through *Dorset* into the ocean; the other here mentioned hath her head in the edge of *Glocester*; and with her snaky course, visiting *Malmesbury*, *Chippenham*, *Bradford*, and divers towns of slight note, turns into *Somerset*, passes *Bath*, and

¹ Girald. Cambrensis topograph. Hib. dist. 2 cap. 18. chorea gigantum. be a whetstone, let the Jew have it.

² Ad Germ. Tacit. Theocrit. eid. 25.

³ Ippunfull. Sax. Mercury. Adam Bremenf. cap. 5. & hence Irmingsfreat.

⁴ Prov. xxvi. ver. 8.

⁵ Apud Munster. ad Deut. iii. If among them there

⁶ Aristot. *μετ' ἑαυτοῦ ἀναρῶν*

⁷ Pausan. *ταπεινὸς* &c.

casts herself into *Severn* at *Bristol*. This compendious contention (whose proportionate example is a special elegance for the expressing of diversity, as in the pastorals of *Theocritus* and *Virgil*) is aptly concluded with that point of antient politick^a observation, that *outward common fear is the surest band of friendship*.

§. To *Grecklade* whose great name yet vaunts that learned tongue.

The history of *Oxford* in the proctor's book, and certain old verses,^b kept somewhere in this tract, affirm, that with *Brute* came hither certain *Greek* philosophers, from whose name and profession here it was thus called, and as an university afterward translated to *Oxford* (upon like notation a company of physicians retiring to *Lechlade*, i. e. the physician's lake, in this shire, gave that its title, as *J. Rous* adds in his history to *Hen. VII.*) but *Godwin* and a very old *anonymus*, cited by *Br. Twine*, refer it to *Theodore of Tarsus* in *Cilicia* (made archbishop of *Canterbury* by *P. Vitalian* under *Ecbert* king of *Kent*) very skilful in both tongues, and an extraordinary restorer of learning to the *English Saxons*; that he had (among other) *Greek* schools, is certain by *Bede's* affirmation, that some of his scholars understood both *Greek* and *Latin* as their mother language. *Richard* of the *Vies*^c will that *Penda*, king of *Mercland*, first deduced a colony of *Cambridge* men hither, and calls it *Creke-lade*, as other *Kirk-lade*, with variety of names: but I suspect all; as well for omission of it in best authorities, as also that the name is so different in itself. *Grecolade* was never honoured with *Greek* schools, as the ignorant multitude think, faith^d *Leland*, affirming it should be rather *Creclade*, *Lechelade*, or *Lathlade*. Nor methinks (of all) stands it with the *British* story,^e making the tongue then a kind of *Greek* (a matter, that way reasonable enough, seeing it is questionless that colonies antiently derived out of the western *Asia*, *Peloponnesus*, *Hellas*, and those continents into the coast whence *Brute* came, transported the *Greek* with them) that profession of *Graecians* should make this so particular a name.

§. Ascribed to that high skill which learned *Bladud* brought.

You are now in *Somersetshire*. I doubt not but the true cause is that which is ordinary of other hot springs; not the sun's heat (saving the author's opinion, which hath warrant enough in others) or agitation of wind, as some will; but either passage through metallick, bituminous, and sulphurous veins, or rather real subterranean fire, as^f *Empedocles* first thought, and with most witty arguments (according to the poetical conceit of *Typhon*^g, buried in *Prochyta*; whereto *Strabo* refers the best baths in *Italy*)

my learned and kind friend Mr. *Lydiat*, that accurate chronologer, in his ingenious philosophy, hath lately disputed. But as the author tells you, some *British* vanity imputes it to *Bladud's* art, which in a very antient fragment^h of rhimes I found expressed: and if you can endure the language and fiction you may read it, and then laugh at it.

Two tunne there beth of bras;
And other two imaked of glas
Seve seats there buth inne
And other thing imaked with ginne:
Quick brimston in them also,
With wild fier imaked thereto:
Sal gemmae and sal petrae,
Sal armonak there is eke
Sal albrod and sal alkine
Sal gemmae is mingled with him;
Sal comin and sal almetre bryght
That boyneth both day and night,
Al this is in the tonne ido
And other things many mo,
And boyneth both night and day
That never quench it ne may
In your wellsprings the tonnes liggeth
As the Philosophers us siggeth,
The hete within, the water without,
Baketh it hot al about,
The two wellsprings earneth mere
And the other two beth inner clere.
There is maked full twis
That kings bath iclused is.
The rich king *Bladud*
The kings sonne *Lud*,
And when he maked that bath hot
And if him failed ought
Of that that shoud thereto,
Perkeneth what he would do,
From Bath to London he would see
And thuske day selfe again bee
And fetch that thereto buel;
He was quicke, and swith fell
Tho the master was ded
And is soule wend to the Dued
For God ne was not put proze
Nor deth suffred him biuore.

I will as soon believe all this, as that *S. h. Dewi* or *Julius*ⁱ *Caesar* (who never came near it) was author of it, or that he made knights of the *Bath*. They are not wanting which have durst say so.

§. When on this point of earth he bends his greatest force.

From eight in the morning till three (within which time the sun-beams make their strongest angles of incidence) it purges itself (as boiling) of unclean excrements, nor then doth any enter it; which the muse here expresses in a fervent sympathy of love, betwixt the water and the sun, and the more properly, because it had the name of^k *aquae solis*, waters of the sun.

^a In Thucyd. & Liv. ^b Leland, ad cyg. cant. in Ifide. ^c Apud Cai. de antiq. Cantabrig. lib. 2. & cod. nig. Cantabr. apud aut. assert. antiq. Oxon. ^d Ad Cyg. Cant. in Ifide & Ifid. vad. ^e Curvus Graecus sermo Britannicus Galfred. Monumeth. lib. 1. ^f Senec. natural. quaest. lib. 3. cap. 24. ^g Pyndar. Pyth. 2. ^h Ex antiq. sched. ⁱ Bal. cent. 1. ^j Malmesbury lib. 2. pontific. ^k Antoninus in itinerario.

S. With the wonders of the isle that she should not be placed.

Wokey hole, or, *Orby*, (so called, in my conceit, from *roc*^k, which is the same with *ric*, signifying a *hollow* or *creaky passage*) in *Mendip* hills by *Wells*, for her spacious vaults, stony walls, creeping labyrinths, unimaginable cause of posture in the earth, and her neighbours report (all which almost equal her to that *grotta de la*¹ *Sybilla* in the *Apenin* of *Marca Anconitana*, and the *Dutch* song of little *Daniel*) might well wonder she had not place among her country wonders. One that seems to increase *Samuel Beaulan* upon *Nennius*, reckons thirteen by that name, but with vain and false reports (as that of the *Bath* to be both hot and cold, according to the desire of him that washes) and in some, the author of *Polychronicon* follows him; neither speaking of this. But the last, and *Henry* of *Huntingdon* reckon only four remarkable; the *Peak*, *Stonbenge*, *Chedderbole*, and a hill out of which it rains. That wonder of human excellence, *Sir Philip Sidney*, to fit his sonnet, makes six; and to fit that number conceitedly, adds a froward, but chaste, lady for the seventh. And the author here tells you the chiefest.

*S. — that Froome for her disgrace,
Since scarcely ever washed the Colesleck from
her face.*

Out of *Mendip* hills *Froome* springeth, and through the colepits, after a short course eastward, turns upward to *Bath's Avon*. The fiction of her besmeared face happens the better, in that *Froome*, after our old mother language, signifies fair, as that paradoxical *Becanus*,^m in exposition of the *Egyptian Pyromis* in *Herodotus*,ⁿ would by notation teach us.

*S. And Chedder for meer grief his teen he
could not wreak.*

Near *Axbridge*, *Chedder cleaves*, rocky and vaulted, by continual distilling, is the fountain of a forcible stream (driving twelve mills within a mile's quarter of it's head) which runs into *Ax* derived out of *Wokey*.

*S. When not great Arthur's tomb, nor holy
Joseph's grave.*

Henry II. in his expedition towards *Ireland*, entertained by the way in *Wales*, with bardish songs, wherein he heard it affirmed that in *Glastenbury* (made almost an isle by the river's embracements) *Arthur* was buried betwixt two pillars, gave commandment to *Henry* of *Blois*, then abbot, to make search for the corps; which was found in a wooden coffin (*Girald* saith oaken, *Leland* thinks alder) some sixteen foot deep; but after they had digged nine foot, they^o found a stone on whose lower side was

fixed a leaden cross (crosses fixed upon the tombs of old christians were in all places ordinary) with his name inscribed, and the letter side of it turned to the stone. He was then honoured with a sumptuous monument, and afterward the skulls of him and his wife *Guinever* were taken out (to remain as separate relics and spectacles) by *Edward Longshanks* and *Eleanor*. Of this, *Girald*, *Leland*, *Prise*, divers others, (although *Polydore* make slight of it) have more copious testimony. The bards songs suppose, that after the battel of *Camlan* in *Cornwall*, where traiterous *Mordred* was slain, and *Arthur* wounded, *Morgain le Fay*, a great *Elfin* lady, (supposed his near kinswoman) conveyed the body hither to cure it; which done, *Arthur* is to return (yet expected) to the rule of his country. Read these attributed to the^p best of the bards, expressing as much;

———*Morgain suscepit honore,
Inque suis thalamis posuit super aurea regem
Fulcra, manuque sibi detexit vulnus honesta,
Inspexitque diu: tandemque redire salutem
Posse sibi dixit, si secum tempore longo
Esset, & ipsius vellet medicamine fungi.*

Englished in metre for me thus by the author:

———*Morgain with honour took,
And in a chair of state doth cause him to repose;
Then with a modest hand his wounds she doth un-
close;
And having searched them well, she bad him
not to doubt,
He should in time be cured if he would stay it out,
And would the med'cine take that she to him
would give.*

The same also in effect, an excellent^q poet of his time thus singing it.

*He is a king crowned in Fairie,
With scepter and sword and with his regally
Shall reseat as lord and soveraigne
Out of Fairie and reigne in Britaine;
And repaite againe the round table.
By prophesy Merlin set the date,
Among princes king incomparable
His seat again to Carlion to translate.
The Parchas suffren spone to his fate
His epitaph recordeth so certaine,
Here lieth K. Arthur that shall raigne againe.*^r

Worthily famous was the abbey also from *Joseph* of *Arimathea* (that, *ἐν στήθει βασιλῆως*, noble counsellor, as *St. Mark* calls him) here buried, which gives proof of christianity in the isle before our *Lucius*. Hence in a charter of liberties by *Hen. II.* to the abbey (made in presence of *Heraclius* patriarch of *Jerusalem*, and others) I read, *Olim a quibusdam mater sanctorum dicta est, ab aliis tumulus sanctorum, quam ab ipsis discipulis domini aedificatam & ab ipso domino dedicatam primo fuisse venerabilis habet antiquorum autoritas.* It goes for

^k Beat. Rhenan. lib. 2. rer. Germanic. ^l Ortelius theat. mundi. ^m Hermathen. lib. 5. ⁿ Euterpe. ^o Chronicon. Glasconienf. ^p Taliesin. ap. Prif. defens. hist. Brit. ^q Dan Lidgat. lib. 8. vers. Boccat. cap. 24. Naenias ad has refert Alanus de insulis illud Merlini vaticinium. Exitus ejus dubius erit.

^r Hic jacet Arthurus rex quondam, rexque futurus. current

current truth that a hawthorn thereby on Christmas-day always blossometh; which the author tells you in that, *Trees yet in winter, &c.* You may cast this into the account of your greatest wonders.

§. *Imbrac'd by Selwood's son her flood the lovely Bry.*

Selwood sends forth *Bry*, which after a winding course from *Bruton*, (so called of the river) through part of *Sedgemore*, and *Andremore*, comes to *Glastenbury*, and almost in-issues it; thence to *Gedney* moor, and out of *Brent* marsh into *Severn*.

§. *The nearest neighb'ring floods to Arthur's antient seat.*

By south *Cadbury*, is that *Camelot*; a hill of a mile compass at the top, four trenches circling it, and betwixt every of them an earthen wall; the content of it, within about twenty acres, full of ruins and relics of old buildings. Among Roman coins there found, and other works of antiquity, *Stow* speaks of a silver horseshoe there digged up in the memory of our fathers. *'Dii boni* (saith *Leland*) *quot hic profundissimarum fossarum? Quot hic egestae terrae valla? Quae demum praecipitia? atque ut paucis finiam, videtur mihi quidem esse & artis & naturae miraculum.* The workmanship of the ditches, walls, and strange steepness of them, makes it seem a wonder of art and nature. Antique report makes this one of *Arthur's* places of his round table, as the muse here sings. But of this, more in the next canto.

Illustrations on the fourth song.

OVER *Severn* (but visiting *Lundy*, a little isle betwixt *Hartland* and *Goven* point) you are transported into *Wales*. Your travels with the muse are most of all in *Monmouth*, *Glamorgan*, and the south maritime shires.

§. *And wantonly to hatch the birds of Ganymede.*

Walter Baker, a canon of *Osney*, (interpreter of *Thomas de la Moor's* life of *Edward II.*) affirms, that it commonly breeds conies, pigeons, & *struconas*, quos vocat *Alexander Nechamus* (so you must read, not *Nechristum*, as the *Frankfort* print senselessly mistook with *Conday*, for *Lundy*) *Ganymedis aves*. What he means by his birds of *Ganymede*, out of the name, unless eagles or ostriches (as the common fiction of the *Catamite's* ravishment, and this French Latin word of the translator would) I collect not. But rather read also *Palamedis aves*, i. e. cranes, of which *Necham* indeed hath a whole chapter; what the other should be, or whence reason of the name comes, I confess I am ignorant.

§. *Clear Towridge whom they feared would have estranged her fall.*

For the rising near *Hartland*, wantonly runs to *Hatherlay* in *Devon*, as if she would to the southern ocean; but returning, there at last is discharged into the *Severn* sea.

§. *Tet hardly upon Powfe they dare their hopes to lay.*

Wales had ^u her three parts, north *Wales*, south *Wales*, and *Powis*. The last, as the middle betwixt the other, extended from *Cardigan* to *Shropshire*; and on the *English* side, from *Chester* to *Hereford* (being the portion of *Anarawd*, son to great *Roderick*) bears this accusation, because it comprehends, for the most, both nations and both tongues. But see for this division to the seventh song.

§. *Nor Rofs for that too much she aliens doth respect.*

Under *Henry I.* a colony of *Flemings* driven out of their country by inundation, and kindly received here in respect of that alliance which the king had with their earl (for his mother *Maud* wife to the conqueror, was daughter to *Baldwin* earl of *Flanders*) afterward upon difference betwixt the king and earl *Robert*, were out of divers parts, but especially *Northumberland*, where they most of all (as it seems by *Hoveden*) had residence, constrained into *Rofs* * in *Pembroke*, which retains yet in name and tongue, express notes of being aliens to the *Cambro-Britons*. See the author in his next song.

§. *That Talieffin once which made the rivers dance.*

Talieffin (not *Telesin*, as *Bale* calls him) a learned bard, stiled ^y *Ben Beirdd*, i. e. the chiefest of the bards, master to *Merlin Sylvestre*, lived about *Arthur's* reign, whose acts his muse hath celebrated.

§. *With Lhu and Lhogor given, to strengthen them by Gower.*

Betwixt *Netb* and *Lhogor* in *Glamorgan* is this *Gower*, a little province, extended into the sea as a chersonese; out of it on the west, rise these two rivers meant by the author.

§. *That at the Stethua oft obtained a victor's praise.*

Understand this *Stethua* to be the meeting of the *British* poets and minstrels, for trial ^z of their poems and musick sufficiencies, where the best had his reward, a silver harp. Some example is of it under *Rees ap Griffith*, prince of south *Wales*, in the year CIC.C.LXX.VI. A custom so good, that, had it been judiciously observed, truth of story had not been so uncertain; for

there

* De rerum natura lib. 1. ^u Girald. descript. cap. 2. & Powel ad Caradoc. Lanchavan. ^y So called perhaps, because it is almost insised within the sea, and Lhogor as Rosay in Scotland, expressing almost an isle. Buchanan. hist. 5. in Eugenio 4. ^z Priif. in descript. Walliae.

^z Antiquis hujusmodi certamina fuisse docemur a scholiast. Aristoph. & D. Cypriano ferm. de aleator.

there was, by suppose, a correction of what was faulty in form or matter, or at least a censure of the hearers upon what was recited. As, according to the *Roman* use it is ^a noted, that *Girald of Cambria*, when he had written his topography of *Ireland*, made at three several days, several recitals of his three distinctions in *Oxford*; of which course, some have wished a recontinuance, that either amendment of opinion, or change of purpose in publishing, might prevent blazoned errors: The sorts of these poets and minstrels out of doctor *Powel's* interserted annotations upon *Caradoc Llancarvan*, I note to you; First *beirdhs*, otherwise *prydvids* (called in *Athenaeus*, *Lucan*, and others, *bards*) who, somewhat like the *παῖδες*, among the *Greeks*, *fortia virorum illustrium facta heroicis composita versibus cum dulcibus lyrae modulis* ^b *cantitarunt*, i. e. *did sing the valiant deeds of famous men, to the sweet melody of the harp*; which was the chiefest form of the antientest musick among the *Gentiles*, as ^c *Zarlino* hath fully collected. Their charge also, as heralds, was to describe and preserve pedigrees, wherein their line ascendant went from the *Petrucius* to *B. M.* thence to *Sylvius* and *Ascanius*, from them to *Adam*. Thus *Girald* reporting, hath his *B. M.* in some copies by ^d transcription of ignorant monks (forgetting their tenent of perpetual virginity, and ^e that relation of *Theodosius*) turned into *beatam Mariam*, i. e. *St. Mary*, whereas it stands for *Belinum magnum* (that was *Heli*, in their writers, father to *Lud* and *Cassibelin*) to whom their genealogies had always reference. The second are, which play on the harp and crowd; their musick for the most part came out of *Ireland* with *Gruffith ap Conan*, prince of north *Wales*, about king *Stephen's* time. This *Gruffith* reformed the abuses of those minstrels, by a particular statute, extant to this day. The third are called *atcancaid*; they sing to instruments plaid on by others. For the *Englyns*, *Cydehs* *Aels*; the first are couplets interchanged of sixteen and fourteen feet, called *paladries* and *pensels*, the second of equal tetrameters, the third of variety in both rhyme and quantity. Subdivision of them, and better information may be had in the elaborate institutions of the *Cymraeg* language by *David ap Rees*. Of their musick antiently, out of an old writer read this: *Non uniformiter, ut alibi, sed multipliciter multisque modis & modulis cantilenas emittunt, adeo ut, turba canentium, quot videas capita tot audias carmina, discriminaque vocum varia, in unam denique sub B. mollis dulcedine blanda, consonantiam & organicam convenientia melodiam*. A good musician will better understand it, than I that transcribe it. But by it you see they especially affected the mind composing *Dorick*, which is shewed in that of an old ^f author, affirming that *ἡμῶν-σεως χαλιν*, i. e. *to make them gentle natured*,

the western people of the world constituted use of musick in their assemblies, though the ^g *Irish* (from whence they learned) were wholly for the sprightly *Phrygian*. See the next canto.

S. And humbly to S. George, their country's patron, pray.

Our author (a judgment-day thus appointed betwixt the water-nymphs) seems to allude to the course used of old with us, that those which were to end their cause by combat, were sent to several saints for invocation, as in our ^h law-annals appears. For ⁱ *S. George*, that he is patron to the *English*, as *St. Denis*, *St. James*, *St. Patrick*, *St. Andrew*, *St. Anthony*, *St. Mark*, to the *French*, *Spanish*, *Irish*, *Scotish*, *Italian*, *Venetian*, scarce any is, that knows not who he was, and when the *English* took him, is not so manifest. The old martyrologies give, with us, to the honour of his birth the twenty third of *April*. His passion is supposed in *Dioclesian's* persecution. His country *Cappadocia*. His acts are divers and strange, reported by his servant *Pasiscrates*, *Simeon Metaphrastes*, and lately collected by *Surius*. As for his knightly form, and the dragon under him, as he is pictured in *Beryth*, a city of *Cyprus*, with a young maid kneeling to him, an unwarrantable report goes, that it was for his martial delivery of the king's daughter from the dragon, as *Hesione* and *Andromeda* were from the whales by *Hercules* and *Perseus*. Your more neat judgments, finding no such matter in true antiquity, rather make it symbolical than truly proper. So that some account him an allegory of our Saviour *Christ*; and our admired ^k *Spencer* hath made him an emblem of religion. So *Chaucer* to the knights of that order.

—— but for Gods pleasure
And his mother, and in significance
That ye ben of S. Georges livery
Doeth him service and knightly obeisance
For Christs cause is his, well known pee.

Others interpret that picture of him, as some country or city (signified by the virgin) imploring his aid against the devil, charactered in the dragon. Of him you may particularly see, especially in *Usuard's* martyrology, and *Baronius* his annotations upon the *Roman kalendar*, with *Erhard Celly* his description of *Frederick* duke of *Witemberg's* installation in the garter, by favour of our present sovereign. But what is delivered of him in the legend, even the church of *Rome* ^l hath disallowed in these words; *That not so much as any scandal may rise in the holy Roman church, the passions of S. George, and such like, supposed to be written by hereticks, are not read in it*. But you may better believe the legend, than that he was a *Coventry* man born, with his *Caleb* lady of

^a Camd. in epist. Fulconi Grevil. ad edit. Anglic. Norm. &c.

^b Dan. Pouel. ad Girald. descript. cap. 3.

^c Girald. topog. dist. 3. cap. 11.

^d 30 Ed. III. fol. 20.

^e *nium, forte ὁπαλορὸς* ἢ ἡνε προπαλορὸς, quid. n. Tropephorus?

^f dist. 15. Gelasius pp.

^g Ammian. Marcellin. hist. 15.

^h Parte seconda cap. 4.

ⁱ Suid. in 1187.

^j Marcian. Heracliot. in περὶ μυστικ.

^k Tropelophorus dictus in menologio Graeco apud Baronium.

^l Fairy Queen. lib. 1.

^m C. sancta Rom. ecclesia.

the woods, or that he descended from the *Saxon* race, and such like; which some *English* fictions deliver. His name (as generally ^m also *St. Maurice* and *St. Sebastian*) was antiently called on by christians as an advocate of victory, (when in the church that kind of doctrine was) so that our particular right to him (although they say ⁿ king *Arthur* bare him in one of his banners) appears not until *Ed. III.* consecrated to *St. George* the knightly order of the garter, ^o soon after the victory at *Calais* against the *French*, in which his invocation was *ha S. Edward, ha St. George*. Some authority ^p refers this to *Richard coeur de Lion*, who supposed himself comforted by *St. George* in his wars against the *Turks* and *Hagarens*. But howsoever, since that, he hath been a patron among others, as in that of *Frederick III.*'s institution ^q of the quadripartite society of *St. George's* shield, and more of that nature, you find. And under *Hen. VII.* it was enacted, ^r that the *Irish* should leave their *cromabo* and *butlerabo*, words of unlawful patronage, and name themselves as under *St. George*, and the king of *England*. More proper is *S. Derwy* (we call him *St. David*) to the *Welsh*. Reports of him affirm that he was of that country, uncle to king *Arthur* (*Bale* and others say, gotten upon *Melaria* a nun, by *Xantus* prince of *Cardigan*) and successor to *Dubrice* archbishop of *Caerleon* upon *Uske* (whereto ^s a long time the *British* bishopricks, as to their metropolitick see, were subject) and thence translated with his nephew's consent the primacy to *Menevia*, which is now *St. David's* in *Pembroke*. He was a strong oppugner of the *Pelagian* heresy. To him our country calenders give the *rst* of *March*, but in the old martyrologies I find him not remembered: yet I read that ^t *Calixtus II.* first canonized him. See him in the next canto.

S. The sacred virgin's shape he bare for his device.

Arthur's ^u shield, *pridwen*, or his banner, had in it the picture of our lady, and his helm an engraven dragon. From the like form was his father called *Uter-pen-dragon*. To have terrible crests or engraven beasts of rapine (*Herodotus* and *Strabo* fetch the beginning of them, and the bearing of arms from the *Carians*) hath been from inmost antiquity continued; as appears in that epithet of *γερωνόφας*, proper to *Minerva*, but applied to others in *Aristophanes*, and also ^x in the *Theban* war. Either hence may you derive the *English* dragon now as a supporter, and usually pitched in fields by the *Saxon*, *English*, and *Norman* kings for their standard, (which is frequent in *Hoveden*, *Matthew Paris*, and *Florilegus*) or from the *Romans*, who after the *minotaur*, *horse*, *eagle*,

and other their antique ensigns took this beast; or else imagine that our kings joined in that general consent, whereby so many nations bare it. For by plain and good authority, collected by a great ^y critick, you may find it affirmed of the *Affyrians*, *Indians*, *Scythians*, *Persians*, *Dacians*, *Romans*, and of the *Greeks* too for their shields, and otherwise; wherein *Lipsius* unjustly finds fault with *Isidore*, but forgets that in a number of *Greek* ^z authors is copious witness of as much.

S. They sing how he himself at Badon bare the day.

That is *Baunsedown* in *Somerset*, (not *Blackmore* in *Torkshire*, as *Polydore* mistakes) as is expressly proved out of a *ms. Gildas* ^a, different from that published by *Joscelin*.

S. That scarcely there was found a country to the pole.

Some, too hyperbolick, stories make him a large conqueror on every adjacent country, as the muse recites; and his seal, which *Leland* says he saw in *Westminster-Abbey*, of red wax, pictured with a mound, bearing a cross in his left hand, (which was first ^b *Justinian's* device; and surely, in later time, with the seal counterfeited and applied to *Arthur*: no kings of this land, except the Confessor, before the conquest ^c ever using in their charters more than subscription of name and crosses) and a scepter fleury in his right, calls him *Britanniae*, *Galliae*, *Germaniae*, *Daciae*, *imperator*, *Emperor of Britain*, *Gaul*, *Germany*, and *Denmark*; for so they falsely turned *Dacia*. The bards songs have, with this kind of unlimited attribute so loaden him, that you can hardly guess what is true of him. Such indulgence to false report hath wronged many worthies, and among them even that great *Alexander* in prodigious suppositions (like *Stichus* ^d his geography, laying *Pontus* in *Arabia*) as *Strabo* often complains; and some idle monk of middle time is so impudent to affirm, that at *Babylon* he erected a column, inscribed with *Latin* and *Greek* verses, as notes of his victory; of them you shall taste in these two:

*Anglicus & Scotus Britonum superque caterva
Irlandus, Flander, Cornwallis, & quoque Nor-*
(guey.)

Only but that *Alexander*, and his followers were no good *Latinists*, (wherein, when you have done laughing, you may wonder at the decorum) I should censure my lubberly versifier to no less punishment than *Marsyas* his excoriation. But for *Arthur*, you shall best know him in this elegy. *This is that Arthur of whom the Britons even to this day speak so idly; a man right worthy to have been celebrated by true*

^m Ord. Rom. de divin. officiis apud Baronium in martyrolog.

ⁿ Ed. III. Fabian puts it before this year, but erroneously.

^o Die ge scelch aft S. Googen schiltz. Martin. Cruf. annal Suevic. part 3. lib. 9.

^p Polychronic. lib. 1. cap. 52.

^q Bal. cent. 1.

^r Aelchil. 47. 48. Euripid. in Phoeniss.

^s Lipsi. com. ad Polyb. 4. differt. 5.

^t Iliad. A. Suid. Epaminond. Heliad. A. 4. Hecul. Plutarch. Lyfand. Euripid. in Ipy. 4. 5. 6. 7. 8. 9. 10.

^u Ingulphus.

^v Plaut. in Stichos.

^y Harding cap. 72.

^z Th. de Waling. a. m. ccccl. &

^a Ex antiq. ms. ap. Camd. in Berkscir.

^b Cid. cd. xxviii.

^c Hen. VII. in Statutis Hibernicis.

^d Nennius histor. Galfred lib. 6. cap. 2. & lib. 7. cap. 2.

^e Pindar. Pythionic. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100.

^f Camden.

^g Suid. in

story, not false tales, seeing it was he that long time upheld his declining country, and even inspired martial courage into his countrymen; as the monk of Malmesbury, of him;

§. *The Pentecost prepared at Caer-leon in his court.*

At *Caer-leon* in *Monmouth*, after his victories, a pompous celebration was at *Whitsontide*, whither were invited divers kings and princes of the neighbouring coasts; he with them, and his queen *Guinever* with the ladies, keeping those solemnities in their several conclaves. For so the *British* story makes it according to the *Trojan* custom, that in festival solemnities, both sexes should not sit together. Of the *Trojans* I remember no warrant for it; but among the *Greeks* one *Sphyromachus*^e first instituted it. Tournaments and josts were their exercises, nor vouchsafed any lady to bestow her favour on him, which had not been thrice crowned with fame of martial performance. For this order, which herein is delineated, know, that the old *Gauls*, whose customs and the *British* were near the same, had their orbicular tables to avoid controversy of precedency (a form much commended by a late^f writer for the like distance of all from the salt, being center, first, and last, of the furniture) and at them every knight attended by his esquire (*ἐπιλοπερῶντες* * *Athenaeus*^g calls them) holding his shield. Of the like in *Henry III. Matthew Paris*, of *Mortimer's* at *Kelngworth*, under *Ed. I.* and that of *Windsor*, celebrated by *Ed. III. Walsingham* speaks. Of the *Arthurian* our histories have scarce mention. But *Havillan's Architreneus*, *Robert of Gloucester*, *John Lidgate* monk of *Bury*, and *English* rhimes in divers hands sing it. It is remembered by *Leland*, *Camden*, *Volateran*, *Philip of Bergamo*, *Lilly*, *Aubert Mirce*, others, but very diversly. *White of Basingstoke* defends it, and imagines the original from an election by *Arthur* and *Howel* king of *Armorick Britain*, of six of each of their worthiest peers to be always assistant in council. The antiquity of the earldom of^h *Mansfield* in old *Saxony* is hence affirmed, because *Heger* earl thereof was honoured in *Arthur's* court with this order. Places of name for residence of him and his knights were this *Caer-leon*, *Winchester*, (where his table is yet supposed to be, but that seems of later date) and *Camelot* in *Somerset*. Someⁱ put his number *xii*. I have seen them antiently pictured *xxiv* in a poetical story of him; and in *Denbighshire*, *Stow* tells us, in the parish of *Lansannan*, on the side of a stony hill is a circular plain, cut out of a main rock, with some *xxiv* seats unequal, which they call *Ar-*

thur's round table. Some catalogues of arms have the coats of the knights blazoned; but I think with as good warrant as^j *Rablais* can justify, that *Sir Lancelot du Lac* slays horses in hell, and that, *Tous les chevaliers de la table ronde estoient pources gaigne-deniers tirans la rame pur passer les rivières de Coccyte, Phlegeton, Styx, Acheron, & Lethe, quand messieurs les diables se veulent esbatre sur l'eau, come font les baselières de Lyon & gondoliers de Venise. Mais pour chacune passée ils n'ont qu'un nazarde, & sur le soir quelque morceau de pain chaumeny. The knights of the round table use to ferry spirits over Styx, Acheron, and other rivers, and for their fare have a fillip on the nose, and a piece of mouldy bread.* Of them, their number, exploits, and prodigious performances, you may read *Caxton's* published volume, digested by him into *xxi* books, out of divers *French* and *Italian* fables. From such I abstain, as I may.

§. *And for Caermardhin's sake —*

Two^k *Merlins* have our stories; one of *Scotland* commonly titled *Sylvester*, or *Caledonius*, living under *Arthur*; the other *Ambrosius*, (of whom before) born of a nun, (daughter to the king of *South-wales*) in *Caermardhin*, not naming the place (for rather in *British* his name is *Merdhin*) but the place (which in *Ptolemy* is *Mariadunum*) naming him; begotten, as the vulgar, by an *Incubus*. For his burial (in supposition as uncertain as his birth, actions, and all of those too fabulously mixed stories) and his lady of the lake, it is by liberty of profession laid in *France* by that *Italian*^l *Ariosto*; which perhaps is as credible as some more of his attributes, seeing no perswading authority, in any of them, rectifies the uncertainty. But for his birth see the next song, and, to it, more.

§. *Tuisco Gomer's son from unbuilt Babel brought.*

According to the^m text, the *Jews* affirm that, all the sons of *Noah* were dispersed through the earth, and every one's name left to the land which he possessed. Upon this tradition, and false *Berosus's* testimony, it is affirmed, that *Tuisco* (son of *Noah*, gotten with others after theⁿ flood upon his wife *Arezia*) took to his part the coast about *Rhine*, and that thence came the name of *Teutschland* and *Teutsch*, which we call *Dutch*, through *Germany*.^o Some make him the same with *Gomer*, eldest son to *Japhet* (by whom these parts of *Europe* were peopled) out of notation of his name, deriving *Tuisco* or *Tuiston* (for so *Tacitus* calls him) from the hooded son, i. e. the eldest son. Others (as the author here) suppose him son to *Gomer*, and take^p him for *Aschenaz* (remembered by

^e Scholiast ad Aristophan. ἐπιλοπερῶντες. & Suidas.

which is expressed in the word *schibori* in *Paul. Warasfred*. lib. 2. de gest. Longobard. cap. 28.

^h Hoppenrod & Spangberg, apud Ortelium in *Mansfeld*. * *Prif*, defens. hist. Brit. & cadair *Arthur*, i. e. *Arthur's* chair in *Brecknock*.

ⁱ *Girald. itin. Camb.* cap. 2. & *Arthur's* oven in *Sterling* of *Scotland*.

^j *Livre 2. chapit. 30.*

^k *Girald. itiner. Camb.* 2. cap. 8.

^l *Orland. Furios. cant. 3.* vid. *Spencer's Fairy Queen* lib. 3. cant. 3.

^m *Gen. x.*

ⁿ *Munster. Cosm. lib. 5.*

^o *Goropius in Indofcythie.*

^p *Jodoc. Willich. com. ad Tacit. Germaniam & Pantaleon*, lib. 1. prosopograph.

^f Gemof. holograph, lib. 3. cap. 9.

^g *Armigeri*.

^h *Dipnosoph. lib. 2.*

ⁱ *Arthur's* chair in *Brecknock*.

^j *Livre 2. chapit. 30.*

^k *Girald. itiner. Camb.* 2. cap. 8.

^l *Orland. Furios. cant. 3.* vid. *Spencer's Fairy Queen* lib. 3. cant. 3.

^m *Gen. x.*

ⁿ *Munster. Cosm. lib. 5.*

^o *Goropius in Indofcythie.*

^p *Jodoc. Willich. com. ad Tacit. Germaniam & Pantaleon*, lib. 1. prosopograph.

Moses as first son to Gomer, and from whom the Hebrews call the Germans ^a *Aschenazim*) whose relics probably indeed seem to be in *Tuisco*, which hath been made of *Aschen*, either by the Dutch prepositive article *tie*, or *lie* ; as our *the* (according to *Derceto* for ^c *Atergatis*, which should be *Adardaga*, in *Ctesias*; and *Danubius* for *Adubenus* in *Festus*, perhaps therein corrupted, as *Joseph Scaliger* observes; as *Theudibald* for *Ildibald* in *Procopius*, and *Diceneus* for *Ceneus* among the *Getes*) or through mistaking of *N* for *B*, or *M* in the Hebrew, as in *Rhodanim* *ר* for ^d *ר* being *Dodanim*, and in *Chalibes* and *Alybes* for *Thalybes*, from *Tubal*, by taking *ח* or *כ* for *ת*; for in ruder manuscripts by an imperfect reader, the first mistaking might be as soon as the rest. I conjecture it the rather, for that in most histories diversity with affinity betwixt the same-meant proper names (especially *easter*n as this was) is ordinary; as *Megabyzus* in *Ctesias*, is *Bacabafus* in *Justin*, who calls *Aaron*, *Aruas*, and *Herodotus* his *Smerdis*, *Mergidis*; *Asarhadon*, *Coras*, and *Esther* in the scriptures, are thus, *Sardanapalus*, *Cyrus*, and *Amestris*, in the Greek stories; *Eporodorix*, *Amiborix*, *Ariminius*, in *Caesar* and *Sueton*, supposed to have been *Frederick*, *Henry*, *Herman*: divers like examples occur; and in comparifon of *Arrian* with *Q. Curtius* very many; like as also in the life of *St. John* the evangelift, antiently ^e written in *Arabick*, you have *Asubafianufu*, *Thithimfe*, *Damthianufu*, for *Vefpafian*, *Titus*, *Domitian*, and in our stories, *Androgeus* for *Caesar*'s *Mandubratius*. from *Tuisco* is our name of *Tuesday*; and in that too, taking the place of *Mars* (the most fiery ftar, and obferve withal that againft the vulgar opinion the planetary account of days is very ^a antient) difcovers affinity with *Aschenaz*, in whole notation (as ^x fome body obferves) *שנ* fignifies *fire*.

§. They Saxons first were called——

So a Latin rhyme in ^y *Engelbuse* also;

*Quippe brevis gladius apud illos Saxa vocatur,
Unde sibi Saxo nomen traxisse putatur.*

Although from the *Sacans*, or *Sagans*, a populous nation in *Asia* (which were also *Scythians*, and of whom an old ^z poet, as most others in their epithets and passages of the *Scythians*,

Τόξα Σάκαι φορέοντες ἃ μὴκέτι ἄλλῃ ἐλάγχοι
Τοξωτῆς, ὃ γὰρ σφι θέμις ἀνερμάλεια βάλλειν.

*The shooting Sacae none can teach them art;
For what they loosed at never scapes their dart.*

a faculty for which the *English* have had no small honour in their later wars with the *French*) both *Goropius*, with long argument in his *Becc-*

selana, our judicious *Camden*, and others, will have them, as it were, *Sacai's sons*. According hereto is that name of ^a *Sacafena*, which a colony of them gave to part of *Armenia*, and the ^b *Safones* in *Scythia* on this side of *Imaus*. However, the author's conceit thus chosen is very apt, nor disagreeing to this other, in that some community was betwixt the name of *Sacae* or *Sagae*, and a certain sharp weapon called *sagaris*, used by the *Amazons*, *Sacans*, and *Persians*, as the Greek ^c stories inform us.

§. The Britons here allur'd to call them to their aid.

Most suppose them sent to by the *Britons*, much subject to the irruptions of *Picts* and *Scots*, and so invited hither for aid; but the stories of *Gildas* and *Nennius* have no such thing, but only that there landed of them (as banished their country, which *Geoffrey of Monmouth* expresses also) three long boats in *Kent* with *Horfe* and *Hengist* captains. They afterward were most willingly requested to multiply their number by sending for more of their countrymen to help king *Vortigern*; and under that colour, and by *Ronix* (daughter to *Hengist*, and wife to *Vortigern*) her womanish subtilty, in greater number were here planted. Of this, more large in every common story. But to believe their first arrival rather for new place of habitation, than upon embassy of the *Britons*, I am persuaded by this, that ^d among the *Cimbrians*, *Gauls*, *Goths*, *Dacians*, *Scythians*, and especially the *Sacans* (if *Strabo* deceive not; from whom our *Saxons*) with other northern people, it was a custom upon numerous abundance to transplant colonies; from which use the *Parthians* (sent out of *Scythia*, as the *Romans* did their ^e *ver sacrum*) retain that name, signifying banished (says *Trogus*) not unlikely from the Hebrew *pharatz* ^f, which is to separate, and also to multiply in this kind of propagation, as it is used in the promise to *Abraham*, and in *Isaiab's* consolation to the church. Here being the main change of the *British* name and state, a word or two of the time and year is not untimely. Most put it under *cd. xl. ix.* (according to *Bede's* copies and their followers) or *cd. l.* of Christ; whereas indeed by apparent proof it was in *cd. xxviii.* and the *iv.* of *Valentinian* the emperor. So *Prise* and *Camden* (out of an old fragment annexed to *Nennius*) and before them, the author of *fasticulus temporum* have placed it. The error I imagine to be from restoring of worn out times in *Bede* and others, by those which fell into the same error with *Florence of Worcester* and *Marian* the *Scot*, who begin the received christian account but *xii* years before the passion, thereby omitting *xxi.* For although *Marian's* published chronicle (which is but ^g a defloration

^a Elias Levit, in Thibis. Arias Mont. in Peleg. ^b Strab. lib. ζ. 16. & 17. de aliis quae hic congerimus. ^c Broughton in concent. praef. ^d Pet. Kirftenius grammaticae Arabicae subjunxit. ^e Scalig. in prolegom. ad emendat. temp. ^f Melancthon ap. Becan. in Indoclyth. ^g Ap. Camdenam. ^h Dionys. Afer. in περὶ οἰκ. ⁱ Strabo lib. 12. ^j Ptolem. geograph. lib. 6. cap. 18. ^k Herodot. Polihymn. Xenoph. ἀναξ. 8. Strabo lib. 16. ^l Justin. lib. 24. & 47. Herodot. Clio. Walfling. Hypocid. Neust. Gemeticen. lib. 1. cap. 4. Sabinis & Graecis morem hunc fuisse meroini legisse me apud Varronem & Columellam. ^m Festus in cod. & Mamertinis. ⁿ 772. Gen. xxviii. 14. Ifai. liv. 3. ^o Malmesb. lib. 4. de Pontificib.

by *Robert of Lorrain* bishop of *Hereford* under *Hen. I.* and an epitome of *Marian*) goes near from the ordinary time of incarnation under *Augustus*, yet he lays it also, according to the *Roman* abbot *Dionysius*, in the *xxiii^d* year following, which was rather by taking advantage of *Dionysius* his error, than following his opinion. For when he (about *Justinian's* time) made his period of *D. xxxii* years of the golden number and cycle of the sun multiplied, it fell out so in his computation that, the *xv* moon following the *Jews* passover, the dominical letter, *Friday*, and other concurrents, according to ecclesiastical tradition, supposed for the passion, could not but be in the *hⁱ xii* year after his birth (a lapse by himself much repented) and then supposing Christ lived *xxxiv* years, *xxii* must needs be omitted; a collection directly against his meaning, having only forgotten to fit those concurrents. This account (in itself, and by the abbot's purpose, as our vulgar is now, but with some little difference) erroneously followed, I conjecture, made them, which too much desired correction, add the supposed evangelical *xxii* years to such times as were before true; and so came *cccc. xxviii.* to be *cccc. xl. ix.* and *cccc. l.* which *White of Basingstoke* (although aiming to be accurate) unjustly follows. Subtraction of this number, and, in some, addition (of addition you shall have perhaps example in amendment of the *c. l. vi.* year for king *Lucius* his letters to *pp. Eleutherius*) will rectify many gross absurdities in our chronologies, which are by transcribing, interpolation, misprinting, and creeping in of antichronisms, now and then strangely disordered.

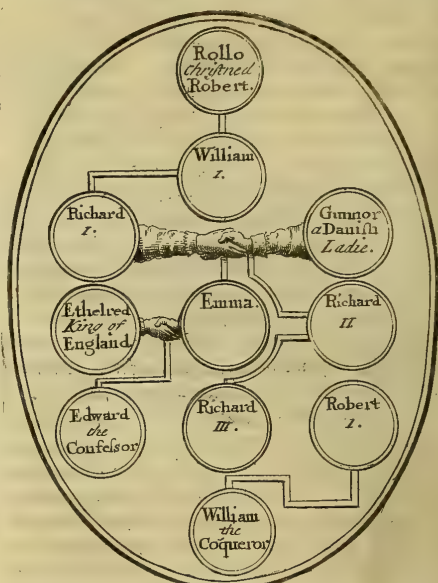
S. To get their seat in Gaul which on Nuestria
And a little after, (light.
S. Called Northmen from the north of Germany
that came.

What is now *Normandy* is, in some, stiled *Neustria* and *Nuestria* corruptly, as most think, for *Westria*, that is, *West-rich*, i. e. the west kingdom (confined antiently betwixt the *Meuse* and the *Loire*) in respect of *Austrich* or *Ostrich*, i. e. the east kingdom, now *Lorrain*, upon such reason as the arch-dukedom hath his name at this day. *Rollo*, son of a *Danish* potentate, accompanied with divers *Danes*, *Norwegians*, *Scythians*, *Goths*, and a supplement of *English*, which he had of king *Athelstan*, about the year *D. cccc.* made transmigration into *France*, and there, after some martial discords, honoured in holy tincture of christianity with the name of *Robert*, received ¹ of *Charles the Simple* with his daughter (or sister) *Gilla*, this tract as her dower, containing (as before) more than *Normandy*. It is ^k reported, that when the bishops at this donation required him to kiss the king's foot for homage, after scornful refusal, he commanded one of his knights to do it; the knight took up the king's

leg, and in straining it to his mouth, overturned him; yet nothing but honourable respect followed on either part.

S. That as the conqueror's blood did to the conquered run.

Our author makes the *Norman* invasion a re-uniting of severed kindred, rather than a conquest by a meer stranger, taking argument as well from identity of countryship (being all *Germans* by original, and the people of ¹ the *Cimbrica Chersonesus*, now *Denmark*, antiently called *Saxons*) as from contingency of blood betwixt the *Engle-Saxon* kings, and the *Norman* dukes thus expressed *



Object not that duke *Robert* got the Conqueror upon *Arletta* (from whom perhaps came our name of *barlot*) his concubine, nor that ^m *con sanguinitatis & adgnationis jura a patre tantum & legitimis nuptiis oriuntur*, right of blood and kindred comes only by lawful marriage, as the civil law, and upon the matter the *English* also defines; but rather allow it by law of nature and nobility, which justifies the bastards bearing of his father's coat, distinguished with a bend sinister: *Nicholas Upton* calls it *fissura*, *eo quod finditur a patria haereditate*, a division, because he is separated from his father's inheritance; which is but his conceit; and read *Heuter's* tract, *de libera hominis natiuitate*, where you shall find a kind of legitimation of that now disgraceful name *bastard*; which in more antique times was as a proud title, inserted in the file of great and most honourable princes. Pretending this consanguinity, *S. Edward's* adoption, and king *Harold's* oath, aided by successful arms, the *Norman* acquired the *English* crown; although *William* of ⁿ *Poitiers* affirms, that on his death-bed he made protestation, that his

^b Paul. de Middleburgo part. 2. lib. 5.

Gemiticenf. lib. 2. cap. 17.

¹ Marcian. Heracleot. in *μεσσην. c.*

^m ff. Unde cognati. l. 4. spurius. & tit. de grad. affin. l. 4. non facile.

ⁱ Paul. AEmilius, hist. Franc. 3.

² G.

^k Guil.

Gemiticenf. lib. 7. cap. 56. & lib. 3. cap. 18.

ⁿ Hist. Cadomenf.

right was not hereditary, but by effusion of blood, and loss of many lives.

S. Who him a daughter brought, which heaven did strangely spare.

After composition of French troubles *Hen. I.* returning into England, the ship wherein his sons *William* and *Richard* were, betwixt *Barbeseu* and *Southampton* was cast away, so that heaven only spared him this issue *Maud* the empress, married, at last, to *Geoffrey Plantagenet* earl of *Anjou*, from whom in a continued race through *Hen. II.* (son to this *Maud*) until *Rich. III.* that most noble surname possessed the royal throne of England.

Illustrations on the fifth song.

IF you ever read of, or vulgarly understand, the form of the ocean, and affinity betwixt it and rivers, you cannot but conceive this poetical description of *Severn*; wherein *Amphitrite* is supposed to have given her a precious robe; very proper in the matter self, and imitating that ° father of the muses, which derives *Agamemnon's* scepter to him by descent, joined with gift from *Jupiter*, *Achilles's* armour from *Vulcan's* bounty, *Helen's* *Nepenthe* from the *Egyptian Polydamna*, and such like, honouring the possessor with the giver's judgment, as much as with the gift possessed.

S. To whom the goodly bay of Milford should be given.

At *Milford* haven, arrived *Henry* earl of *Richmond*, aided with some forces and sums of money by the French *Charles VIII.* but so entertained and strengthened by divers of his friends, groaning under the tyrannical yoke of *Rich. III.* that, beyond expectation, at *Bosworth* in *Leicester*, the day and crown was soon his. Every chronicle tells you more largely.

S. And how Llewelin's line in him should doubly thrive.

Turn to the eagle's prophecies in the second song, where the first part of this relation is more manifested. For the rest, thus: About our Confessor's time, *Macbeth* ^P king of *Scotland* (moved by predictions, affirming that, his line extinct, the posterity of *Banghuo*, a noblethane of *Lochubrie* should attain and continue the *Scotish* reign) and jealous of others hoped for greatness, murdered *Banghuo*, but missed his design; for, one of the same posterity, *Fleance* son to *Banghuo*, privily fled to *Griffith ap Llewelin* then prince of *Wales*, and was there kindly received. To him and *Nesta*, the prince's daughter, was issue one *Walter*. He (afterward for his worth favourably accepted, and through stout performance honourably requited by

Malcolm III.) was made lord high steward of *Scotland*; out of whose loins *Robert II.* was derived: since whom that royal name hath long continued, descending to our mighty sovereign, and in him is, joined with the commixed kingly blood of *Tudor* and *Plantagenet*. These two were united with the white and red roses, in those auspicious nuptials of *Henry VII.* and *Elizabeth* daughter to *Edward IV.* and from them, through the lady *Margaret*, their eldest daughter, married to *James IV.* his majesty's descent and spacious empire observed, easily shews you what the muse here plays withal. The rest alludes to that; *Cambria shall be glad, Cornwall shall flourish, and the isle shall be glided with Brute's name, and the name of strangers shall perish*; as it is in *Merlin's* prophecies.

S. That spirit to her unknown this virgin only loved.

So is the vulgar tradition of *Merlin's* conception. Untimely it were, if I should slip into discourse of spirits faculties in this kind. For my own part, unless there be some creatures of such middle nature; as the rabbinick ° conceit upon the creation supposes, and the same with *Hesiod's* nymphs, or *Paracelsus* his non-*Adams*, I shall not believe that other than true bodies on bodies can generate, except by swiftness of motion in conveying of stolen seed, some unclean spirit might arrogate the improper name of generation. Those which *St. Augustine* [†] calls *Dusii*, * in *Gaul*, altogether addicted to such filthiness, fauns, satyrs, and sylvans, have had as much attributed to them. But learn of this from divines upon the *Beni-baeol-him* [†] in holy writ, passages of the fathers upon this point, and the later authors of disquisitions in magick and forcery, as *Bodin*, *Wier*, *Martin del Rio*, others. For this *Merlin* (rather *Merdin*, as you see to the fourth song, his true name being *Ambrose*) his own answer to *Vorigern* was, that his father was a *Roman* [†] consul, (so *Nennius* informs me) as perhaps it might be, and the fact palliated under name of a spirit; as in that of *Ilia*, supposing, to save her credit, the name of *Mars* for *Romulus* his father. But to enterlace the polite muse with what is more harsh, yet even therein perhaps not displeasing, I offer you this antique passage of him.

— the messagers to Kermerdin come
And thou childzen bidoze the yate pleyde hii toke gome
Tho sede † on to another, Merlin wat is the
Thou faderlese † arewe, wy misnostou me
Wo icham of kinges icome and thou nart nought woztj a
fille
Wo thou naddest nevere nanne fader. thereboze hold the stille.
Tho the messagers hurde this hii astunte there,
And este at men about wat the child were.

° *Iliad*. β. & σ. *Odyss.* α.
† *Hector Boet.* lib. 12. & *Buchanan.* in reg. 87. & 86 lib. 7. qui eisdem aevo ceteriori *Stuartos* ait dictos, quos olim thianos nuncupabant. Thani vero quaeftores erant regii per interpretationem, uti *Boetius*. Certe in charta illa qua jure clientelari fe Henrico II. obitrixit *Willielmus Scotorum* rex, leguntur inter testes *Willielmus de Curcy fenefchallus*, *Willielmus filius Aldelmi fenefchallus*, *Aluredus* de sancto Martino fenefchallus, *Gilbertus Malet fenefchallus*, unde honorarium fuisse hoc nomen patet. Horum bini defuncti apud *Hovedenum*, verum ex vetustiss. anonymo m. excerpti.
† *Rabbi Abraham* in *Zeror Hammor.* ap. *Munst* ad ii *Genef.*
† *Lib. 15.* de civ. Dei cap. 23.
† *Gen.* vi. 2.
* Forte *Dusii* (quod vult *Bodinus*)
† Illustres saepius viros indignant historici nostri consules, unde & Aetium adloquuntur Saxones eos, quem tamen consulem fuisse haud asserent fasti, illustriss. tn. & in republica nobilissimum *Procopii* aliorumque historiae Gothicae produnt. See to the tenth song.
† *Durbitius* dictus *Galfredo*,
† *Shrew*,
now a word applied to the shrewish sex, but in *Chaucer*, *Lidgat*, and *Gower*, to the quieter also.

He seide that he ne had nebete fader that me might under-
stande,
And is moder au kings doughter was of thulke lond
And woned at St. Petres in a nonnerie there.

His mother (a nun, daughter to *Pubidius*
king of *Mathraval*, and called *Matilda*, as by
" poetical authority only, I find justifiable) and
he being brought to the king, she colours it in
these words.

—whanne ich ofte was

In chambze mid mine fellows, there come to me bi cas
A suite baie man mid alle, and bi clupt me wel softe,
And semblance made baie ynou, and cust me well ofte.

and tells on the story which should follow so
kind a preface. But enough of this.

*S. By th' shoulder of a ram from off the right
side pared.*

Take this as a taste of their art in old time.
Under *Hen. II.* one *William Mangumel* *
a gentleman of those parts, finding by his skill of
prediction, that his wife had played false with
him, and conceived by his own nephew, for-
mally dresses the shoulder bone of one of his own
rams; and sitting at dinner (pretending it to be
taken out of his neighbour's flock) requests his
wife (equalling him in these divinations) to give
her judgment; she curiously observes, and at
last with great laughter casts it from her; the
gentleman, importuning her reason of so vehe-
ment an affection, receives answer of her, that
his wife, out of whose flock the ram was taken,
had by incestuous copulation with her husband's
nephew, fraughted her self with a young one.
Lay all together, and judge, gentlewomen, the
sequel of this cross accident. But why she
could not as well divine of whose flock it was,
as the other secret, when I have more skill in
osteomanty, I will tell you. Nor was their re-
port less in knowing things to come, than past;
so that jealous *Panurge* in his doubt *de la
coquage*, of *cuckoldry*, might here have had
other manner of resolution than *Rondibilis*,
Hippothade, *Bridoye*, *Trovillogan*, or the oracle
itself, were able to give him. Blame me not
in that, to explain my author, I insert this
example.

*S. To crown the goodly road, where built that
falcon stout.*

In the rocks of this maritime coast of *Pem-
broke*, are aeries of excellent falcons. *Hen. II.*
here passing into *Ireland*, cast off a *Norway*
gothawk at one of these; but the gothawk taken
at the source by the falcon, soon fell down at
the king's foot; which performance in this ra-
mage, made him yearly afterward send hither
for eyesses, as *Girald* is author: Whether these
here are the haggarts, (which they call peregrins)
or falcon-gentles, I am no such falconer to ar-
gue; but this I know, that the reason of the
name of peregrins is given, for that they come

from remote ^y and unknown places, and there-
fore hardly fits these; But I also read in no less
than imperial ^z authority, that peregrins never
bred in less latitude than beyond the seventh
climate, *dia Riphæos*, which permits them this
place; and that, of true falcons-gentle an airy
is never found but in a more southern and hot-
ter parallel; which (if it be true) excludes the
name of gentle from ours, breeding near the
ninth *per Rostochium*. And the same authority
makes them (against common opinion) both of
one kind, differing rather, in local and outward
accidents, than in self-nature.

*S. Whose birth the antient bards to Cambria
long foretold.*

Of *St. Dewy* and his bishoprick you have
more to the fourth song. He was prognosti-
cated ^a above thirty years before his birth;
which, with other attributed miracles, (after the
fashion of that credulous age) caused him to be
almost paralleled in monkish zeal with that holy
John, which, unborn, sprang at presence of the
incarnate author of our redemption. The tran-
slation of the archbishoprick, was also ^b foretold
in that of *Merlin*; *Menevia shall put on the pall
of Caerleon*; and the preacher of *Ireland shall
wax dumb by an infant growing in the womb*.
That was performed when *St. Patrick*, at pre-
sence of *Malaria* then with child, suddenly lost
use of his speech; but recovering it after some
time, made prediction of *Dewy's* holiness,
joined with greatness, which is so celebrated.
Upon my author's credits only believe me.

Illustrations on the sixth song.

After *Pembroke*, in the former song, succeeds
here *Cardigan*; both washed by the *Irish*
seas. But, for intermixture of rivers, and con-
tiguity of situation, the inlands of *Montgomery*,
Radnor, and *Brecknock* are partly infolded.

*S. Whose kind, in her decay'd, is to this isle un-
known.*

That these bevers were in *Tivy* frequent
antiently, is testified by *Sylveſter Girald* ^c de-
scribing the particulars, which the author tells
you, both of this, and the falmons: but that
here are no bevers now, as good authority of
the present ^d time informs you.

*S. Unto thy charming harp thy future honour
sing.*

Of the bards, their singing, heraldship, and
more of that nature, see to the fourth song.
Ireland ^e (saith one) uses the harp and pipe,
which he calls *tympanum*: Scotland the harp,
tympan, and chorus: Wales the harp, pipe, and
chorus. Although *tympanum* and chorus have
other significations, yet, this *Girald* (from
whom I vouch it) using these words as received,

* Spencer's *Fairy Queen*, lib. 3. cant. 3.

Th. Mor. epig.

lib. 8. cap. 8. *Girald*. itin. 2. cap. 1. Bal. cent. 1. vita S. Dewy.

Hib. diff. 1. cap. 21. Itin. Cam. 2. cap. 3.

^z *Girald*. itin. 1. cap. 11.—Quae te dementia cepit? Quererere follicite quod reperire times.

^y Albert. de animal. 23. cap. 8.

^a Frederic. II. lib. 2. de artevenand. cap. 4.

^b Alan. de insul. 1. ad proph. Merlin.

^d Pouel. & Camden.

^e *Girald*. topograph. 3. diff. cap. 11.

^c Monumeth.

^e Topograph.

I imagine, of St. *Jerom's* epistle to *Dardanus*, according to whom, for explanation, finding them pictured in *Ottomar Luscinus* his *musfury*, as several kinds of pipes, the first dividing it self into two at the end, the other spread in the middle, as two segments of a circle, but one at both ends, I guess them intended near the same. But I refer my self to those that are more acquainted with these kind of *British* fashions. For the *harp* his word is *cithara*, which (if it be the same with *lyra*, as some think, although urging reason and authority are to the contrary) makes the bards musick, like that expressed in the ^f lyrick.

— bibam

*Sonante mistum tibiis carmen lyra,
Hæc Dorium, illis Barbarum.*

Apply it to the former notes, and observe with them, that ^s the *Pythagoreans* used, with musick of the harp, (which in those times, if it were *Apollo's*, was certainly but of ^h seven strings) when they went to sleep, to charm (as the old *Scots* were wont to do, and do yet in their isles, as *Buchanan* ¹ affirms) and compose their troubled affections. Which I cite to this purpose, that in comparing it with the *British* musick, and the attributes thereof before remembered out of *Heracleotes* and *Girald*, you may see conveniency of use in both, and worth of antiquity in ours; and as well in pipes as harp, if you remember the poetick story of *Marsyas*. And withal forget not that in one of the oldest coins that have been made in this kingdom, the picture of the reverse is *Apollo* having his hair incircled with *Cunobelin's* name, then chief king of the *Britons*; and for *Belin* and *Apollo*, see to the eighth song.

S. By whom first Gaul was taught her knowledge.

Understand the knowledge of those great philosophers, priests, and lawyers, called *Druids*, of whom to the tenth song largely. Their discipline was first found out in this isle, and afterward transferred into *Gaul*; whence their youth were sent hither as to a university for instruction in their learned professions: ^k *Caesar* himself is author of as much. Although in particular law-learning, it might seem that *Britain* was required, if the satirist ¹ deceive not in that;

*Gallia caufidicos docuit facunda Britannos.
Eloquent Gaul taught the British lawyers.*

Which with excellent *Lipsius*, ^m I rather apply to the dispersion of the *Latin* tongue through *Gaul* into this province, than to any other language or matter. For also in *Agricola's* time, somewhat before, it appears that matter of good

literature was here in a far higher degree than there, as *Tacitus* in his life hath recorded. Thus hath our isle been as mistress to *Gaul* twice. First in this *Druidian* doctrine, next in the institution of their now famous university of *Paris*, which was done by *Charlemagne*, through aid and industry of our learned *Alcuin* (he is called also *Albin*, and was first sent ambassador to the emperor by *Offa* king of *Mercland*) seconded by those *Scots*, ⁿ *John Mailros*, *Claudius Clement*, and *Raban Maurus*. But I know great men permit it not; nor can I see any very antient authority for it, but infinite of later times; so that it goes as a received opinion; therefore without more examination in this no more fit passage, I commit it to my reader.

*S. One bard but coming in their murd'rous
swords hath staid.*

Such strange assertion find I in story of these bards powerful enchantments, that with the amazing sweetness of their delicious ^o harmonies, not their own only, but withal their enemies armies have suddenly desisted from fierce encounters; so, as my author says, *did Mars reverence the muses*. This exactly continues all fitness with what is before affirmed of that kind of musick; betwixt which (and all other by authentick affirmance) and the mind's affections there are certain ^p *μιμήματα*, imitations, as in this particular example is apparent. But how agreeth this with that in *Tacitus*, which calls a musical incentive to war among the *Germanians*, *barditus*? Great criticks would there ^q read *barrhitus*, which in *Vegetius* and *Ammian* especially, is a peculiar name for those stirring-up alarms before the battle used in *Roman* assaults, equal in proportion to the *Greeks* *ἀλαλαγμὸς*, the *Irish* kerns *pharroh*, and that *Roland's* song of the *Normans*, which hath had his like also, in most nations. But, seeing *barrhitus*, (in this sense) is a word of later time, and scarce yet, without remembrance of his naturalization, allowed in the *Latin*; and, that this use was notable in those *Northerns* and *Gauls*, ^r until wars with whom, it seems *Rome* had not a proper word for it (which appears by *Festus Pompeius*, affirming that the cry of the army was called *barbaricum*) I should think somewhat confidently that *barditus* (as the common copies are) is the truest ^t reading; yet so, that *barrhitus*, formed by an unknowing pronunciation is, and, by original, was the self same. For, that *Lipsius* mending the place, will have it from *baren* in *Dutch*, which signifies, *to cry out*, or from *bar bar*, (which is as *baron* in the *Norman* customs and elsewhere) or from the word *brate*, for imitation of that beast's cry, I much wonder, seeing *Tacitus* makes express mention

^f Horat. epod. 9.

^g Plutarch. de Isid. & Osiride.

^h Horat. carm. 3. od. 11. Homer. in hymn. ad Egeu. Serv.

Honorat. ad 4. Aeneid. (ubi testimonium primo trium chordarum, quam a Mercurio caducei pretio emisse Apollinem septemque discrimina vocum addidisse legimus, & videndus Diodor. Sicul. lib. a.) unde ἐπὶ ἀγγέλῳ, ἐπὶ ἀφρογγῳ, &c. dicitur Graecis. ⁱ Hist. Scot. 4. in Fethelmachio.

^k Comment. 6.

^l Juvenal. Satir. 15.

^m Balaeus cent. 1.

ⁿ De pronuntiat. rest. Lat. ling. cap. 3. v. Vi-

gilium ad instir. Justin. tit. quib. non est permitt. fac. test.

^p Aristot. Polit. 2. cap. 5.

^q Lipsi. ad Polyb. 4. dialog. 11.

^r Locut. Taciti in de morib.

^s Germ. ^t Bardus Gallicæ & Britannicæ cantor. Fest. & vide Bodin. meth. hist. cap. 9. qui Robartum Dagelartum &c. similia vocabula hinc (male vero) deducit.

of verses harmonically celebrating valiant performers, recital whereof hath that name *barditus*, which, to interpret, we might call *singing*. But to conjoin this fiery office with that quenching power of the bards, spoken of by the author, I imagine, that they had also for this martial purpose skill in that kind of musick, which they call *Phrygian*, being (as *Aristotle* says) *οργιαστικη παθητικη & ενθουσιαστικη*, i. e. as it were, *madding the mind with sprightly motion*. For so we see that those which sing the tempering and mollifying *paean*s to *Apollo*, the *τινελλα & καλδινικος*, after victory, did among the *Greeks* in another strain move with their *paean*s to *Mars*, their *δρεια*, and provoking charms before the encounter; and so meets this in our bards dispersed doubtless (as the *Druids*) through *Britain*, *Gaul*, and part of *Germany*, which three had especially in warfare much community.

§. Our Cimbri with the Gauls.—

National transigrations touched to the fourth song give light hither. The name of *Cimbri* (which most of the learned in this latter time have made the same with *Cimmerians*, *Cumerians*, *Cambrians*, all coming from *Gomer* ^x *Japhet's* son, to whom with his posterity, was this north-western part of the world divided) expressing the *Welsh*, calling themselves also *Kumry*. The author alludes here to that *British* army, which in our story is conducted under *Brennus* and *Belinus* (sons to *Molmutius*) through *Gaul*, and thence profecuted, what in the eighth song and my notes there more plainly.

§. Where, with our brazen swords—

The author thus teaches you to know, that, among the antients, brass, not iron, was the metal of most use. In their little scythes, where-with they ^y cut their herbs for enchantments, their priest's razors, plow shares, for describing the content of plotted cities, their musick instruments, and such like, how special this metal was, it is with good warrant delivered; Nor with less, how frequent in the making of swords, spears, and armour in the heroick times, as among other authorities, that in the encounter of *Diomedes* and *Hector* ^z manifesteth:

— πλάγχθη δ' ἀπὸ χαλκῶφι χαλκός.
— brass rebounds from brass.

Which seems in them to have proceeded from a willingness of avoiding instruments too deadly in wounding; for from a styptick faculty in this, more than in iron, the cure of what it hurts is affirmed more easy, and the metal itself, *φαρμακῶδης*, of remedial power, as ^a *Aristotle* expresses it. But that our *Britons* used it also,

it hath been out of old monuments by our most ^b learned antiquary observed.

§. That to the Roman trust on his report that stay.

For indeed many are, which the author here impugns, that dare believe nothing of our story, or antiquities of more antient times, but only *Julius Caesar*, and other about or since him. And surely his ignorance of this isle was great, time forbidding him language or conversation with the *British*. Nor was any before him of his country, that knew or meddled in relation of us. The first of them that once to letters committed any word deduced from *Britain's*, name was a philosophical ^c poet (flourishing some fifty years before *Caesar*) in these verses:

*Nam quid Britannum coelum differre putamus,
Et quod in Aegypto est, qua mundi claudicat
(axis?)*

In the somewhat later poets that lived about *Augustus*, as *Catullus*, *Virgil*, and *Horace*, some passages of the name have you, but nothing that discovers any monument of this island proper to her inhabitants. I would not reckon *Cornelius Nepos* among them, to whose name is attributed, in print, that polite poem (in whose composition *Apollo* seems to have given personal aid) of the *Trojan* war, according to *Dares* the *Phrygian's* story; where, by poetical liberty the *Britons* are supposed to have been with *Hercules* at the rape of *Hesione*: I should so, besides error, wrong my country, to whose glory the true author's name of that book will, among the worthies of the muses, ever live. Read but these of his verses, and then judge if he were a *Roman*:

— sine remigis usu
*Non nosset Memphis Romam, non Indus Hiberum,
Non Scythia Cecropidem, non nostra Britannia
(Gallum.*

And in the same book to *Baldwin* archbishop of *Canterbury*.

*At tu dissimulis longe cui fronte serena
Sanguinis egregii lucrum, pacemque litata
Emptam anima pater illepius, summumq; cacu-
In curam venisse velit, cui cederet ipse (men
Prorsus, vel proprias laetus sociaret habenas.*

Of him a little before.

— quo praeside floret
** Cantia, & in prisca respirat libera leges.*

Briefly thus: the author was *Joseph* of *Exeter*, (afterwards archbishop of *Bordeaux*) famous in this and other kind of good learning, under *Hen. II.* and *Rich. I.* speaking among those verses in this form:

^u Suid in *παϊαν*. ^x Genes. x. ^y Sophocles, Carminis, Virgil. ap. Macrobius Saturnal. lib. 5. cap. 19. Tausan, in Laconic. γ. & Arcadic. n. 1 Sam. xvii. ^z Iliad. λ. ^a Problem a. § λε. ^b Camd. in Cornub. ^c Lucret. de rer. nat. 6. ^x Ita, n. legendum, non Tania aut Pontia, uti ineptiunt, qui Josepho nostro merenti suam inviderunt coronam, in codice typis excuso.

*Te sacrae assument acies divinaque bella.
Tunc dignum majore tuba, tunc pectore toto
Nitar, & immensum mecum spargere per orbem.*

Which must (as I think) be intended of *Baldwin*, whose undertaking of the cross and voyage with *Coeur de Lion* into the holy land, and death there, is in our ^d stories; Out of which you may have large declaration of this holy father (so he calls *Thomas Becket*) that bought peace with price of his life; being murdered in his house at *Canterbury*, through the urging grievances intolerable to the king and laity, his diminution of common law liberties, and endeavoured derogation for maintenance of *Romish* usurped supremacy. For these liberties, see *Matthew Paris* before all other, and the epistles of ^e *John of Salisbury*, but lately published; and, if you please, my *Janus Anglorum*, where they are restored from senseless corruption, and are indeed more themselves than in any other whatsoever in print. But thus too much of this false *Cornelius*. Compare with these notes what is to the first song of *Britain* and *Albion*; and you shall see that in Greek writers mention of our land is long before any in the *Latin*: for *Polybius*, that is the first that mentions it, was more than c. years before *Lucretius*. The author's plainness, in the rest of *Wye's* song to this purpose, discharges my further labour.

S. Comes Dulas, of whose name so many rivers be.

As in *England* the names of *Avon*, *Onse*, *Stoure*, and some others; so in *Wales*, before all, is *Dulas*, a name very often of rivers in *Radnor*, *Brecknock*, *Caermarthen*, and else where.

S. Which some have held to be begotten of the wind.

In those western parts of *Spain*, *Gallicia*, *Portugal*, and *Asturia*, many classick testimonies, both poets, as *Virgil*, *Silius Italicus*; naturalists, historians, and geonickons, as *Varro*, *Columel*, *Pliny*, *Trogus*, and *Solinus*, have remembered these mares, which conceive through fervent lust of nature, by the west wind, without copulation with the male (in such sort as the *ova subventanea* ^f are bred in hens) but so that the foals live not over some three years. I refer it as an allegory ^g to the expressing only of their fertile breed and swiftness in course; which is elegantly to this purpose, framed by him that was the father ^h of this conceit to his admiring posterity, in these speaking of *Xanthus* and *Balius*, two of *Achilles's* horses:

— τῷ ἄμα πνοῇσι πετέσθην
Τὴς ἔτεκε Ζεφύρου ἀνέμου ἀρπυια Πόδαργη
Βοσκομένη λαιμῶνι παρὰ εὖρον Ὠκεανοῖς.

These did fly like the wind, which swift Podarge foaled to their sire Zephyrus, feeding in a meadow by the ocean. Whence withal you may note, that *Homer* had at least heard of these coasts of *Spain*, according as upon the conjectures on the name of *Lisbon*, the *Elysians*, and other such you have in ⁱ *Strabo*. But for *Lisbon*, which many will have from *Ulysses*, and call it *Ulixbon*, being commonly written *Olisippo*, or *Ulisippo*, in the antients, you shall have better etymology, if you hence derive and make it ^{*} ἑλῶς ἱππων, as it were, that the whole tract is a seminary of horses, as a most learned man hath delivered.

Illustrations on the seventh song.

THE muse yet hovers over *Wales*; and here sings the inner territories, with part of the *Severn* story, and her *English* neighbours.

*S. That fraught from plenteous Powise with their superfluous wast
Manure the batful March*————

Wales (as is before touched) divided into three parts, north *Wales*, south *Wales*, and *Powise*; this last is here meant, comprizing part of *Brecknock*, *Radnor*, and *Montgomery*. The division hath its beginning attributed to the three sons of ^k *Roderick* the great, *Mervin*, *Cadelb*, and *Anarawt*, who possessed them for their portions hereditary, as they are named. But out of an old book of *Welsh* laws, *David Powel* affirms those tripartite titles more antient. I know that the division and gift is different in *Caradoc Llancarvan*, from that of *Girald*; but no great consequence of admitting either here. Those three princes were called in *British* *ϣ τριτωρλορ talaethior*, the three crowned princes, because ^l every of them wore upon his bonet, or helmet, a coronet of gold, being a broad lace, or headband, indented upward, set and wrought with precious stones, which in *British*, or *Welsh*, is called *talaeth*, which name, nurses give to the upper band on a child's head. ^m Of this form (I mean of a band or wreath) were the antientest of crowns, as appears in the description of the *cidaris*, and *tiara* of the *Persians*, in *Ctesias*, ⁿ *Q. Curtius*, and *Xenophon*, the crowns of oak, grafs, parsley, olives, myrtle, and such among the *Greeks* and *Romans*, and in that express name of *diadema*, signifying a band, of which, whether it have in our tongue community with that *banda*, derived out of the ^m *Carian* into *Italian*, expressing

^d Chronicis adde & Girald. itin. Camb. 2. cap. 14.
^e Justin. hist. lib. 44.
^f Iliad. π.
^g Iustin. hist. lib. 44.
^h Iliad. π.
ⁱ Geograph. 2.
^k Girald. Camb. descript. cap. 2. DCCC. LXXVI.
^l D. Pouel.
^m Stephan. πειρ. πον. A' d'ε'α'δ'α v. Gorop. Beccefelan. 2. & Pet. Pithaei adversar. 2. cap. 20. de banda, cui & andatem apud Dionem conteras, & videlicet si in altero alterius reliquiae.

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victory,

victory, and so, for ominous good words, is translated to ensigns and standards (as in oriental stories, the words *ἑνὶ σταυρῷ* and *ἑνὶ σταυρῷ*, often shew) I must not here inquire. *Molmutius* first^a used a golden crown among the *British*, and, as it seems by the same authority, *Athelstan* among the *Saxons*. But I digress. By the *March* understand those limits between *England* and *Wales*; which continuing from north to south, join the *Welsh* shires to *Hereford*, *Shropshire*, and the *English* part, and were divers baronies, divided from any shire, until^b *Hen. VIII.* by act of parliament, annexed some to *Wales*, other to *England*. The barons that lived in them, were called lords marchers, and by the name of^c *marchiones*, i. e. *marquesses*. For so *Roger* of^d *Mortimer*, *James* of *Audeleg*, *Roger* of *Clifford*, *Roger* of *Leiburn*, *Haimo* *L'estrangle*, *Hugh* of *Turbervil* (which by sword adventured the ransom of *Hen. III.* out of *Simon* of *Montfort* his treacherous imprisonment, after the battel of *Lewes*) are called *marchiones Walliae*; i. e. *marquesses*, or lords marchers of *Wales*; and *Edward III.* created *Roger* of *Mortimer*, earl of *March*, as if you should say, of the limits betwixt *Wales* and *England*. See to the next song. *Warr*, or *mett*, signifying a bound or limit; as to the third song more largely. And hence is supposed the original of that honorary title of marquis, which is as much as a lord of the frontiers, or such like; although I know divers other are the derivations which the^e feudists have imagined. These marchers had their laws in their baronies, and for matter of suit, if it had been betwixt tenants holding of them, then was it commenced in their own courts and determined; if for the barony itself, then in the king's court at *Westminster*, by writ directed to the sheriff of the next *English* shire adjoining, as *Glocester*, *Hereford*, and some other. For the king's writ (but see to the ninth song more particularly) did not run in *Wales* as in *England*, until by statute the principality was incorporated with the crown; as appears in an old^f report where one was committed for disoigning a ward into *Wales*, *extra potestatem regis*, under *Hen. III.* Afterward^g *Ed. I.* made some shires in it, and altered the customs, conforming them in some sort to the *English*, as in the statute of *Ruthlan* you have it largely; and under *Ed. II.* to a^h parliament at *York*, were summoned twenty four out of north *Wales*, and as many out of south *Wales*. But notwithstanding all this, the marches continued as distinct; and in them were, for the most part, those controverted titles, which in our law annals, are referred to *Wales*. For the divided shires were, as it seems, or should have been, subject to the *English* form; but the particulars hereof are unfit for this room; if you are

at all conversant in our law, I send you to my^x margin; if not, it scarce concerns you.

§.—the *Higre* wildy raves.

This violence of the waters madness, declared by the author, is so expressed in an old^y monk, which about cccc. years since, says it was called the *Higre* in *English*. To make more description of it, were but to resolve the author's poem.

§. *Within her hollow woods the satyrs that did won.*

By the satyrs ravishing the sea nymphs into this maritime forest of *Dean*, (lying between *Wye* and *Severn* in *Glocester*) with *Severn's* suit to *Neptune*, and his provision of remedy, you have, poetically described, the rapines which were committed along that shore, by such as lurked in these shady receptacles, which he properly styles *satyrs* that name coming from an eastern root *σαῦρος* signifying to hide, or lie hid, as that^z all knowing *Isaac Casaubon* hath at large (among other his unmeasurable benefits to the state of learning) taught us. The *English* were also ill intreated by the *Welsh* in their passages here, until by act of parliament remedy was given; as you may see in the^a statute's preamble, which satisfies the fiction.

§. *Whilst Malvern, king of hills, fair Severn overlooks.*

Hereford and *Worcester* are by these hills seven miles in length confined; and rather, in respect of the adjacent vales, than the hills self, understand the attribute of excellency. Upon these is the supposed vision of *Piers Plowman*, done, as is thought, by *Robert* of^b *Langland*, a *Shropshire* man, in a kind of *English* metre; which for discovery of the infecting corruptions of those times, I prefer before many more seemingly serious invectives, as well for invention as judgment. But I have read that the author's name was *John Malverne*, a fellow of *Oriel* college in *Oxford*, who finished it in 16 *Ed. III.*

§. *As there the Apulian fleece, or dainty Tarentine.*

In *Apulia* and the upper *Calabria* of *Italy*, the wool hath been ever famous for^c finest excellence; in so much that for preserving it from the injury of earth, bushes, and weather, the shepherds used to cloath their sheep with skins; and indeed was so chargeable in these and other kind of pains about it, that it scarce required cost.

§. —himself in two did rive.

Alluding to a prodigious division of *Marcle* hill, in an earthquake of late^d time; which most of all was in these parts of the island.

^a Galfred, Monumeth. lib. 1. & 9.

^b Matth. Westmonast. lib. 2.

Gard. 147.

^c Stat. Ruthland. 12 *Ed. I.*

^d 13 *Ed. III.* jurisdic. 23. 6 *Hen. V.* ib. 34.

^e 1 *Ed. III.* f. 14. & saepius in annalibus juris nostri.

^f 2 *Placetis* lib. de satyra. Merito indigetatur hoc epitheto longe

^g Heinio in annot. ad Horatium.

^h Columell. lib. 7. cap. 4.

^x 27 *Hen. VIII.* cap. 26. v. 28 *Ed. III.* cap. 2.

^y Ad const. feud. 2. tit. quis dicatur dux. & juriconsulti saepius.

^z 14 *Ed. II.* dorf. claus. mem. 13.

^a Guil. Malmesbur. lib. 4. de

^b About time of *Ed. III.*

^c Var. de re rustica. 2. cap. 2.

^d Lib. rub. scaccar.

^e 13 *Hen. III.* tit.

^f V. 18 *Ed. II.* tit. assis. 382.

^g Guil. Malmesbur. lib. 4. de

^h doctissimus a doctissimo Dan.

ⁱ Var. de re rustica. 2. cap. 2.

^j Stat. 9 *Hen. VI.* cap. 5.

^k C. D. D. L. X. V.

Illustrations on the eighth song.

STill are you in the *Welsh* march, and the chorography of this song includes itself, for the most, within *Shropshire's* part over *Severn*.

S. That all without the mound that Mercian Offa cast?

Of the marches in general, you have to the next before. The particular bounds have been certain parts of *Dee*, *Wye*, *Severn*, and *Offa's* dike. The antientest is *Severn*, but a later is observed in a right line from * *Strigoil* castle upon *Wye*, to *Chester* upon *Dee*, which was so naturally a meer between these two countries, *Wales* and *England*, that by apparent change of its channel towards either side, superstitious judgment was used to be given of success in the following year's battels of both nations; whence perhaps came it to be called *holy Dee*, as the author also often uses. Betwixt the mouths of *Dee* and *Wye* in this line (almost c. miles long) was that *Offa's* dike cast, after such time as he had besides his before possessed *Mercland*, acquired by conquest even almost what is now *England*. King *Harold* † made a law, that whatsoever *Welsh* transcended this dike with any kind of weapon, should have, upon apprehension, his right hand cut off. *Athelstan* after conquest of *Howel Dha* king of *Wales*, made *Wye* limit of north *Wales*, as in regard of his chief territory of west *Saxony*. So affirms *Malmesbury*. Which well understood, impugns the opinion received for *Wye's* being a general meer instituted by him, and withal, shews you how to mend the monks published text, where you read ** *Ludwallum regem omnium Wallensium, & Constantinum regem Scotorum cedere regnis compulsi*; he compelled *Ludwall* king of all *Wales*, and *Constantine* king of *Scots*, to leave their crowns. For plainly this *Ludwall* (by whom he means *Howel Dha* in other chronicles called *Huwal*) in *Athelstan's* life time was not king of all *Wales*, but only of the fourth and western parts, with *Powis*, his cousin *Edwall Voel* then having north *Wales*; betwixt which, and the part of *Howel* conquered, this limit was proper to distinguish. Therefore either read *occidentalium Wallensium*, west *Wales*, (for in *Florence* of *Worcester*, and *Roger* of *Hoveden*, that passage is with *occidentalium Britonum*, west *Britons*) or else believe that *Malmesbury* mistook *Howel* to be in *Athelstan's* time, as he was after his death, sole prince of all *Wales*. In this conjecture, I had aid from *Lhancarvan's* history, which in the same page (as learned *Lhuid's* edition in *English* is) says, that *Athelstan* made the river *Cambia* † the frontier towards *Cornwal*; but

there, in requital, I correct him, and read *Tambra*, i. e. *Tamar*, dividing *Devonshire* and *Cornwal*; as *Malmesbury* hath it expressly, and the matter self enough perfwades.

S. Who drove the giants hence, that of the earth were bred.

Somewhat of the giants to the first song; fabulously supposed begotten by spirits upon *Dioctesian's* or *Danaus's* daughters. But here the author aptly terms them, *bred of the earth*, both for that the antiquities of the *Gentiles* made the first inhabitants of most countries as produced out of the soil, calling them *aborigines* and *αὐτόχθονες*, as also for imitation of those epithets of *γενεῖς* and *πυλὸ γόνι* among the *Greeks*, *terrae filii* among the *Latins*, the very name of giants being thence ^h derived,

Ὀὐτέκα γῆς ἐγένοντο καὶ ἀμαῖα θεοῦ οὐρανοῦ.
Because they were bred of earth, and the dew of heaven;

Which misconceit I shall think abused the heathen upon their ill understanding of *Adam's* creation * and allegorick greatness, touched before out of *Jewish* fiction.

S. Her Albanact for aid, and to the Scythian cleave.

Britain's tripartite division by *Brute's* three sons, *Logrin*, *Camber*, and *Albanact*, whence all beyond *Severn* was stiled *Cambria*, the now *England* *Loegria*, and *Scotland* *Albania*, is here shewed you; which I admit, but as the rest of that nature, upon credit of our suspected stories followed with sufficient justification by the muse; alluding here to that opinion which deduces the *Scots* and their name from the *Scythians*. Arguments of this likelihood have you largely in our most excellent antiquary. I only add, that by tradition of the *Scythians* themselves, they had very antiently a general name, titling them ⁱ *Scolots* (soon contracted into *Scots*) whereas the *Grecians* called the northern all ^k *Scythians*, perhaps the original of that name being from shooting; for which they were especially through the world famous, as you may see in most passages of their name in old poets; and that *Lucian's* title of *Toxaris*, is, as if you should say, an *archer*. For, the word *shoot* being at first of the *Teutonick* (which was very likely dispersed largely in the northern parts) antiently was written nearer *schyth*, as among other testimonies, the name of ^l *scythe* finger i. e. *the shooting finger*, for the fore-finger among our ^m *Saxons*.

S. Three hundred years before Rome's great foundation laid.

Take this with latitude; for between *Aeneas Sylvius*, king of the *Latins*, under whose time *Brute* is placed, to *Numitor*, in whose second year *Rome* was built, intercedes above ccc.xl.

* Caradoc Lhancarvan in Conan Tindaethwy. Girald. itinerar. 2. cap. 11. & descript. cap. 15. * By Chespitow in Monmouth.
† Claudy-Offa. See to the tenth song for Dee. † Higden. in polychronic. 1. cap. 43. ** Malmesburienfis lib. 2. cap. 6.
† Cambalan or Camel. † Callimach. in hymn. Jovis. † Orpheus ap. Nat. Com. mytholog. 6. cap. 21. * אֶרֶץ
terra. † Herodot. Melpomene d. † Ephor. ap. Strab. 2. See to the fourth song. † In τῶν ἰσχυτέ forsan reliquiae
vocabuli וְשִׁבְּדָה i. e. arcus, & punctorum variatione, sagittarius v. Goropium Beceselan. 8. five Amazonic. † Alured.
leg. cap. 40.

and with such difference understand the thousand until *Caesar*.

§. *And long before born arms against the barbarous Hun.*

Our stories tell you of *Humber* king of *Huns* (a people that being *Scythian*, lived about those parts which you now call *mar delle Zabach*) his attempt and victory against *Albanact*, conflict with *Logrin*, and death in this river, from whence they will the name. Distance of his country, and the unlikely relation, weakens my historical faith. Observe you also the first transmigration of the *Huns*, mentioned by *Procopius*, *Agathias*, others, and you will think this very different from truth. And well could I think by conjecture (with a great antiquary) that the name was first (or thence derived) ⁿ *Dabzen* or *Aber*, which in *British*, as appears by the names *Abergevenni*, *Abertewy*, *Aberhodni*, signifying the fall of the river *Gevenni*, *Tewi*, *Rhodni*, is as much as a ^a river's mouth in *English*, and fits itself specially, in that most of the *Torkshire* rivers here cast themselves into one confluence for the ocean. Thus perhaps was *Severn* first *Hafren*, and not from the maid there drowned, as you have before; but for that, this no place.

§. *To Stamford in this isle seem'd Athens to transfer.*

Look to the third song for more of *Bladud* and his baths. Some testimony ^r is, that he went to *Athens*, brought thence with him four philosophers, and instituted by them an university at *Stamford* in *Lincolnshire*: But, of any persuading credit I find none. Only of later time, that profession of learning was there, authority is frequent. For when through discording parts among the scholars, (reigning *Ed. III.*) a division in *Oxford* was into the northern and southern faction, the northern (before under *Hen. III.* also was the like to *Northampton*) made secession to this *Stamford*, and there professed, until upon humble suit by *Robert of Stratford*, chancellor of *Oxford*, the king, ⁱ by edict, and his own presence, prohibited them; whence, afterward, also was that oath taken by *Oxford* graduates, that they should not profess at *Stamford*. *White of Basingstoke* otherwise guesses at the cause of this difference, making it the *Pelagian* heresy, and of more antient time, but erroneously. Unto this, refer that supposed prophecy of *Merlin*:

Doctrinae studium quod nunc viget ad vada boum,*

Ante finem seculi celebrabitur ad† vada saxi.

Which you shall have *Englished*, in that solemn

nized marriage of *Thames* and *Medway*, by a most admired ⁱ muse of our nation, thus with advantage.

*And after him the fatal Welland went,
That, if old sawes prove true (which God forbid)*

Shall drown all Holland with his excrement.
And shall see Stamford, though now homely bid,*

*Then shine in learning more than ever did
Cambridge or Oxford, England's goodly beams.*

Nor can you apply this, but to much younger time than *Bladud's* reign.

§. — *As he those four proud streets began.*

Of them you shall have better declaration to the sixteenth song.

§. *There ballancing his sword against her banner gold.*

In that story, of *Brennus* and his *Gauls* taking *Rome*, is affirmed, that by senatorial authority *P. Sulpitius* (as a tribune) was committee to transact with the enemy for leaving the *Roman* territory; the price was ⁿ agreed 100 pound of gold; unjust weights were offered by the *Gauls*, which *Sulpitius* disliking, so far were those insolent conquerors from mitigation of their oppressing purpose, that (as for them all) *Brennus* to the first injustice of the balance, added the poize of his sword also, whence upon a murmuring complaint among the *Romans*, crying ^{*} *vae victis, vae to the conquered*, came that to be as a proverb applied to the conquered.

§. *Against the Delphian power yet shak'd his ireful sword.*

Like liberty as others, takes the author in affirming that *Brennus*, which was general to the *Gauls* in taking *Rome*, to be the same which overcame *Greece*, and assaulted the oracle. But the truth of the story stands thus. *Rome* was afflicted by one *Brennus* about the year ^{*} 330. after the building, when the *Gauls* had such a *Cadmeian* victory of it, that fortune converted by martial opportunity, they were at last by *Camillus* so put to the sword, that a reporter of the slaughter was not left, as *Livy* and *Plutarch* (not impugned by ^y *Polybius*, as *Polydore* hath mistaken) tell us. About 60 years after, were tripartite excursions of the *Gauls*, of an army under *Cerethrius* into *Thrace*; of the like under *Belgius* or *Bolgius* into *Macedon* and *Illyricum*; of another under one *Brennus* and *Acichorius* into *Pannonia*. What success *Belgius* had with *Ptolemy*, furnished

ⁿ Agathias lib. 6.

^a Girald. itinerar. cap. 2. & 4.

^r Tuin, lib. 3. apolog. Oxon. §. 115. & seqq.

stanz. 35.

^{*} The maritime part of *Lincolnshire*, where *Welland* a river.

^y V. vero Stephan. Forcatulum, lib. 2. de Gall. philosoph. qui haec inter examinandum foede, ast cum aliis, in historia ipsa lapsus est.

^{*} Halicarnass. 487. e. Liv. 5.

^o Leland, ad cyg. Cant. in Hull.

ⁱ Merlin, apud Hard. cap. 25. ex iisdem & Balaeus.

^{*} Oxen-ford.

[†] Stane-ford.

^p Abus dictum isthoc aestuarium Ptolemaeo.

ⁱ 10 Cai. antiq. Cant. 2. Br.

^{*} Spenc. Fairy Queen, lib. 4. cant. 11.

^y Liv. dec. lib. 5. Plutarch. in Camillo.

^{*} Liv. dec. lib. 5. Plutarch. in Camillo.

κεραυνός, thunderbolt, is discovered in the same^a authors which relate to us *Brennus* his waſting of Greece, with his violent, but ſomewhat voluntary, death. But part of this army, either divided by mutiny, or left, after *Apollo's* revenge, betook them to habitation in *Thrace*, about the now *Conſtantinople*; where firſt, under their king *Comontorius* (as *Polybius*, but *Livy* ſaith under *Lutatius* and *Lomnorius*, which name perhaps you might correct by *Polybius*) they ruled their neighbouring ſtates with impoſition of tribute, and, at laſt, growing too populous, ſent (as it ſeems) thoſe colonies into *Aſia*, which in^a *Gallogræcia* left ſufficient ſteps of their antient names. My compared claſſick^b authors will juſtify as much; nor ſcarce find I material oppoſition among them in any particulars; only *Trogus*, epitomized by *Juſtin*, is therein, by conſuſion of time and actions, ſomewhat abuſed; which hath cauſed that error of thoſe which take hiſtorical liberty (poetical is allowable) to affirm *Brennus* which ſacked *Rome*, and him that died at *Delphos*, the ſame. Examination of time makes it apparently falſe; nor indeed doth the *Britiſh* chronology endure our *Brennus* to be either of them, as *Polydore* and *Buchanan* have obſerved. But want of the *Britiſh* name moves nothing againſt it; ſeeing the people of this weſtern part were all, until a good time after thoſe wars, ſtiled by the name of *Gauls* or *Celts*; and thoſe which would have ranſacked the oracle, are ſaid by *Callimachus* to have come

—ἀπὸ ἐσπερίου ὁριζωνίου.

—from the utmoſt weſt.

Which as well fits us as *Gaul*. And thus much alſo obſerve, that thoſe names of *Brennus* and *Belinus*, being of great note, both in ſignification and perſonal eminency; and, likely enough, there being many of the ſame name in *Gaul* and *Britain*, in ſeveral ages, ſuch identity made conſuſion in ſtory. For the firſt, in this relation appears what variety was of it; as alſo *Uenſhin* and *Uennin* in the *Britiſh* are but ſignificant words for *king*; and peradventure almoſt as ordinary a name among theſe weſterns, as *Pharaoh* and *Ptolemy* in *Egypt*, *Agag* among the *Amalekites*, *Arſaces*, *Nicomedes*, *Alevada*, *Sophi*, *Caesar*, *Oſicing*, among the *Parthians*, *Bythinians*, *Theſſalians*, *Persians*, *Romans*, and our *Kentish kings*, which the courſe of hiſtory ſhews you. For the other, you may ſee it uſual in names of their old kings, as *Cassi-Belin* in *Caesar*, *Cuno-Belin* and *Cymbelin* in *Tacitus*, and *Dio*, and perhaps *Cam-Baules* in *Pausanias*, and *Belin* (whoſe ſteps ſeem to be in^c *Abellius*, a *Gauliſh* and *Bela-tucadre* a *Britiſh* God) was the name among them of a worſhipped idol, as appears in *Auſonius*; and the ſame with *Apollo*, which alſo by

a moſt antient *Britiſh* coin, ſtamped with *Apollo* playing on his harp, circumscribed with *Cunobelin*, is ſhewed to have been expreſſly among the *Britons*. Although I know, according to their uſe, it might be added to *Cuno* (which was the firſt part of many of their regal names, as you ſee in *Cuneglas*, *Cyngetorix*, *Congolitan*, and others) to make a ſignificant word, as if you ſhould ſay, *the yellow king*, for *Belin* in *Britiſh* is *yellow*. But ſeeing the very name of their *Apollo* ſo well fitted with that colour, * which to *Apollo* is commonly attributed, (and obſerve that their names had uſually ſome note of colour in them, by reaſon of their cuſtom of painting themſelves) I ſuppoſe they took it as a fortunate concurrence to bear an honoured deity in their title, as we ſee in the names of *Merodach* and *Evil-Merodach* among the *Babylonian* kings, from *Merodach*^d one of their falſe Gods; and like examples may be found among the old emperors. Obſerve alſo that in *Britiſh* genealogies, they aſcend always to *Belin* the great (which is ſuppoſed *Heli*, father to *Lud* and *Caffibelin*) as you ſee to the fourth ſong; and here might you compare that of *Hel*,^e in the *Punick* tongue, ſignifying *Phoebus*, and turned into *Belus*; but I will not therewith trouble you. Howſoever, by this, I am perſwaded (whenſoever the time were of our *Belinus*) that *Bolgus* in *Pausanias*, and *Bolgus* in *Juſtin* were miſtook for *Belinus*, as perhaps alſo *Praufus* in *Strabo* (π. ſupplying^f oftentimes the room of ε.) generated of *Brennus* corrupted. In the ſtory I dare follow none of the modern erroneouſly tranſcribing relaters or ſeeming correctors, but have, as I might, took it from the beſt ſelf-fountains, and only upon them, for trial, I put myſelf.

§. — whence *Cymbrica* it took.

That northern promontory now *Jutland*, part of the *Daniſh* kingdom, is called in geographers *Cymbrica Chersonesus*, from name of the people inhabiting it. And thoſe which will the *Cymbrians*, *Cambrians*, or *Cumrians*, from *Camber*, may, with good reaſon of conſequence, imagine that the name of this *Chersonesus* is thence alſo, as the author here, by liberty of his muſe. But if, with *Goropius*, *Camden*, and other their followers, you come nearer truth, and derive them from † *Gomer*, ſon to *Japhet*, who, with his poſterity, had the north-weſtern part of the world; then ſhall you ſet, as it were, the accent upon *Chersonesus*, giving the more ſignificant note of the country; the name of *Cymbrians*, *Cimmerians*, *Cambrians*, and *Cumrians*, all as one in ſubſtance, being very comprehensive^g in theſe climates; And perhaps, becauſe this promontory lay out ſo far, under near 1x degrees latitude (almoſt at the utmoſt of *Pto-*

^a Pausanias in Phocic. ^b Strab. lib. 10. ^c Polyb. l. a. β. δ. & θ. & Liv. dec. 1. lib. 5. dec. 4. lib. 8. Strab. β. Pausan. Phocic. 1. Appian. Illyric. Juſtin. lib. 24. & 25. Plutarch. Camillo. Caeterum plerique Delphis inſecta a Phoebō grādinē peremptis, qui fuerunt, reliquos in Aegyptum conductos ſub ſtipendiis Ptolemæi Philadelphī meruiſſe ait vetus ſcholiaſtes Graec. ad hymn. Callimach. in Delum. ^d Vet. inſcript. in Cumbria, & apud Joſ. Scalig. ad Auſon. 1. cap. 9. & v. Rhodigin. lib. 17. cap. 28. Plura de Belino, ſive Beleno, i. e. Apolline Gallico Pët Pitheus adveſt. ſubſec. lib. 1. cap. 3. qui Belenum παρὰ τὸ ἐκινῶν Phoebi epitheton autumat. v. notas Camd. ad numiſmata. & nos ad Cant. 9. ^e Ζανδὸς Ἀπόλλων. ^f Jerem. cap. 1. ^g Cael. Rhodig. antiq. leſt. 1. cap. 6. ^h Eufſtath. ad Dionyſ. πεντη. uti Ἀμωγεῖ, ἀντὶ τοῦ ἀμωγεῖ & Νῆροι Περσῶν καὶ ἀντὶ τοῦ Περσῶν καὶ. ⁱ Transmutation of G. into C. was, antiently, often and eaſy, as Lilius ſhews, lib. de pronuntiati. ling. Latin. cap. 13. ^k Plutarch. in Mario. & Herodot. lib. β.

emy's geography) and so had the first winter days no longer than between five and six hours, therein somewhat (and more than other neighbouring parts of that people, having no particular name) agreeing with ^bHomer's attribute of darkness to the *Cimmerians*, it had more specially this title.

S. To wife Molmutius's laws her Martian first did frame.

Particulars of *Molmutius's* laws, of church-liberty, freedom of ways, husbandry, and divers other are in the *British* story, affirming also, that queen *Martia* made a book of laws, translated afterward, and titled by king *Alfred* *Mercenlage*. Indeed it appears that there were three sorts of ⁱ laws in the *Saxon* heptarchy, *Mercen-lage*, *Dan-lage* ^j *þergeraxen-lage*, i. e. the *Mercian*, *Danish*, and *West-Saxon* law; all which three had their several territories, and were in divers things compiled into one volume by *Cnut*, and examined in that *Norman* constitution of their new common-wealth. But as the *Danish* and *West-saxons* had their name from particular people; so it seems, had the *Mercian* from that kingdom of *Mercland*, limited with the *Lancashire* river *Mersey* toward *Northumberland*, and joining to *Wales*, having either from the river that name, or else from the word meap, a limit or bound, because it bounded upon most of the other kingdoms; as you may see to the eleventh song.

*S.—in whose eternal name,
Great London still shall live —*

King *Lud's* re-edifying *Troinovant* (first built by *Brute*) and thence leaving the name of *Caer Lud*, afterward turned (as they say) into *London*, is not unknown, scarce to any that hath but looked on *Ludgate's* inner frontispiece; and in old ^k rhimes thus I have it expressed.

Walls þ he lete make al aboute and pates up and down
And after Lud that was is name he clupede it Luds towne.
The herte pate of the toun that put stont there and is
He let hit clupie Ludgate after his owe name twis.
He let him tho he was ded burie at thulke pate
Therewoze put after him me clupeth it Ludegate.
The toun me clupeth that is wide couth
And now me clupeth it London that is lighte in the mouth.
And new Troy it het ere, and nou it is so ago
That London it is now icluped and twozth ebre mo.

Judicious reformers of fabulous report I know have more serious derivations of the name; and seeing conjecture is free, I could imagine, it might be called at first *Ihan Dien*, i. e. the temple of *Diana*, as *Ihan Dewi*, *Ihan Stephan*, *Ihan Paderu wauur*, *Ihan Iair*, i. e. *S. Dewi's*, *St. Stephen's*, *St. Patern the great*, *St. Mary*; and *Verulam* is by *H. Lbuid*, derived from *Aer-Ihan*, i. e. the church upon the river *Ver*, with divers more such places in *Wales*; and so afterward by strangers turned

into *Londinium*, and the like. For, that *Diana* and her brother *Apollo* (under name of *Belin*) were two great deities among the *Britons*, what is read next before, *Caesar's* testimony of the *Gauls*; and that she had her temple there where *Paul's* is, relation in *Camden* discloses to you. Now, that the antique course was to title their cities oft-times by the name of their power adored in them, is plain by *Beth-el* among the *Hebrews*, *Heliopolis* (which in holy writ is ^l called בֵּית שֶׁמֶשׁ in *Egypt*, and the same in *Greece*, *Phaenicia*, elsewhere; and by *Athens* named from *Minerva*. But especially from this supposed deity of *Diana* (whom in substance *Homer* no less gives the epithet of ἐρυσίβολος, ^m patron of cities, than to *Pallas*) have divers had their titles; as *Artemisium* in *Italy*, and *Eubaea*, and that ⁿ *Bubastis* in *Egypt*, so called from the same word, signifying in *Egyptian*, both a cat and *Diana*.

S. Those armed stakes in Thames—

He means that which now we call *Corway-stakes* by *Orelands*, where only, the *Thames* being without boat passable, the *Britons* fixed both on the bank of their side, and in the water ^o sharp stakes, to prevent the *Romans* coming over; but in vain, as the stories tell you.

S. And more than Caesar got, three emperors could not win.

Understand not that they were resisted by the *Britons*, but that the three successors of *Julius*, i. e. *Augustus*, *Tiberius*, and *Caligula*, never so much as with force attempted the isle, although the last after king *Cunobelin's* son, *Adminius*, his traitorous revolting to him, in a seeming martial vehemency, made ^p all arm to the *British* voyage, but suddenly in the *German* shore, (where he then was) like himself, turned the design to a jest, and commanded the army to gather cockles.

S. Came with his body naked, his hair down to his waist.

In this *Caradoc* (being the same which at large you have in *Tacitus* and *Dio*, under name of *Caratacus* and *Cataracus*, and is by some *Scottish* historians drawn much too far northward) the author expresses the antient form of a *Briton's* habit. Yet I think not that they were all naked, but, as is affirmed ^q of the *Gauls*, down only to the navel; so that on the discovered part might be seen (to the terror of their enemies) those pictures of beasts, with which ^r they painted themselves. It is justifiable by *Caesar*, that they used to shave all except their head and upper lip, and wear very long hair; but in their old coins I see no such thing warranted; and in later ^s times about cccc years since, it is especially attributed to them, that

^b Odyss. l. 'Hæc δὲ νεφέλῃ κακαλυμμένη.

^c But it is affirmed that king *Coile's* daughter, mother to *Constantine the Great*, walled this first, and *Colchester* also.

^d Huntingdon, lib. 1. & *Simon Dunelmensis*, ap. *Stov.* in *notitia Londini*.

^e *xlili.* comm. ult. ^f *V. Homer.* hymn. ad *Dian.*

^g *Sueton.* lib. 4. cap. 44. & 46. & *Dio Cassius*.

^h *Girald.* descript. cap. 10.

ⁱ *Gervas.* *Tilburiensis* de *scaccario*.

^j *Rob. Glo.* *Jerem.* cap. 1. *I shall presently speak of her also.*

^k *Stephan.* *ἡσέη ἡσέη* in *Bædæ's*, *Herodot.* lib. β.

^l *Polybius* hist. γ.

^m *Bed.* lib. 1. cap. 2.

ⁿ *Solin.* polyhist. cap. 35.

they always cut their heads close for avoiding *Abſalon's* miſfortune.

§. *The colony long kept at Maldon—*

Old historians and geographers call this *Camalodunum*, which ſome[†] have abſurdly thought to be *Camelot* in the *Scottiſh* ſheriffdom of *Stirling*, others have fought it elſewhere; but the *Engliſh* light of antiquity (*Camden*) hath ſurely found it at this *Maldon* in *Effex*, where was a *Roman* colony, as alſo at[‡] *Gloceſter*, *Cheſter*, *York*, and perhaps at *Colcheſter*. Which proves expreſſly (againſt vulgar allowance) that, there was a time when in the chiefſt parts of this ſouthern *Britany* the *Roman** laws were uſed, as every one that knows the meaning of a colony (which had all their rights and inſtitutions[‡] deduced with it) muſt confeſs. This was deſtroyed upon diſcontentment taken by the *Icens* and *Trinobants* (now *Norfolk*, *Suffolk*, *Middleſex*, and *Effex* men) for intolerable wrongs done to the wife and poſterity of *Prasutagus* king of the *Icens* by the^x *Romans*, which the king (as others in like form) thought, but vainly, to have prevented by inſtituting *Nero*, then emperor, his heir. The ſigns, which the author ſpeaks of, were a ſtrange, and, as it were, voluntary falling down of the goddeſs *Victory's* ſtatue, erected by the *Romans* here; women, as diſtracted, ſinging their overthrow; the ocean looking bloody; uncouth howlings in their aſſemblies; and ſuch like. *Petilius Cerealis*, lieutenant of the ninth legion, coming to aid, loſt all his foot-men, and betook himſelf with the reſt to his fortified tents. But for this read the hiſtory.

§. *By poiſon end her days—*

So *Tacitus*; but *Dio*, that he died of ſickneſs. Her name is written diverſly *Voadicia*, *Boodicia*, *Bunduica*, and *Boudicea*; ſhe was wife to *Prasutagus*, of whom laſt before.

§. *A greater foe to us in our own bowels bred.*

Every ſtory, † of the declining *Britiſh* ſtate, will tell you what miſeries were endured by the hoſtile irruptions of *Scots* and *Picts* into the ſouthern part. For the paſſage here of them, know, that the *Scottiſh* ſtories, which begin their continued monarchick government at *Fergus*, affirm the *Picts* (from the *Scythian* territories) to have arrived in the now *Jutland*, and thence paſſed into *Scotland* ſome ccl years after the *Scots* firſt entering *Britain*, which was, by account, about lxxx years before our Saviour's birth, and thence continued theſe a ſtate by themſelves, until king *Kenneth* about dccc.xl years after Chriſt, utterly ſupplanted them. Others, as *Bede* and his followers, make them elder in the iſle than the *Scots*, and fetch

them out of *Ireland*; the *Britiſh* ſtory (that all may be diſcords) ſays, they entered *Albania* under conduct of one *Roderic* their king; (for ſo you muſt read in † *Mommouth* and not *Londric*, as the print in that and much other miſtakes) and were valiantly oppoſed by *Marius* then king of *Britons*, *Roderic* ſlain, and *Cathenes* given them for habitation. This *Marius* is placed with *Veſpaſian*, and the groſs differences of time make all ſuſpicious; ſo that you may as well believe none of them, as any one. Rather adhere to learned *Camden*, making the *Picts* very genuine *Britons*, diſtinguiſhed only by accidental name, as in him you may ſee more largely.

§. *Arviragus of our's firſt taking to protect.*

His marriage with (I know not what) *Geniſſa*, daughter to *Claudius*, the habitude of friendſhip betwixt *Rome* and him, after compoſition with *Veſpaſian* then, under the emperor, employed in the *Britiſh* war, the common ſtory relates. This is *Arviragus*, which *Juvenal*^y ſpeaks of. *Polydore* refers him to *Nero's* time, others rightly to *Domitian*, becauſe indeed the poet^z then flouriſhed. That fabulous *Heſtor Boetius* makes him the ſame with *Phaſuiragus*, as he calls him, in *Tacitus*; he means *Prasutagus*, having miſread *Tacitus* his copy.

§. *This happineſs we have Chriſt crucify'd to know.*

Near c.lxxx after Chriſt, (the chronology of *Bede* herein is plainly falſe, and obſerve what I told you of that kind to the fourth ſong) this *Lucius*, upon requeſt to pope *Eleutherius*, received at the hands of *Engatius* and *Damianus*, holy baptiſm; yet ſo, that by *Joſeph* of *Arimathea* (of whom to the third ſong) ſeeds of true religion were here before ſown: by ſome I find it without^a warrant, affirmed that he converted *Arviragus*,

And gave him then a ſhilde of ſilber white,
A croſſe endlong and overthwart full perfect,
Theſe armes were uſed through all *Brittain*
For a common ſigne each man to know his nation
From enemies, which now we call certain,
S. George's armes—

But thus much collect, that, although until *Lucius* we had not a chriſtian king (for you may well ſuſpect, rather deny, for want of better authority, this of *Arviragus*) yet (unleſs you believe the tradition of *Gandaſer* king of *India*,^b converted by *S. Thomas*, or *Abagar*^c king of *Edessa*, to whom thoſe letters written, as is ſuppoſed, by our Saviour's own hand, kept as a precious relic in^d *Conſtantinople*

† *Heſtor*, Boet. lib. 3.

‡ *Antiq. inſcript. lapideae & numm.*

* *V. Fortſcutt, de laud. leg. Ang. cap. 17 & Vitum Baſing-*

ſtoch, lib. 4. not 36.

† *Agellius* lib. 16. cap. 13.

‡ *Tacitus*, annal. 14. Dio lib. 5.

† *Pictorum* in *Britannia*

(potius *Pictorum* ita. n. legitur) primus meminit *Romanorum* panegyriſtes ille inter alios, qui *Conſtantinum* encomiis adloquitur, & ſi placet, adeas *Humfred. Lhud. brev. Brit. & Buchanan. lib. 2. rer. Scotic. aut Camdeni* *Scotos & Pictos. Rob. Gloceſtrenſis* dicuntur *Pictors*.

‡ *Galfredus Monumethenſis* correctus, & ibidem vice 78 *Maefmarius* lege *Veſtmaria*.

† *Satir* 4.

† *Suidas* in *Juvenali*.

‡ *Ex Nennio Harding. cap. 48. Aſt Codices ii, quos conſuluiſſe me Nennii antiquos contigit, huiuſce*

rei parum ſunt memores.

† *Abdias hiſt. apoſtolic. lib. 9. Euſeb. lib. 1. cap. 13.*

† *Nicet. Choniati. in Andronic. Com-*

nen. lib. 2. ‡ *Nicephor. Calliſt. lib. 2. cap. 7. & 8.*

until the emperor *Isaacius Angelus*, as my authors say, were sent) it is apparent that this island had the first christian king in the world, and clearly in *Europe*, so that you cite not *Tiberius* his private seeming christianity (which is observed out of *Tertullian*) even in whose time also *Gildas* affirms, *Britain* was comforted with wholsom beams of religious light. Not much different from this age was *Donald* first king christian of the *Scots*; so that if priority oft-time swayed it, and not custom, (derived from a communicable attribute given by the popes) that name of *most christian* should better fit our sovereigns than the *French*. This *Lucius*, by help of those two christian aids, is said to have, in room of three archflamens and twenty eight flamens (through whose doctrine, polluting sacrifices, and idolatry reigned here instead of true service) instituted three archbishopricks at *London*, *York*, and *Caerleon* upon *Uske*, and twenty eight bishopricks; of them, all beyond *Humber* subject to *York*; all the now *Wales* to *Caerleon*; to *London*, the now *England* with *Cornwal*. And so also was the custom in other countries, even grounded upon St. *Peter's* own command, to make substitution of archbishops or patriarchs to archflamens, and bishops to flamens, if you believe a pope's assertion. For *York*, there is now a metropolitan see; *Caerleon* had so until the change spoken of to the fifth song. And *London*, the cathedral church being at St. *Peter's* in *Cornhill*, until translation of the ^f pall to *Canterbury* by *Augustine*, sent hither by *Gregory I.* under king *Ethelbert*, according to a prophecy of *Merlin*, that *Christianity should fail, and then revive when the see of London did adorn Canterbury*, as, after coming of the *Saxons*, it did. This moved that ambitious *Gilbert of Folioth*, bishop of *London*, to challenge the primacy of *England*; for which he is bitterly taxed by a great ^b clerk of the same time. If I add to the *British* glory that this *Lucius* was cause of like conversion in *Bavaria* and *Rhetia*, I should out of my bounds. The learned *Mark Velfer*, and others, have enough remembered it.

§. Constantius worthy wife—

That is *Helen*, wife to *Constantius* or *Constantians Chlorus* the emperor, and mother to *Constantine* the great, daughter to *Coile* king of *Britain*, where *Constantine* was by her brought forth. Do not object *Nicephorus Callistus* that erroneously affirms him born in *Drepanum* of *Bithynia*, or *Jul. Firmicus*, ^h that says at *Tarsus*, upon which testimony (not uncorrupted) a great critick ⁱ had violently offered to deprive us both of him and his mother, affirming her *Bithynian*; nor take advantage of *Ce-*

drenus, that will have *Dacia* his birth soil. But our histories, and with them, the *Latin* ecclesiastick relation (in passages of her invention of the cross, and such like) allowed also by cardinal *Baronius*, make her thus a *British* woman. And for great *Constantine's* birth in this land, you shall have authority; against which I wonder how *Lipsius* durst oppose his conceit. In an old panegyrist, ^k speaking to *Constantine*; *Li-beravit ille* (he means his father) *Britannias servitute, tu etiam nobiles illic oriendo fecisti; He freed Britain of bondage, thou enobledst it with thy birth*; and another, ^{*} *O fortunata nunc omnibus beator terris Britannia, quae Constantinum Caesarem prima vidisti; O happy Britain that first of all sawest Constantine*. These might persuade, that *Firmicus* were corrupted, seeing they lived when they might know as much of this as he. *Nicephorus* and *Cedrenus*, are of much later time, and deserve no undoubted credit. But in certain oriental admonitions ^l of state (newly published by *John Meursius*, professor of Greek story at *Leyden*) the emperor *Constantine Porphyrogenetes* advises his son *Romanus*, that he should not take him a wife of alien blood, because all people dissonant from the government and manners of the empire by a law of *Constantine*, established in *S. Sophy's* church, ^m were prohibited the height of that glory, excepting only the *Franks*, allowing them this honour, *ὅτι καὶ αὐτοὶ τὸν Ἰησοῦν καὶ τὸν τοῦτον ἐξ ἑσπερίων, because he was born in their parts*, which might make you imagine him born in *Gaul*. Let it not move you, but observe that this *Porphyrogenetes* lived about 900 years since, when it was (and among the *Turks* still is) ordinary with these *Greeks* to call all ⁿ (especially the western) *Europeans* by the name of *Franks*, as they did themselves *Romans*. Why then might not we be comprehended, whose name, as *English*, they scarce, as it seems, knew of, calling us ^o *Inclins*; and indeed the indefinite form of speech in the author I cite, shews as if he meant some remote place by the *Franks*, admitting he had intended only but what we now call *French*. If you can believe one of our country men ^p that lived about *Hen. II.* he was born in *London*; others think he was born at *York*; of that, I determine not. Of this *Helen*, her religion, finding the cross, good deeds in walling *London* and *Colchester* (which in honour of her, they say, bears a cross between four crowns, and for the invention she is yet celebrated in holyrood day in *May*) and of this *Constantine* her son, a mighty and religious emperor, (although I know him taxed for no small faults by ecclesiastick writers) that in this air received his first light and life, our *Britons* vaunt not unjustly; as in that spoken to king *Arthur*. ^q

^f Distinct. 80. cap. in illis. Clemens pp. Pontific. vide Basingtoch. hist. 9. not. 11. *Stow's Survey of London*, pag. 479. ^g Ivo Carnotens. in epistol. 272. ^h Mathesew, lib. 1. cap. 4. ⁱ Lipsi. de Rom. magnitud. lib. 4. cap. 11. nimium lapsus. ^k Panegyric. dixerim licet, Maximiano, &c. ^l Panegyric. Faerem. Constantino. ^m Constantine. Porphyrogenet. de administ. imperio. cap. 29. ⁿ Jo. Leviaeum ad Panegyric. 5. haut multum hic moramur. ^o Nicet. Choniata. 2. Isaac Angel. §. ult. *Iyulivon* Glocestrenf.

^p V. Kenulph. in epist. ad Leonem pp. apud G. Malmesb. lib. 1. de reg. & 1. de Pontific. ^q Rob.

Now it worth iended that Sibile the sage sede bi-
hoze
That there sold of Brutaine the men be phoze
That solde winne the aumppe of Rome; of
twepe ydo it is,
As of * Bely and Constantin, and thou art the
thredde y wis.

For this *Sibyl* who she was, I must take day
to tell you.

S. Against the Arrian sect at Arles having run.

In the second council at *Arles*, in *Provence*, held under *Constantine* and *Sylvester*, is subscribed the name of *Resitutus*, bishop of *London*, the like respectively in † other councils spoken of by the author. It is not unfit to note here, that in later time the use hath been (when and where *Rome's* supremacy was acknowledged) to send always to general councils, out of every christian state, some bishops, abbots, and priors; and I find it affirmed by the clergy under *Hen. II.* that to a general council, only four bishops are to be sent out of *England*. So, by reason of this course added to state allowance afterward at home, were those canons received into our law; as of *bigamy* in the council of *Lyons*, interpreted by parliament under *Edward I.* of pluralities in the council of *Lateran*, held by *Innocent III.* reigning our king *John*; And the law of *lapse* in benefices had to it's ground from that council of *Lateran* in c10.c LXXIX under *Alexander III.* whither, for our part, were sent *Hugh* bishop of *Durham*, *John* bishop of *Norwich*, *Robert* bishop of *Hereford*, and *Rainold* bishop of *Bath*, with divers abbots, where the † canon was made for presentation within six months, and title of *lapse* given to the bishop in case the chapter were patron, from the bishop to them if he were patron; which, although, in that, it be not law with us, nor also their difference between a † lay and ecclesiastick patron for number of the months, allowing the layman but four, † yet shews itself certainly to be the original of that custom antiently and now used in the ordinary's collation. And hither *Henry of Bracton* * refers it expressly; by whom you may amend *John le Briton*, † and read *Lateran* in stead of *Lyons*, about this same matter. Your conceit, truly joining these things, cannot but perceive that canons and constitutions, in popes councils, absolutely never bound us in other form than fitting them by the square of *English* law and policy, our reverend sages and baronage † all owed and interpreted them, who in their formal † writs would mention them as law and custom of the kingdom, and not otherwise.

S. Eleven thousand maids sent those our friends again.

Our common story affirms, that in time of

Gratian the emperor, *Conan* king of *Armorick Britain* (which was filled with a colony of this isle by this *Conan* and *Maximus*, otherwise *Maximian* that slew *Gratian*) having war with the neighbouring *Gauls*, desired of *Dinotb's* regent of *Cornwal*, or (if you will) of our *Britain* (by nearness of blood, so to establish and continue love in the posterity of both countries) that he might himself march with *Dinotb's* daughter *Orsula*, and with her a competent multitude of virgins might be sent over to furnish his unwived bachelors; whereupon were x1.c10 of the nobler blood with *Orsula*, and Lx.c10 of meaner rank (elected out of divers parts of the kingdom) shipped at *London* for satisfaction of this request. In the coast of *Gaul*, they were by tempest dispersed; some ravished by the ocean; others for chaste denial of their maidenheads to *Guaine* and *Melga*, kings of *Huns* and *Picts*, (whom *Gratian* had animated against *Maximus*, as usurping title of the *British* monarchy) were miserably put to the sword in some *German* coast, whither misfortune carried them. But because the author slips it over with a touch, you shall have it in such old ^b verse, as I have.

This maidens were ygadzed and to London come.

Spani were glad ther of and wel sogri some.

That * hii sold of londe wende and neu eft † hoz stend yle.

And some to lese hoz maidenhod wiwes hoz to be.

Tho hii were in stipes ydo, and in the se ber were

So gret tempest ther come that ydof hem here and there.

So that the † messedel adz eined were in the se

And to othor lonos some yozive, that ne come never ** age.

A king ther was of Hungry, Guaine was his name

And † Melga k. Picardie that couthe inou of fame,

The waters hoz to loki aboute, the se hii were

A companie of this maydens so that hii met there.

To hoz solie hii wolde † home nime, and hoz men also,

Al the maydens wold rather die than conceyt thereto.

Tho wende hozth the *** luther men and the maidens

How echone

So that to the lasse Brutaine there ne come alie none.

* They. † Their. ‡ Most part. *** Again
†† Of the *Picts*. ‡‡ Them take. **** Leud.

Some lay all this wickedness absurdly (for time endures it not) to *Attila's* ^c charge, who reigned king of *Huns* about cccc.L. (above Lx. years after *Gratian*) and affirm their sufferings of this (as they call it) martyrdom at *Cologn*, whither, in at the mouth of *Rhine*, they were carried; Others also, particularly tell you that there were four companions to *Orsula*, in greatness and honour, their ^d names being *Pyn-nosa*, *Cordula*, *Eleutheria*, *Florentia*, and that under these, were to every of the x1.c10. one president, *Iota*, *Benigna*, *Clementia*, *Sapientia*, *Carpophora*, *Columba*, *Benedicta*, *Odia*, *Celyndris*, *Sibylla* and *Lucia*; and that custom at *Cologn* hath excluded all other bodies from the place of their burial. The strange multitude of LXXI.c10. virgins thus to be transported,

* Belinus.

† 1. Tom. Concil.

‡ Roger Hoveden, fol. 332.

§ G. Nubrigenf. (cujus editionem nuperam

& Jo. Picardi annotationes consulas) lib. 3. cap. 3. & Hoveden, habent ipsas, quae sunt, constitutiones. Extravag. concess.

praebend. c. 2.

¶ 6 Decret. tit. jure patronat. §. verum. c. unic.

Lib. 4. tract. 2. cap. 6.

Cap. des

exceptions 92.

2 D. Ed. Coke lib. de jure regis ecclesiastic.

Regist. orig. fol. 42

Rob. Glocestrenf.

† Hector. Boet. hist. Scotie. 7. ex antiquioribus, verum falsi reis.

†† Ufford. martyrolog. 21. Octob.

with the difference of time (the most excellent note to examine truth of history by) may make you doubt of the whole report. I will not justify it, but only admonish thus, that those our old stories are in this followed by that great historian *Baronius*, allowed by *Francis de Bar*, *White of Basingstoke*, and before any of them, by that learned abbot *Trithemius*, beside the martyrologies, which to the honour of the *XI. CIO* have dedicated the *XI. day* of our *October*. But indeed how they can stand with what in some copies of *Nennius*^e we read, I cannot see; It is there reported, that those *Britons* which went thither with *Maximus* (the same man and time with the former) took them *Gaulish* wives, and cut out their tongues, lest they should possess their children of *Gaulish* language; whence our *Welsh* called them afterward *lehit-widion*, half silent, because they spoke confusedly. I see^f that yet there is great affinity betwixt the *British Armorick*, and the *Welsh*, the first (to give you a taste) saying *Don tad pehuniu sou en esauu*, the other, *En tad yr hwn ydwiu yn y nesoedd*, for *Our Father which art in heaven*; But I suspect extremely that fabulous tongue-cutting, and would have you, of the two, believe rather the virgins, were it not for the exorbitant number, and that, against infallible credit, our historians mix with it *Gratian's* surviving *Maximus*; a kind of fault that makes often the very truth doubtful.

§. That from the Scythian poor, whence they themselves derive.

He means the *Saxons*, whose name, after learned men, is to the fourth song derived from a *Scythian* nation. It pleases the muse in this passage, to speak of that original, as mean and unworthy of comparison with the *Trojan British*, drawn out of *Jupiter's* blood by *Venus*, *Anchises*, and *Aeneas*; I justify her phrase, for that the *Scythian* was indeed poor, yet voluntarily, not through want, living commonly in field tents; and (as our *Germans* in *Tacitus*) so *Stoical*, as not to care for the future, having provision for the present, from nature's liberality. But, if it were worth examining, you might find the *Scythian* as noble and worthy a nation as any read of; and such a one as the *English* and others might be as proud to derive themselves from, as any which do search for their ancestors glory in *Trojan*, ashes. If you believe the old report^g of themselves, then can you not make them less than descended by *Targitans* from *Jupiter* and *Borysthenes*; if what the *Greeks*, who, as afterward the *Romans* accounted and stiled all barbarous, except themselves; then you must draw their pedigree through *Agathyrsus*, *Gelonus*, and *Scythia*, from *Hercules*; neither of these have, in this kind, their superior. If among them you desire learning, remember *Zamolxis*, *Diceneus*, and *Anacharsis* before the rest. For although to some of these, other patronymicks are given, yet

know that antiently (which for the present matter observe seriously) as all, southward, were called *Æthiopians*, all eastward, *Indians*, all west, *Celts*, so all northern were stiled *Scythians*; as ^h *Ephorus* is author. I could add the honourable allegories, of those their golden yoke, plough, hatchet, and cup, sent from heaven, wittily enough delivered by ⁱ *Goropius*, with other conjectural testimonies of their worth. But I abstain from such digression.

Illustrations on the ninth song.

More western are you carried into *Merioneth*, *Caernarvan*, *Anglesey*, and those maritime coasts of north *Wales*.

§. The last her genuine laws which stoutly did retain.

Under *William Rufus*, the *Norman English* (animated by the good success which *Robert Fitz-Hamon* had first against *Rees ap Tiddour*, prince of south *Wales*, and afterward against *Jestyn*, lord of *Glamorgan*) being very desirous of these *Welsh* territories; *Hugh*,^k surnamed *Wolf*, earl of *Chester*, did homage to the king for *Tegengl* and *Ryvonioch*, with all the land by the sea unto *Conway*. And thus pretending title, got also possession of *Merioneth*, from *Gruffith ap Conan*, prince of north *Wales*; but he soon recovered it, and thence left it continued in his posterity, until *Llewelyn ap Gruffith*, under *Edward I.* lost it, himself, and all his dominion. Whereas other parts (of south and west *Wales* especially) had before subjected themselves to the *English* crown; this, through frequency of craggy mountains, accessible with too much difficulty; being the last strong refuge until that period of fatal conquest.

§. Of those two noble arms into the land that bear.

In the confines of *Merioneth* and *Cardigan*, where these rivers jointly pour themselves into the *Irish* ocean, are these two arms or creeks of the sea, famous, as he saith, through *Guineithia* (that is, one of the old titles of this north *Wales*) by their names of *traeth mawr* and *traeth bachan*, i. e. the great haven, and the little haven; *traeth*, in ^l *British*, signifying a tract of sand, whereon the sea flows, and the ebb discovers.

§. Into that spacious lake where Dee unmix'd doth flow.

That is *Llyn-tegid* (otherwise called by the *English* *Pemelsmere*) through which, *Dee* rising in this part runs whole and unmixed, neither lake nor river communicating to each other water or fish; as the author anon tells you. In the^m antients, is remembered specially the like of *Rhofne* running unmixed, and (as it were) over the lake of *Geneva*; as for a greater wonder, the most learned *Casaubon*ⁿ hath delivered also of *Arva*, running whole through

^e Sunt enim antiqui codices quibus hoc merito deest, nec. n. ut glossa illud non itreptasse, sentire sum potis. ^f Paul. Merul. cosmog. part. 2. lib. 3. cap. 15. ^g Herodot. Melpom. 3. ^h Apud Strab. lib. 2. ⁱ Amazonic. Beccesclan. 8. ^k Pouel, ad Caradoc. Llancarv. & Camd. ^l Girald. itinerar. 2. cap. 6. ^m Ammian. Marcel. hist. 15. Pomp. Mel. lib. 2. Plin. hist. nat. 2. cap. 103. ⁿ Ad Strabon. lib. 3.

Rhosue; and divers others such like are in *Pliny's* collection of nature's most strange effects in waters.

§. *The multitude of wolves that long this land annoy'd.*

Our excellent *Edgar* (having first enlarged his name with diligent and religious performance of charitable magnificence among his *English*, and confirmed the far spread opinion of his greatness, by receipt of homage at *Chester*, from eight kings; as you shall see in and to the next song) for increase of his benefits towards the isle, joined with preservation of his crown duties, converted the tribute of the *Welsh* into ccc wolves a year, as the author shews; the king that paid it,

Thye per he huld is terme rent ac the verthe was behinde
Wo2 he sende the king wo2d that he ne mighte ne mo binde.

as, according to the story my old rhimer delivers it. Whom you are to account for this *Ludwall* king of *Wales* in the *Welsh* history, except *Howel ap Iewaf*, that made war against his uncle *Jago*, delivered his father, and took on himself the whole principality towards the later years of *Edgar*, I know not. But this was not an utter destruction of them; for, since that ° time, the manor of *Piddlesey* in *Leicestershire* was held by one *Henry of Angage*, *per serjeantiam capiendi lupos*, as the inquisition delivers it.

§. *S. Helen's wondrous way—*

By *Festeneog*, in the confines of *Caernarvan* and *Merioneth*, is this high way of note; so called by the *British*, and supposed made by that *Helen*, mother to *Constantine*, (among her other good deeds) of whom to the last song before.

§. *As level as the lake until the general flood.*

So is the opinion of some divines, ^p that, until after the flood, were no mountains, but that by congection of sand, earth, and such stuff as we now see hills strangely fraughted with, in the waters they were first cast up. But in that true secretary of divinity and nature, *Solomon*, ^q speaking as in the person of *Wisdom*, you read, *Before the mountains were founded, and before the hills I was formed*, that is, before the world's beginning; and in holy ^r writ elsewhere, *The mountains ascend, and the valleys descend to the place where thou didst found them*; Good authorities to justify mountains before the flood. The same question hath been of isles, but I will peremptorily determine neither.

§. *And with stern AEolus blasts, like Thetis waxing rank.*

The south-west wind constrained between two hills on both sides of the lake, sometimes so violently fills the river out of the lake's store, that both have been affirmed (but somewhat against truth) never to be disturbed, or overflow, but upon tempestuous blasts; whereas indeed (as *Powel* delivers) they are overfilled with rain and land floods, as well as other waters; but most of all moved by that impetuous wind.

§. *Still Delos like, wherein a wand'ring isle doth float.*

Of this isle in the water on top of *Snowdon*, and of one eyed eels, trouts, and perches, in another lake there, *Girald* is witness. Let him perform his word; I will not be his surety for it. The author alludes to that state of *Delos*, which is feigned, ^t before it was with pillars fastened in the sea, for *Latona's* childbirth.

§. *That with the term of Welsh the English now imbase.*

For this name of *Welsh* is unknown to the *British* themselves, and imposed on them, as an antient and common opinion is, by the *Saxons*, calling them *walsh*, i. e. *strangers*. Others fabulously have talked of *Wallo* and *Wandolena*, whence it should be derived. But you shall come nearer truth, if upon the community of name, customs, and original, betwixt the *Gauls* and *Britons*, you conjecture them called *Walsh*, as it were, *Gualsh* (the *W* oftentimes being in stead of the *G*) which expresses them to be *Gauls* rather than *strangers*; although in the *Saxon* (which is ^u observed) it was used for the name of *Gauls*, *strangers*, and *barbarous*, perhaps in such kind as in this kingdom the name of ^v *Frenchman*, hath by inclusion comprehended all kind of aliens.

§. *Was Little Britain called—*

See a touch of this in the passage of the virgins to the eighth song. Others affirm, that under ^x *Constantine*, of our *Britons*, colonies were there placed; and from some of these the name of that now dukedom, to have had its beginning. There be ^y also that will justify the *British* name to have been in that tract long before, and for proof cite *Dionysius* ^z *Afer*, and ^a *Pliny*; but for the first, it is not likely that he ever meant that continent, but this of ours, as the learned tell you; and for *Pliny*, seeing he reckons his *Britons* of *Gaul* in the confines of the now *France*, and lower *Germany*, it is as unlikely that betwixt them and little *Bretagne* should be any such habitude. You want not authority, affirming that our *Britons* from them, ^b before they from ours, had deduction of this national title; but my belief admits it nor. The surer opinion is to refer the name unto

^q Itin. Leicest. 27 Hen. III. in archiv. turr. London.

^q Proverb. viii.

^r Psalm. civ.

^r Pindar. ap. Strabon.

lib. 3. tract. 2. cap. 15. leg. G. conquest. & d. Coke in cas. Calvin.

^u V. Eustath. ad eundem.

dixisse, miror p. Merulam tam constanter affirmasse.

^p His post alios refragatur B. Pererius ad Genes. j. quaest. 101.

^t Buchanan. Scotie. hist. 2.

^u Braet.

^x Malmesb. de gest. reg. 1.

^y Paul. Merul. cosmog.

^z Hist. nat. lib. 4. cap. 17. quem super Ligerim Britannos hos sitos

^b Bed. lib. 1. cap. 3. quem secutus P. Merula.

those *Britons*, (which being expelled the island at the entry of the *Saxons*) got then new habitation in this maritime part, as beside other authority, an exprefs assertion is in an old fragment of a *French* history,^c which you may join with most worthy *Camden's* treatise on this matter; whither (for a learned declaration of it) I send you.

S. Forewarned was in dreams that of the Britons reign.

Cadwallader driven to forsake this land, especially by reason of plague and famine, tyrannizing among his subjects, joined with continual irruptions of the *English*, retired himself into little *Bretagne*, to his cousin *Alan* their king; where, in a dream, he was admonished by an angel, (I justify it by the story) that a period of the *British* empire was now come, and until time of *Merlin's* prophecy, given to king *Arthur*, his country or posterity should have no restitution; and farther, that he should take his journey to *Rome*, where, for a transitory, he might receive an eternal kingdom. *Alan* upon report of this vision, compares it with the *eagles* prophecies, the *Sibyl's* verses, and *Merlin*; nor found he but all were concurring in prediction of this ceasing of the *British* monarchy. Through his advice therefore, and a prepared affection, *Cadwallader* takes voyage to *Rome*, received of *PP. Sergius*, with holy tincture, the name of *Peter*, and within very short time there died; his body very lately under pope *Gregory XIII.* was found^d buried by *St. Peter's* tomb, where it yet remains; and *White of Basingstoke* says, he had a piece of his raiment of a chefnut colour, taken up (with the corps) uncorrupted; which he accounts, as a *Romish* pupil, no slight miracle. It was added among *British* traditions, that, when *Cadwallader's* bones^e were brought into this isle, then should the posterity of their princes have restitution; concerning that, you have enough to the second song. Observing concurrence of time and difference of relation in the story of this prince, I know not well how to give myself or the reader, satisfaction. In *Monmouth*, *Robert of Glocester*, *Florilegus*, and their followers, *Cadwallader* is made the son of *Cadwallo*, king of the *Britons* before him, but so, that he descended also from *English* Saxon blood; his mother being daughter to *Penda* king of *Mercland*. Our monks call him, king of west *Saxons*, successor to *Kentwine*, and son to *Kenbrith*. And where *Caradoc Lhancarvan* tells you of wars betwixt *Ine* or *Ivor* (successor to *Cadwallader*) and *Kentwine*, it appears in our chronographers, that *Kentwine* must be dead above three years before. But howsoever these things might be reconcileable, I think clearly that *Cadwallader* in the *British*, and^f *Cedwalla*, king of west *Saxons*, in *Bede*, *Malmesbury*, *Flo-*

rence, *Huntingdon*, and other stories of the *English*, are not the same, as *Geoffrey*, and, out of *Girald*, *Randal* of *Chester*, and others, since erroneously have affirmed. But strongly you may hold, that *Cadwallo* or *Caswallo*, living about DC.XL slain by *Oswald* king of *Northumberland*, was the same with *Bede's* first *Cedwalla*, whom he calls king of *Britons*, and that by misconceit of his two *Cedwalls* (the other being, almost L years after, king of west *Saxons*) and by communicating of each other's attributes upon indistinct names, without observation of their several times, these discordant relations of them, which in story are too palpable, had their first being. But to satisfy you in present, I keep myself to the course of our ordinary stories, by reason of difficulty in finding an exact truth in all. Touching his going to *Rome*, thus: Some will, that he was christian before, and received of *Sergius* only confirmation; others, that he had there his first baptism, and lived not above a month after; which time (to make all dissonant) is extended to eight years in *Lhancarvan*. That, one king *Cedwall* went to *Rome*, is plain by all, with his new imposed name and burial there: For his baptism before, I have no direct authority but in *Polychronicon*; many arguments proving him indeed, a well-willer to christianity, but as one that had not yet received its holy testimony. The very phrase in most of our historians, is plain that he was baptized; and so also his epitaph then made at *Rome*, in part here inserted.

ⁱ Percipiensque alacer redivivæ præmia vitæ,

Barbaricam rabiem, nomen & inde suum, Conversus convertit ovans, Petrumque vocari,

Sergius antistes, jussit ut ipse pater.

Fonte renascentis quem Christi gratia purgans,

Protinus ablatum vexit in arte poli.

This shews also his short life afterward, and agrees fully with the *English* story. His honourable affection to religion, before his cleansing mark of regeneration, is seen in that kind respect, given by him to *Wilfrid* first bishop of *Selesey* in *Suffex*; where the episcopal see of *Chichester* (hither was it translated from *Selesey*, under *William* the conqueror) acknowledges in publick monuments, rather him founder than *Edikwalch*, the first christian king of that province, from whom *Cedwalla* violently took both life and kingdom; nor doth it less appear, in that his paying tenths of such spoils, as by wars fortune, accrued to his greatness; which notwithstanding, although done by one then not received into the church of either testament, is not without many examples among the antient *Gentiles*, who therein imitating the *Hebrews*, tythed much of their possessions, and acquired subsistence

^c Ex ms. Coenob. Floriac. edit. per P. Pithæum.

Higden. lib. 5. cap. 20.

^d Cedwalla rex Britonum Bed. hist. eccles. 3. cap. 1. caeterum v. Nennium ap. Camd. in Ottadi-

nis pag. 664. & 665. & Bed. lib. 5. cap. 7.

and soon died. A.C.H.R. DC.LXXX.VIII.

Judicious conjecture cannot but attribute all this to the west Saxon Cedwall, and not the British.

See to the eleventh song.

^e Anton. major. ap Basingstoch. lib. 9. not. 32.

^f Bed. eccles. hist. lib. 5. cap. 7. Englished in substance, if you say, He was baptized,

^g Ranulph.

to such deities as unhallowed religion taught them to adore; which, whether they did upon mystery in the number, or, therein as paying first fruits (for the word בְּכֹרֶת which was for *Abel's* offerings, and מַעֲשֵׂה for *Melchisedech's* tythes, according to that less^h calculation in cabalistical concordance of identities in different words, are of equal number, and by consequent of like interpretation) I leave to my reader. Speaking of this, I cannot but wonder at that very wonder of learning,ⁱ *Joseph Scaliger*, affirming, tythes among those antients, only payable to *Hercules*; whereas, by express witness of an^k old inscription at *Delphos*, and the common report of *Camillus*, it is justified, that both *Greeks* and *Romans* did the like to *Apollo*; and no less, among them and others together, was to *Mars*,^l *Jupiter*,^m *Juno*,ⁿ and the number of gods in general, to whom the *Athenians* dedicated the tenth^o part of *Lesbos*. He which the author, after the *British*, calls here *Ivor*, is affirmed the same with *Ine* king of *Westsex* in our monkish chronicles, although there be scarce any congruity betwixt them in his descent. What follows, is but historical, and continued succession of their princes.

§. *More excellent than those which our good Howel here.*

For, *Howel Dha*, first prince of south *Wales* and *Powis*, after upon death of his cousin *Edwal Voek*, of north *Wales* also, by mature advice in a full council of barons and bishops, made divers universal constitutions. By these, *Wales* (until *Edward I.*) was ruled. So some say; but the truth is, that before *Ed. I.* conquered *Wales*, and, as it seems, from 28 but especially 35 of *Hen. III.* his empire enlarged among them, the *English* king's writ did run there. For when *Ed. I.* sent commission to ^p *Reginald of Grey*, *Thomas*, bishop of *S. David's*, and *Walter of Hopton*, to inquire of their customs, and by what laws they were ruled, divers cases were upon oath returned; which by, and according to the king's law, if it were between lords or the princes themselves, had been determined; if between tenants, then by the lord's seising it into his hands, until discovery of the title in his court; but also that none were decided by the laws of *Howel Dha*. Of them, in *Lbnyd's* annotations to the *Welsh* chronicle, you have some particulars, and in the roll which hath aided me. Touching those other of *Molmutius* and *Martia*, somewhat to the ninth song.

§. *Us to subjection sloop, or makes us, Britons, bear*

Th' unweildy Norman yoke — —

Snowdon properly speaks all for the glory of his country, and follows suppositions of the *British* story, discording herein with ours.

For in *Matthew Paris*, and *Florilegus*, under the year CIO.LXXVIII. I read, that the *Conqueror* subdued *Wales*, and took homage and hostages of the princes; so of *Hen. I.* CIO.C.XIII. *Hen. II.* in CIO.C.LVII. and other times. Of this *Hen. II.* hath been understood that prophecy of *Merlin*, when the freckle faced prince (so was the king) passes over * rhyd pencaen, the ford at the rocks head, then should the *Welsh* forces be weakened. For he in this expedition against *Rees ap Gryffith* into south *Wales*, coming mounted near that ford in *Glamorgan*, his steed maddened with sudden sound of trumpets, on the bank violently, out of the purposed way, carries him through the ford; which compared with that of *Merlin*, gave to the *British* army no small discomfiture; as a ^q *Cambro-Briton*, then living, hath delivered. But, that their stories and ours are so different in these things, it can be no marvel to any that knows how often it is used among ^r historians, to flatter their own nation, and wrong the honour of their enemies. See the first note here for *Rufus* his time.

§. *And from the English power, the imperial standard took.*

Henry of Essex, at this time standard-bearer to *Hen. II.* in a streight at *Counslsb* near *Flint*, cast down the standard, thereby animating the *Welsh*, and discomfiting the *English*, adding much danger to the dishonour. He was after ward accused by *Robert of Mountfort*, of a traitorous design in the action. To clear himself, he challenges the combat; they both, with the royal assent and judicial course by law of arms, enter the lists; where *Mountfort* had the victory, and *Essex* pardoned for his life; but forfeiting ^t all his substance, entered religion, and professed in the abbey of *Reading*, where the combat was performed. I remember a great ^u clerk of those times says, that *Mountfort* spent a whole night of devotions to *S. Denis*, (so I understand him, although his copy seem corrupted) which could make champions invincible; whereto he refers the success. That it was usual for combatants to pray over night to several saints, is plain by ^u our law annals.

§. *Or any ear had heard the sound of Florida.*

About the year CIO.C.LXX *Madoc*, brother to *David ap Owen*, prince of *Wales*, made this sea voyage; and, by probability, those names of *Capo de Briton* in *Norumbeg*, and *Penguin* in part of the northern *America*, for a white rock, and a white headed bird, according to the *British*, were relics of this discovery. So that the *Welsh* may challenge priority of that new world, before the *Spaniard*, *Genoese*, and all other mentioned in *Lopez*, *Marinaeus*, *Cortez*, and the rest of that kind.

^h Ratio cabalistica minor, secundum quam e centenario quolibet & denario unitatem accipiunt, reliquos numeros in utroque vocabulo retinentes uti Archangel. Burgonovens in dog. cabalisticis. ⁱ Ad Festum verb. decima. ^k Clemens Alexand. Strom. 3. & Steph. *ἐκ τοῦ πλ.* in *Ἀποκρίσιν*, tantundem; praeter alios quam plurimos. ^l Lucian *αὐτοῦ* *Ὁμήρου*, & Varro ap. Macrobi. 3. cap. 11. ^m Herodot. 2. ⁿ Samii apud Herodot. 3. ^o Thucyd. hist. 7. ^p Rot. claus. de ann. 9 Ed. 1. in archiv. tur. London. ^q Girald. itinerar. 1. cap. 6. ^r De quo, si placet, videas compendiose apud Alberic. ^s Joan. Sarisburiensis. ep. 159. ^t 30 Ed. III. fol. 20. ^u Guil. de Novo Burgo, lib. 2. cap. 5.

§. And with that Croggins name let th' English us disgrace.

The first cause of this name, take thus: In one of *Hen. II.* his expeditions into *Wales*, divers of his camp sent to essay a passage over *Offa's* dike, at *Crogen* castle, were entertained with prevention by *British* forces, most of them there slain; and, to present view, yet lying buried. Afterward, this * word *Crogen*, the *English* used to the *Welsh*, but as remembering cause of revenge for such a slaughter, although time hath made it usual in ignorant mouths for a disgraceful attribute.

§. To his unbridled will, our necks we never bow'd.

Sufficiently justifiable is this of king *John*, although our monks therein not much discording from *British* relation, deliver, that he subdued all *Wales*; especially this northern^y part unto *Snowdon*, and received twenty hostages for surety of future obedience. For, at first, *Lhwelin ap Iorweth* prince of north *Wales*, had by force joined with stratagem the better hand, and compelled the *English* camp to victual themselves with horse-flesh; but afterward indeed, upon a second inroad made into *Wales*, king *John* had the conquest. This compared with those changes ensuing upon the popes wrongful uncrowning him, his barons rebellion, and advantages in the mean time taken by the *Welsh*, proves only, that his winnings here were little better than imaginary, as one on a tragick stage. The stories may, but it fits not me to inform you of large particulars.

§. As fate had spar'd our fall till Edward Longshank's reign.

But withal, observe the truth of story in the mean time. Of all our kings until *John*, somewhat you have already. After him, *Hen. III.* had wars with *Lhwelin ap Iorweth*; who (a most worthy prince) desiring to bless his feeble days, with such composed quiet, as inclining age affects, at last put himself into the king's protection. Within short space dying, left all to his sons, *David* and *Gruffyth*; but *David* only being legitimate, had title of government. He, by charter,^z submits himself and his principality to the *English* crown, acknowledges that he would stand to the judgment of the king's court in controversies betwixt his brother and himself; and that what portions soever were so allotted to either of them, they would hold of the crown in chief; and briefly makes himself and his barons (they joining in doing homage) tenants, and subjects of *England*. All this was confirmed by oath, but the oath through favour, purchased at *Rome*, and delegate authority in that kind to the abbots of *Cowey* and *Remer*, was (according to persuasion of

those times, the more easily induced, because gain of regal liberty was the consequent) soon released, and in lieu of obedience, they all drew their rebellious swords; whereto they were the sooner urged, for that the king had transferred the principality of *Wales* (by name of *una cum conquestu nostro Walliae*^a) to prince *Edward Longshanks* (after *Edward I.*) since when, our sovereigns eldest sons have born that hopeful title. But when this *Edward*, after his father, succeeded in the *English* crown, soon came that fatal conversion, here spoken of by the author, even executed in as great and worthy a prince, as ever that third part of the isle was ruled by; that is *Lhwelin ap Gruffyth*, who (after uncertain fortune of war, on both sides, and revolting of south *Wales*) was constrained to enter a truce (or rather subjection) resigning his principality to be annexed wholly to the crown, after his death, and reserving, for his life only, the isle of *Anglesey*, and five baronies in *Snowdon*; for which, the king's exchequer should receive a yearly rent of *cio* marks; granting also, that all the baronies in *Wales* should be held of the king, excepting those five reserved, with divers other particulars in *Walsingham*, *Matthew of Westminster*, *Nicholas Trivet*, and *Humphrey Lbwyd*, at large reported. The articles of this instrument, were not long observed, but, at length, the death of *Lhwelin*, spending his last breath for maintenance of his ancestors rights against his own covenant, freely cast upon king *Edward* all that, whereof he was, as it were, instituted there. What ensued, and how *Wales* was governed afterward, and subject to *England*, stories and the statute of *Ruthlan*, will largely shew you; and see what I have to the seventh song. In all that follows concerning *Edward* of *Caernarvan*, the author is plain enough. And concluding, observe this proper personating of *Snowdon* hill, whose limits and adjacent territories are best witnesses, both of the *English* assaults, and pacifying covenants between both princes.

§. Was call'd in former times her country Cambria's mother.

In the *Welsh* proverb *Mon mam Cymru*, *Mon*, the mother of *Wales*,^b in such sense as *Sicily* as was stiled, *Italy's*^c store-house, by reason of fertile ground, and plenteous liberality of corn thence yearly supplied. And *Girald* tells me, that this little isle was wont to be able to furnish all *Wales* with such provision, as *Snowdon* hills were for pasture. Of its antiquities and particulars, with plain confutation of that idle opinion in *Polydore*, *Hector Boethius*, and others, taking the (now called) isle of *Man* for this *Mon* (now *Anglesey*) learned *Lbwyd* in his epistle to *Ortelius*, hath sufficient. Although it be divided as an isle (but rather by a shallow ford, than a sea; and in the *Roman*

^z Guty Owen in *Lhwelin ap Iorweth*.

^y Powis paid a tribute, as out of the laws of *Howel Dha*, is noted by doctor *Powel*.

^a *Gruffyth* then imprisoned, was, with others, a pledge for her husband's part.

^b *Girald. itinerar.* 2. cap. 7. & 9.

^c *Strabo*, lib. 5.

^y Note, that north *Wales* was the chief principality, and to it south *Wales* and

^z *Charta Davidis* 25 *Hen. III.* *Senen*, wife.

^a In *archiv. feaccar.* & *Polydore. hist.* 16.

times, we see by *Tacitus*, that *Paulinus* and *Agricola's* soldiers swam over it) yet is it, and of ancient time hath been, a county by itself, as *Caernarvan*, *Denbigh*, and the rest neighbouring.

S. That the Eubonian Man, a kingdom long time known.

It is an isle lying betwixt *Cumberland*, and the *Irish Down* county, almost in the mid sea, as long since *Julius Caesar* could affirm, calling it ^d *Mona*, which being equivalent, as well for this, as for *Anglesey*, hath with imposture blinded some knowing men. *Nennius* (the eldest historian amongst us extant) gives it the name of *Eubonia-manay*, like that here used by the author. It was of antient time governed by kings of its own, as you may see in the chronicle of *Russin*, deduced from time of *S. Edward*, into the reign of *Edward II.* After this the government of the *English* and *Scots* were now and then interchanged in it, being at last recovered, and with continuance, ruled by such as the favour of our sovereigns (to whose crown ^e it belonged) honoured with that title, *king of Man*. It is at this day, and since time of *Henry IV.* hath ^f been, in that noble family of the *Stanleys* earls of *Derby*; as also is the patronage of the bishoprick of *Sodor*, whereto is all judicial government of the isle referred. There was long since a controversy, whether it belonged to *Ireland* or *England* (for you may see in the civil ^g law, with which, in that kind, ours somewhat agrees, that all lesser isles are reckoned part of some adjoining continent, if both under the same empire) and this by reason of the equal distance from both. To decide it, they tried if it would endure venomous beasts, which is certainly denied of *Ireland*; and, finding that it did, ^h adjudged it to our *Britain*. The other isles here spoken of, lie further north by *Scotland*, and are to it subject.

S. The fearless British priests under an aged oak.

He means the *Druids*; because they are indeed, as he calls them, *British* priests, and that this island was of old, their mother; whence, as from a seminary, *Gaul* was furnished with their learning. Permit me some space more largely to satisfy you in their name, profession, sacrifice, places of assembling; and lastly, subversion. The name of *Druids* hath been drawn from *δρῦς*, i. e. an oak; because of their continual ⁱ using that tree as superstitiously hallowed; according as they are called also *σαερινδαι*^k or *σαρινδαι*, which likewise, in *Greek*, is old oaks. To this, compare the *British* word *derw*, of the same signification, and, the origi-

nal here sought for, will seem surely found. But one, ^l that derives all from *Dutch*, and prodigiously supposes, that the first tongue spoken, makes them so stiled from *trouw wis*, i. e. *truly wise*; so expressing their nature in their name. Nor is this without good reason of conjecture (if the ground were true) seeing that their like in proportion, among the *Jews* and *Gentiles* were called (until *Pythagoras's* time) *wise men*,^m and afterward by him turned into the name of philosophers, i. e. *lovers of wisdom*; and perhaps the old *Dutch* was, as some learned think, communicated to *Gaul*, and from thence, hither; the conjecture being somewhat aided in that attribute which they have in *Pomponius*,ⁿ calling them *masters of wisdom*. A late ^o great scholar draws it from *trutin*, in an old *Dutch* copy of the gospel, signifying, as he says, *God*; which might be given them by *hyperbole* of superstitious reverence; nay, we see that it is justifiable by holy writ, so to call great magistrates and judges; as they were among the people. But that word *trutin*, or *trutchin*, in the old angelical salutation, *Zachary's* song, and *Simeon's*, published by *Vulcan*, is always *lord*; as this, *Siwihit si truchtin got Israels*, i. e. *Blessed be the Lord God of Israel*; and so in the *Saxon* ten commandments, ^p *Ic eom Drihten sin Eos*, i. e. *I am the Lord thy God*. These are the etymologies which favour of any judgment. To speak of king *Druis*, or *Sarron*, which that ^{*} *Dominican* friar hath cozened vulgar credulity withal, and thence fetch their name, according to doctor *White* of *Basingstoke*, were with him to suffer, and, at once, offer imposture. Of them all, I incline to the first, seeing it meets in both tongues, *Greek* and *British*; and somewhat the rather too, because antiquity did crown their infernal deities (and from *Dis*, if you trust *Caesar*, the *Gauls*, and by consequence, our *Britons*, upon tradition of these priests, drew their descent) with oak; as ^q *Sophocles* hath it of *Hecate*, and ^r *Catullus* of the three destinies. Neither will I desire you to spend conceit upon examination of that supposition, which makes the name ^t corrupted from *Durcerglus*, which in *Scotish*, were such as had a holy charge committed to them; whereupon, perhaps, *Bale* says, *S. Columban* was the chief of the *Druids*; I reckon that among the infinite fables and gross absurdities, which its author hath, without judgment, stuffed himself withal. For their profession, it was both of learning profane, and holy (I speak in all, applying my words to their times. They sate as judges, and determined all causes emergent, civil and criminal, subjecting the disobedient, and such as made default, to interdicts and censures, prohibiting them from sacred assemblies, taking away their capacities in honourable offices, and so disabling them, that

^d Commentar. 5.

^e Walsingham in Ed. II.

^f Camden. in insulis.

^g Ulpian ff. de iudiciis l. 9. &

verb. sig. l. 99.

^h Topograph. Hibern. dist. 2. cap. 15.

ⁱ Goropius Gallic. 5.

^m אֲבִירֵי חָכְמָה i. dixerunt sapientes, Capnio de art. cabalistic. l. 3.

quod Hebraei in usu ut

cap. 2.

(ille Annianus subditivus) Chaldaic. antiquitat. 5.

in conjectancis.

^k De nuptiis Pelei & Thetidos. 3.

^l His corpus tremulum, &c. ubi vulgatis deest ista, quae, antiquorum codicum fide, est vera lectio, uti Scalgi.

ⁿ Plin. hist. nat. 16. cap. 44.

^o Plin. hist. nat. 16. cap. 44.

^p Praefat. ad leg. Aluredi Saxonie.

^q In Piſtorib. apud Scholiast. Apollonii uti primum didici a Iosepho Scaligero

^r Hector Boeth. Scot. hist. 2.

^s Geograph. 3.

^t Berofus

(as our now out-laws, excommunicates, and attainted persons) they might not commence suit against any man. In a multitude of verses, they delivered what they taught, not suffering it to be committed to writing, so imitating both *Cabalists*, *Pythagoreans*, and antient ^c christians; but used in other private and publick business *Greek* letters, as *Caesar's* copies have; but here-of see more to the tenth song. Their more private and sacred learning consisted in divinity and philosophy (see somewhat of that, to the first song) which was such, that although I think you may truly say with *Origen*, ^u that, before our Saviour's time, *Britain* acknowledged not one true God, yet it came as near to what they should have done, or rather nearer, than most of other, either *Greek* or *Roman*, as by their positions in *Caesar*, *Strabo*, *Lucan*, and the like discoursing of them, you may be satisfied. For although *Apollo*, *Mars*, and *Mercury*, were worshipped among the vulgar *Gauls*, yet it appears, that the *Druids* invocation, was to one ^x all-healing or all-saving power. In morality, their instructions were so perswasive, and themselves of such reverence, that the most fiery rage of *Mars* kindled among the people, was by their grave councils ^y often quenched. Out of *Pliny*, receive their form of ritual sacrifice, (here described by the author) thus: In such gloomy shadows, as they most usually for contemplation retired their ascending thoughts into, after exact search, finding an oak, whereon a mistletoe grew, on the sixth day of the moon (above all other times) in which, was the beginning of their year, they religiously, and with invocation, brought with them to it, a ceremonial banquet, materials for sacrifice, with two white bulls, filleted on the horns, all which they placed under the oak. One of them, honoured with that function, clothed all in white, climbs the tree, and with a golden knife, or scythe, cuts the mistletoe, which they solemnly wrapped in one of their white garments. Then did they sacrifice the bulls, earnestly calling on the *omnia sanantem*, all healing deity, to make it prosperous and happy on whomsoever they shall bestow it, and accounted it both preservative against all poisons, and a remedy against barrenness. If I should imagine by this all-healing deity, to be meant *Apollo*, whom they worshipped under name of *Belin* (as I tell you to the eighth song) my conjecture were every way receivable; seeing that *Apollo* ^z had both among *Greeks* and *Latins*, the divine titles of *αλεξιμαχῶς*, *λῶμιῶς*, *medicus*, *physician*; and to him the invocation was *ὦ Παιάν*, *heal Apollo*, all concurring in the same proof; but also if they had (as probability is enough to conjecture it) an altar inscribed for this devotion, and used *Greek* letters (which, to the next song, shall be somewhat examined) I could well think the dedication thus conceived.

^c Cael. Rhodigin. antiq. lect. 10. cap. 1.

geograph. d.

^z Macrob. saturnal. cap. 17.

^u Ausoniarum. lect. 1. cap. 9.

^y Camd. ibid.

^x Virgil. *Aeneid*. 6. Petr. Crinit. hist. poet. 6. cap. 10.

soph. 10.

* B E A I N Ω :

T Ω .

Π A N A K E I .

To all healing Apollo.

O R,

B E A I N Ω . Ω E Ω :

To God Belin.

Which, very probably, was meant by some, making in *Latin* termination, and nearer *Apollo's* name.

D E O

ABELLIONI.

To God Abellio.

As, an inscription, in *Gaul*, to abiding memory committed by that most noble *Joseph^a Scaliger*, is read; And perhaps some relics or allusion to this name is in that

D E O

SANCTO BELA-
TUCADRO—

yet remaining in ^b *Cumberland*. Nor is it strange that *Apollo's* name should be thus far of antient time, before communication of religion betwixt these northern parts and the learned *Gentiles*, seeing that *Caesar* affirms him for one of their deities; and, long before that, *Abarris* (about the beginning of the ^c *olympiads*) an *Hyperborean* is recorded for ^d *Apollo's* priest among the utmost *Scythians*, being further from *Hellenism* than our *British*. But I return to the misse: Hereto hath some referred ^e that which the *Sybil* counselled *Aeneas* to carry with him to *Proserpine*;

——latet arbore opaca

Aureus, & foliis, & lento vimine ramus,
Junoni infernae dictus sacer: hunc tegit omnis

Lucus, & obscuris claudunt convallibus umbrae.

Which may as well be so applied, as to ^f chymistry; seeing it agrees also with what I spoke before of *Dis*, and that *Virgil* expressly compares it to the misse,

——quod non sua seminat arbos.

——which grows not of itself.

for it springs out of some particular nature of the oaken stem, whereupon it is called by an old poet *δρυς ιδρώς*, *sweat of the oak* †; and although it be not ordinarily found upon oaks, yet, that oft-times it is, any apothecary can tell, which

^a Ad Jehezkel. 4.

^x Plin. hist. nat. 16. cap. 44.

^y Strab.

^z Et SALUTARIS APOLLO, in num. apud Goltzium. in Thef.

^c Hippostrat. ap. Suid. in Abat.

^d Malchus vit. Pythagorae.

^e Bracefch. in ligno vitae.

† Ion apud Athenaeum dipno-

preserveth it for medicine, as the antients used to make lime of it to catch birds; of which ⁸ *Argentarius* hath an admonitory epigram to a black-bird, that she ¹ should not sing upon the oak, because that

— ἐν τῷ ἐνὶ δέντρῳ φέψῃ τὴν ἀνὰ πρὸν ἰχθῆρα,
— *bred lime to catch her,*

but on the vine, dedicated to *Bacchus*, a great favourite of singers. Upon this *Druidian* custom, ^h some have grounded that unto this day used in *France*, where the younger country fellows, about new year's tide in every village give the wish of good fortune at the inhabitants doors, with this acclamation, *au guy l'an neuf, to the mistle this new year*, which, as I remember, in *Rablais*, is read all one word, for the same purpose. Whether this had any community with the institution of that ⁱ temple *ἱερὸν τύχης*, of *mistled fortune* in *Antium*, or that *Ovid* alluded to it in that verse, commonly cited out of him,

At (some read *ad*) *viscum Druidae, viscum clamare solebant;*

To the mistle the Druids used to cry.

I cannot assure you, yet it is enough likely. But I see a custom in some parts among us, in our language (nor is the digression too faulty) the same in effect; I mean the yearly *was-haile* in the country on the vigil of the new year, which had it's beginning, as some ^k say, from that of *Vonix* (daughter to *Hengist*) her drinking to *Vortigern*, by these words *louerd king was heil, lord king a health*: he answering her by direction of an interpreter, *drinc-heil, drink the health*, and ^l then,

*Kusse hire and sette hire adoune and glad dronke hire heil
And that was tho in this land the best was-hail
As in language of Saxonye that me might euere iwrite
And so wel he paith the fote about, that he is not put bozpyute.*

Afterward it appears that *was-haile* and *drinc-heil*, were the usual phrases of quaffing among the *English*, as we see in ^m *Thomas de la Moore*, and before him that old ⁿ *Havillan*, thus:

*Ecce vagante cifo disento gutture wast-heil
Ingeminant wast-heil—*

But I rather conjecture it a usual ceremony among the *Saxons* before *Hengist*, as a note of health-wishing (and so perhaps you might make it *wish-heil*) which was expressed among other nations in that form of drinking to the health of their mistresses and friends,

*Bene ꝥ vos, bene nos, bene te, bene me, bene
(nostram etiam
Stephanium.*

in ^o *Plautus*, and infinite other testimonies of that nature (in him, *Martial*, *Ovid*, *Horace*,

and such more) agreeing nearly with the fashion now used; we calling it a *health*, as ^p they did also in direct terms; Which, with an idol called *Heil*, antiently worshipped, at *Cerne* in ^q *Dorsetshire*, by the *English Saxons*, in name expresses both the ceremony of drinking, and the new year's acclamation (where to in some parts of this kingdom is joined also solemnity of drinking out of a cup, ritually composed, decked, and filled with country liquor) just as much and as the same which that *all-healing Deity*, or *all-helping medicine* did among the *Druids*. You may to all this add, that, as an earnest of good luck to follow the new year beginning, it was ^r usual among the *Romans*, as with us, and I think, in all *Europe*, at this day is, to greet each other with auspicious gifts. But hereof you say I unfitly expatiate: I omit therefore their sacrificing of human bodies, and such like, and come to the *places* of their assembly. This was about *Chartres* in *Gaul*, as *Caesar* tells us; *Paul Merula* (for affinity of name) imagines it to be *Dreux*, some eight miles on this side *Chartres*. And peradventure the *Galatians* publick council, called ^s *Drymenetum*, had hence original. The *British* Druids took this isle of *Anglesey* (then well stored with thick woods, and religious groves, inasmuch that it was called *inis downl, the dark isle*) for their chief residence; as in the *Roman* ^t story of *Paulinus* and *Agricola's* adventuring on it, is delivered. For their *subversion*; Under *Augustus* and *Tiberius* they were prohibited ^u *Rome*, and *Claudius* endeavoured it in ^v *Gaul*; yet in the succeeding emperor's times there were of them left, as appears in *Lampridius* and *Vopiscus*, mentioning them in their lives; and, long since that, *Procopius*, ^y writing under *Justinian* above *D.* years after Christ, affirms, that then the *Gauls* used sacrifices of human flesh, which was a part of *Druidian* doctrine. If I should upon testimony ^z of, I know not what, *Veremund Campbell*, and the *Irish Cornill*, tell you that some *c.1x* years before Christ, *Finan* king of *Scotland* first gave them the isle, or that king *Crathlint*, in *Dioclesian's* persecution, turned their religion into christianism, and made *Amphibalus* first bishop of *Sodor*, I should fabulously abuse time, as they have ignorantly mistook that *Isle of Man* for this: Or to speak of the supposed, their *druttenfuss*, *i. e. a pentagonal figure*, engraven with *ΥΓΙΕΙΑ* or *Υγία*, (it is the same, in fashion, with the victorious seal of *Antiochus Soter*, ^a being admonished by *Alexander* in a dream, to take it) which in *Germany* they reckon for a preservative against hobgoblins, were but to be indulgent to old wives traditions. Only thus much for a corollary, I will note to you; ^b *Conrad Celtes* observes, to be in an abbey at the foot of *Vichtelberg-hill*, near *Voitland*, six statues, of stone,

^a Antholog. a. cap. ξ.
lect. 18. cap. 14.
Archireen. lib. 2.
eadem comœdia.
& vit. Agricola.
^y De bell. Gothic. β.
apud Agrippam in 3. de occulta philosoph. cap. 31. atque ex Antiochi de Herennia Silva.

^b Jo. Goropius Gallic. 5. & alii.

^c Galfred. Monumeth. lib. 3. cap. 1.

^d Subintellige ἑστῶτα, aut quid simile.

^e Camdenus.

^f Ovid. Fast. 1. Fest.

^g Sueton. lib. 5. cap. 24. & Plin. hist. nat. 30. cap. 1.

^h Hector. Boet. Scotor. hist. 2. & 6.

ⁱ Lucian. ἑστῶτα β. ἐν τῇ περὶ εὐνοίας καὶ ἡθελῶν.

^j alii. Et habetur nummis apud I. Reuchlinum in 3. de arte cabalistica.

^k Plutarch. problem. Rom. A. Coelius Rhodigin. antiq.

^l Rob. Gloucetrenf.

^m Vita Edwardi II.

ⁿ In Sticho.

^o Propino tibi saltem plenius faucibus. Plaut.

^p Strab. Geograph. 16.

^q Tacit. annal. 14.

^r Senec. in Apocoloc. & Sueton. ubi supra.

^s Lucian. ἑστῶτα β. ἐν τῇ περὶ εὐνοίας καὶ ἡθελῶν.

^t alii. Et habetur nummis apud I. Reuchlinum in 3. de arte cabalistica.

^u Tacit.

set in the church wall, some seven foot, every one tall, bare head and foot, cloaked and hooded, with a bag, a book, a staff, a beard hanging to his middle, and spreading a mustachio, an austere look and eyes fixed on the earth; which he conjectures to be images of them. Upon mistaking of *Strabo*, and applying what he saith in general, and bracelets and gold chains of the *Gauls*, to the *Druids*, I once thought that *Conrad* had been deceived; but I can now upon better advice incline to his judgment.

§. Which with my prince's court I sometimes pleas'd to grace.

For, as in *Southwales*, *Caermarthen*, and afterward *Dineuor*; in *Powis*, *Shrewsbury*, and then *Mathraval*; so in *Northwales* was *Aber-fraw*, in *Anglesey*, chief place of the prince's residence.

Least (by reason of the composition in print) some pages should have been idle, and because also here is so much of the *Welsh* story, I inferred this chronology of the kings and princes of *Wales*, from *Arthur*, until the end of the *British* blood in them.

Of Christ.

D.XVI. - - - - - * *Arthur* succeeded his father *Uther Pendragon*: Of his death, see to the third song.

DXLII. - - - - - *Constantine*, son to *Cador*, duke of *Cornwall*, (understand governor or lord lieutenant; for neither in those times, nor long after, was any such title particularly honorary;) he lies buried at *Stonebenge*.

D.XLV. - - - - - *Aurelius Conan*.

D.LXXXVIII. - - - - - *Vortipor*.

D.LXXXI. - - - - - *Malgo*.

D.LXXXVI. - - - - - *Catheric*. In his time the *Britons* had much adverse fortune in war with the *Saxons*; and then, most of all, made that secession into *Wales* and *Cornwall*, yet in name retaining hereof remembrance.

About DC. - - - - - *Cadwan*.

About DC.XXX. - - - *Cadwalin* or *Cadwallo*: the *Britons* as in token of his powerful resistance and dominion against the *Saxons*, put † him, being dead, into a brazen horse, and set it on the top of the west gate of *London*; it seems he means *Ludgate*.

DC.LXXVI. - - - *Cadwallader*, son to *Cadwallo*. Of him and his name, see before. Nor think I the *British* and *English* chronicles, concerning him, reconcilable. In him the chief monarchy and glory of the *British* failed.

DC.LXXXVIII. - - - *Ivor*, son to *Alan*, king of *Armorick Britain*. This *Ivor* they make (but I examine it not now) *Ise*, king of *West-Saxons* in our monks; that is, he which began the *Peter-pence* to *Rome*.

D.CCXX. - - - - - *Roderick Molwinoc*, son of *Edwal* † *Wurh*.

D.CCLV. - - - - - *Conan Tindaethwy*, son of *Roderick*.

Near D.CCCXX. - - - *Mervin Urich*, in right of his wife *Esfylt*, daughter and heir to *Roderick*.

D.CCCXLIII. - - - *Roderick Mawr*, son to *Mervin* and *Esfylt*. Among his sons was the tripartite division of *Wales* (as to the seventh song) into *Powis*, *North*, and *South Wales*.

D.CCCLXXVII. - - - *Anarawd*, son to *Roderick*.

D.CCCCXIII. - - - *Edward Voel*, son of *Anarawd*.

D.CCCCXL. - - - *Howel Dha*, cousin-german to *Edwal*, having before the principality of *South Wales* and *Powis*. This he whose laws are so famous and enquired of in *rot. claus. Wall. 9 Ed. I.* in the *Tower*.

D.CCCCXLVIII. - - - *Jevaf* and *Jago*, sons of *Edward Voel*.

DCCCC.LXXXII. - - - *Howel ap Jevaf*.

DCCCCXXCIV. - - - *Cadwalbon ap Jevaf*.

D.CCCCXXCVI. - - - *Meredith ap Owen*.

D.CCCCXCII. - - - *Edwal ap Meiric*.

CIJ.III. - - - - - *AEdan ap Blegored*.

CIJ.XV. - - - - - *Lhwelin ap Sitfylt*.

CIJ.XXI. - - - - - *Jago ap Edwal ap Meyric*.

CIJ.XXXVII. - - - *Gruffyth ap Lhwelin*.

CIJ.LXI. - - - - - *Blethin* and *Rhywallon ap Convin*.

CIJ.LXXIII. - - - *Trabaern ap Caradoc*.

CIJ.LXXVIII. - - - *Gruffyth ap Conan*. He reformed the *Welsh* poets and minstrels, and brought over others out of *Ireland* to instruct the *Welsh*, as to the fourth song.

CIJ.CXXXVII. - - - *Owen Gwineth ap Gruffyth ap Conan*.

* Prif. in descript. Wall.

* I will not justify the times of this *Arthur*, nor the rest, before *Cadwallader*; so discording are our chronologers; nor had I time to examine, nor think that any man hath sufficient means to rectify them.

† This report is, as the British

stories tell, hardly justifiable, if examined.

‡ The Roo.

- Cl^o.CLXIX. -- David ap Owen Gwineth. In his time, *Madoc*, his brother, discovered part of the *West Indies*.
- Cl^o.C.XCIV. -- Lhwelín ap Forwerth ap Owen Gwineth.
- Cl^o.CC.XL. -- David ap Lhwelín ap Forwerth.
- Cl^o.CC.XLVI. -- Lhwelín ap Gruffyth ap Lhwelín ap Forwerth; the last prince of *Wales* of the *British* blood.
- Cl^o.CCLXXXII. Edw. I. conquered *Wales*, and got the principality, Lhwelín then slain; and and since that (*Hen. III.* before gave it also to his son prince *Edward*) it hath been in the eldest sons, and heirs apparent of the *English* crown.

But note, that after the division among *Roderick Mawr*'s sons, the principality was chiefly in *North Wales*, and the rest as tributary to the prince of that part: and from him, as supreme king of *Wales*, are all these deductions of time and persons, until this last Lhwelín.

Illustrations on the tenth song.

Returning into the land, the muse leads you about *Denbigh* and *Flint*, most northern and maritime shires of *Wales*; which conclude these seven last books dedicated to the glory of that third part of *Great Britain*.

S. Prophetick Merlin sat, when to the British king.

In the first declining state of the *British* empire, (to explain the author in this of *Merlin*) *Vortigern*, by advice of his magicians, after divers unfortunate successes in war, resolved to erect a strong fort in *Snowdon-hills* (not far from *Conway*'s head in the edge of *Merioneth*) which might be as his last and surest refuge, against the increasing power of the *English*. Masons were appointed, and the work begun; but what they built in the day, was always swallowed up in the earth, next night. The king asks counsel of his magicians, touching this prodigy: They advise, that he must find out a child which had no father, and with his blood sprinkle the stones and mortar, and that then the castle would stand as on a firm foundation. Search was made, and in *Caermartben* (as you have it to the fifth song) was *Merlin Ambrose* found; he, being hither brought to the king, slighted that pretended skill of those magicians as palliated ignorance; and with confidence of a more knowing spirit, undertakes to shew the true cause of that amazing ruin of the stone work; tells them that in the earth was a great water, which could endure continuance of no heavy super-struction. The work-men dig-

ged to discover the truth, and found it so. He then beseeches the king to cause them to make further inquisition, and affirms, that in the bottom of it were two sleeping dragons: which proved so likewise, the one white, the other red; the white he interpreted for the *Saxons*, the red for the *Britons*: and upon this event here in ^k*Dinas Emrys*, as they call it, began he those prophecies to *Vortigern*, which are common in the *British* story. Hence questionless was that fiction of the muses best pupil, the noble *Spencer*¹, in supposing *Merlin* usually to visit his old *Timon*, whose dwelling he places

—low in a valley green

Under the foot of Rauran mossie bore
From whence the river Dee as silver clean,
His tumbling billows rolls with gentle rore.

For this *Rauran-vaur* hill is there by in *Merioneth*: but observe withal, the difference of the *Merlins*, *Ambrose* and *Sylvestre*, which is before to the fourth song; and permit it, only as poetical, that he makes king *Arthur* and this *Merlin* of one time. These prophecies were by *Geoffrey ap Arthur*, at request of *Alexander* bishop of *Lincoln* under *Hen. I.* turned into *Latin*, and some ccc years since had interpretation bestowed on them by a *German* doctor, one *Alanus de insulis*, who never before, but twice since that happy inauguration and mighty increase of dominion in our present sovereign hath been imprinted. It is certain that oft-times they may be directly and without constraint applied to some event of succeeding time; as that which we have before to the fifth song of *Caerleon*, and this, *the Isle shall again be named after Brute*; which is now seen by a publick edict, and in some of his majesty's present coins, and with more such; Yet seeing learned^m men account him but a professor of unjustifiable magick, and that all prophecies either fall true, or else are among the affecters of such vanity perpetually expected, and that of later time the council of *Trent* have by their expurgatories prohibited it, I should abuse you, if I endeavoured to persuade your belief to conceit of a true fore-knowledge in him.

S. And the delicious Vale thus mildly doth bespeak.

If your conceit yet see not the purpose of this fiction, then thus take it. This vale of *Cluid* (for so is the *English* of *dyffyn Clwyd*) extended from the middle of *Denbighshire* to the sea, about eighteen miles long, and some five in breadth, having those three excellencies, a fertile soil, healthful air, and pleasant seat for habitation, washed through the middle with this river, and encompassed on the east, west, and south, with high mountains, freely receives the wholesome blasts of the north-wind (much accounted of among builders and geoponicks for immision of pure air) coming in from that part

^k Ambroses Bury. Itinerar. 2. cap. 8. cap. 16. alii.

¹ *Fairy Queen*. lib. 1. Cant. 9. Stanz. 4.

^m Wier, de praestigiis demon. 2.

which lies open to the sea; whereupon the muse very properly makes the vale here *Boreas* his beloved; and in respect of his violence against the waters, supposeth him jealous of *Neptune*; whose ravishing waves in that troubled *Irish* sea, and the depressed state of the valley warrant it. And for that of *Moluenid's* love to the river, wantonly running by him; I know your conceit cannot but apprehend it.

§. That naturally remote six British miles from sea.

It is in the parish of *Kilken* in *Flintshire*, where it ebberth ^b and floweth in direct opposite times to the sea, as the author describes; they call it ^h *Finon Leinw*: Such a one is there about a furlong from the *Severn* sea, by *Newton* in ⁱ *Glamorganshire*, and another ebbing and flowing (but with the common course of the moon, ascending or setting) by ^k *Dinevor* in *Caermarthenshire*. Nor think I any reasons more difficult to be given, than those which are most especially hidden, and most frequently strange in particular qualities of floods, wells, and springs; in which (before all other) nature seems as if she had, for man's wonder, affected a not intelligible variety, so different, so remote from conceit of most piercing wits; and such unlooked for operations both of their first and second qualities (to use the school phrase of them) are in every chronographer, naturalist, and historian.

§. Yet to the sacred fount of Winifred gives place.

At *Halywell*, a maritime village, near *Basingwerke* in *Flint*, is this *Winifred's* well, whose sweetness in the moss, wholsomness for bath, and other such useful qualities, have been referred to her martyrdom in this place. But *D. Powel* upon *Girald*, in effect thus: *Hen. II.* in his first *Welsh* expedition fortified the castle of *Basingwerke*, and near by, made a cell for *Templers*, which continued there until their dissolution under ^{*} *Edward II.* and was after converted to a nest of lubberly monks, whose superstitious honouring her, more than truth, caused this dedication of the fountain; so much to their profit (in a kind of merchandize then, too shamefully in request) that they had large guerdons (it belonging to the cell) of those, which had there any medicine, beside increasing rents which accrued to them yearly out of pardons to such as came thither in solemn pilgrimage. This title of exaction they purchased of *P.P. Martin V.* under *Hen. V.* and added more such gaining pretences to themselves in time of *Hen. VII.* by like authority; nor, until the more clear light of the gospel, yet continuing its comfortable beams among us, dissipated those foggy mists of error and imoak-felling imposture, ended these collected revenues. The author follows the legend; but observe times compared, and you shall find no mention of

this well, and the healthful operations of it, until long after the supposed time of *S. Winifred's* martyrdom.

§. That figure of the cross of which it takes the name.

Depressed among mountains this valley expresses the former of a cross, and so is called the *cross vale*, and in *British* than *gwest*.

§. To whom eight lesser kings with homage did resort.

Upon comparing our stories, I find them to be *Kenneth* of *Scotland*, *Malcolm* of *Cumberland*, *Malcuze*, king of the isles (whom *Malmfbury* gives only the name of *Archpirat*) *Donald*, *Siffreth*, *Howel*, *Jago*, and *Inchithill* kings of *Wales*. All these, he (thus touched with imperious affection of glory) sitting at the stern, compelled to row him over *Dee*; his greatness as well in fame as truth, daily at this time increasing, caused multitudes of aliens, to admire and visit his court, as a place honoured above all other by this so mighty and worthy a prince; and through that abundant confluence, such vicious courses followed by example, that, even now was the age, when first the more simple and frugal natures of the *English*, grew infected with what (in some part) yet we languish. For, before his time, the *Angles* hither traduced, being *homines integri*, † and using, *naturali simplicitate sua defensare, aliena non mirari: honest men, by simplicity of nature, looking only to their own, neglecting others*, did now learn from the stranger *Saxons* an uncivil kind of fierceness, of the *Flemings* effeminacy, of the *Danes* drunkenness, and such other; which so increased, that, for amendment of the last, the king was driven to constitute quantities in quaffing bowls by little pins of mettle, set at certain distances, beyond which, none durst swallow in that provocation of good fellowship.

§. As thou, the queen of isles, great Britain—

Both for excellence in soil and air, as also for large continent she hath this title. And although in antientest time of the *Greeks* (that hath any story or chorography) *Sardinia* was accounted the ¹ greatest isle, and by some *Sicily*, as the old verses of the ^m *Seven* tell us, and that by ⁿ *Ptolemy*, the *East-Indian Taproban*, now called *Sumatra*, had pre-heminence of quantity before this of ours; yet certainly, by comparison of that with this, either according to the measure took of it by *Onesicrit* ^o upon *Alexander's* commandment, or what later time teaches us, we cannot but affirm with the author here in substance, that

————— ἐδέτις ἄλλη
Νήσις ἐν πάσι Βρετανίαν ἰσοφείζει.

No other isle is equal to Britain.

^b Hum. Lhuid. descript.

¹, cap. 10.

^{*} § Ed. II.

^h Pouel. ad Girald. Itinerar. 1. cap. 10.

[†] Malmesbur.

¹ Scylax. Caryand. περιηγ.

^o Solin. polyhist. cap. 66.

ⁱ Stradling ap. Camd.

edit, per D. Hoeschelium.

^k Girald. itinerar.

^m Eustath. ad Dionys.

as long since, *Dionysius Afer* of our *Britain*, which hath given cause to call it *another world*; as the attributes of it in *Virgil*, *Horace*, *Claudian*, and others, justify.

S. And learning long with us ere 'twas with them in use.

For the *Druids*, being in profession very proportionate in many things to *Cabalistical* and *Pythagorean* doctrine, may well be supposed much antienter than any that had note of learning among the *Romans*; who before *Livius Salinator*, and *Naevius Ennius*, *Pacuvius Accius*, and others, not much preceding *Caesar*, can scarce shew steps of poetry, nor before *Fabius Pictor*, *Valerius Antias*, and some such now left only in their names (although, by pretence of *Annius*, there be a piece of *Pictor* published) can produce the title of a story; whereas we have some that make that supposed eldest historian (of the *Gentiles*) extant, *Dares Phrygius*, translated by *Cornelius Nepos*, and dedicated to *Salusty*, to have lived here, but indeed upon no such warrant, as I dare trust.

S. Our Geoffrey Monmouth first our Brutus to devise.

It was so laid to *Geoffrey's* charge (he was bishop of *St. Asaph*, under king *Stephen*) by *John of Whetbamsted*, abbot of *St. Albans*, *William Petit*, called *William of Newborough*, and some others. But plainly (let the rest of his story, and the particulars of *Brute* be as they can) the name of *Brute* was long before him in *Welsh* (out of which his story was partly translated) and *Latin* testimonies of the *Britons*, as I have, for the author, more largely spoken, to the first song. And (a little to continue my first justification, for this time) why may not we as well think that many stories and relations, anciently written here, have been by the *Picts*, *Scots*, *Romans*, *Danes*, *Saxons*, and *Normans*, devoured up from posterity; which perhaps, had they been left to us, would have ended this controversy? Shall we doubt of what *Livy*, *Polybius*, *Halicarnassens*, *Plutarch*, *Strabo*, and many others have had out of *Fabius*, *Antias*, *Chereas*, *Solytus*, *Ephorus*, *Theopompus*, *Cato*, *Quadrigrarius*, with infinite other, now lost, writers, because we see not the self authors? No. Time hath ransacked more precious things, and even those super-excellent books, wherein that incomparable *Solomon* wrote from the cedar to the hyssop, were (upon fear of the facile multitudes too much respecting natural causes in them divinely handled) by king *Hezekiah*, suppressed from succeeding ages, if my authority deceive not. So that the loss in this, and all kinds, to the commonwealth of letters, hath been so grievous and irreparable, that we may well imagine, how error of conceit

in some, envy in others, and hostile invasion, hath bereft us of many monuments most precious in all sorts of literature, if we now enjoyed their instructing use; And to conclude, the antiquities of these original ages are like those of *Rome* between it built and burnt by the *Gauls*; *Cum vetustate nimia obscurae, velut quae* (as *Livy* says) *magno ex intervallo loci vix cernuntur: tum quod perrarae, per eadem tempora literae fuere, una custodia fidelis memoriae rerum gestarum; & quod etiam, si quae in commentariis pontificum aliisque publicis privatisque erant monumentis, incensa urbe, pleraque interiere*; But all this, in effect, the muse tells you in the sixth canto.

S. To letters never would their mysteries commit.

What they taught their scholars for matter of law, heathenish religion, and such learning as they here were presidents of, was delivered only by word of mouth; and, least memory unused might so fail, they permitted not commission of their lectures and instructions, to the custody of writing; but delivered all in a multitude of verses and *Pythagorean* precepts, exactly imitating the *Cabalists*; which, until of late time, wrote not, but taught and learned by mouth, and diligent hearing of their *Rabbins*. In other matters, private and publick, (so is *Caesar's* assertion) *Graecis literis utuntur, they used Greek letters*, which hath made some think that they wrote *Greek*. But be not easily thereto persuaded. Perhaps they might use *Greek* characters, seeing that those which the *Greeks* then had, and now use, were at first received from strangers, and as likely from the *Druids* as from any other; for it is sufficiently justifiable out of old coins, inscriptions, and express assertion, that the ancient character among the *Greeks*, was almost the same with that which is now the *Latins*. But thence to collect, that therefore they wrote or spake *Greek*, is as if you should affirm the *Syriack* testament to be *Hebrew*, because published in *Hebrew* letters, or some *Latin* treatises, *Saxon*, because in that character; or that the *Saxons* wrote *Irish*, because they used the *Irish* form of writing; or that those books which are published in *Dutch* by some *Jews*, in a special kind of *Hebrew* letter, should also be of the same tongue. Observe but this passage in *Caesar*: He sends by a *Gaul* (allured to this use against his country by large rewards) a letter to *Q. Cicero*, being then besieged about * where now is *Tournay*, *& Graecis conscripsit literis, ne intercepta epistola nostra* (saith he of himself) *ab hostibus consilia cognoscantur*; wrote it in *Greek*, least the enemy might, by intercepting the letters, discover his design. To what purpose did he thus, if the *Gauls*, or their statesmen the *Druids*, understood *Greek*? I

* V. Liv. decad. 1. lib. 6.

[†] Bal. centur. 1.

[‡] In Zerror Hamor apud Munst. ad Exod. xv.

[§] Dec. 1. lib. 6.

[¶] Caesar, de Bell. Gallic. lib. 6.

^{||} Varro de ling. Lat. 7.

^π Plin. hist. nar. 7. cap. 48. & si placet, videas An-

nianus illos, Archilochum, de temporibus, & Xenophontem in equivocis.

^ρ Camd. in Hibernia, & per Graecas literas in ara

Ulyssis in confinio Rhetiae & Germaniae, apud Tacitum, Liplius characteres solummodo intelligit.

^σ Nervii, de bello

know what he writes of those tables of account found in the now *Switzerland*, but shall not soon believe that they had much more Greek in them, than the character. If you object^d *Strabo* his affirmance, that the *Gauls* (for as long as I speak of them in general in this kind, I well include our *Druids*, as sufficient reason is elsewhere given) were grown such lovers of that tongue, ὥστε καὶ τὰ συμβόλαια Ἑλληνιστὶ γράφειν, that they wrote their instruments of contract, in Greek. It is soon answered, that he speaks only of those about *Marfeilles*, which was, and is well known to all men, to have been a colony of *Phocians*, out of the now *Natolia*, (which were *Greeks*) by appointment of fate, arriving at the mouth of *Rhosne*, about time of *Tarquin the proud*; where *Protis*, one of their chief leaders, entertained by *Nannus* king of that coast, was chosen (according to their custom) in a banquet by *Gyptis* the king's daughter for her husband: Hereto success grew so fortunate, that honourable respect on both sides, joined with imitation of Greek civility, (after this city built near their arrival) it seemed, as my author^e says, as if *Gaul* had been turned into *Greece*, rather than *Greece* to have travelled into *Gaul*. Wonder not then why, about *Marfeilles*, Greek was so respected, nor why in the *Romaunt-French*, now such *hellenisms* are. Here you see apparent original of it. Yet conclude, upon the former reasons, that the *Druids* and *Gauls* used a peculiar tongue, and very likely the same with the now *Welsh*, as most learned *Camden* hath even demonstrated; although I know some great scholars there are, which still suspend their judgment, and make it a doubt, as ever things of such antiquity will be. But (if you will) add here to that of the famous and great lawyer^f *Hotoman*, who presumes that the word *Graecis*, in *Caesar's* text, is crept in by ignorance of transcribers, as he well might, seeing those commentaries, titled with name of *J. Caesar*, commonly published, and in divers mss. with *Julius Celsus*, are very imperfect, now and then abrupt, different in stile, and so variable in their own form, that it hath been much feared by that great^g critic *Lipsius*, least some more impolite hand hath sowed many patches of base cloth into that more rich web, as his own metaphor expresses it. And if those characters which are in the pillars at *T-Voellas* in *Denbighshire*, are of the *Druids*, as some imagine (yet seeming very strange and uncouth) then might you more confidently concur in opinion with *Hotoman*. In sum, I know that *Graecis literis* may be taken as well for the language (as in^h *Justin* I remember, and elsewhere) as for the character; but here I can never think it to be understood in any but the last sense, although you admit *Caesar's* copy to be therein not interpolated. It is very justifiable which the author here implies, by slighting *Caesar's* autho-

rity in *British* originals, in respect that he never came further into the isle than a little beyond *Thames* towardsⁱ *Berkshire*; although some of ours idly talk of his making the *Baib*, and being at *Chester*, as the *Scottish* historians most senselessly of their *Julius Hoff*, built by him, which others refer^k to *Vespasian*. Some affirm it a temple^l of God *Terminus*; whereas it seems expressly to be built by *Carausius*, in time of *Dioclesian*, if *Nennius* deceive us not. But, this out of my way.

Illustrations on the eleventh song.

NOW are you newly, out of *Wales*, returned into *England*; and, for conveniency of situation, imitating therein the ordinary course of chorography, the first shire eastward, (from *Denbigh* and *Flint*, last sung by the muse) *Cheshire*, is here surveyed.

S. Of our great English bloods as careful—

For as generally in these northern parts of *England*, the gentry is from ancient time left preserved in continuance of name, blood, and place; so most particularly in this *Cheshire*, and the adjoining *Lancashire*; which, out of their numerous families, of the same name, with their chief houses and lordships, hath^m been observed.

S. And of our counties, place of Palatine doth hold.

We have in *England* three more of that title, *Lancaster*, *Durham*, and *Ely*; and, until laterⁿ time, *Hexamsire*, in the western part of *Northumberland*, was so reputed. *William* the Conqueror, first created one *Hugh Wolf*, a *Norman*, count *palatine* of *Chester*, and gave the earldom to hold, as freely as the king held his crown. By this supremacy of liberty, he made to himself barons, which might assist him in council, and had their courts and cognizance of pleas in such sort regarding the earldom, as other barons the crown. *Ego comes Hugo & mei barones confirmavimus ista omnia*; I earl *Hugh*, and my barons, have confirmed all this; is subscribed to a charter, whereby he founded the monastery of *S. Werburg* there. For the name of *palatine*, know, that in ancient time, under the emperors of declining *Rome*, the title of count *palatine* was; but so, that it extended first only to him^o which had care of the household and imperial revenue; which is now (so faith^p *Wessembeck*, I affirm it not) as the marshal in other courts; but was also communicated by that honorary attribute of *comitiva dignitas*, to many others, which had any thing proportionate, place or desert, as the code teacheth us. In later times, both in *Germany* (as you see in the *Palgrave* of *Rhine*) in *France*, (which the earldom of *Champaign* shews

^c De Bell. Gallic. 1.

^d Geograph. J.

^e Trog. Pomp. hist. 43.

^f Franco-Gall. cap. 2. quem v. etiam ad Caesar.

com. ^g Elect. 2. cap. 7. epistolic. quest. 2. cap. 2.

^h Hist. lib. 20. in extrema.

ⁱ Caesarem si legas, tibi ipsi

satisfacias, verum & ita Leland, ad Cyg. Cant. in Baln.

^k Veremund. ap. Hecht. Boet. hist. 3.

^l Buchanan, hist. 4.

In Donaldo.

^m Camden. in Cornau. & Brigant.

ⁿ Stat. 1. 4. Eliz. cap. 13.

^o C. de offic. com. sac. palat. v.

Euseb. de vit. Constant. J. & cod. lib. 12.

^p In paratit. c. 1. tit. 34.

long time since in the crown; yet keeping a distinct palatine government, as *Peter Pitbou* ⁹ hath at large published) and in this kingdom, such were hereditarily honoured with it, as being near the prince in the court (which they, as we, called the palace) had by their state-carriage gained full opinion of their worth, and ability in government, by delegate power of territories to them committed, and hereafter titled *countes de palais*, as our law annals call them. If you desire more particulars of the power and great state of this palatine earldom, I had rather (for a special reason) send you to the marriage of *Hen. III.* and queen *Eleanor* in *Matthew Paris*; where *John Scot*, then earl of *Chester*, bore before the king, *S. Edward's sword*; called *curtain*, which the prince at coronation of *Henry IV.* is recorded to have done as ¹ duke of *Lancaster*; and wish you to examine the passages theré; with what *Bracton* ¹ hath of earls, and our year ¹ books of the high constable of *England*, than here offer it myself. To add the royalties of the earldom, as courts, officers, franchises, forms of proceeding, even as at *Westminster*, or the diminution of its large liberties by the statute of ¹¹ refumption, were to trouble you with a harsh digression.

§. Our leopards they so long and bravely did advance.

He well calls the coat of *England*, leopards. Neither can you justly object the common blazon of it, by name of lions, or that assertion of *Polydore's* ignorance, telling us that the conqueror bare three *fleurs de lis*, and three lions, as quartered for one coat, which hath been, and is, as all men know, at this present born in our sovereigns arms for *France* and *England*; and so, that the quartering of the *fleurs* was not at all until *Ed. III.* to publish his title, and gain the *Flemish* forces (as you have it in *Froissart*) bare the *French* ^{*} arms, being then *azure semé with fleurs-de-lis*, and were afterward contracted to three in time of *Hen. V.* by *Charles VI.* because he would bear different from the *English* king, who notwithstanding presently seconded the change, to this hour continuing. Nor could that *Italian* have fallen into any error more palpable, and in a professed antiquary so ridiculous. But to prove them antiently leopards; *Mist ergo* (saith *Matthew Paris*) *imperator* (that is *Frederick II.*) *regi Anglorum tres leopardos in signum regalis clypei, in quo tres leopardi transeuntes figurantur*; The emperor sent to *Hen. III.* three leopards, as alluding to the arms of *England*. In a ms. of *J. Gower's Confessio amantis*, which the printed books have not:

*Ad laudem Christi, quem tu virgo peperisti,
Sic laus Richardi, quem sceptrum colunt leopardi.*

And *Edward* ² *IV.* granted to *Lewis* of *Bruges*, earl of *Winchester*, that he should bear

d'azure a dix mascles enarime d'un canton de nostre propre armes d'Engleterre, cestassavoir, de goulles unz leopard passant d'or, arme d'azur, as the patent speaks; and likewise ² *Hen. VI.* to king's college in *Cambridge*, gave a coat armoured three roses, and *summo scuti partitum principale de azoreo, cum Francorum flore, deque rubeo cum peditante leopardo*, and calls them *parcellae armorum, quae nobis in regnis Angliae & Franciae jure debentur regio*. I know it is otherwise now received, but withal, that princes, being supreme judges of honour and nobility, may arbitrarily change their arms in name and nature; as was done ³ upon return out of the holy war in *Godfrey of Bulloign's* time; and it seems, it hath been taken indifferently, whether you call them the one or other, both for similitude of delineaments and composure (as in the bearing of *Normandy*, the county of *Zutphen*, and such more) being blazoned in *Jerom de Bara*, and other *French* heralds, lion-leopards; and for that, even under this *Hen. VI.* a great ⁴ student in heraldry, and a writer of that kind, makes the accession of the lion of *Guienne*, to the coat of *Normandy* (which was by *Hen. II.* his marriage with queen *Eleanor*, divorced from *Lewis* of *France*) to be the first three lions, born by the *English* kings.

§. Caerlegion, whilst proud Rome her conquests here did hold.

You have largely in that our most learned antiquary, the cause of this name from the tents of *Roman* legions, there, about *Vespasian's* time. I will only note, that *Leland* ⁴ hath long since found fault with *William* of ⁵ *Malmesbury*, for affirming it so called, *quod ibi emeriti legionum Julianarum resedere*; because the old soldiers of *Julius* his legions resided there; whereas it is plain, that *Julius Caesar* never came near this territory. Perhaps, by *Julius*, he meant *Agri-cola* (then lieutenant here) so named, and then is the imputation laid on that best of the monks, unjust. To help it with reading *militarium* for *Julianarum*, as the printed book pretends, I find not sufficiently warrantable, in respect that my ms. very antient, as near *Malmesbury's* time as (it seems) may be, and heretofore belonging to the priory of *S. Augustine's* in *Canterbury*, evidently persuades the contrary.

§. — the fortress upon Dee.

At this day in *British*, she is called, ⁶ *Eath Lheon* at *dour Dwy*, i. e. the city of legions upon the river *Dee*. Some vulgar antiquaries have referred the name of *Leon* to a giant builder of it: I, nor they, know not who, or when he lived. But indeed ridiculously they took *leon* baur a great legion, for king *Leon* the great; to whom the author alludes presently.

§. But

⁹ Livre 1. des comtes de Champagne & Brie. De palatinorum nostrorum nomine Sarisbur. Policrat. 6. cap. 16. & epist. 263.
¹ Archiv. in tur. Lond. jam vero & typis commissi. apud Crompt. juridict. cur. ¹ De acq. rer. dom. cap. 16. §. 3. ² 6 Hen. VIII.
 Kelway, & v. Brook. tit. prerogat. 31. ³ 27 Hen. VIII. cap. 24. ⁴ V. stat. 14 Ed. III. ⁵ 19 Hen. III.
² Pat. 12 Ed. IV. part. 1. memb. 12. ³ Pat. 27 Hen. VI. num. 46. ⁶ Pont. Heuter. de vet. Belgio. 2. ⁷ Nichol.
 Upton. de re militari lib. 3. ⁸ In Deva ad cyg. Cant. ⁹ De pontificib. lib. 4. ¹⁰ Humf. Lhuid in Breviario.

§. But in himself thereby doth holiness retain.

He compares it with *Dee's* title presently, which hath its reason given before to the seventh song. *Wever*, by reason of the salt-pits at *Northwich*, *Nantwich*, and *Middlewich*, (all on his banks) hath this attribute, and that of the sea gods suit to him, and kind entertainment for his skill in physick, and prophecy; justifiable in general, as well as to make *Tryphon* their surgeon, which our excellent *Spencer* hath done; and in particular cause, upon the most respected and divinely honoured name of salt; of which, if you observe it used in all sacrifices by express commandment ⁸ of the true God, the מלח כרית *salt of the covenant*, in holy writ, the religion of the salt, set first, and last taken away as a symbol ^h of perpetual friendship, that in *Homer* ⁱ πασέ δ' ἄλός θείοιο, he sprinkled it with divine salt, the title of ἀγνίς, a cleanser, given it by *Lycophron*, ^k and passages of the ocean's medicinable ^l epithets, because of his saltness, you shall see apparent and apt testimony.

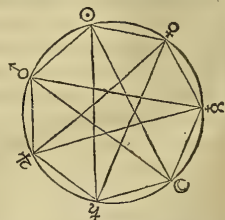
§. From Woden, by which name they stiled Mercury.

Of the *Britons* descent from *Jove*, if you remember but *AEneas* son to *Anchises* and *Venus*, with her derivation of blood from *Jupiter's* parents, sufficient declaration will offer itself. For this of *Woden*, see somewhat to the third song. To what you read there, I here more fitly add this; *Woden*, in *Saxon* genealogies, is ascended to, as the chief ancestor of their most royal progenies; so you may see in *Nennius*, *Bede*, *Ethelwerd*, *Florence of Worcester*, an anonymous *de regali prosapia*, *Huntingdon* and *Hoveden*, yet in such sort that in some of them they go beyond him, through *Frithwald*, *Frealar*, *Fri-hulf*, *Fin*, *Godolph*, *Geta*, and others, to *Seth*: But with so much uncertainty, that I imagine many of their descents were just as true as the *theogony* in *Hesiod*, *Apollodorus*, or that of *Prefter John's*, sometimes deriving ^m himself very near from the loins of *Solomon*. Of this *Woden*, beside my authors named, special mention is found in *Paul* ⁿ *Wanfred*, who makes *Freia* his wife (others call her *Fricco*, and by her understand *Venus*) and *Adam* ^o of *Breme*, which describe him as *Mars*, but in *Geoffrey of Monmouth*, and *Florilegus*, in *Hengist's* own person, he is affirmed the same with *Mercury*, who, by *Tacitus's* report, was their chief deity; and that also is warranted in the denomination of our *Woden'sday*, (according to the *Dutch Wodensdag*) for the fourth day of the week, titled by the antient planetary account with name of *Mercury*. If that allusion in the illustrations of the third song to *Merc*, allow it him not, then take the other first taught me by ^p *Lipsius*, fetching *Wodan* from *won* or

win, which is to *gain*, and so make his name *Wondan*, expressing in that sense the self ^q name Εἰμὸς κερδῶν, *Mercury president of gain*, used by the *Greeks*. But, without this inquiry, you understand the author.

§. Here put the German names upon the weekly days.

From their *Sunnan*, for the sun, *Monan*, for the moon, *Tuisco*, or *Tuisto*, (of whom see to the fourth song) for *Mars*, *Woden*, for *Mercury*, *Thor*, for *Jupiter*, *Fre*, *Frie*, or *Frigo*, for *Venus*, *Saetern*, for *Saturn*, they stiled their days, *Sunnan-dæg*, *Monan-dæg*, *Tuiscon-dæg*, *Woden-dæg*, *Þors-dæg*, *Frige-dæg*, *Sætern-dæg*: Thence came our names now used *Sunday*, *Monday*, *Tuesday*, *Wednesday*, *Thursday*, *Friday*, *Saturday*; which planetary account was very antient among the ^r *Egyptians*, (having much *Hebrew* discipline) but so superstitious, that, being great astronomers and very observant of mysteries produced out of number and quantity, they began on the *Jewish* sabbath, and imposed the name of *Saturn*, on the next the sun, then the moon, as we now reckon, omitting two planets in every nomination, as you easily conceive it. One might seek, yet miss the reasons of that form; but nothing gives satisfaction equal to that of all penetrating *Joseph Scaliger*, ^s whose intended reason for it is thus. In a circle describe an heptagonal and equilateral figure; from whose every side, shall fall equilateral triangles, and their angles respectively on the corners, of the inscribed figure, which are noted with the planets after their not interrupted order. At the right side of any of the bases begin your account, from that to the oppositely noted planet, and so shall you find a continued course in that order (grounded perhaps among the antients upon mysteries of number, and interchanged government by those superior bodies over this habitable orb) which some have sweated at, in inquiry of proportions, musick distances, and referred it to planetary hours; whereas they (the very name of hour for a twenty fourth part of a day, being unusual till about the *Peloponnesiack* war) had their original of later time, than this hebdomadal account, whence the hourly from the morning of every day had his breeding, and not the other from this, as pretending and vulgar astrologers receive in supposition. At last, by *Constantine* the great, and pope *Sylvester*, the name of *Sunday*, was turned into the ^t *Lord's day*; as it is stiled *dominicus* ^u *κυριακή*; of *Saturday*, into the sabbath; and the rest, not long afterward, named according to their nu-



⁸ Levit. ij. com. 13. & Num. xviii.

^v Lipf. fatal. 1. cap. 2.

^{AE} Ethiopia.

⁹ Lucian. in Timone. merito agnoscimus.

^u De Longobard. 1. cap. 8.

^l Dion. hist. Rom. 12.

^t Nicephor. Callist. eccles. hist. 3. cap. 15. Polyd. invent. rer. 6. cap. 5.

^h Cael. Rhodigin. antiq. leſt. 12. cap. 1. v. Plutarch. ſympoſ. 6. cap. 10.

^k In Caſſandra.

ⁱ Cael. Ant. leſt. 11. cap. 22.

^o Hiſt. eccleſiaſt. lib. 4. cap. 91.

^r De emendat. temp. eundem de hac re prolegom. & lib. 7. Doctorem

ⁱ Iliad. 1.

^m Damian. a Goes de morib.

^p Ad Tacit. Germ. not. 32.

meral order, as the first, second, or third *feria* (that is holiday, thereby keeping the remembrance of *Easter* week, the beginning of the ecclesiastical year, which was kept every day holy) for *Sunday*, *Monday*, *Wednesday*. You may note here, *Caesar*¹ was deceived in telling us, the *Germans* worshipped no other gods but *Quos cernunt, & quorum opibus aperte juvantur, Solem, Vulcanum & Lunam, reliquos ne fama quidem accepisse; Whom they see, and have daily use of, as the sun, moon, and the fire, by name of Vulcan*. For you see more than those thus honoured by them, as also they² had their *Eorste* Monarch for *April*, dedicated to some adored power of that name; but blame him not, for the discovery of the northern parts was but in weakest infancy, when he delivered it.

§. *Good Ethelbert of Kent, first christened English king.*

About the year bc christianity was received among the *Saxons*; this *Ethelbert* (being first induced to taste that happiness by *Berta* his queen, a christian, and daughter to *Hiþeric* (or *Lothar* II.) king of *France*) was afterward baptized by *Augustine* a monk sent hither, with other workmen for such a harvest, by PP. *Gregory* I. zealously being moved to conversion of the *English* nation; so that after the first coming of *Hengist*, they had lived here c.L years by the common account without tincture of true religion; nor did the *Britons*, who had long before (as you see to the eighth song) received it, at all impart it by instruction, which *Gildas* imputes to them for merit of divine revenge. *White*^{*} of *Basingstoke* (I must cite his name, you would laugh at me if I affirmed it) refers to *Kent's* paganism, and *British* christianity, before this conversion, the original of our vulgar by-word, *nor in Christendom, nor in Kent*.

§. *That abstinence of flesh for forty days began.*

Began it here, so understand him, for plainly that fasting time was long before in other churches, as appears in the decreeing¹ epistle of PP. *Telephorus*, constituting that the clergy should fast from *Quinquagesima* (that is, *Shrove-Sunday*) to *Easter*, whereas the laity, and they both were before bound but to six weeks, accounted, as now, from the first *Sunday* in *Lent*. So, that even from the² first of christianity, for remembrance of our Saviour, it seems, it hath been observed, although I know it hath been referred to *Telephorus*, as first author. He died in c.XL of *Christ*. But if you compare this of him with³ that of PP. *Melchides* some c.Lxx years after, taking away the fast upon *Sunday* and *Thursday*, you will lose therein forty days, and the common name of *Quadragesima*; but again find it thus. *S. Gregory*^b (after both these) makes *Lent* to be so kept, that yet no fasting

be upon *Sundays*, because (among other reasons) he would have it as the tenth of time consecrated to God in prayer and abstinence, and the canonists,^c how justly I argue not, put it in their division of personal tythes. Then, in this form, after the exception, calculate out his number. From the first *Sunday* in *Lent*, to *Easter*, are 6 weeks; that is, 42 days; whence 6 *Sundays* subtracted, remain 36; which (fractions avoided) is the quotient of 365; being the number of the common year, divided by 10. But seeing that holy number (as he calls it) of 40, which our Saviour honoured with his fasting, is, by this reckoning, excluded; he adds, to the first week, the 4 last days of the *Quinquagesima*, that is, *Asþ-Wednesday*, *Thursday*, *Friday*, and *Saturday*; so keeping both his conceit of tything, and also observation of that number, which we remember only (not able to imitate) in our essayed abstinence. For proof of this in *Erconbert*, both *Bede* and *Malmesbury*, besides their later followers, are witnesses. Their *Saxon* name near ours, was^d *Langsten-fæsten*, as the other four fasts, *ympþen fæsten*.

§. *So Ella coming in soon from the Britons won.*

Near forty years after the *Saxons* first arrival, *Ella*, (of the same nation) with his sons *Pleuncing*, or *Pleting*, *Cimen*, and *Cissa*, landed at *Cimenshore* in the now *Sussex* (it is supposed^e to be near the *Witterings* by *Chichester*) and having his forces increased by supply, after much bloodshed betwixt him and the *Britons*, and long siege of the city *Andredceaster*, now *Newenden* in *Kent*, (as learned *Camden* conjectures) got supreme dominion of those southern parts, with title of king of *Sussex*, whose son and successor *Cissa's* name, is yet there left in^{*} *Cissa-cearsteþ* for *Chichester*, and in a hill incircled with a deep trench for military defence, called *Cissbury*, by *Offington*. The author fitly begins with him after the *Kentish*; for he was the first that made the number of the *Saxon* kings plural, by planting and here reigning over the south *Saxons*; And as one was always in the heptarchy, which had title of first, or chief king of the *Angles* and *Saxons*, so this *Ella* not only was honoured with^f it, but also the prerogative by priority of time, in first enjoying it, before all other princes of his nation; but his dominion afterward, was for the most part still under the *Kentish* and west *Saxon* kings.

§. *Saint Wilfrid sent from York into his realm received.*

This *Wilfrid*, archbishop of *York*, expelled that see by *Egfrid*, king of *Northumberland*, was kindly received by *Edilwalch* (otherwise *Ethelwalch*, being before christened through religious persuasion of his godfather *Wulpher*,

¹ Comment. Gallic. 6.

² Bed. lib. de temporibus.

³ Hist. 7. not. 24.

D. Ambrosius.

⁴ Ita etiam Baronius; sed & vide Eusebii chronic. in Sixto. I.

⁵ Dist. 4. c. 4. statutus & ibid.

^b In homil. dist. 5. de consecrat. c. 14.

^c Rebuff. tract. de decim. quaest. 3. num. 37.

^d Canut. leg. 16.

^e Ex

antiqu. charta eccles. Selesens. ap. Camden.

^f So it is called in Florent. Wigorn. pag. 331.

^f Ethelwerd. hist. 3. cap. 2. Bed.

hist. 2. cap. 5.

king of *Mercland*) and converted the *South Saxons* to the gospel. He endowed this *Wilfrid* with *Selsey*, a chersonese in *Suffex*, and was so founder of a bishoprick, afterward translated, under the *Norman* conqueror, to *Chichester*, whose cathedral church in publick monuments honours the name of *Cedwalla* (of whom see to the ninth song) king of *West Sex* for her first creator; but the reason of that was rather because *Cedwalla*, after death of *Edilwalch*, (whom he slew) so honoured *Wilfrid*,² *ut magistrum & dominum omni provinciae eum praefecit, nihil in tota provincia sine illius assensu faciendum arbitratum; that he committed the supreme government of that province to him*; Whereupon it was, as it seems, thought fit (according to course of yielding, with the sway of fortune) to forget *Eldiwalch* and acknowledge *Cedwalla* (then a pagan) for first patron of that episcopal dignity. It is reported, that three years, before this general receipt there of *Christ's* profession, continued without rain; inasmuch that famine, and her companion pestilence, so vexed the province, that in multitudes of forty or fifty at a time, they used hand in hand, to end their miseries in the swallowing waves of their neighbouring ocean: But, that all ceased upon *Wilfrid's* preaching; who taught them also first (if *Henry of Huntingdon's* teaching deceive me not) to catch all manner of fish, being before skilled only in taking of eels. I know, ^h some make *Eadbert* abbot of the monastery in *Selsey*, under king *Ine*, first bishop there, adding, that before his time, the province was subject to *Winchester*; but that rightly understood, discords not; that is, if you refer it to instauration of what was discontinued by *Wilfrid's* return to his archbishoprick.

S. Adopting for his heir young Edmund —

Penda king of *Mercland*, had slain *Sigebert* (or *Sebert*) and *Anna* kings of *East-Angles*, and so in dominion might be said to have possessed that kingdom; But *Anna* had divers successors of his blood, of whom, *Ethelbert* was traiterously slain in a plot dissembled by *Offa* king of *Mercland*, and this part of the heptarchy confounded in the *Mercian* crown. Then did *Offa* adopt this *S. Edmund*, a *Saxon*, into name of successor in that kingdom; which he had not long enjoyed, but that through barbarous cruelty, chiefly of one *Hinguar* a *Dane* (*Polydore* will needs have his name *Agner*) he was with miserable torture martyred, upon the 19th of *November*, *DCCC.LXX*, whither his canonization directeth us for holy memory of him.

S. And slew a thousand monks as they devoutly prayed.

You may add cc to the author's number. This *Ethelfrid*, or *Edilfrid*, king of *Northumberland*, aspiring to increase his territories, made war against the bordering *Britons*. But as he

was in the field, by *Chester*, near the onset, he saw, with wonder, a multitude of monks assembled, in a place by, somewhat secure; demanded the cause, and was soon informed that they were there ready to assist his enemies swords with their devout orizons, and had one called *Brocmail*, professing their defence from the *English* forces. The king no sooner heard this, but *Ergo* (saith he being a heathen) *si adversus nos, ad dominum suum clamant, profecto & ipsi quamvis arma non ferant, contra nos pugnant, qui adversis nos imprecationibus persequuntur*; If they pray to their God against us, then plainly they fight against us; presently commands their spoil; which was so performed by his soldiers, that *CC.CC* were in their devotions put to the sword. A strange slaughter of religious persons at one time and place! But not so strange as their whole number in this one monastery, which was *CC.CC.C* not such idle lubberly lots as later times pestered the world withal, truly pictured in that description of (their character) sloth.

— With two stumpy eyne

I must sit said the legge, or else I must needs nap,
I may not stond ne stoupe, ne without mi stole neele,
Where I brought a bed (but if my talende it made)
Should ne ringing do me rise, or I were ripe to dine.
He began Benedicite with a belke, and his best knoked
And rasked, and rozed, and rut at the last;
If I should dye by this daie, me lyffe not to take.
I can not perfectly my Pater nost, as the priest it singeth
But I can rimes of Robin Hod, and Randall of Chester,
But of our Lord or our Lady, I tyme nothing at all.
I am occupied euerie day, holy day and other
With idle tales at the Ale, and other while in churches.
Gods paine and his passion full selde think I thereon.
I visited never feblemen, ne fettered folke in pities,
I have leuer here an harlottrie, or a somers game,
Or leasings to laugh at and bilpe my neighbours,
Then all that euer Marke made, Math, John and Lucas.
And bigiles and fasting daies all these let I passe
And lie in bed in Lent, and mi lemman in mine armes.
I have ben priest and parson passing thyrtye winter.
Yet I can nether sol fe ne sing, ne saints lives read.
But I can find in a feild, or in a furlong an hare
Better then in beatus vir, or in beati omnes.

Not such were those *Bangor* monks; but they *omnes de labore manuum suarum vivere solebant*; all lived of handy labour. Observe here the difference betwixt the more antient times and our corrupted neighbour ages, which have been so branded, and not unjustly, with dissembled bestial sensualities of monastick profession, that in the universal visitation under *Hen. VIII.* every monastery afforded shameful discovery of sodomites and incontinent friers. In *Canterbury* priory of *Benedictins* nine sodomites; in *Battel* abbey fifteen, and in many other, like proportion. Larger reckoning will not satisfy if you account their wenches which, married and single, (for they affected that variety) supplied the wants of their counterfeited solitariness. So that, hereupon, after an account of de convents of monks and friers, with mendicants, in this kingdom, when time endured them, *Je laisseray*, saith

² Malmesb. de gest. pontific. 3.

^h Math. Westmonasteriensis.

ⁱ Rob. de Langland, five Joannes Malverne pass 5.

^k one, maintenant au lecteur calculer combien pur le moins devoit estre de fils de putains en Angletere, je di seulement fils de moines & de putaines; I leave it to the reader to guess, how many bastards the monks and friers got for the laity. These were they who admired all for Hebrew or Greek which they understood not, and had at least (as many of our now professing formalists) Latin enough to make such a speech as *Rablais* hath to *Gargantua* for *Paris* bells, and call for their *vinum Cos*; which, in one of them personated, receive thus from a noble ^l poet.

*Fac extra: nihil hoc: extra totum sit oportet,
Sobrie n. juste atque pie potare jubet lex.
Vinum laetificat cor hominis, praecipue Cos.
Gratia sit Domino, vinum Cos, inquit, habemus.*

How my reader tastes this, I know not; therefore I willingly quit him; and add only, that *William* of *Malmesbury* grossly errs in affirming that this *Bangor*^m is turned into a bishoprick; but pardon him, for he lived in his cloister, and perhaps was deceived by equivocation of name, there being in *Caernarvan* a bishoprick of the same title to this day, which some body laterⁿ hath on the other side ill taken for this.

S. Who re-ordained York a bishop's government.

For in the *British* times it had a metropolitick see (as is noted to the ninth song) and now by *Edwin* (converted to christian discipline both through means of his wife *Ethelburg*, daughter to *Ethelbert* king of *Kent*, and religious persuasion of God's ministers) was restored to the former dignity, and *Paulinus*, in it, honoured with name of archbishop, being afterwards banished that province, and made bishop of *Rochester*, which, some have ignorantly made him before.

S. Nor those that in the stem of Saxon Crida came.

Most of our chronologers begin the *Mercian* race royal with *Penda*; but *Henry* of *Huntingdon* (not without his proofs and followers) makes *Crida* (grandfather to *Penda*) first in that kingdom.

S. Confirmed in Christ's belief by that most reverend Chad.

This *Wulpher*, son to *Penda*, restored to his father's kingdom, is^o reported with his own hands to have slain his two sons, *Wulphald* and *Rufin*, for that they privily withdrew themselves to that famous *St. Chad*, or *Cedda*, bishop of *Lichfield*, for instruction in the christian faith; and all this is supposed to be done where the now *Stone* in *Staffordshire* is seated. Hereupon the author relies. But, the credit of it is more than suspicious, not only for that in claffick authority I find his issue only to be *Kenred*, and

St. Werburge (by *Ermengild*, daughter to *Erconbert* of *Kent*) but withal, that he was both christian, and a great benefactor to the church. For it appears, by consent of all, that *Peada*, *Weda*, or *Penda*, (all these names he hath) eldest son of the first *Penda*, first received in *Middle Engle* (part of *Mercland*) the faith, and was baptized by *Finnan* bishop of *Lindisfarne*; after whose violent death, in spite of *Oswey*, king of *Northumberland*, *Immin*, *Ebba*, and *Edberth*, gentlemen of power in *Mercland*, saluted *Walpbur* (brother to *Peada*) king of all that province, who was then, as it seems, (by *Florence* of *Worcester*, and *Bede*'s reporting of four bishops in succession preferred by him) of christian name; But howsoever he was at that time, it is certain that in the second or third years of his reign, he was godfather to king *Editwalch* of *Sussex*, and bestowed on him as a gift, in token of that spiritual adoption, the *Isle of Wight*, with another territory in *West Saxony*, and gave also to *S. Cedda*, (made, by consent of him and king *Oswey*, bishop of *Lindisfarne*) fifty hides of land (a *hide*,^q a plough land, or a *carve*, I hold clearly equivalent) towards foundation of a monastery. All this compared, and his life, in our monks observed, hardly endures this note of persecution; which in respect of his foundership of *Peterborough* abbey, *Robert* of *Swapham*, a monk there, reporting it, or those from whom he had it, might better in silence have buried it, or rather not so ungratefully feigned it. I only find one thing notably ill of him; that he, first of the *English* kings, by simony made a bishop, which was *Wine* of *London*, as *Malmesbury* is author.

S. And (through his rule) the church from taxes strongly freed.

Ethelbald, king of *Mercland*, founder of *Crowland* abbey in *Lincolnshire*, a great, martial, and religious prince, in a synod held, (*Cuthbert*, then archbishop of *Canterbury*) enlarged ecclesiastick liberty in this form; *Donationem meam me vivente concedo, ut omnia monasteria & ecclesiae regni mei a publicis vestigaliis, operibus, & oneribus absolvantur, nisi instructionibus arcium vel pontium, quae nunquam ulli possunt relaxari*, i. e. he discharged all monasteries and churches of all kind of taxes, works, and imposts, excepting such as were for building of forts, and bridges; being (as it seems, the law was then) not releasable. For, beside the authority of this statute of *Ethelbald*, it appears frequent in charters of the *Saxon* times, that, upon endowment, and donations to churches, with largest words of exemption, and liberty from all secular charges, the conclusion of the *habendum*, was, *exceptis istis tribus, expeditione, pontis, arcisque constructione, excepting those three, aid in war, mend-*

^k H. Stephen en le introduit, au traite de la conformite, &c. 1 chap. 27. ^l Jan. Douz, satyr. 5. ^m In hist. & lib. 4. de pontificib. in Dorcestrensis.

ⁿ Aut. lib. academ. per Europ. edit. 1590. ^o Robert de Swapham in hist. Petroburgens. ap. Camd. in Stafford. & Northampton. & J. Stovaeum.

^p It is that now called Holy Island, by east the utmost parts of Northumberland, whence the bishoprick about 8000. xcv. was translated to Durham.

^q Ita. n. apud Marth. Paris, Huntingdon.

^r Th. Walsingham docemur, licet alii 100 acris, alii aliter definiunt. Caeterum quod me maxime movet, & abique haesitatione in hanc sententiam pedibus ire cogit, en tibi ex Dunstani charta (an. 1000. lxxii) qua terrae partem concessit septem aratorum quod Anglice dicitur septem hidar. Nec immemorem hic te yellem vocabuli illius apud J. C. nos nostros, hide & gaine, quod arum refibile interpretari haut ignorat dupondius quipiam

ing of bridges and forts; ^r which among common notaries, or scriveners, was so well known, that they called it by one general name, *trinoda necessitas*, a three knotted necessity, as out of *Cedwalla's* charter, A.D. DCLXXX. to *Wilfrid*, first bishop of *Selfsey*, of the manor of *Pagenham* (now *Pagham*) in *Sussex*, I have seen transcribed; Whereupon in a deliberative (concerning papal exactions, and subjection of church-living) held under *Hen.* ^r III. after examination of ancient king's indulgence to the clergy, it was found, that; *Non adeo libertati dederunt hujusmodi possessiones, quin tria sibi reservarent semper propter publicam regni utilitatem, videlicet, expeditionem pontis, & arcis reparationes, vel refectiōnes, ut per ea resisterent hostium incursionibus*; they always reserved those, that so they might the better be furnished against the enemies invasion; Although by words of a statute of *Ethelulph*, king of *West-Saxons* in the year DCCCLV. made by advice both of laity, and spirituality, the church was quitted also of those three common-wealth causes of subsidy, but enjoyed it not; For, even the ^r canons themselves subject their possessions to these services and duties; and upon interpretation of a charter made by *Henry Beauclerc*, founder of the priory of *St. Oswald* in *Yorkshire*, containing words of immunity and liberty of tenure, as general and effectual as might be, a great lawyer ^u long since affirmed, that yet the house was not freed of repairing bridges and causeways. But all lands, as well in hands of clerks, as lay, were subjected to particular tenures after the conquest; and so these kind of charges and discharges being made

rather feudal (as ^{*} *Bracton* calls them) than personal, use of them in charters consequently ceased. I note here to students of antiquity, that, where the printed *Ingulph* says this was done by *Ethelbald* in the third year of his reign, they must with correction make it the thirty third, as is, without scruple, apparent in the date of ^v the synod, which was D.CCXLV. of our Saviour.

§. *The Britons had interr'd their proto-martyrs bones.*

In that universal persecution under *Dioclesian*, ^z and *Herculius*, this isle gave, in *St. Alban*, testimony of christian profession; even to his last breath drawn among tormenting enemies of the cross. His death, (being the first martyr, as the author here calls him, that this country had) was at *Werlamcester* (i.e. the old *Verulam*) where by, the abbey of *St. Alban* ^a was afterward erected.

§. (*Extirping other styles*) and gave it ^b England's name.

Look back to the last note on the first song. Thus, as you see, hath the muse compendiously run through the *Heptarchy*, and united it in name and empire under *Egbert*, king of *West-Saxons*; after whom, none but his successors, had absolute power in their kingdoms, as course of story shews you. Likely enough I imagine, that, as yet, expectation of the reader is not satisfied in these seven kingdoms, their beginnings, territory, and first christianity; therefore, as a corollary, receive this, for the eye's more facile instruction.

	Began in	First received faith in
Compre- bended in.	I. Kent. The now Kent.	I. <i>Ethelbert</i> D. XC VII. of <i>Augustine</i> from <i>Gregory</i> I.
	II. South- Sex. { <i>Sussex.</i> <i>Surrey.</i> <i>Cornwall.</i> <i>Devonshire.</i>	II. <i>Edilwalch</i> DC. LXI. and the whole country converted by <i>Wilfrid</i> DC. L. XXIX.
	III. West- Sex. { <i>Dorset.</i> <i>Somerset.</i> <i>Wilton.</i> <i>Southampton.</i> <i>Berkshire.</i> <i>Lancaster.</i> <i>York.</i> <i>Durham.</i> <i>Westmoreland.</i>	III. <i>Certic</i> , DXIX. whose grand-father was <i>Gewise</i> , and thence his people and posterity called <i>Gewises</i> .
	IV. North- umber- land. { <i>Northumberland</i> , and the neighbouring territories, to <i>Edin- burgh Frith</i> ; whi- ther from <i>Tine</i> was the name of <i>Berni- cland</i> , and what lay on this side <i>Tine</i> , cal- led, <i>Deirland</i> .	IV. <i>Edwin</i> DC. XXVI. christened by <i>Paulin</i> first archbishop (in the Saxon times) of <i>York</i> .

^r V. Chartam hujusmodi apud D. Ed. Cok. in epist. ad lib. 6.

ecclef. c. pervenit. 2.

^s Malmesb. lib. de gest. pontif. 1;

2

^u Knivet 44, Ed. III. fol. 25. a.

^a See the author in the XVI song.

^v Math. Paris, pag. 838.

^z DCC. LX. aut circiter,

^a Gregor. decret. tit. de imm.

^b De acquir. rer. dom. 2. cap. 16. §. 8.

^c A. circa d. ccc.

Compre-
hended
in.

V. Est- Sex.	{ Essex. Middlesex. Part of Hereford.
VI. Est- Angle.	{ Norfolk. Suffolk. Cambridgeshire. Part of Ely. Glocester. Hereford. Worcester. Warwick. Leicester. Rutland. Northampton. Lincoln. Huntingdon. Bedford. Buckingham. Oxford. Stafford. Derby. Salop. Nottingham. Chester.
VII. Merc- land.	{ The northern part of Hereford. But in these the inhabitants of them inlands were called Middle-Eng- les, and the Merc- ians divided into names of their local quarters.

Began in

First received faith in

V. Sleda, after some (others say in Er- chinwin before him) about D. LXXX. both uncertain, and their successors.	V. Sebert, DC. IV. dipt in holy tincture by Mellitus, first bishop of London.
VI. Redwald, about DC. but some talk of one Vuffa (whence these kings were cal- led Vuffings) to be author of it near XXX years before.	VI. Eorpwald DCXXXII. although Redwald were christened, for he soon fell to apostacy, by persuasion of his wife, and in the same chapel made one al- tar to Christ, another to the devil.
VII. In Penda DC. XXVI. others will in Crida, some XL. be- fore.	VII. Peada, king of Middle Engle DC. LIII. baptized by Finna, bishop of Lindisfarn, but enlarged the pro- fession of it in Vul- pher, next king there.

Perhaps as good authority may be given against some of my proposed chronology, as I can justify myself with. But although so, yet I am therefore freed of error, because our old monks exceedingly in this kind corrupted, or deficient, afford nothing able to rectify. I know the *East-Angles*, by both ancient and later authority, begin above a hundred years before; but if with synchronism you examine it, it will be found most absurd. For, seeing it is affirmed expressly, that *Redwald* was slain by *Ethelfrid*, king of *Northumberland*, and being plain by *Bede* (take his story together, and rely not upon syllables and false printed copies) that it must needs be near DC. for *Edwin* succeeded *Ethelfrid*, and that, *Uffa* was some xxx years before; What calculation will cast this into less than D. years after Christ? Forget not (if you desire accurate times) my admonition to the fourth song, of the xxii. years error upon the *Dionysian* account, especially in the beginning of the kingdoms, because they are for the most part reckoned in old monks from the coming of the *Saxons*. Where you find different names from these, attribute it to misreading old copies, by such as have published *Carpenwald* for *Eorpenwald*, or *Edrpwald*; *Penda* also perhaps for *Wenda*, mistaking the Saxon *p*. for our *P*. and other such, variably both written and print-

ed. How in time they successively came under the *West-Saxon* rule, I must not tell you, unless I should untimely put on the person of an historian. Our common annals manifest it. But know here, that although seven were, yet but five had any long continuance of their supremacies.

The Saxons tho in ther power (tho thii were so riae)
Seue Kingdomes made in Engelande and * lute but viue;
The king of Northomberlonde, and of Eastangle also.
Of Kent and of Westsex, and of the March ther to.
* Afterward.

as *Robert* of *Glocester*, according to truth of story, hath it; for *Estsex* and *Southsex* were not long after their beginnings (as it were) annexed to their ruling neighbour princes.

S. A nation from their first bent naturally to spoil.

Indeed so were universally the *Germans* (out of whom our *Saxons*) as *Tacitus* relates to us; *Nec arare terram aut expectare annum tam facile persuaseris, quam vocare hostes & vulnera mereri. Pigrum quinimo & iners videtur, sudore acquirere, quod possis sanguine parare. You could not so easily persuade them to husbandry, as to martial conflict; nor thought they it better than slothful, to get that by sweat,*

Eccl. hist. 2. cap. 9. ubi legendum sexcentesimo vice tē quingentesima.

which they might have by blood. And more of that nature we read in him.

S. Of famous Cambridge first —

About the year DC.XXX, *Sigebert*, (after death of *Eorpwald*) returning out of *France*, whither his father *Redwald* had banished him, and receiving the *East-Angle* crown, assisted by *Felix* a *Burgognon*, and first bishop of *Dunwich* (then called *Dunmoe*) in *Suffolk*; desiring to imitate what he had seen observant in *France*, for the common good, *instituit scholam*, (read it *scholas*, if you will, as some do, I see no consequence of worth) *in qua pueri literis erudirentur, instituta a school for children*, as *Bede* writeth. Out of these words thus general, *Cambridge* being in *Eastangle*, hath been taken for this school, and the school for the university. I will believe it (in so much as makes it then an university) not much sooner than that (I know not what) *Gurguntius* with *Cantaber*, some CL. years before Christ, founded it; or, those charters of king *Arthur*, bulls of pope *Honorius* and *Sergius* sent thither; *Anaximander* or *Anaxagoras* their studies there, with more such pretended and absurd unlikelihooods; unless every grammar school be an university, as this was, where children were taught by *paedagogi & magistri juxta morem Cantuariorum, schoolmasters, according to the fashion* at *Canterbury*, as *Bede* hath expressly; which so makes *Canterbury* an university also. But neither is there any touch in authentick and antient story, which justifies these schools instituted at *Cambridge*, but generally somewhere in *Eastangle*. Reasons of inducement are framed in multitudes on both sides. But, for my own part, I never saw any sufficiently probable, and therefore most of all rely upon what authorities are afforded. Among them I ever preferred the appendix to the story of *Crowland*, supposed done by *Peter* of *Blois*, affirming, that under *Hen. I.* (he lived very near the same time; therefore believe him in a matter not subject to causes of historians temporizing) *Joffred*, abbot of *Crowland*, with one *Gilbert* his commoigne, and three other monks came to his manner of *Cotenham*, as they used oft-times, to read; and thence daily going to *Cambridge*, *conducto quodam horreo publico suas scientias palam profitentes, in brevi temporis excursu, grandem discipulorum numerum contraxerunt. Anno vero secundo adventus illorum, tantum accrevit discipulorum numerus, tam ex tota patria, quam ex oppido, quod quaelibet domus maxima, horreum, nec ulla ecclesia sufficeret eorum receptaculo; Hired a barn to read in, and so continued till the number of their scholars exceeded the content of that, or any church, &c.* and so goes on with an ensuing frequency of schools. If before this there were an university, I imagine that in it was not professed *Aristotle's* ethicks, which tell us *ἡμεῖς τῶν ξενικῶν φιλίας*: for, then would they not have permitted learned readers of the sciences (whom

all that hated not the muses, could not but love) to be compelled into a barn, instead of schools. Nor is it tolerable in conceit, that for near D. years (which interceded 'twixt this and *Sigebert*) no fitter place of profession should be erected. To this time others have referred the beginning of that famous seminary of good literature: and, if room be left for me, I offer subscription; but always under reformation of that most honoured tutress's pupils, which shall (omitting fabulous trash) judiciously instruct otherwise. But the author here, out of *Polydore*, *Leland*, and others of later time relying upon conjecture, hath his warrant of better credit than *Cantilup*, another relater of that *Arcadian* original, which some have so violently patronized.

S. Renowned Oxford built to Apollo's learned brood.

So it is affirmed (of that learned king, yet knowing not a letter till he was past XII.) by *Polydore*, *Bale*, and others; grounding themselves upon what *Alfred's* beneficence and most deserving care hath manifested in royal provision for that sacred nourice of learning. But justly it may be doubted, lest they took insaturation of what was deficient, for institution; for although you grant that he first founded *University college*; yet it follows not, but there might be common schools, and colleges, as at this day in *Leyden*, *Giesse*, and other places of high and low *Germany*. If you please, fetch hither that of *Greeklade* (to the third song) which I will not importune you to believe; but without scruple you cannot but credit that of a monk of *St. Dewi's* (made grammar and rhetorick reader there by king *Alfred*) in these words of the year DCCC. LXXXVI. *Exorta est pessima ac teterrima Oxoniae discordia inter Grimbaldum*, (this was a great and devout scholar, whose aid *Alfred* used in his disposition of lectures) *doctissimosque illos viros quos secum illuc adduxit, veteres illos scholasticos quos ibidem invenisset; qui ejus adventu, leges, modos, ac praelegendi formulas ab eodem Grimboldo institutas, omni ex parte amplecti recusabant.* And a little after; *Quinetiam probabant & ostendebant, idque indubitato veterum annuallium testimonio, illius loci ordines ac instituta, a nonnullis piis & eruditissimis hominibus, fuisse sancita, ut a Gilda, Melkino* (he was a great mathematician, and as *Gilda* also, lived between D. and DC.) *Nennio*, (the printed book hath falsely *Nemrio*) *Kentigerno* (he lived about D. LX.) *& aliis, qui omnes literis illic confluxerunt, omnia ibidem foelici pace & concordia administrantes;* and affirmed also, that letters had there been happily professed in very antient time, with frequency of scholars, until irruptions of pagans (they meant *Danes*) had brought them to this lately restored deficiency. After this testimony, greater than all exception, what can be more plain, than the noble worth and fame of this pillar of the muses, long before king *Alfred*? Neither make I any great question, but that, where in an

^d Affer. Menevens. de gest. Alfred. which of antient time were there before, &c. kingdom to teach him. Florent Wigorn, pag. 309.

^e A great controversy grew betwixt those new scholars which Alfred brought thither, and those about Alfred's time, before his insaturation, a grammarian was not found in his

viii. by the *Mercian* law.

Here was none of *Cornwall*, *Cumberland* (stiled also *Carlisle-shire*) *Northumberland*, *Lancaster*, *Westmorland*, (which was since titled *Appleby-shire*) *Durham*, *Monmouth*, nor *Rutland*, which at this day make our number (beside the XII in *Wales*) XL. *Cornwall*, because of the *Britons* there planted, until the Conqueror gave the county to his brother *Robert of Moreton*, continued out of the division. *Cumberland*, *Northumberland*, *Westmorland*, and *Durham*, being all northern, seem to have been then under *Scottish*, or *Danish*, power. But the two first received their division, as it seems, before the conquest; for *Cumberland* had its particular[†] governors, and *Northumberland*[†] earls; *Westmorland* perhaps began when king *John* gave it *Robert Vipont*, ancestor to the *Cliffords*, holding by that patent to this day the inheritance of the sheriffdom. *Durham* religiously was with large immunities given to the bishop, since the *Norman* invasion. *Lancaster*, until *Hen. III.* created his younger son *Edmund Crookback*, earl of it, I think, was no county; for, in one of our old year^u books, a learned judge affirms, that, in this *Henry's* time, was the first sheriff's turn held there. Nor until *Edward* (first son to *Edmund of Langley*, duke of *York*, and afterward duke of *Aumerle*) created by *Rich. II.* had *Rutland* any earls. I know for number and time of those, all authority agrees not with me; but I conjecture only upon selected. As *Alfred* divided the shires first, so to him is owing the constitution of hundreds, tythings, lathes, and wapentakes; to the end that whosoever were not lawfully, upon credit of his boroughs, *i. e.* pledges, admitted in some of them for a good subject, should be reckoned as suspicious of life and loyalty. Some steps thereof remain in our^{*} antient and later law books.

§. Which be an heirloom left unto the English throne.

The first healing of the *king's evil*, is referred to this *Edward*^v the *Confessor*; and, of a particular example in his curing a young married woman, an old^z monument is left to posterity. In *France*, such a kind of cure is attributed to their kings also. Both of that and this, if you desire particular inquisition, take doctor *Tooker's* *charisma sanationis*.

§. Our countries common laws did faithfully produce.

In *Lambard's Archaeonomy*, and *Roger of Hoveden's Hen. II.* are laws under name of the *Confessor* and *Conqueror* joined, and deduced, for the most part out of their predecessors; but those of the *Confessor* seem to be the same, if *Malmesbury*^a deceive not, which king *Cnut* collected, of whom his words are; *Omnes leges ab antiquis regibus & maxime antecessore suo Ethefredo latas, sub interminatione regiae*

*multae, perpetuis temporibus observari praecepit, in quarum custodiam etiam nunc tempore bonorum sub nomine regis Edwardi juratur, non quod ille statuerit, sed quod observaverit. He commanded all laws made by the antient kings to be kept, especially those of Ethelred, to which the kings swear under name of king Edward's laws, not that he made them, but observed them. And under this name have they been humbly desired by the subject, granted with qualification, and controverted, as a main and first part of liberty, in the next age, following the *Norman* conquest.*

Illustrations on the twelfth song.

Taking her progress into the land, the muse comes southward from *Cheshire* into adjoining *Stafford*, and that part of *Shropshire*, which lies in the *English* side, east from *Severn*.

§. And into lesser streams the spacious current cut.

In that raging devastation over this kingdom by the *Danes*, they had gotten divers of their ships fraught with provision out of *Thames* into the river *Lee* (which divides *Middlesex* and *Essex*) some xx miles from *London*; *Alfred*, holding his tents near that territory, especially to prevent their spoil of the instant harvest, observed, that by dividing the river, then navigable between them and *Thames*, their ships would be grounded, and themselves bereft of what confidence their navy had promised them. He thought it, and did it, by parting the water into three channels. The *Danes* betook themselves to flight, their ships left as a prey to the *Londoners*.

§. Her lords embraces vow'd she never more would know.

This *Alfred* left his son *Edward* successor, and, among other children, this *Ethelred*, or *Ethelred* his daughter, married to *Ethelred*, earl of *Mercland*. Of *Alfred's* worth and troublesome reign, because here the author leaves him, I offer you these of an antient *English* wit:

*Nobilitas innata tibi probitatis honorem
Armipotens Alfredus dedit, probitasque laborum,*

Perpetuumque labor nomen. Cui mixta dolori

Gaudia semper erant, spes semper mixta timori.

Si modo victor eras, ad crastina bella pavebas.

Si modo victus eras, ad crastina bella parabas.

Cui vestes sudore jugi, cui sica cruore

Tincta jugi, quantum sit onus regnare probarunt.

Huntington cites these as his own; and if he deal plainly with us (I doubted it, because his

[†] Matth. West. fol. 366.

[†] Ingulph. hist. Crowland.

^u Thorp. 17 Ed. III. fol. 46. b.

^{*} Braet. lib. 3. tract. de

corona cap. 10. Quam plurimi casus in annis Ed. III. & 5. Jacob. apud dom. Ed. Cok. lib. 6. fol. 77. maxime vero huc faciunt itinera

illa Hen. III & Ed. I.

^v Polydor. hist. 8.

^a Eilred. Rhivallens. ap. Took, in charifmat. sanat. cap. 6.

^z De gest. reg. 2. cap. 11.

mf. epig-

mf. epigrams, which make in some copies the xi and xii of his history, are of most different strain, and seem made when *Apollo* was either angry, or had not leisure to overlook them) he shews his muse (as also in an other written by him upon *Edgar*, beginning, *Auctor opum, vindex scelerum largitor bonorum*, &c.) in that still declining time of learning's state, worthy of much precedence. Of *Ethelred* in *William of Malmesbury*, is the Latin of this English: *She was the love of the subject, fear of the enemy, a woman of a mighty heart, having once endured the grievous pains of child-birth, ever afterward denied her husband those sweeter desires; protesting, that, yielding indulgence towards a pleasure, having so much consequent pain, was unseemly in a king's daughter*. She was buried at *S. Peter's* in *Glocester*; her name loaden by monks with numbers of her excellencies.

§. For Constantine their king, an hostage hither brought.

After he had taken *Wales* and *Scotland* (as our historians say) from *Howel* (*Malmesbury* calls him *Ludwal*) and *Constantine*; he restored presently their kingdoms, affirming, that, *it was more for his majesty to make a king than be one*. The *Scottish*^b stories are not agreeing here with ours; against whom *Buchanan* storms, for affirming what I see now how he is so well able to confute, as they to justify. And for matter of that nature, I rather send you to the collections in *Ed. I.* by *Thomas of Walsingham*, and thence for the same and other to *Ed. Hall's Hen. VIII.*

§. A Neptune, whose proud sails the British ocean swept.

That flower and delight of the *English* world, in whose birth-time *S. Dunstan* (as is^c said) at *Glastenbury*, heard this angelical voice,

To holy church and to the Lord pays is pboze and blis

By thutke child's time, that nouthe pboze is.

(among his other innumerable benefits and royal cares) had a navy of *cix. cix. cix. dc* sail; some say *cix. cix. cix. cix*; which by tripartite division in the east, west, and northern coasts, both defended what was subject to pirates rapine, and so made strong his own nation against the enemies invasion.

§. By civil stepdames hate to death was lastly done.

Edgar had by one woman (his greatest stains shewed themselves in this variety and unlawful obtaining of lustful sensuality, as stories will tell you, in that of earl *Ethelwald*, the nun *Wulfrit*, and the young lass of *Andover*) called *Egelfled*, surnamed *Ened*, daughter to *Odmer* a

great nobleman, *Edward*; and, by queen *Elfrith*, daughter to *Orgar*, earl of *Devonshire*, *Ethelred* of some vii years age at his death. That *Egelfled* was a professed^d nun, some have argued, and so make *Ethelred* the only legitimate heir to the crown; nor do I think that, except *Alfrith*, he was married to any of the ladies, on whom he got children. *Edward* was anointed king (for in those days was that use of anointing among the *Saxon* princes, and began in king *Alfred*) but not without disliking grudges of his stepmother's faction, which had nevertheless in substance, what his vain name only of king pretended; but her bloody hate, bred out of womanish ambition, straining to every point of sovereignty, not thus satisfied, compelled in her this cruelty. King *Edward* not suspecting her dissembled purposes, with simple kindness of an open nature, wearied after the chase in *Purbeck* isle in *Dorsetshire*, without guard or attendance, visits her at *Corfe Castle*; she, under sweet words and saluting kisses, palliating her hellish design, entertains him; but while he being very hot and thirsty (without imagination of treason) was in pledging her, she, or one of her appointed servants, stabbed the innocent king. His corps, within little space expiring its last breath, was buried at *Warham*, thence afterward, by *Alfer* earl of *Mercland*, translated into *Shaftsbury*, which (as to the second song I note) was hereby for a time called^e *S. Edward's*. Thus did his brother-in-law *Ethelred* (according to wicked *Elfrith's* cruel and traitorous project) succeed him. As, of *Constantine* Copronymus, the *Greeks*, so, of this *Ethelred*, is affirmed, that, in his holy tincture he abused the font with natural excrements, which made *S. Dunstan*, then christening him, angrily exclaim, *Per Deum & matrem ejus ignavus homo erit*; By God and his mother, he will be a slovenly fellow. Some ten years of age was he, when his brother *Edward* was slain, and, out of childish affection, wept for him bitterly; which his mother extremely disliking, being author of the murder only for his sake, most cruelly beat him herself with^f an handful of wax.

— candlen long and towe

* *Woe ne bileued nocht ar he lay at hir † bet yswome :
Was thoze this child afterward such hep mon as he was
Was the worze wan he † pley candlen boz this cas.*

* She.

† Feet in woe.

‡ Saw.

But I have^h read it affirmed, that *Ethelred* never would endure any wax candles, because he had seen his mother unmercifully with them whip the good *S. Edward*. It is not worth one of the candles, which be the truer; I incline to the first. To expiate all, the afterward built two nunneries, one at *Werwel*, the other at *Ambsbury*; and, by all means of penitence and satisfaction, (as the doctrine then directed) endeavoured her freedom out of this horrible offence.

^b Hector Boeth. lib. 11. & Buchanan hist. 6. reg. 85.

hist. 4. ^c Vide Malmesb. lib. 2. cap. 9. & Huntingdon. hist. 5.

cestrensis.

^d Vir. S. Edwardi apud Ranulph Cestrenf. lib. 6.

^e Rob. Glocestrenf.

^d Ex Osberno in vita Dunstan. Fox. eccles.

^f Malmesb. lib. de pontific. 2.

^h Rob. Glo-

§. *And in one night the throats of all the Danish cut.*

History, not this place, must inform the reader of more particulars of the *Danes*; and let him see to the first song. But for this slaughter, I thus ease his inquisition. *Ethelred* (after multitudes of miseries, long continued through their exactions and devastations, being so large, that xvi shires had endured their cruel, and even conquering spoils) in the xxiii. of his reign, strengthened with provoking hopes, grounded on alliance, which, by marriage with *Emma*, daughter of *Richard I.* duke of *Normandy*, he had with his neighbour potentate, sent privy letters into every place of note, where the *Danes* by truce peaceably resided, to the *English*, commanding them, all as one, on the self same day and hour appointed (the day was *St. Brictius*, that is, the xiiii. of *November*) suddenly to put them, as respective occasion best fitted, to fire or sword; which was performed.

A chronological order and descent of the kings here included in Wrekin's song.

A. CHR.

DCCC. ----- *Egbert*, son to *Inegild* (others call him *Albmund*) grandchild to king *Ine*. After * him scarce any, none long, had the name of king in the isle, but governors or earls; the common titles being *duces*, *comites*, *consules*, and such like; which in some writers, after the conquest, were indifferent names, and *William I.* is often called earl of *Normandy*.

DCCC.XXXVI. *Ethelulph*, son to *Egbert*.
DCCC.LV. ---- *Ethelbald*, and *Ethelbert*, sons to *Ethelulph*, dividing their kingdom, according to their fathers testament.

DCCC.LX. ---- *Ethelbert* alone, after *Ethelbald's* death.

DCCC.LXVI. -- *Ethelred*, third son of *Ethelulph*.

DCCC.LXXI. -- *Alfred*, youngest son to *Ethelulph*, brought up at *Rome*; and there in *Ethelred's* life-time, anointed by *PP. Leo IV.* as in ominous hope of his future kingdom.

DCCCC.I. - - - - *Edward I.* surnamed in story *senior*, the *elder*, son to *Alfred*.

DCCCC.XXIV. *Athelstan*, eldest son to *Edward*, by *Egwine*, a shepherd's daughter; but, to whom beauty and noble spi-

rit denied, what base parentage required. She, before the king lay with her, dreamed (you remember that of *Olympias*, and many such like) that out of her womb did shine a moon, enlightening all *England*, which in her birth (*Athelstan*) proved true. *Edmund I.* son of *Edward* by his queen *Edgiva*.

DCCCC.XL. ---

DCCCC.XLVI.

DCCCC.LV. --

DCCCC.LIX. --

DCCCC.LXXV.

DCCCC.LXXIX.

CIO.XVI. ----

Edred, brother to *Edmund*.
Edwy, first son of *Edmund*.
Edgar, second son of *Edmund*; *Honor ac deliciae Anglorum*. The minion of his subjects.

Edward II. son to *Edgar*, by *Egelfled*, murdered by his step-mother *Elfrith*, and thence called *St. Edward*.

Ethelred II. son to *Edgar*, by queen *Elfrith*, daughter to *Orgar*, earl of *Devonshire*.

Edmund II. son to *Ethelred*, by his first wife *Elfgiva*, surnamed *Ironside*.

Between him and *Cnut*, or *Canutus* the *Dane*, son to *Swaine*, was that intended single combat; so by their own particular fortunes, to end the miseries which the *English* soil bore recorded in very great characters, written with streams of her childrens blood. It properly here breaks off; for (the composition being, that *Edmund* should have his part *Westsex*, *Essex*, *Essex*, *Middlesex*, *Surrey*, *Kent*, and *Sussex*; and the *Dane*, (who durst not fight it out, but first moved for a treaty) *Mercland* and the northern territories) *Edmund* died the same year, (some report was, that traiterous *Edrick Streona*, earl of *Mercland*, poisoned him) leaving sons, *Edmund* and *Edward*; but they were, by *Danish* ambition and traiterous perjury of the unnatural *English* state, disinherited, and all the kingdom cast under *Cnut*. After him reigned his son *Harold I. Lightfoot*, * a shoemaker's son (but dissembled, as begotten by him on his queen *Alfgiva*) then, with *Harold, Hardcnut*, whom he had by his wife *Emma*, king *Ethelred's* dowager. So that from *Edmund*, of *Saxon* blood, (to whose glory *Wrekin* hath dedicated his endeavour; and therefore should transcend his purpose, if he exceeded their empire) until *Edward* the Confessor, following *Hardcnut*, son to *Ethelred*, by the same queen *Emma*, the kingdom continued under *Danish* princes.

Illustrations on the thirteenth song.

INTO the heart of *England* and *Wales*, the muse here is entered, that is, *Warwickshire*, her native country; whose territory you might call

* See to the last song before, because in *Westsex* all the rest were at last confounded. These are most commonly written kings of *Westsex*, although in signiory, (as it were) or, as the civilians call it, direct property, all the other provinces (except some northern, and what the Danes unjustly possessed) were theirs.
‡ Male enim & inepte Veremundi sequax. Hector ille Boeth. lib. 11. qui Edm.
& Edredum Aethelstano scribit prognatos.
* Marian. Scot. & Florent. Wigorn.

Middle-Engle (for here was that part of *Mercland*, spoken of in story) for equality of distance from the inarming ocean.

§. *By her illustrious earls renowned every where.*

Permit to yourself credit of those, loaden with antique fables, as *Guy*, (of whom the author in the twelfth song, and here presently) *Morind*, and such like, and no more testimony might be given, to exceed. But, more sure justification hereof is, in those great princes *Henry Beauchamp* earl of *Warwick*, and *praecomes Angliae*, chief earl of England, (as the record calls him) under ¹ *Hen. VI.* and *Richard Nevil*, making, as it were, his gain to crown and depose kings, in that bloody dissension betwixt the white and red roses.

§. *That mighty Arden held—*

What is now the *Woodland* in *Warwickshire*, was heretofore part of a larger weald or forest called *Arden*. The relicks of whose name in *Dene* of *Monmouthshire*, and that *Arduenna* or *la forest d'Ardenne*, by *Henault* and *Luxemburg*, shews likelihood of interpretation of the yet used *English* name of *Woodland*. And, whereas, in old inscriptions, ^m *Diana nemorensis*, *Diana of the wood*, with other additions, hath been found among the *Latins*, the like seems to be expressed in an old marble, now in *Italy*, ⁿ graven under *Domitian*, in part thus :

DIS. MANIBUS.

Q. CAESIUS. Q. F. CLAUD.
ATILIANUS. SACERDOS.
DEANAE. ARDUINNAE.

To the separated souls,

Q. Caesius, &c.

Priest of Diana

Of Arden, or surnamed Arden.

That comprehensive largeness which this *Arden* once extended (before ruin of her woods) makes the author thus limit her with *Severn* and *Trent*. By reason of this her greatness joined with antiquity, he also made choice of this place for description of the chase, the *English* simples, and hermit, as you read in him.

§. *And thither wisely brought that goodly virgin band.*

Sufficient justification of making a poem, may be from tradition, which the author here uses ; but see to the eighth song, where you have this incredible number of virgins, shipt at *London* ; nor skills it much on which you bestow your faith, or if on neither. Their request (as the genius prayer) are the author's own fictions, to come to express the worth of his native soil's city.

§. *By Leofrick, her lord, yet in base bondage held.*

The ensuing story of this *Leofrick* and *Godiva* was under the Confessor. I find it reported in *Matthew of Westminster*, that, *Nuda equum ascendens, crines capitis & tricas dissolvens, corpus suum totum, praeter crura candidissima, inde velavit ; As she was on horseback, her hair loose hung so long, that it covered all her body, to her thighs.* This *Leofrick* (buried at *Coven-*
try) was earl of *Leicester*, not *Chester*, (as some ill took it by turning *Legecestra*, being indeed sometimes for *Chester*, of old called *urbs legionum*, as to the eleventh song already) which is, without scruple, shewed in a ° charter, of the manor of *Spalding* in *Lincolnshire*, made to *Wulgat* abbot of *Crowland*, beginning thus ; *Ego Thoroldus de Buckenbale coram nobilissimo domino meo Leofrico comite Leicestriae, & nobilissima comitissa sua domina Godiva sorore mea, & cum consensu & bona voluntate domini & cognati mei comitis Algari primogeniti & haeridis eorum, donavi, &c.* This *Algar* succeeded him ; and, as a special title, government and honour, this earldom was therein among the *Saxons* so singular, that it was hereditary with a very long pedigree, till the conquest, from king *Ethelbald's* time, above ccc years. In *Malmesbury*, he is stiled earl of *Hereford* ; and, indeed, as it seems, had large dominion over most part of *Mercland*, and was a great protector of good king *Edward*, from ambitious *Godwin's* faction. You may note in him what power the earls of those times had for granting, releasing, or imposing liberties and exactions, which since only the crown hath, as inseparably annexed to it. Nay, since the *Normans*, I find that ^p *William Fitz-Osbern*, earl of *Hereford*, made a law in his country, *Ut nullus miles pro qualicunque commisso plus septem solidis solvat ; That no knight should be amerced above seven shillings ;* which was observed without controversy, in *Malmesbury's* time ; And I have seen original letters of protection (a perfect and uncommunicable power royal) by that great prince *Richard* earl of *Poictiers* and *Cornwal*, brother to *Hen. III.* sent to the sheriff of *Rutland*, for, and in behalf of a nunnery about *Stamford* ; and it is well known, that his successor, *Edmund*, left no small tokens of such supremacy in constitutions, liberties, and imposed subsidies, in the flannaries of *Cornwal* ; with more such like extant in monuments. But whatsoever their power heretofore was, I think it ceased with that ^q custom of their having the third part of the king's profit in the county, which was also in the *Saxon* times usual, as appears in that, ^r *In Ipswich regina Edeva duas partes habuit & comes Guert tertiam ; Norwich reddebat xx. libras regi, & comiti x. libras :* Of the borough of *Lewes* ; its profits erant *duae partes regis, tertia comitis ; & Oxford reddebat regi xx.*

¹ Parl. rot. 23 Hen. VI. ap. Cam.

^m Hubert. Goltz. thesaur. in Aris.

ⁿ Jul. Jacobon. ap. Paul. Merul. cosmog.

part 2. lib. 3. cap. 11.

^o Ingulphus hist. fol. 519.

^p Malmesb. de gest. reg. 3.

^q Lib. vetust. monast. de

Bello ap. Camd.

^r Lib. Domesday in Itaccario.

libras, & sex sextarios mellis, comiti vero Algaro x. libras. And under king *John, Geoffrey Fitz-Peter*, earl of *Essex*, and *William le Marshall*, earl of *Striguil*, *administrationem suorum comitatum habebant; had rule of their counties,*¹ faith *Hoveden*; but time hath, with other parts of government, altered all this to what we now use.

§. *A witness of that day we won upon the Danes.*

He means *Rollrich* stones in the confines of *Warwick* and *Oxfordshire*; of which the vulgar there have a fabulous tradition, that they are an army of men, and I know not what great general amongst them, converted into stones; a tale not having his superior in the rank of untruths. But (upon the conceit of a most learned man) the muse refers it to some battle of the *Danes*, about the time of *Rollo's* piracy and incursion, and for her country takes the better side (as justifiable as the contrary) in affirming the day to the *English*. But, to suppose this a monument of that battle, fought at *Hochnorton*, seems to me, in matter of certainty, not very probable; I mean, being drawn from *Rollo's* name: Of whose story, both for a passage in the last song, and here, permit a short examination. The *Norman*² tradition is, that he, with divers other *Danes* transplanting themselves, as well for dissension betwixt him and his king, as for new feat of habitation, arrived here, had some skirmishes with the *English*, defending their territories; and soon afterward being admonished in a dream, aided and advised by king *Athelstan*, entered *Seine* in *France*; wasted and won part of it about *Paris*, *Baieux*, elsewhere, returned, upon request by embassy, to assist the *English* king against rebels; and afterward in the year *DCCC.XI.* or *XII.* received his dukedom of *Normandy*, and christianity, his name of *Robert*, with *Egidia* or *Gilla* (for wife) daughter to *Charles*, surnamed the *simple*; as to the fourth song, I have, according to the credit of the story, touched it. But how came such habitude betwixt *Athelstan* and him, before this *DCCC.XII.* when, as it is plain, that *Athelstan* was not king till *DCCC.XXIV.* or near that point? Neither is any concordance betwixt *Athelstan* and this *Charles*, whose kingdom was taken from him by *Rodulph*, duke of *Burgundy*, two years before our king *Ed. I.* (of the *Saxons*) died. In the ninth year of whose reign, falling under *DCCC.VI.* was that battle of *Hochnorton*; so that, unless the name of *Athelstan* be mistook for this *Edward*, or, be wanting to the dominical year of those *XXII.* of the *Dionysian* calculation (whereof to the fourth song) I see no means to make their story stand with itself, nor our monks; in whom (most of them writing about the *Norman* times) more mention would have been of *Rollo*, ancestor to the

Conqueror, and his acts here, had they known any certainty of his name or wars; which I rather guess to have been in our maritime parts, than inland, unless when (if that were at all) he assisted king *Athelstan*. Read *Frodoard*, and the old annals of *France*, written near the supposed times, and you will scarce find him to have been, or else there under "some other name; as *Godfrey*, which some have conjectured, to be the same with *Rollo*. You may see in *Æmilius* what uncertainties, if not contrarities, were, in *Norman* traditions of this matter; and, I make no question, but of that unknown nation, so much mistaking hath been of names, and times, that scarce any undoubted truth therein now can justify itself. For, observe but what is here delivered, and compare it with * them which say in *DCCC.XCVIII.* *Rollo* was overthrown at *Chartres* by *Richard* duke of *Burgundy*, and *Ebal* earl of *Poitiers*, assisting *Walzelin* bishop of that city; and, my question is, where have you hope of reconciliation; except only in equivocation of name. For plainly, *Hastings*, *Godfrey*, *Hroric*, and others (if none of these were the same) all *Danes*, had to do, and that with dominion in *France* about this age; wherein it is further reported, that † *Robert* earl of *Paris*, and in some sort a king betwixt *Charles* and *Rodulph*, gave to certain *Normans* that had entered the land at *Loire* (they first ‡ entered there in *DCCC.LIII.*) all *Little Bretagne* and *Nantis*, and this in *DCCC.XXII.* which agrees, with that gift of the same tract to *Rollo* by *Charles*, little better than harlehest discords. And so doth that of *Rollo's* being aided by the *English* king, and in league with him against the *French*, with another received truth, which is, that *Charles* was (by marriage with † *Edgith* of the *English* king's loins) son-in-law to *Edward*, and brother-in-law to *Athelstan*, in whose † protection here *Lewis* (afterward the *IV.*) was; while *Rodulph* of *Burgundy* held the crown. For that unmanly homage also, spoken of to the fourth song by one of *Rollo's* knights, it is reported by *Malmesbury* and others, to be done by *Rollo* himself; and, touching that *Egidia*, wife to *Rollo*, the judicious *French* historiographer, *P. Æmilius* (from whom the *Italian Polydore* had many odd pieces of his best context) tells clearly, that she was daughter to *Lothar*, king of *Romans*, and given by his cousin *Charles* the *gross*, to *Godfrey* king of *Normans*, with *Westrich* (that is *Neustria*) about *DCCC.LXXXVI.* and imagines that the *Norman* historians were deceived by equivocation of name, mistaking *Charles* the *simple* for *Charles* the *gross*, living near one time; as also that they finding *Egidia*, a king's daughter, (being indeed *Lothar's*) supposed her *Charles* the *simple's*. This makes me think also that of *Godfrey* and *Rollo*, hath been like confusion of name. But both times, reigns, and persons are so disturbed in the stories, that

¹ Et v. Jo. Carnotens. epist. 263. Nicol. vicecomiti Essexiae,

de Wallingham in Hypodig. Neut. secundum quos, in quantum ad chronologicam rationem spectat, plerique alii.

apud P. Æmilium hist. Franc. 3. quem de hac re vide & Polydor. ejusdem sequacem hist. 5.

ger. Hoveden. part 1. fol. 241.

Membran. vetust. coenob. Floriacens. edit. a P. Pirhaeo.

² Guil. Gemeticens. de dubib. Norm. 2. cap. 4. & seqq. Thom.

ita quidam

³ Floren. Wigorn. pag. 335. & Ro-

⁴ Ogina dicta P. Æmi-

Reicherspergens.

being insufficient to rectify the contrarieties, I leave you to the liberty of common report.

Illustrations on the fourteenth song.

Somewhat returning now near the way you descended from the northern parts, the muse leads you through that part of *Worcestershire*, which is on this side *Severn*, and the neighbouring *Stafford*, viewing also *Cotteswold*, and so *Glocester*. The fictions of this song are not so covert, nor the allusions so difficult, but that I presume your conceit, for the most part, willingly discharges my labour.

S. And of her cares repress with her delicious wines.

In this tract of *Glocestershire* (where to this day many places are stiled vineyards) was of ancient time among other fruits of a fertile soil, great store of vines and more than in any other place of the kingdom. Now in many parts of this realm we have some; but what comes of them in the press is scarce worth respect. Long since, the emperor *Probus Gallis, omnibus Hispanis ac Britannis permisit ut vites haberent vinumque conficerent*; Permitted vines to the Gauls, Spaniards, and Britons, and leave to make wines. But *Tacitus*, before that, speaking of this island commends it with, *Solum præter oleam vitemque, & caetera calidioribus terris oriri sueta, patiens frugum, foecundum; A soil fruitful enough, except of olives and vines, which are for hotter climates*. Long since *Probus*, England had its vineyards also, and some store of wines, as appears by that in *Domesday*, *Unus & parvus & vi. arpenni vini* (that is between five and six acres; *arpent* in French signifying a content of ground of a hundred rods square, every rod XVIII foot) *& reddit xx. modios vini si bene procedit*; One park and six arpens of vineyard, and brings forth some xx firkins of wine, if the year prove well, being recorded of a place ^e by *Raleigh* in *Essex*. This was under *William I.* and since him in time of *Hen. I.* ^f much wine was made here in *Glocestershire*. That now the isle enjoys not frequency of this benefit, as in old time, whether it be through the soil's old age, and so like a woman growing sterile; as ^g in another kind *Tremellius*, many hundred years since thought; or by reason of the earth's change of place, as upon difference in astronomical observations *Stadius* guessed, or that some part of singular influence, whereon astrology hangs most of inferior qualities, is alter'd by that slow course (yet of great power in alteration of heaven's system) of the eighth sphere, or precession of the equinoctial, or by reason of industry wanting in the husbandman, I leave it to others examination.

S. — Still falling southward leaves.

He alludes to the difference of the zodiac's obliquity from what it was of old. For in *Ptolemy's* time, about CIO.CD.LX. years since, the

utmost declination of the sun in the first of *Cancer*, where she is nearest to our vertical point, was XXIII. gr. and about LII. min. Since that, *Albategni*, about *Charlemagne's* time, observed it some xv. scruples less; after him, near CIO. of Christ, *Arzachel* found it XXIII. gr. XXXIV. scr. and in this later age, *John of Coningsburg* and *Copernicus* ^h brought it to XXIII gr. XXVIII. scr. which concords also with the *Prutenick* account, and as many as thence traduce their *Ephemerides*. So that, by this calculation, about XXIIII. min. the sun comes not now so near our *Zenith*, as it did in *Ptolemy's* time. But in truth (for in these things I account that truth, which is warranted by most accurate observation; and those learned mathematicians, by omitting of parallax and refractions, deceived themselves and posterity) the declination in this age is XXIII. gr. XXXI. scrup. and a half, as that noble *Dane*, and most honoured restorer of astronomical motions; *Tycho Brahe*, hath taught us; which although it be greater than that of *Copernicus* and his followers, yet is much less than what is in *Ptolemy*; and by two scruples different from *Arzachel's*. So justifying the author's conceit, supposing the cause of our climates not now producing wines, to be the sun's declination from us, which for every scruple answers in earth, about one of our miles; but a far more large distance in the celestial globe. I can as well maintain this high fetched cause, being upon difference of so few minutes in one of the slowest motions; and we see that greatest effects are always attributed to them, as upon the old conceit of the *Platonick* year, abridged into near his half by *Copernicus*, those consequences foretold upon the change of ⁱ eccentricicks out of one sign into another, the equinoctial precession, and such like; as others may their conversion of a planet's state into *fortunate, oppressed or combust*, by measuring or missing their xvi. scruples of *Cazimi*, their *orbes moities*, and such curiosities. Neither can you salve the effect of this declination, by the sun's much nearer approach to the earth, upon that decrease of his eccentricity, which *Copernicus* and his followers have published. For, admitting that were true, yet judicial astrology relies more upon aspect and beams falling on us with angles, which are much altered by this change of obliquity in the zodiack, than distance of every singular star from the earth. But indeed, upon mistaking the poles altitude, and other error in observation, ^k *Copernicus* was deceived, and in this present age the sun's eccentricity (in *Ptolemy*, being the XXIV. of the eccentric's semidiameter, divided into LX.) hath been ^l found between the XXVII. and XXVIII. p. which is far greater than that in *Copernicus*, erroneously making it but near the XXXI. But this is too heavenly a language for the common reader; and perhaps too late I leave it.

^e Flav. Vopiscus in ejusd. vita.

^d In Jul. Agricola.

^e Camd. in Trinobantibus.

^f Malmesb; de pontificum gestis 4.

^g Ap. Columel. de re rustica. 2. cap. 1.

^h Copernic. re. 3. cap. 3.

ⁱ Cardan. ad 2. Terrabil & de varietat. rer. 2. qui prophane nimium, a motibus octavae sphaerae, iis scilicet quos circa CIO.DCCE. contrario velut fieri modo supponit sacrosanctae religionis mutationem inepte simul & impie praedixit, & hujus generis sexcenta.

lig. exercitat. 90. §. 2.

^k Tycho Brahe in progymnasim.

^l Cui; hoc nomine, graviter minuitur est Jul. Scaliger.

Illustrations on the fifteenth song.

I Shall here be shorter than in the last before, the muse is so full in herself, employed wholly about the nuptials of *Tame* and *Isis*. In the garlands of *Tame* are wreathed most of our *English* field-flowers: In them of *Isis*, our more sweet and those of the garden. Yet upon that,

§. The garter's royal seat, from him who did advance.

I cannot but remember the institution, (touched to the fourth song) of this most honourable order, dedicated to St. George in xxiv. Ed. III. It is yearly at this place celebrated by that noble company of xxvi. Whether the cause were upon the word of *garter* given in the *French* wars among the *English*, or upon the queen's, or countess of *Salisbury's* *garter* fallen from her leg, or upon different and more antient original whatsoever, know clearly (without unlimited affectation of your country's glory) that it exceeds in majesty, honour, and fame, all chivalrous orders in the world; and (excepting those of *Templars*, *St. James*, *Calatrava*, *Alcantara*, and such like other, which were more religious than military) hath precedence of antiquity before the eldest rank of honour, of that kind any where established. The *Anunciada* (^m instituted by *Amadaeus* VI. earl of *Savoy*, about cix.cccc.ix although others have it by *Amadaeus* IV. and so create it before this of the *garter*) and that of the golden fleece, by *Philip* duke of *Burgundy* cix.cccc.xxix. of *S. Michael* by *Lewis* XI. *Della Banda*, by *Alfonso* of *Spain*, and such-like, ensued it, as imitating in institutions, after a regard of the far extended fame, worth, and glory, of *S. George's* knights.

Illustrations on the sixteenth song.

IN wandering passage the muse returns from the wedding, somewhat into the land, and first to *Hartford*; whence, after matter of description, to *London*.

§. Thou saw'st when Ver'lam once her head aloft did bear.

For, under *Nero*, the *Britons* intolerably loaden with weight of the *Roman* government, and especially the *Icens*, now *Norfolk* and *Sussex*, provoked by that cruel servitude, into which, not themselves only, but the wife also and posterity of their king *Prasutagus* were, even beyond right of victory, constrained; at length breathing for liberty (and in a further continuance of war having for their general *R. Boudicea*, *Bunduica*, or as the difference of her name is) rebelled against their foreign conqueror, and in martial opposition committing a slaughter of no less than lxxxii. (as *Dio* hath, although *Tacitus* misseth cccxx. of this number)

ransacked and spoiled *Maldon*, then *Camalodunum*, and also this *Verulam*, near *St. Albans*, which were the two ⁿ chief towns of the isle; the first a colony, (whereof the eighth song) this a *municipal* ^o city, called expressly in a catalogue at the end of *Nennius*, *Caer-municip*. Out of ^p *Agellius* I thus note to you its nature. *Municipes sunt cives Romani ex municipiis suo jure & legibus suis utentes, muneris tantum cum pop. Rom. honorarii participes, a quo munere capeffendo appellati videntur; nullis aliis necessitatibus neque ulla pop. Rom. lege astricti, quum nunquam pop. Rom. eorum fundus factus esset. Such as lived in them were free of Rome, but using their own laws, capable only of honorary titles in the Roman state, and thence had their name.* It differed from a colony, most of all in that a colony was a progeny of the city, and this of such as were received into state favour and friendship by the *Roman*. Personating the *genius* of *Verulam*, that ever famous ^q *Spencer* sung.

*I was that city, which the garland wore
Of Britain's pride, delivered unto me
By Roman victors, which it won of yore;
Though nought at all but ruins now I be,
And lie in mine own ashes, as ye see:
Verlam I was; What boots it that I was,
Sith now I am but weeds and wastful grass?*

As under the *Romans*, so in the *Saxon* times afterward it endured a second ruin; and out of its corruption, after the abbey erected by king *Offa*, was generated that of *St. Albans*; whither, ^r in later times most of the stone-works, and whatsoever fit for building was by the abbots translated. So that,

—^t *Now remains no memory,
Nor any little monument to see,
By which the traveller that fares that way,
This once was she, may warned be to say.*

The name hath been thought from the river there running, called *Ver*, and *Humbrey* ^u *Lbuid* makes it, as if it were *Aer-than*, i. e. a church upon *Ver*.

§. Thou saw'st great burthen'd ships through these thy valleys pass.

Lay not here unlikelihoods to the author's charge; he tells you more judiciously towards the end of the song. But the cause why some have thought so, is, for that, ^v *Gildas*, speaking of *St. Alban's* martyrdom and his miraculously passing through the river at *Verlamcestre*, calls it *iter ignotum trans Thamesis fluvii abveum*, an unknown passage over *Thames*; so by collection they guessed that *Thames* had then his full course this way, being thereto further moved by anchors, and such like, here digged up. This conjecture hath been followed by that ^x noble muse thus in the person of *Verulam*;

^m V. Aubert. Mir. orig. equestr. 2. cap. 4. & Sanfovin. orig. de cavaliere. Tacit. annal. 14. ^p Noët. Attic. 16. cap. 13. ^q In his ruins of time. ubi supra. ^r In brev. Brit. ^s In epist. de Excid. Britan.

ⁿ Sueton. lib. 6. cap. 39.

^t Leland. ad cyg. Cant.

^x Spencer.

^o Municipium

^v Spence.

*And where the crystal Thamys wont to slide
In silver channel down along the lee,
About whose flow'ry banks on either side
A thousand nymphs, with mirthful jollity,
Were wont to play from all annoyance free:
There now no rivers course is to be seen,
But moorish fens, and marshes ever green.*

*There also where the winged ships were seen,
In liquid waves, to cut their foamy way;
A thousand fishers numbred to have been
In that wide lake, looking for plenteous prey
Of fish, with baits which they us'd to betray,
Is now no lake, nor any fishers store,
Nor ever ship shall sail there any more.*

But, for this matter of the *Thames*, those two great antiquaries, *Leland* and *Camden*, have joined in judgment against it; and for the anchors, they may be supposed of fish-boats in large pools, which have here been; and yet are left relics of their name.

S. Since us his kingly ways Molmutius first began.

Near D. years before our Saviour, this king *Molmutius* (take it upon credit of the *British* story) constituted divers laws; especially, that churches, ploughs, and highways should have liberties of sanctuary, by no authority violable. That churches should be free and enjoy liberty for refuge, consenting allowance of most nations have tolerated, and in this kingdom (it being affirmed also by a constitution of ^v king *Lucius* a christian) every church-yard was a sanctuary, until by act ² of parliament under *Hen. VIII.* that licence for protection of offences, being too much abused, was taken away; but, whether now restored in the last ^a parliament, wherein all statutes concerning abjuration, or sanctuary made before 35 *Eliz.* are repealed, I examine not. The plough and husbandmen have, by our ^b statutes, and especially by ^c civil and ^d *Persian* law, great freedoms. Highways, being without exception, necessary, as well for peace as war, have been defended in the *Roman* ^e laws, and are taken in ours, to be in that respect (as they are by implication of the name) *the king's highways*, ^f and *res sacrae*; & *qui aliquid inde occupaverit excedendo fines & terminos terrae suae, dicitur fecisse purpresturam super ipsum regem. Priviledged places; and he which trespasses there, commits purpresture upon the king.* According to this privilege of *Molmutius*, in the statute of *Marlebridge*, ^g it is enacted, that none should distrain in the king's highway, or the common street, but the king and his ministers, *specialem auctoritatem ad hoc habentibus*; which I particularly transcribe, because the printed books are therein so generally corrupted by addition of this here cited in *Latin*. You see it alters the law much, and we have divers judgments, that in behalf of the king by common bailiffs, without special authority, di-

stresses may be ^h taken, as for an amercement in the sheriff's torn or leet, or for parliament knights fees. But the old rolls of the statute; (as I have seen in a fair ms. examined by the exemplification, for the record itself is, with many other, lost) had not those words, as the ⁱ register also specially admonishes, nor is any part of that chapter in some ms. which I marvel at, seeing we have a formal writ grounded upon it. Nor much amiss were it here to remember a worse fault, but continually received, in the charter of the forest art. VII. where you read, *Nullus forestarius, &c. aliquam collectam faciat nisi per visum & sacramentum XII. regardatorum quando faciunt regardum. Tot forestarii, &c.* the truth of the best copies (and so was the record) being in this digestion *Nullus forestarius, &c. aliquam collectam faciat. Et per visum & sacramentum XII. regardatorum, quando faciunt regardum, tot forestarii ponantur, &c.* as, beside authentick ms. it is expressly in the like charter, almost word for word, given first by king *John*, and printed in *Mathew Paris*; betwixt which, and that of ours commonly read, may be made a time-deserving comparison. Were it not for digression, I would speak of the senseless making of *Boniface*, archbishop of *Canterbury*, witness to the grand charter in 9 *Hen. III.* when, as it is plain, that he was not archbishop till XXV. The best copy that ever I saw, had *Simon* archbishop of *Canterbury*; which indeed was worse, there being no such prelate of that see, in those times; but the mistaking was by the transcriber turning the single *S.* (according to the form of writing in that age) into *Simon* for *Stephen*, who was (*Stephen of Langton*) archbishop at that time. But I forget myself in following matter of my more particular study, and return to *Molmutius*. His constitution being general for liberty of highways, controversy grew about the course and limits of them; whereupon his son king *Belin*, to quit the subject of that doubt, caused more specially these four, here presently spoken of, to be made, which might be for interrupted passage, both in war and peace; and hence by the author; they are called *military*, (a name given by the *Romans* to such highways, as were for their marching armies) and indeed by more polite conceit ^k and judicious authority these our ways have been thought a work of the *Romans* also. But their courses are differently reported, and in some part their names also. The author calls them *Waling-street*, the *Fosse*, *Ikinild*, and *Rickeneld*. This name of *Rickeneld*, is in *Randal of Chester*; and by him derived from *S. David's* in *Pembroke* into *Hereford*, and so through *Worcester*, *Warwick*, *Derby*, and *York* shires to *Tinmouth*, which (upon the author's credit reporting it to me) is also justifiable by a very ancient deed of lands, bounded near *Birmingham* in *Warwickshire* by *Rickeneld*. To endeavour certainty in them,

^f Florilegus.

² 22 Hen. VIII. cap. 14.

³ 1 Jacob. sess 1. cap. 25.

^b West. 2. cap. 20. & 21

Ed. 1. distict. scaccarii.

^c C. quae res pignori oblig. l. 7. executores & alibi.

^d Xenoph. cyropaed. 5.

^e ff. de

via public.

^f Bract. lib. 4. tract. assis. nov. diff. c. 16. §. 8.

^g 52 Hen. III. cap. 16. & v. artic. cler. cap. 9.

^h 34 Ed. I. *Avourey*, 232.

⁸ Rich. II. ibid. 194.

¹¹ Hen. IV. fol. 1.

¹⁹ Ed. II. *Avourey*, 221. & 225. alibi.

¹ Original. fol. 97. b.

^k V. Camden Roman.

were but to obtrude unwarrantable conjecture, and abuse time and you, Of *Watling* (who is here personated, and so much the more proper, because *Verulam* was called also, by the *English*, ^m *Watling-Chester*) it is said that it went from *Dover* in *Kent*, and so by west of *London* (yet part of the name seems to this day left in the middle of the city) to this place, and thence in a crooked line through *Shropshire* by *Wrekin* hill into ⁿ *Cardigan*. But ^o others say from *Verulam* to *Chester*. And where all is referred to *Belin* by *Geoffrey ap Arthur*, and *Polychronicon*, another ^p tells you that the sons of (I know not what) king *Wetble* made, and denominated it. The *Fosse* is derived, by one consent, out of *Cornwall* into *Devonshire*, through *Somerset*, over *Cotes-wold* by *Tewksbury*, along near *Coventry*, to *Leicester*, through *Lincoln* to *Berwick*, and thence to *Cathness* the utmost of *Scotland*. Of restitution of the other, you may be desperate, *Rickeneld* I have told you of; in *Henry of Huntingdon*, no such name is found, but with the first two, *Ickenild* and *Ermingsstreet*. *Ickenild*, saith he, goes from east to west; *Ermingsstreet*, from south to north. Another tells me, that *Ermingsstreet* begins at *S. David's*, and conveys itself to *Southampton*; which the author hath attributed to *Ichning*, begun (upon the words community with *Iceni*) in the eastern parts. It is not my power to reconcile all these, or elect the best; I only add, that, *Ermingsstreet* (which being of *English* idiom, seems to have had its name from *Immunull* in that signification, whereby it ^q interprets an universal pillar, worshipped for *Mercury* president of ways) is like enough (if *Huntingdon* be in the right, making it from south to north) to have left its part in *Stanstreet* in *Surrey*, where a way made with stones and gravel in a foil on both sides very different continues near a mile; and thence towards the eastern shore in *Sussex*, are some places seeming as other relicks of it. But I here determine nothing.

Illustrations on the seventeenth song.

After your travels (thus led by the muse) through the inlands, out of the *Welsh* coast maritime, here are you carried into *Surrey* and *Sussex*; the southern shires from *London* to the ocean; and *Thames*, as king of all our rivers, summarily sings the kings of *England*, from *Norman William* to yesterday's age.

S. Mole digs herself a path, by working day and night.

This *Mole* runs into the earth, about a mile from *Darling* in *Surrey*, and after some two miles, sees the light again; which, to be certain hath been affirmed by inhabitants thereabout reporting trial made of it. Of the river *Deveril*, near *Warmister* in *Wiltshire*, is said as much; and more of *Alpheus's* running out of

Elis (a part of the now *Morea* antiently *Peloponnesus* in *Greece*) through the vast ocean to *Arethusa* in a little isle (close by *Syracuse* of *Sicily*) called *Ortygia*, and thither thus coming unmixed with the sea, which hath been both tried by a ^r cup, lost in *Elis*, and other stuff of the *Olympian* sacrifices there cast up, and is justified also by express assertion of an old ^t oracle to *Archias*, a *Corinthian*, advising him he should hither deduce a colony.

—“*Ἴν' Ἀλφειῷ ζομα ἐλύζει, Μισγόμενον πηγαῖς Εὐερπείης Ἀρεθέας.*

There Alpheus springeth again, embracing fair Arethusa.

Like this *Pausanias* reckons more; ^u *Erasin* in *Greece*, *Lycus* ^v that runs into *Meander*, ^x *Tiger*, and divers others, some remember for such quality. And *Guadiana* (the antient limit of *Portugal*, and the *Baetick Spain*) is specially famous for this form of subterranean course; which, although hath been thought fabulous, yet by some learned and judicious of that ^y country, is put for an unfeigned truth.

S. He ever since doth flow beyond delightful Sheene.

Mole's fall into *Thames* is near the utmost of the flood, which from the *German* ocean, is about *LX* miles, scarce equalled (I think) by any other river in *Europe*. Whereto you may attribute its continuing so long a course, unless to the diurnal motion of the heavens, or moon, from east to west (which hardly in any other river of note falling into so great a sea, will be found so agreeable, as to this, flowing the same way) and to the easiness of the channel being not over creeky, I cannot guess. I incline to this of the heavens, because such ^z testimony is of the ocean's perpetual motion in that kind. And whether it be for frequency of a winding, and thereby more resisting shore, or for any other reason judiciously not yet discovered; it is certain, that our coasts are most famous for the greatest differences, by ebbs and floods, before all other whatsoever.

S. Left with his ill got crown unnatural debate.

See what the matter of descent to the *iv* song tells you of his title, yet even out of his own mouth, as part of his last will and testament, these words are reported; ^a *I constitute no heir of the crown of England; but to the universal Creator, whose I am, and in whose hand are all things, I commend it. For I had it not by inheritance, but, with direful conflict, and much effusion of blood; I took it from that perjured Harold, and by death of his favourites, have I subdued it to my empire. And somewhat after: Therefore I dare not bequeath the scepter of this kingdom to any but to God alone, least after*

^m Lhuid. breviar. Brit. Hoveden. part. 1. fol. 248.
ⁿ Pausan. Eliac. 6.
Auv. Hispan.

^o Polichronic. lib. 1. cap. de plat. reg.
^q Adam Bremenf. hist. eccles. cap. 5. and see to the third song.
^r Herodot. hist. 5.
^s Idem. 5. Polyhym.
^t Scalig. de subtilis. exercitat. 52.

^u Henric. Huntingd. hist. 1.
^v Justin. hist. 42.
^w Guil. Pictavens. in hist. Cadomens.

^y Roger Strabo geograph. 5.
^z Ludovic. Nonius in

my death, worse troubles happen in it, by my occasion. For my son William (always, as it became him, obedient to me) I wish that God may give him his graces, and that, if so it please the Almighty, * he may reign after me. This William II. (called *Rufus*) was his second son, Robert, his eldest, having upon discontent (taken because the dukedom of *Normandy*, then as it were by birthright, nearly like the principality of *Wales*, antiently, or dutchy of *Cornwal* at this day, belonging to our kings heirs apparent, was denied him) revolted unnaturally and moved war against him, aided by *Philip I.* of *France*, which caused his merited disinheri- tance. Betwixt this *William* and *Robert*, as also betwixt him and *Henry I.* all brothers (and sons to the Conqueror) were divers oppositions for the kingdom and dukedom, which here the author alludes to. Our stories in every hand inform you : And will discover also the Conqueror's adoption by the Confessor, *Harold's* oath to him, and such institutions of his lawful title enforced by a case^k reported of one *English*, who, deriving his right from feisin before the conquest, recovered by judgment of king *William I.* the manor of *Sharborn* in *Norfolk*, against one *Warren a Norman*, to whom the king had before granted it; which had been unjust, if he had by right war only gotten the kingdom; for then had^l all titles of subjects before, been utterly extinct. But, (admit this case as you please, or any cause of right beside his sword) it is plain, that his will and imperious affection (moved by their rebellions which had stood for the sworn *Harold*) disposed all things as a Conqueror : Upon observation of his subjection of all lands to tenures, his change of laws, disinheriting the *English*, and such other reported (which could be but where the profitable dominion, as civilians call it, was universally acquired into the prince's hand) and in reading the disgraceful account then made of the *English* name, it will be manifest.

§. Who by a fatal dart in vast New Forest slain.

His death by an unfortunate loosing at a dear out of one^m *Walter Tirrel's* hand in *New Forest*, his brother *Richard* being blasted there with infection, and *Richard*, duke *Robert's* son, having his neck broken there in a bough's twist catching him from his horse, have been thought as divine revenges on *William I.* who destroyed in *Hampshire* xxxvi parish churches to make dens for wild beasts; although it is probable enough, that it was for security of landing new forces there, if the wheel of fortune, or change of *Mars*, should have dispossessed him of the *English* crown. Our stories will of these things better instruct you; but, if you seek *Matthew Paris* for it, amend the absurdity of both the *London* and *Tigurin* prints in *An. c. lxxxvi.* and for *rex magnificus & bonae indolis adole-*

scens, read *Rich. magnificus*, &c. for *Richard* brother to this red *William*.

§. Was by that cruel king deprived of his sight.

Thus did the Conqueror's posterity unequally possess their father's inheritance. *William* had much to do with his brother *Robert*, justly grudging at his usurping the crown from right of primogeniture; but so much the less, in that *Robert* with divers other *German* and *French* princes left all private respects for the holy war, which, after the crosses undertaken, (as those times used) had most fortunate success in recovery of *Palestine*. *Robert* had no more but the dutchy of *Normandy*, nor that without swords often drawn, before his holy expedition; about which (having first offer of, but refusing, the kingdom of *Jerusalem*) after he had some five years been absent, he returned into *England*, finding his younger brother (*Hen. I.*) exalted into his hereditary throne. For, although it were undoubtedly agreed that *Robert* was eldest son of the Conqueror; yet the pretence which gave *Henry* the crown (beside the means of his working favourites) was, thatⁿ he was the only issue born after his father was a king; upon which point, a great question is disputed among^o civilians. *Robert* was no sooner returned into *Normandy*, but presently first animated by *Randal*, bishop of *Durham*, a great disturber of the common peace betwixt the prince and subject by intolerable exactions and unlimited injustice under *William II.* whose^p chief justice it seems he was, newly escaped out of prison, whither for those state-misdemeanors he was committed by *Henry*, he dispatches and interchanges intelligence with most of the baronage, claiming his primogeniture right, and thereby the kingdom. Having thus gained to him most of the *English* nobility, he lands with forces at *Portsmouth*, thence marching towards *Winchester*; but before any encounter, the two brothers were persuaded to a peace; covenant was made and confirmed by oath of xii barons on both parts, that *Henry* should pay him yearly c. lxx pounds of silver, and that the survivor of them should inherit, the other dying without issue. This peace, upon denial of payment (which had the better colour, because, at request of queen *Maud*, the duke prodigally released his c. lxx pounds the next year after the covenant) was soon broken. The king (to prevent what mischief might follow a second arrival of his brother) assisted by the greatest favours of *Normandy* and *Anjou*, besieged duke *Robert* in one of his castles, took him, brought him home captive, and at length using that course (next secure to death) so often read of in *Choniates*, *Cantacruzen*, and other oriental stories, put out his eyes, being all this time imprisoned in *Cardiffe* castle in *Glamorgan*, where he miserably breathed his last. It is by *Polydore*

* This is the bequest understood by them, which say he devised his kingdom to *William II.*

^l *Aqui, ad hanc rem enucleatus elucidandam, jure & gentium Anglico, visendi sunt Hottoman, illust. quaest. 5. Alberic, Gentil. de jure belli. 3. cap. 5. & cas. Calv. in D. Coke lib. 7.*

^m *Malmesb. For he was born the xii year after the conquest.*

ⁿ *Flor. Wig. & monachorum turba.*

^o *See to the second song.*

^p *Hottom, illust. quaest. 2.*

^k *Antiq. Sched. in Icen. Camd.*

^l *illust. quaest. 5. Alberic, Gentil.*

ⁿ *Solus omnium natus esset regie.*

^p *Placitator, & exactor, totius regni.*

added, out of some authority, that king *Henry*, after a few years imprisonment, released him, and commanded that within *xl* days and *xii* hours (these hours have in them time of two floods, or a flood and an ebb) he should, abjuring *England* and *Normandy*, pass the seas as in perpetual exile; and that in the mean time, upon new treasons attempted by him, he was secondly committed, and endured his punishment and death, as the common monks relate. I find no warrantable authority that makes me believe it: Yet, because it gives some kind of example of our obsolete law of abjuration (which it seems had its beginning from one of the statutes published under name of the *Confessor*) a word or two of the time prescribed here for his passage: which being examined upon *Bracton's* credit, makes the report therein faulty. For he seems confident that the *xl* days in abjuration, were afterward induced upon the statute of *Clarendon*, which gave the accused of felony, or treason although quitted by the *ordell* (that is judgment by water or fire, but the statute published, speaks only of water, being the common tryal of meaner persons) *xl* days to pass out of the realm with his substance, which to other felons taking sanctuary and confessing to the coroner, he affirms not grantable; although *John le Breton* is against him, giving this liberty of time, accounted after the abjuration to be spent in the sanctuary, for provision of their voyage necessities, after which complete, no man, *on pain of life and member*, is to supply any of their wants. I know it a point very intricate to determine, observing these opposite authors, and no express resolution. Since then, the oath of abjuration published among our manual statutes nearly agrees with this of duke *Robert*, but with neither of those old lawyers. In it, after the felon confesses, and abjures, and hath his port appointed; *I will* (proceeds the oath) *diligently endeavour to pass over at that port, and will not delay time there above a flood, and an ebb, if I may have passage in that space; if not, I will every day go into the sea up to the knees, assaying to go over, and unless I may do this within forty continual days I will return to the sanctuary, as a felon of our lord the king; so God me help, &c.* So here the *xl* days are to be spent about the passage and not in the sanctuary. Compare this with other authorities, and you shall find all so dissonant, that reconciliation is impossible, resolution very difficult. I only offer to their consideration, which can here judge, why *Hubert de Burgh* (earl of *Kent*, and chief justice of *England* under *Hen. III.*) having incurred the king's high displeasure, and grievously persecuted by great enemies, taking sanctuary, was, after his being violently drawn out, restored; yet that the sheriffs, of *Hereford* and *Essex*, were commanded to ward him there, and prevent all sustenance to be brought him, which

they did, *decernentes tibi XL. dierum excubiis observare*. And whether also the same reason, now unknown to us, bred this *xl* days for expectation of embarkment out of the kingdom, which gave it in an other kind for return? As in case of disseisin, the law hath been that the disseisor could not re-enter without action, unless he had, as it were, made a present and continual claim, yet if he had been out of the kingdom in single pilgrimage, that is, not in general voyages to the holy-land, or in the king's service in *France*, or so, he had allowance of *xl* days two floods, and one ebb, to come home in, and *xv.* days, and *iv.* days, after his return; and if the tenant had been so beyond sea, he might have been effoigned *de ultra mare*, and for a year and a day, after which he had *xl.* days, one flood, and one ebb (which is easily understood as the other for two floods) to come into *England*. This is certain, that the space of *xl.* days (as a year and a day) hath had with us divers applications, as in what before, the *assise* of *freshforce* in cities and boroughs, and the widows *quarentine*, which seems to have had beginning either of a deliberative time granted to her, to think of her convenience in taking letters of administration, as in an other country, the reason of the like is given; or else from the *xl.* days in the effoign of child birth allowed by the *Norman* customs. But you mislike the digression. It is reported, that when *William* the *Conqueror* in his death-bed, left *Normandy* to *Henry*, and *England* to *William* the red, this *Henry* asked him what he would give him, *cio. pounds of silver* (saith he) *and he contented, my son; for, in time, thou shalt have all which I possess, and be greater than either of thy brethren.*

§. His sacrilegious hands upon the churches laid.

The great controversy about electing the archbishop of *Canterbury* (the king, as his right had him, commanding that *John* bishop of *Norwich* should have the prelacy, the pope, being *Innocent III.* for his own gain, aided with some disloyal monks of *Canterbury*, desiring, and at last consecrating *Stephen* of *Langton*, a cardinal) was first cause of it. For king *John* would by no means endure this *Stephen*, nor permit him the dignity after his unjust election at *Rome*, but banished the monks and stoutly menaces the pope. He presently makes delegation to *William* bishop of *London*, *Eustace* of *Ely*, and *Malgere* of *Worcester*, that they should, with monitory advice, offer persuasion to the king of conformity to the *Romish* behest; if he persisted in constancy, they should denounce *England* under an interdict. The bishops tell king *John* as much, who suddenly, moved with imperious affection and scorn of papal usurpation, swears, *By God's tooth, if they or any other, with unadvised attempt, subject his kingdom to an interdict, he would presently drive every prelate,*

⁹ Hen. II. ap. Rog. Hoved. fol. 314.

¹ Itin. North. 3 Ed. III. coron. 313. lectur. ap. B. tit. coron. 181. v. Stamford lib. 2. cap. 40. qui de his graviter, & modeste, sed *exquirunt*.
² Math. Par. pag. 507.
³ v. de consuetudine in Oxonia 21 Ed. III. fol. 46. b.

⁴ Glanvil. lib.

14. cap. 1. caeterum, si placet, adeas Janum nostrum lib. 2. §. 67.
⁵ Braft. lib. 4. tract. assis. nov. diss. cap. 5. & lib. 5. tract. de effoign. cap. 3.
⁶ Cust. generaux de Artois art. 164.
⁷ 9 Johan. reg.

and priest of England to the pope, and confiscate all their substance, and of all the Romans amongst them, he would first pull out their eyes, and cut off their noses, and then send them all packing; with other like threatening terms, which notwithstanding were not able to cause them desist; but within little time following, in public denunciation, they performed their authority; and the king, in some sort, his threatenings; committing all abbeys and priories, to laymens custody, and compelling every priest's concubine to a grievous fine. Thus for a while continued the realm without divine sacraments, or exercise, excepted only confession, extrem unction, and baptism; the king being also excommunicated, and burials allowed only in highways and ditches, without ecclesiastick ceremony, and (but only by indulgence procured by archbishop Langton which purchased favour that in all the monasteries, excepting of *Whitefriars*, might be divine service once a week) had no change for some four or five years, when the pope in a solemn council of cardinals, according to his pretended plenary power, deposed king John, and immediately by his legate Pandulph offered to Philip II. of France the kingdom of England. This with suspicion of the subjects heart at home, and another cause then more esteemed than either of these, that is, the prophecy of one Peter an hermit in *Yorkshire* foretelling to his face, that before *Holy-Thurs day* following he should be no king, altered his stiff and resolute, but too disturbed affections; and persuaded him, by oath of himself and sixteen more of his barons, to make submission to the church of Rome, and condescended to give for satisfaction, *cro. cro. cro. cro.* pounds sterling (that name of *sterling*^a began, as I am instructed, in time of Henry II. and had its original of name from some *Esterling*, making that kind of money, which hath its essence in particular weight and fineness, not of the *starling* bird, as some, nor of *Sterling* in Scotland, under Ed. I. as others absurdly; for in^a records, much more ancient, the expresse name *sterlingorum* I have read) to the clergy, and subject^b all his dominions to the pope; and so had absolution, and after more than four years release of the interdict.^c I was the willing to insert it all, because you might see what injurious opposition, by papal usurpation, he endured; and then conjecture that his violent dealings against the church were not without intolerable provocation, which madded rather than amended his troubled spirits. Easily you shall not find a prince more beneficial to the holy cause than he, if you take his former part of reign, before this ambitious Stephen of Langton's election exasperated desire of revenge. Most kind habitude then was betwixt him and the pope; and for alms toward *Jerusalem's* aid he gave the fortieth part of his revenue, and caused his baronage to second his example. Although therefore he be no ways excusable of many of those faults, both in government and religion, which are laid on

him, yet it much extenuates the ill of his action, that he was so besieged with continual and undigestable incentives of the clergy, with traitorous confidence striking at his crown, and in such sort, as humanity must have exceeded itself, to have endured it with any mixture of patience. Nor ever shall I impute that his wicked attempt of sending ambassadors, Thomas Hardington, Ralph Fitz-Nicholas, and Robert of London to Amiramully, king of Morocco, for the Mahometan religion, so much to his own will and nature, as to the persecuting bulls, interdicts, excommunications, deposings, and such like, published and acted by them, which counterfeiting the vain name of pastors, sheering, and not feeding their sheep, made this poor king (for they brought him so poor, that he was called^d *Johannes sine terra*) even as a phrenetick, commit what posterity receives now among the worst actions (and in themselves they are so) of princes.

§. His baronage were forc'd defensive arms to raise.

No sooner had Pandulph transacted with the king, and Stephen of Langton was quietly possessed of his archbishoprick, but he presently, in a council of both orders at *Pauls*, stirs up the hearts of the barons against John, by producing the old charter of liberties granted by Hen. I. comprehending an instauration of S. Edward's laws, as they were amended by the Conqueror, and provoking them to challenge observance thereof as an absolute duty to subjects of free state. He was easily heard, and his thoughts seconded with rebellious designs; and after denials of this purposed request, armies were mustered to extort these liberties. But at length^e by treaty in *Runingmede* near *Stains*, he gave them two charters; the one, of liberties general, the other of the forest: both which were not very different from our *grand charter*, and that of the *forest*. The pope, at his request, confirmed all: but the same year, discontentment (through too much favour and respect given by the king to divers strangers, whom since the composition with the legate, he had too frequently, and in too high esteem, entertained) renewing among the barons, ambassadors were sent to advertise the pope what injury the see of Rome had by this late exaction of such liberties out of a kingdom, in which it had such great interest (for king John had been very prodigal to it, of his best and most majestic titles) and with what commotion the barons had rebelled against him, soon obtained a bull; cursing in thunder all such as stood for any longer maintenance of those granted charters: This (as how can it be otherwise?) bred new, but almost incurable, broils in the state betwixt king and subject: But in whom more, than in the pope and his archbishop, was cause of this dissension? Both as wicked *boutefeus* applying themselves to both parts; sometimes animating the subject by censorious exauthorizing the prince, then assisting

^a Jo. Stov. in notit. London. pag. 52. v. Camd. in Scot. Buchan. alios.

& alibi in eisdem archivis v.

^c Ante alios de hijs consulendus sit Matth. Paris.

^b Polydor. hist. 16.

^d Norff. 6. Rich. I. fin. rot. 13.

^e John Hadland.

^f 16 Joh. reg. and

and moving forward his proneness, to faithless abrogation, by pretence of an interceding universal authority.

§. *The general charter seiz'd* —————

The last note somewhat instructs you in what you are to remember, that is, the *grand charters* granted and (as matter of fact was) repealed by king *John*; his son *Henry III.* of some 19 years age (under protection first of *William Marshal* earl of *Pembroke*, after the earl's death, *Peter de Roches* bishop of *Winchester*) in the ninth year of his reign, in a parliament held at *Westminster*, desired of the baronage (by mouth of *Hubert de Burgh* proposing it) a fifteen: whereto, upon deliberation, they gave answer, *Quod regis petitionibus gratanter adqueſcerent ſi illis diu petitas libertates concedere voluiſſet; That they would willingly grant his request, if he would vouchsafe them thoſe liberties ſo long deſired.* The king agreed to the condition, and preſently, under the great ſeal, delivered charters of them into every county of *England*, ſpeaking as thoſe of king *John*, ſaith *Paris*, *Ita quod chartae utrorumque regum in nullo inveniuntur diſſimiles; So that the charter of both kings are juſt alike.* Yet thoſe, which we have publiſhed, want of that which is in king *John's*, wherein you have a ſpecial chapter that, if a *Jew's* debtor die, and leave his heir within age ſubject to payment, the uſury during the nonage ſhould ceaſe, which explains the meaning of the ſtatute of *Merton* chap. v. otherwiſe but ill interpreted in ſome of our year books. After this, follows further, that no aid, except to redeem the king's perſon out of captivity, (example of that was in *Richard I.* whoſe ranſom, out of the hands of *Leopold* duke of *Austria*, was near cccccc. pounds of ſilver, collected from the ſubject) make his eldeſt ſon knight, or marry his eldeſt daughter, ſhould be levied of the ſubject, but by parliament. Yet, reaſon, why theſe are omitted in *Henry III.* his charter, it ſeems, eaſily may be given; ſeeing ten years before time of *Edward Longſhanks's* exemplification (which is that whereon we now rely, and only have) all *Jews* were baniſhed the kingdom: and among the petitions, and grievances of the commons, at time of his inſtauration of this charter to them, one was thus conſented to; * *Nullum tallagium vel auxilium, per nos vel haeredes noſtros de caetero in regno noſtro imponatur ſeu levetur, ſine voluntate & conſenſu communi archiepiſcoporum, epiſcoporum, abbatum & aliorum praelatorum, comitum, baronum, militum, burgenſium, & aliorum liberorum hominum:* Which although compared with that of aids by tenure, be no law, yet I conjecture that upon this article was that chapter of aids omitted. But I return to *Henry*: He, within ſome three years, ſummons a parliament to *Oxford*, and declare his full age, reſuſing any longer *Peter de Roches* his protection; but taking all upon his perſonal

government, by pretence of paſt nonage, cauſed all the charters of the foreſt to be cancelled, and repealed the reſt, (for ſo I take it, although my author ſpeak chiefly of that of the foreſt) and made the ſubject with price of great ſums, rated by his chief juſtice *Hubert de Burgh*, renew their liberties, affirming that his grant of them was in his minority, and therefore ſo defeaſible: which, with its like, (in diſinheriting and ſeizing on his ſubjects poſſeſſions, without judicial courſe, beginning with thoſe two great potentates *Richard* earl of *Cornwall*, his brother, and *William le Maſhal* earl of *Pembroke*) bred moſt inteſtine trouble betwixt him and his barons, although ſome time diſcontinued, yet not extinguished even till his declining days of enthroned felicity. Obſerve among this, that where our hiſtorians and chronologers, talk of a deſire by the baronage, to have the conſtitutions of *Oxford* reſtored, you muſt underſtand thoſe charters cancelled at *Oxford*; where after many rebellious, but provoked, oppoſitions, the king at laſt, by oath of himſelf and his ſon *Edward*, in full parliament, † having nevertheleſs oft-times before made ſhow of as much, granted again their deſired freedom: which in his ſpacious reign, was not ſo much impeached by himſelf, as through ill counſel of alien caterpillars crawling about him, being as ſcourges then ſent over into this kingdom. But *Robert of Gloceſter* ſhall ſummarily tell you this, and give your palate variety.

The meſſe two that here bel bi king Henries day
In this lond i cholle biginne to tell, yuf ich map.
He adde † thye brythren, that is modres ſons were.
And the † king of Almaine the berthe, that to heie them here,
Ac fir William de Valence, and fir † Eimer thereto,
Cit of Wincetre, and fir Guy de Liſewi alſo.
Thozu hom, and thozu tye k quene, was ſomuch Frenſ ſolt
That of Engliſh men me told as right nought, (brought,
And the king hom, let her wiſt, that each was as king.
And nome poore men god, and ne paieide nothing.
To eni of this brythren yuf ther pleinde enp wight,
Hii ſede, yuf we doth ou wzong, woſs all ou do right †
As wo ſeyth, we both kings, be wille we moſwe do.
And many Engliſſe, alas / hulde mid hom alſo.
So that thozou Godes grace the erles at laſt,
And the biſhops of the lond, and barons beſpeake baſte,
That the kind Engliſſemen of londe hii wolde out caſte,
And that long bzing adoun, yuf her poer laſte.
Therof † hii nome conſeil, and to the king hii ſend,
To † abbe pite of his lond and ſuiche manners amende.
So ther at laſte hii brought him thereto
To make a purveiance amendment to do.
And made it was at Oxenford, that lond boz to ſeyte,
Twelf hundred as in per of grace and fifty and eyghte.
Right aboute miſſomer fourtene night it laſte.
The erles and the barons were well † ſtude baſte,
Woz to amendi that lond, as the erle of Glouceſtre,
Sir Richard, and fir Simond erle of Leicetre,
And fir John le Fiz Geſſey and other barons inowe.
So that at laſt the k. thereto hii drowe,
To remue the Frenſſe men, to † † libbe beyond ſe
Bi hor londs her and ther, and ne come nought † † age.
And to granti † † god lawes, and the old charter alſo.
That to ofte was i granted er, and to ofte vndo.,

† They took.
† Again.

† Have.
† Good.

† Stedfaſt.

† Live.

* 35 Hen. VI. fol. 61, & 3 Eliz. Plowd. 1. fol. 236. acqui v. Bract. lib. 2. cap. 26. §. 2.
of parliament, ſhould after be exacted. Thom. de Walsingham in 26 Ed. 1. Polyd. hiſt. 17.
Luſignan, William of Valence, and Athelmar, his half brothers, ſons
married to Hugh Browne earl of March, in Poitiers. b Richard earl of Cornwall, ſon to king John.

† Eleanor daughter to Raimund earl of Provence.

* No tallage or aid without conſent
† 42 Hen. III. b Guy of
Engoliſme, c Athelmarus,

Hereof was the chartre imade and afeled baft there
Of the king and of othe heve men that there were :
Who nome * tende tapers the biftops in hoz hond.
And the king himfelfe and othe heve men of the lond.
The biftops † amaned all that there agon were
And ever elt undube the labors that foked were there,
And burninge taperes ; and futh as lafte,
The king, and others feide, amen, and the tapers adoun cafte.

* Kindled tapers.

† Curfed.

If particulars of the ftory, with precedents and confequents, be defired, above all I fend you to *Matthew Paris*, and *William Rishanger* ; and end in adding, that thefe fo controverted charters had not their fettled furety until *Ed. I.* fince whom they have been more than thirty times, in parliament confirmed.

S. The feat on which her kings inaugurated were.

Which is the chair and ftone at *Westminster*, whereon our fovereigns are inaugurated. The ¹ *Scottifh* ftories (on whole credit in the firft part hereof, I importune you not to rely) affirm that the ftone was firft in *Gallicia* of *Spain* at *Brigantia*, (whether that be *Compostella*, as *Francis Tarapha* wills, or *Corunna*, as *Florian del Campo* conjectures, or *Betanfos*, according to *Mariana*, I cannot determine) where *Gatbel*, king of *Scots*, there, fate on iras his throne : Thence was it brought into *Ireland* by *Simou Brech* firft king of *Scots* tranfplanted into that ifle, about DCC. years before Chrift : Out of *Ireland* king *Fergus* (in him, by fome, is the beginning of the now continuing *Scottifh* reign) about CCC. LXX. years afterward, brought it into *Scotland* ; King *Kenneth* fome DCCC. L. of the incarnation, placed it at the abbey of *Scone*, in the fheriffdom of *Perth*, where the coronation of his fucceffors was ufual, as of our monarchs now at *Westminster*, and in the *Saxon* times at *Kingfton* upon *Thames*. This *Kenneth*, fome fay, firft caufed that diftich to be engraven on it.

*Ni fallat fatum, Scoti, quocunque locatum
Invenient lapidem, regnare tenentur ibidem.*

(whereupon it is called *fatale marmor* ; the *fatal marble*, in *Heftor Boetius*) and inclofed it in a wooden chair. It is now at *Westminster*, and on it are the coronations of our fovereigns ; thither firft brought (as the author fpeaks) among infinite other fpoils, by *Edward Longfanks*, after his wars and victories againft king *John Baliol*.

S. Their women to inherit —

So they commonly affirm ; but that denial of fovereignty to their women coft the lives of many thoufands of their men, both under this victorious *Edward*, and his fon the *Black Prince*, and other of his fucceffors. His cafe flood briefly thus ; *Philip IV.* furnamed the *fair*, had iffue three fons, *Lewis* ^m the *contentious*, *Philip* the *long*, and *Charles* the *fair*.

All thefe fucceffively reigned after him, and died without iffue inheritable. He had likewife a daughter *Ifabella* (I purpofely omit the other, being out of the prefent matter,) married to *Edward II.* and fo was mother to *Edw. III.* The iffue male of *Philip* the *fair* thus failing, *Philip*, fon and heir of *Charles* earl of *Valois*, *Beaumont*, *Alençon*, &c. which was brother to *Philip* the *fair*, challenged the crown of *France* as next heir male againft this *Edward*, who answered to the objection of the *Salick* law, that, admitting it as their affertion was, yet he was heir male, although defcended of a daughter ; and in a publick affembly of the eftates, firft about the protectorfhip of the womb, (for, queen *Joan* dowager of the *fair Charles*, was left with child, but afterward delivered of a daughter, *Blanch*, afterwards dutcheff of *Orleans*) was this had in folemn difputation by lawyers on both fides, and applied at length alfo to the direct point of inheriting the crown. What followed upon judgment given againft his right, the valiant and famous deeds of him and his *English*, recorded in *Walsingham*, *Froiffart*, *Æmilius*, and the multitude of later collected ftories make manifef. But for the law itfelf, every mouth fpeaks of it, few I think underftand at all why they name it. The opinions are, that it being part of the antient laws made among the *Salians*, the fame with *Franks*, under king *Pharamond* about cxc. cc. years fince, hath thence denomination ; and, *Goropius* (that fetches all out of *Dutch*, and more tolerably perhaps this than many other of his etymologies) deriving the *Salians* name from *sal*, which in contraction he makes from ⁿ *ſadel*, as our word *saddle* ; (inventors whereof the *Franks*, faith he, were) interprets them, as it were, *horfemen*, a name fitly applied to the warlike and moft noble of any nation, as *chivalers* in *French*, and *equites* in *Latin* allows likewife. So that, upon collection, the *Salick* law by him, is as much as a chivalrous law, and *Salick* land, *quæ ad equeſtris ordinis dignitatem & in capite ſummo, & in caeteris membris conſervandam pertinebat ; which belonged to the prefervation of chivalrous ſtate in the poſſeſſors ;* Which very well agrees with a ^o ſentence given in the parliament at *Bourdeaux* upon an antient teſtament devising all the teſtators *Salick* lands, which was, in point of judgment, interpreted *fief*, *knights fees*, or *lands held*. And who knows not, that *fiefs*, were originally, military gifts ? But then, if fo, how comes *Salick* to extend to the crown, which is merely without tenure ? Therefore, *Ego ſcio* (faith a later ^p lawyer) *legem Salicam agere de privato patrimonio tantum ; I know that the Salick law intends only private poſſeſſions.* It was compoſed (not this alone, but with others as they fay) by *Wiſogaſt*, *Bodogaſt*, *Salogaſt*, and *Windogaſt*, wiſe counſellors about that *Pharamond's* reign. The text of it in this part is

¹ Heftor Boeth. hiſt. 1. 10. & 14. Buchanan. rer. Scotie. 6. & 8.

^o Bodin. de repub. 6. cap. 5. V. Barth. Chaffan. conf. Burgund. rubric. 3. §. 5. num. 70. as it were.

^m Hucin.

ⁿ Francis. lib. 2.

^p Paul. Merul. cosmog.

offered us by *Claude de Sciffel*, bishop of *Mar-seilles*, *Bodin*, and divers others of the *French*, as it were, as antient as the origin of the name, and in these words, *De terra salica nulla portio haereditatis mulieri veniat, sed ad virilem sexum tota terrae hereditas perveniat*; No part of the Salick land can descend to the daughter, but all to the male; and in substance, as referred to the person of the king's heir female. So much is remembered by that great civilian ^q *Baldus*, and divers others, but rather as custom than any particular law, as one ^r of that kingdom also hath expressly and newly written; *Ce n'est point une loy ecrite, mais nee avec nous, que nous n'avons point inventee, mais l'avons puisee de la nature meme, qui le nous a ainsi appris* & donne cet instinct; This is no law written, but learned of nature. But why, the same author dares affirm, that king *Edward* yielded upon this point to the *French Philip de Valois*, I wonder, seeing all story and carriage of state in those times is so manifestly opposite. *Becanus* undertakes a conjecture of the first cause which excluded *Gynaecocracy* among them, guessing it to be upon their observation of the misfortune in war, which their neighbours the *Brutterans* (a people about the now *Over-Iffel* in the *Netherlands*, from near whom he, as many other, first derive the *Franks*) endured in time of *Vespasian*, under conduct and empire of one ^r *Velleda*, a lady even of divine esteem amongst them. But howsoever the law be in truth, or interpretable, for it might ill beseem me to offer determination in matter of this kind, it is certain, that to this day, they have an use of antient ^r time, which commits to the care of some of the greatest peers, that they, when the queen is in child-birth, be present, and warily observe, lest the ladies privily should counterfeit the inheritable sex, by supposing some other male when the true birth is female, or, by any such means, wrong their antient custom royal, as of the birth of this present *Lewis* the XIIIth, on the last of *September*, in 1328. I. is, after other such remembered.

§. Of these two factions stiled, of *York* and *Lancaster*.

Briefly their beginning was thus ^u. *Edw. III.* had seven sons, *Edward* the black prince, *William* of *Hatfield*, *Lionel* duke of *Clarence*, *John* of *Gaunt* duke of *Lancaster*, *Edmund* of *Langley* duke of *York*, *Thomas* of *Woodstock*, and *William* of *Windsor*, in prerogative of birth as I name them. The *Black Prince* died in life of his father, leaving *Richard* of *Bourdeaux*, afterward II. *William* of *Hatfield* died without issue; *Henry* duke of *Lancaster* (son to *John* of *Gaunt* the fourth brother) deposed *Richard* II. and to the V. and VI. of his name left the kingdom, descending in right line of the family of *Lancaster*. On the other side, *Lionel* duke of *Clarence*, the third brother, had only issue *Philip* a daughter, married to *Edmund*

Mortimer earl of *March*, who upon this title, was designed heir apparent to *Rich. II. Edmund*, by her, had *Roger*; to *Roger* was issue two sons, and two daughters; but all died without posterity, excepting *Anne*. Through her married to *Richard* earl of *Cambridge*, son to *Edmund* of *Langley*, was conveyed (to their issue *Richard* duke of *Tork*, father to king *Edward* IV.) that right which *Lionel*, whose heir she was, had before the rest of that royal stem. So that *Lancaster* derived itself from the fourth brother; *Tork*, from the blood of the third and fifth united. And in time of the sixth *Henry* was this fatal and enduring misery over *England*, about determination of these titles, first conceived in xxx of his reign, by *Richard* duke of *Tork*, whose son, *Edw. IV.* deposed *Henry* some nine years after; and having reigned near like space, was also, by re-adeption of *Henry*, deprived for a time, but restored and died of it possessed, in whose family it continued until after the death of *Rich. III. Henry* earl of *Richmond*, and heir of *Lancaster*, marrying *Elizabeth* the heir of *Tork*, made that happy union. Some have referred the utmost ^x root of the *Lancastrian* title to *Edmund*, indeed eldest son to *Hen. III.* but that by reason of his unfit deformity, his younger brother *Edward* had the succession, which is absurd and false. For, one whom I believe before most of our monks, and the king's chronologer of those times, *Matthew Paris*, tells expressly the days and years of both their births, and makes *Edward* above three years elder than *Crook-back*. All these had that most honoured surname *Plantagenet*; ^y which hath been extinct among us ever since *Margaret* countess of *Salisbury*, daughter to *George Plantagenet*, duke of *Clarence*, was beheaded in the *Tower*. By reason of *John* of *Gaunt's* device, being a red rose, and *Edmund* of *Langley's*, a white rose, these two factions afterward, as for cognizances of their descent and inclinations, were by the same flowers distinguished.

§. Yet jealous of his right, descended to his grave.

So jealous, that towards them of the *Lancastrian* faction, nought but death (as there reason of state was enough) was his kindness. Towards strangers, whose slipping words were in wrested sense, seeming interpretable to his hurt, how he carried himself, the relations of Sir *John Markham*, his chief justice, *Thomas Burdet*, an esquire of *Warwickshire*, and some citizens, for idle speeches, are testimony. How to his own blood, in that miserable end of his brother *George*, duke of *Clarence*, is shewed: Whose death hath divers reported causes, as our late chroniclers tell you. One is supposed upon a prophecy for speaking that *Edward's* successors name should begin with G; which made him suspect this *George* (a kind of superstition not exempld, as I now remember, among our

^q Ad. l. ff. de senatorib. Boter. commentar. 8.

^r Hierome Bignon, de le excel. des Roies. livre. 3.

^r V. Tacit. histor. 4.

^r Rodulph.

^y 33 Hen. VIII. J. Stow, pag. 717.

^u Ex archiv. parl. 1 Ed. IV. in lucem edit. 9. Ed. IV. fol. 9.

^x Ap. Polydor. hist. 16.

princes ; but in proportion very frequent in the oriental empire, as passages of the names in *Alexius, Manuel*, and others, discover in *Nicetas Choniates*) and many more serious, yet insufficient faults, tasting of *Richard* duke of *Glocester's* practices, are laid to his charge. Let *Polydore, Hall*, and the rest disclose them. But of his death, I cannot omit, what I have newly seen. You know, it is commonly affirmed, that he was drowned in a hoghead of *Malmsey* at the *Tower*. One, ^a that very lately would needs dissuade men from drinking healths to their princes, friends, and mistresses, as the fashion is, a bachelor of divinity, and professor of history and Greek at *Cologne*, in his division of drunken natures, makes one part of them, *Qui in balaenas mutari cuperent, dummodo mare in generosissimum vinum transformaretur ; Which would wish themselves whales, so the sea were strong liquor ;* And for want of another example, dares deliver that, *such a one was George^b earl of Clarence, who, when, for suspicion of treason, he was judged to die, by his brother Ed. IV. and had election of his form of death given him, made choice to be drowned in Malmsey.* First, why he calls him earl of *Clarence*, I believe not all his professed history can justify ; neither indeed was ever among us any such honour. Earls of ^c *Clare* long since were ; but the title of *Clarence* began when that earldom was converted into a dukedom by creation of *Lionel*, who married with the heir of the *Clares*, duke of *Clarence*, third son to *Ed. III.* since whom never have been other than dukes of that dignity. But, unto what I should impute this unexcusable injury to the dead prince, unless to *Icarus's* shadow, dazzling the writers eyes, or *Bacchus's* revengeful causing him to slip in matter of his own profession, I know not. Our stories make the death, little better than a tyrannous murder, privily committed without any such election. If he have other authority for it, I would his margin had been so kind as to have imparted it.

S. Upon a daughter born to John of Somerset.

John of *Gaunt* duke of *Lancaster*, had issue by *Catherine Swinford*, *John* of *Beaufort* earl of *Somerset*, and marquis of *Dorset*. To him succeeded his second son, *John, Henry* the eldest dead, and was created first duke of *Somerset* by *Henry V.* Of this *John's* loins was *Margaret*, mother to *Henry VII.* His father was *Edmund* of *Hadhram*, made earl of *Richmond* by *Hen. VI.* son to *Owen Tudor*, deriving himself from the *British Cadwallader*, by his wife queen *Catherine* dowager to *Hen. V.* and hence came that royally enobled name of *Tudor*, which in the late queen of happy memory ended.

S. Defender of the faith—

When amongst those turbulent commotions of *Lutherans* and *Romanists* under *Charles V.*

such oppositions increased, that the pope's three crowns even tottered at such arguments as were published against his pardons, mass, monastick profession, and the rest of such doctrine ; this king *Henry*, that *Luther* might want no sorts of antagonists, wrote particularly against him in defence of pardons, the papacy, and of their seven sacraments ; of which is yet remaining the original in the ^d *Vatican* at *Rome*, and with the king's own hand thus inscribed,

Anglorum rex, Henricus, Leoni X. mittit hoc opus, & fidei testem & amicitiae.

Henry king of England, sends this to pope Leo X. as a testimony of his faith, and love to him.

Hereupon, this *Leo* sent him the title of ^e *defender of the faith* ; which was, as ominous to what ensued. For towards the twenty fifth year of his reign, he began so to examine their traditions, doctrine, lives, and the numerous faults of the corrupted time, that he was indeed founder of reformation for inducement of the true antient faith ; which by his son *Edward VI.* queen *Elizabeth*, and our present sovereign, hath been to this day piously established and defended.

To ease your conceit of these kings here sung, I add this chronology of them.

A. CHR.

- CIJ.LXVI.----- *William I.* conquered *England.*
- CIJ.LXXXVII. - - - *William the Red (Rufus)* second son to the conqueror.
- CIJ.C. - - - - - *Henry I.* surnamed *Beauclerc*, third son to the first *William.*
- CIJ.C.XXXV.----- *Stephen* earl of *Moreton* and *Bologne*, son to *Stephen*, earl of *Blois*, by *Adela*, daughter to the Conqueror. In both the prints of *Matthew Paris*, Ann. CIJ.LXXXVI. you must mend *Beccensis comitis*, and read *Blesensis comitis* ; and howsoever it comes to pass, he is, in the same author, made son to *Ted-bald* earl of *Blois*, which indeed was his brother.
- CIJ.C.LIV.----- *Hen. II.* son to *Geoffrey Plantagenet*, earl of *Anjou*, and *Maud* the empress, daughter to *Henry Beauclerc.*
- CIJ.C.LXXXIX.--- *Richard I. Coeur de lion*, son to *Henry II.*
- CIJ.C.XCIX. ----- *John*, brother to *Coeur de lion.*
- CIJ.CC.XVI.----- *Henry III.* son to king *John.*

^a Francis. Matene. de ritu bibend. 1. cap. 1. edit. superioribus nundinis. indiscriminatim comes & dux usurpantur, & Will. conqueror saepius dictus comes Norm. hist. 19, & Camd. in Icenis. ^b Comes Clarentiae. Caeterum aevo Normannico ^c From Clare in Suffolk. Vid. Polydor. ^e Defensor ecclesiae. I. Siciliano comment. 3. Edward

- CI₃.CC.LXXIII. --- Edward I. Longshanks, son to Hen. III.
- CI₃.CCC.VIII. --- Edward II. of Caernarvan, son to Ed. I. deposed by his wife and son.
- CI₃.CCC.XXVI. --- Edward III. son to Ed. II.
- CI₃.CCCLXXXVII. Richard II. of Bourdeaux, son to Edw. the Black Prince, son to Edw. III. deposed by Henry duke of Lancaster.
- CI₃.CCC.XCIX. --- Henry IV. of Bolingbroke, son to John of Gaunt, duke of Lancaster, fourth son to Edward III.
- CI₃.CD.XIII. --- Henry V. of Monmouth, son to Hen. IV.
- CI₃.CD.XXII. --- Henry VI. of Windsor, son to Hen. V. deposed by Edward, earl of March, son and heir to Richard duke of York, deriving title from Lionel, duke of Clarence and Edmund of Langley third and fifth sons of Edward III.
- CI₃.CD.LX. --- Edward IV. of Roan, son and heir of York. In the tenth of his reign, Hen. VI. got again the crown, but soon lost both it and life.
- CI₃.CD.XXCIII. --- Edward V. son to the IV. of that name, murdered with his brother Richard duke of York, by his uncle Richard duke of Gloucester.
- CI₃.CD.XXCIII. --- Richard III. brother to Edward IV. slain at Bosworth field, by Henry earl of Richmond. In him ended the name of Plantagenet in our kings.
- CI₃.CD.XXCV. --- Henry VII. heir to the Lancastrian family, married with Elizabeth, heiress to the house of York. In him the name of Tudor began in the crown.
- CI₃.D.IX. --- Henry VIII. of Greenwich, son to Hen. VII.
- CI₃.D.XLVI. --- Edward VI. of Hampton court, son to Hen. VIII.
- CI₃.D.LIII. --- Mary, sister to Edw. VI.
- CI₃.D.LVIII. --- Elizabeth, daughter to Hen. VIII.

§. Great Andredswalde sometime —

All that maritime tract comprehending *Suffex*, and part of *Kent* (so much as was not mountains, now called the *Downs*, which in ^f *British*, old *Gaulish*, *Low Dutch*, and our *English*, signifies but *hills*) being all woody, was called *Andredswalde*, ^g i. e. *Andredswood*, often mentioned in our stories, and *Newenden* in *Kent* by it *Andredcester* (as most learned *Camden* upon good reason guesses) whence perhaps the wood had his name. To this day we call those woody lands, by north the *Downs*, the *Weald*; and the channel of the river that comes out of those parts, and discontinues the downs about *Bramber*, is yet known in *Shoreham* ferry, by the name of *Weald-ditch*; and, in another *Saxon* word equivalent to it, are many of the parishes terminations on this side the downs, that is, *herst*, or *hurst*, i. e. a *wood*. It is called by *Ethelwerd* ^h expressly *immanis sylva, quae vulgo, Andredsuuda nuncupatur*, and was ⁱ cxx miles long, and xxx broad. The authors conceit of these forests being nymphs of this great *Andredsuuda*, and their complaint for loss of woods, in *Suffex*, so decayed, is plain enough to every reader.

§. As Arun which doth name the beauteous Arundel.

So it is conjectured, and is without controversy justifiable, if that be the name of the river. Some fable it from *Arundel*, the name of *Bevis's* horse. It were so as tolerable as ^k *Bucephalon*, from *Alexander's* horse, ^l *Tymenna* in *Lycia*, from a goat of that name, and such like, if time would endure it. But *Bevis* was about the conquest, and this town, is by name of *Erundele*, known in time of king *Alfred* ^m, who gave it with others to his nephew *Athelm*. Of all men, ⁿ *Goropius* had somewhat a violent conjecture, when he derived *Harondell*, from a people called *Charudes*, in *Ptolemy*, towards the utmost of the now *Jutland*, part of whom he imagines, about the *Saxon* and *Danish* irruptions, planted themselves here, and by difference of dialect, left this as a branch sprung of their country title.

§. And Adur coming on to Shoreham.

This river that here falls into the ocean might well be understood in that ^o port of *Adur*, about this coast, the relics whereof, learned *Camden* takes to be *Edrington*, or *Adrington*, a little from *Shoreham*. And the author here so calls it *Adur*.

§. Doth blusk, as put in mind of those there sadly slain.

In the plain near *Hastings*, where the *Norman William* after his victory found king *Ha-*

^f *Dunum* uti ex *Clitophonte* apud *Plut.* habet *Camd.* & *Dwynen* Belgis dicuntur tumuli arenarii oceano objecti. *Gorop.* Gallic. 1. alii.

^g We yet call a desert, a wilderness from this root.

^h Lib. 4. cap. 3.

ⁱ Henric. Huntingdon.

^k *Plutarch* in *Alex.* & *Q. Curt.* lib. 9.

^l Steph. *περὶ πολ.*

^m Testament. *Alfred.* ubi etiam, *Ritheramfeild*, *Diccalingum*, *Augmeringum*, *Feltham*, & aliae in hoc agro villae legantur *Ostertho* ejusdem cognato.

ⁿ Goth. Danic. lib. 7.

^o *Portus Adurni* in notit. provinc.

old slain, he built *Battel* abbey, which at last (as divers other monasteries) grew to a town enough populous. Thereabout is a place which after rain always looks red, which some^a have (by that authority, the muse also) attributed to a very bloody sweat of the earth, as crying to heaven for revenge of so great a slaughter.

Illustrations on the eighteenth song.

OUT of *Sussex*, into its eastern neighbour, *Kent*, this canto leads you. It begins with *Rother*, whose running through the woods insiling *Oxney*, and such like, poetically here described is plain enough to any apprehending conceit. And upon *Medway's* song of our martial and heroick spirits, because a large volume might be written to explain their glory in particular action, and in less comprehension without wrong to many worthies, it is not performable. I have omitted all illustration of that kind, and left you to the muse herself.

§. *That Limen then was named—*

So the author conjectures; that *Rother's* mouth was the place called *Limen*, at which the *Danes*, in time of king *Alfred*, made irruption; which he must, I think, maintain by adding likelihood that *Rother* then fell into the ocean about *Hithe*; where (as the relics of the name in *Lime*, and the distance from *Canterbury* in *Antoninus*, making 'portus Lemanis, which is misprinted in *Surita's* edition, *pontem Lemanis*, xvi miles off) it seems *Limen* was; and if *Rother* were *Limen*, then also, there was it discharged out of the land. But for the author's words, read this; *Equestris paganorum exercitus cum suis equis ccl navibus Cantiam transvectus in ostio amnis Limen qui de sylva magna Andred nominata decurrit, applicuit, a cuius ostio iv milliariis in eandem sylvam naves suas sursum traxit, ubi quandam arcem semistructam, quam pauci inhabitabant villani, diruerunt, aliamque sibi firmiorem in loco qui dicitur Apultrea construxerunt. The Danes with 250 sail, came into the mouth of the river Limen, which runs out of Andredswald; from whence iv miles into the wood they got in their ships, and built them a fort at Appledore; which are the syllables of *Florence of Worcester*; and with him in substance fully agrees *Matthew of Westminster*; nor can I think but that they imagined *Rye* (where now *Rother* hath its mouth) to be this port of *Limen*, as the muse here; if you respect her direct terms. *Henry of Huntingdon* names no river at all, but lands them, ad portum *Limene* cum 250 navibus qui portus est in orientali parte Cent juxta magnum nemus Andredslaige^b. At port *Limen* by Andredswald in the east of *Kent*. How *Rother's* mouth can be properly said in the east (but ra-*

ther in the fourth part) of *Kent*, I conceive nor, and am of the adverse part, thinking clearly that *Hithe* must be portus *Lemanis*, which is that coast, as also learned *Camden* teaches, whose authority cited out of *Huntingdon*, being near the same time with *Florence*, might be perhaps thought but as of equal credit; therefore I call another witness (that^c lived not much past 1 years after the arrival) in these words. *In Limneo portu constituunt puppes*, Apoldre (so I read, for the print is corrupted) loco condito orientali Cantiae parte, destruuntque ibi prius opere castrum propter quod rustica manus exigua quippe intrinsecus erat, illicque hiberna castra confirmant; They leave their ships in port *Limen*, making their rendezvous at *Appledore* in the east of *Kent* (for this may better endure that name) and there destroyed one castle and built another. Out of which you note both; that no river, but a port only, is spoken of, and that the ships were left in the shore at the haven, and thence the *Danes* conveyed their companies to *Appledore*. The words of this *Ethelwerd* I respect much more than these later stories, and I would advise my reader to incline so with me.

§. *What time I think in bell that instrument devis'd.*

He means a gun; wherewith that most noble and right martial *Thomas Mountague*, earl of *Salisbury*, at the siege of *Orleans* in time of *Hen. VI.* was slain. The first inventor of them (I guess you dislike not the addition) was one^d *Berthold Swartz*, (others say *Constantine Anklitzen*, a *Dutch* monk and chymist) who having in a mortar fulphurous powder for medicine, covered with a stone, a spark of fire by chance falling into it, fired it, and the flame removed the stone; which he observing, made use afterward of the like in little pipes of iron, and shewed the use to the *Venetians* in their war with the *Genoese* at *Chioggia*, about cto.ccc.lxxx. Thus is the common assertion; but I see as good^e authority, that it was used above xx years before in the *Danish* seas. I will not dispute the convenience of it in the world, compare it with *Salmoneus's* imitation of thunder, *Archimedes's* engines, and such like; nor tell you that the *Chinese* had it, and printing, so many ages before us, as *Mendoza*, *Maffy*, and others deliver; but not with persuading credit to all their readers.

§. *Whereas some say before he used on foot to pass.*

The allusion is to *Britain's* being heretofore joined to *Gaul* in this straight, betwixt *Dover* and *Calais*, some xxx miles over, as some moderns have conjectured. That learned antiquary *J. Twine*, is very confident in it, and derives the name from *Witth*, signifying (as he says) as

^a Guil. Paryus hist. 1. cap. 1.
de invent. rer. 2. cap. 2. & Salmuth. ad G. Panciroll. 2, tit. 18.

^b Lemannis in notit. utr. provinc.

^c Ethelwerd. lib. 4. cap. 4.

^d Achilles Gafchar. ap. Munst. cosmog. 3.

^e V. Polyd.

much as *guith*, i. e. a separation in *Welsh*, whence the * isle of *Wight* was so called; *Guith* and *Wight* being soon made of each other. Of this opinion is the late *Verstegan*, as you may read in him; and for examination of it, our great light of antiquity *Camden* hath proposed divers considerations, in which, experience of particulars must direct. Howsoever this was in truth, it is as likely, for ought I see, as that *Cyprus* was once joined to *Syria*, *Euboea*, now *Negroponte*, to *Boeotia*, *Atalante* to *Euboea*, *Belbicum* to *Bithynia*, *Leucosia* to *Thrace*, as is affirmed; and *Sicily* (whose like our island is) was certainly broken off from the continent of *Italy*, as both *Virgil* expressly, *Strabo* and *Pliny* deliver; and also the names of *Rhegium*, ² *παρά τὸ ῥηγνυσθαι*, from breaking off, and of the self *Sicily*; which, rather than from *secare*, to cut off, I derive from ¹ *scilire*, which is of the same signification, and nearer in analogy. *Claudian* calls the isle

———*ducta Britannia mundo.*

Britain pull'd from the world.

and *Virgil* hath

———*toto divisos orbe Britannos;*

Britons divided from the whole world.

Where *Servius* is of opinion, that, for this purpose, the learned poet used that phrase. And it deserves inquisition, how beasts of rapine, as foxes and such like came first into this island (for *England* and *Wales*, as now *Scotland* and *Ireland*, had store of wolves, until some ccc years since) if it were not joined to a firm land, that either by like conjunction, or narrow passage of swimming might receive them from that continent where the ark rested, which is *Armenia*. That, men desired to transport them, is not likely; and a learned ^b *Jesuit* hath conjectured, that the *West Indies* are therefore, or have been, joined with firm land, because they have lions, wolves, panthers, and such like, which in the *Bermudas*, *Cuba*, *Hispaniola*, *S. Domingo*, and other remote isles, are not found. But no place here to dispute the question.

§. Not suffering foreign laws should thy free customs bind.

To explain it, I thus *English* you a fragment of an old ^c monk: *When the Norman Conqueror had the day, he came to Dover castle, that he might with the same subdue Kent also; wherefore, Stigand archbishop, and Egelsin abbot, as the chief of that shire, observing that now whereas heretofore no villeins (the Latin is nullus fuerat servus, and applying it to our law phrase, I translate it) had been in England, they should be now all in bondage to the Nor-*

*mans, they assembled all the county, and shewed the imminent dangers, the insolence of the Normans, and the hard condition of villenage. They, resolving all rather to die than lose their freedom, purpose to encounter with the duke for their country's liberties. Their captains are the archbishop and the abbot. Upon an appointed day, they meet all at Swanefcomb, and harbouring themselves in the woods, with boughs in every mans hand, they compass his way. The next day, the duke coming by Swanefcomb, seemed to see with amazement as it were a wood approaching towards him. The Kentish men at the sound of a trumpet, take themselves to arms, when presently the archbishop and abbot were sent to the duke and saluted him with these words: Behold, Sir duke, the Kentish men come to meet you, willing to receive you as their liege lord, upon that condition, that they may for ever enjoy their antient liberties and laws used among their ancestors; otherwise, presently offering war; being ready rather to die, then undergo a yoke of bondage, and lose their antient laws. The Norman in this narrow pinch, not so willingly, as wisely, granted the desire; and hostages given on both sides, the Kentish men direct the Normans to Rochester, and deliver them the county and the castle of Dover. Hither is commonly referred the retaining of antient liberties in Kent. Indeed it is certain that special customs they have in their gavelkind (although now many of their gentlemens possessions ^d are altered in that part) suffering for felony, without forfeiture of estate, and such like, as in particular, with many other diligent traditions you have in *Lambard's* perambulation. Yet the report of *Thomas Spot*, is not, methinks, of clear credit, as well by reason that no warrant of the historians about the conquest affirms it (and this monk lived under *Ed. I.*) as also for his commixture of a falsity about villenage, saying it was not in *England* before that time, which is apparently false by divers testimonies. *Grægor*, (says king *Ina's* laws) *ryppce on Sunnan-tægs, be hir hlafonþer hæst rý he rreo; If a villein work on Sunday by his lord's command, he shall be free; and under Edward the Confessor, Thorold of Beuchenale grants to the abbey of of Crowland, his manor of Spalding, with all the appurtenances; Scilicet Colgrinum praepositum meum, & totam sequelam suam, cum omnibus bonis & catallis, quae habet in dicta villa, &c.* ^e *Item Hardingum fabrum & totam sequelam suam; and the young wench of Andevor, that Edgar was in love with, was a nief. But for Kent, perhaps it might be true, that no villeins were in it, seeing since that time it hath been adjudged in our law, ^f that one born there, could not, without cognizance of record, be a villein.**

* Sam. Beulan, ad Nennium.

⁷ Plin. hist. nat. 2. cap. 88.

cap. 49.

^b Joseph. Acost. de natur. novi orbis 1. cap. 20. & 21.

^d Stat. 31. Hen. VIII. cap. 3.

^e Colgrin, my bailiff, and his issue, with all goods and chattels, &c.

² Trog. hist. 4. & Strab. 2.

^c Th. Spotus ap. Lamb. in explic. verb.

^f Trin. Cornub. 30 Ed. 1.

§. And foremost ever plac'd when they shall reckon'd be.

For this honour of the *Kentish*, hear one [§] that wrote it about *Hen. II. Enudus* (as some copies are, but others, *Cinidus*; and perhaps it should so be, or rather *Cnudus*, for king *Cnut*; or else I cannot conjecture what) *quanta virtute Anglorum; Dacos Danosque fregerit motusque compefcuerit Noricorum, vel ex eo perspicuum est, quod ob egregiae virtutis meritum quam ibidem potenter & patenter exercuit, Cantia nostra, primae cohortis honorem & primus congressus hostium usque in hodiernum diem in omnibus praeliis obtinet. Provincia quoque Severiana, quae moderno usu & nomine ab incolis Wiltelira vocatur, eodem jure sibi vendicat cohortem subsidiariam, adjecta sibi Devonia & Cornubia. What performance king Cnut did among the Danes and Norwegians, by English*

[§] Joan. Sarisbur. de nugis curial. 6. cap. 18.

valour, is apparent in that until this day, the Kentish men for their singular virtue then shewn, have prerogative always to be in the van-guard; as Wiltshire, Devonshire, and Cornwall in the rear. Briefly, it had the first English king, in it was the first christianity among the English, and Canterbury then honoured with the metropolitick see: all which give note of honourable prerogative.

§. Grim Godwin but the while seems grievously to lowr.

That is *Godwin-sands*, which is reported to have been the patrimony ^b of that *Godwin*, earl of *Kent*, under *Edward the Confessor*, swallowed into the ocean by strange tempest somewhat after the conquest, and is now as a floating isle or quicksand, very dangerous to sailors, sometimes as fixed, sometimes moving, as the muse describes.

^b Heft. Boeth. hist. Scotie, 12. & Jo. Twin. Albionie, 1.



N O T E S

O N

Sir JOHN FORTESCUE,

De laudibus legum Angliae.

VOL. III.

II M

TO

NOTES

FOR THE

USE OF

T O T H E R E A D E R.

THIS author, Sir John Fortescue, was chief justice to Hen. VI. as the records of the later half of his reign, every where shew; and that he might statum suum decen-
tius manutenere, in part. 1. rot. pat. 20. Hen. VI. membran. 10. an annuity of
clxxx marks is given him out of the hamper, with cxvi s. xi d. q. Percipiendum singulis an-
nis ad festum natalis domini pro una roba & furrura pro eadem, erga idem festum.
And lxvi s. vi d. singulis annis ad festum pentecostes pro una roba & linura pro eadem,
erga idem festum. He is called his chancellor also. In this book, his title, given by himself, is can-
cellarius Angliae. And in his declaration, or rather retractation, of that he had written against the
title of the house of York, himself puts in the mouth of a friend of his expostulating with him, these
words, considering that ye were the chief chancellor to the said late king. It seems,
being with Henry VI. driven into Scotland, he was made his chancellor, the memory whereof
(as it could hardly be otherwise) wants in the patent rolls. His books, which I have seen, are
three: This now newly published, his difference between dominium regale, and dominium
politicum and regale; and that declaration touching the title of the crown. Neither of the
two last were ever published; but they remain mss. in divers hands. As touching his descent; by
good testimony, he is made son to Henry Fortescue, son of Sir John Fortescue, knight (captain
of Meaux, and governour of Brie in France under Hen. V.) who was second son of William
Fortescue, of Wimelston in Devonshire, esquire.

Because he was Englished by him that first published him, this, part of the title, and the
notes on him are in English. What he hath of the commendations of the law of England,
must not be expected to be so copious, as if all, that might thereof have been said, had been
hunted for by him to be here congested. He shews that he instructed the young prince, and
only in some such few occurrences of our trials and positions, as might be, without difficulty, appre-
hended by a mind so tender and strange to the courts of judicial contention. Neither gives he
enough to satisfy or the malice, or the ignorance of some foul mouthed declaimers against it, who,
for the most part (if they descend to particulars, and make a case to find fault withal) either
ridiculously compact things incompatible, just like the Jycophant in that geography of his in
Trinumus.

Omnium primum in Pontum adveſti ad Arabiam terram ſumus,

and thence,

Ad caput amnis quod de coelo exoritur ſub ſolio Jovis,

or else, meaſuring an eſta bliſhed and univerſal proceeding or poſition only by their own damage,
never coming near apprehenſion of the true reaſon, rail at it, with like judgment, as the para-
ſite, in a loſt comedy of Plautus, doth at the certain courſe of ſun-dials, being thence only moved,
be cauſe the ſhadow went not ſo faſt as his ſtomach, which, when he was a child, was the only dial,
and that

-----iſte monebat eſſe, niſi quum nihil erat.

Nunc etiam quod eſt non eſt, niſi SOL I lubet.

But no place is here for more of this, and nos hac a ſcabie tenemus ungues.

To this edition, are added the ſums of Sir Ralph de Hengham, chief juſtice to Edw I. ne-
ver till now printed; in whom, although moſt of the learning be touching eſſoins, defaults, and
courſe of proceedings in ſuch actions which are in ſeldom uſe at this day, yet divers things occur
both ſpecially obſervable in what what he bath touching thoſe proceedings (which a profeſſor of the
law

law cannot but wish to know) as also he often otherwise gives light to the customs or law of his time, whence, as through an ancestor of the right line, we must deduct that of the present. Of him in the preface to the reader, before him, enough is said, and of his sums. Of his language, which with the rest of our common law Latin is accused of barbarism, somewhat is there brought in excuse. That preface was thought fit to speak Latin, the author of the book himself being published only in that tongue. But the notes are English. For what other readers than English, are to be expected? Many an ignorant had been deterred by pure Latin, and to have used barbarism in them would have turned the stomach of a polite reader. Though divers copies of Hengham were examined in preparing this, yet could not a perfect one be extracted from them all. As one helped another, choice was so made that this might be the best; which yet is not without many faulty passages. So faithfully it is published from the mss. that even the false language, which by consent of old copies, appeared not to be the transcribers, but proceeded from the age's either negligence or ignorance, is religiously retained. So should the lost monuments of antient writers be given to the publick; so should we abstain from wronging their manes. Some places, that the erring hands of such as antiently copied him corrupted, are by way (amongst other observations collected in the heat of the press) noted, and either by conjecture restored, explained, or marked with asterisks, left to better judgment. The varying of letter in the print, is only to lead the readers eye the sooner to what he may look after.

3

Farewel from the Inner Temple,
September 24, MDCCXVI.



N O T E S.

Ad C A P. III.

1. **A**UCTORE *causarum*.] Questionless he meant the author of the little book *de causis*, put in some Latin editions at the end of *Aristotle's* works, with some other ridiculously attributed to *Aristotle*. There are, who think it to be done by *Alpharabius*, others by *Avempace*, others by *Proclus*. It was turned out of *Hebrew* into *Latin*, but is not extant in *Aristotle's* language. It is antient, but clearly beneath the age of *Aristotle*. In *proposit. i.* the substance is of what he cites.

Ad C A P. VIII.

2. **A**pprenticios.] From *apprendre*, i. e. to learn, comes *apprentice de la ley*; which will denote as much as *discipulus*, applied by *Justinian* to somewhat a like degree in his law. For after he had reckoned his *dupondii*, or *Justiniani novi*, that is, students of two years standing, his *Papinianists*, students of three years, his *Lytae*, those of four years, and his *Prolytae*, for them of five, to whom the reading of the whole course of that law, and an able understanding was imputed, he then, comprehending the *Prolytae*, and the rest labouring to that degree, adds, *Discipuli igitur, omnibus eis legitimis arcanis reſeratis, nihil habeant abſconditum*, but that they might afterwards be *juſtitiae ſatellites*, & *judiciorum optimi tam athletae, quam gubernatores omni loco aequoſque foelices*. So he writes, *digest. prooem.* The antientest mention of an apprentice in this ſenſe which our published books have, is in 1 *Ed. III. fol. 16. pl. 3.* But in the monuments of parliament, of 20 *Ed. I.* extant in the *Tower*, this testimony is of them; *De attornatis & apprenticiis, d. rex injunxit Johanni de Mettingham & ſociis ſuis, quod ipſi per eorum diſcretionem provideant & ordinent certum numerum de quolibet comitatu, de melioribus & legalioribus & libentius addiſcentibus, ſecundum quod intellexerint, quod curiae ſuae & populo de regno melius valere poterit, & majus commodum fuerit, & quod ipſi quos ad hoc elegerint curiam ſequantur, & alii non. Et videtur regi & ejus conſilio quod ſepties-viginti ſufficere poterint, &c. Apponant tamen praefati juſtitiarii plures ſi viderint eſſe faciendum, vel numerum anticipent, & de aliis remanentibus fiat ſecundum diſcretionem juſtitiariorum.* Mention is of them alſo in *Fleta, lib. 2. cap. 37.* Part of that of 20 *Ed. I.* is tranſcribed in the epiſtle of the xth report, where more is out of antiquity, touching theſe apprentices. The name was uſed for practiſers, and *apprenticii ad barros*, are barristers in the ridiculous verſes of *Andrew Horn*, before his *mirrour aux juſtices*. Theſe are they,

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*Hanc legum ſummam, ſi quis vult mira tueri,
Perlegat, & ſapiens ſi vult orator haberi;
Hoc apprenticiis ad barros ebore munus,
Gratum juridicis utile mittit opus.
Horn mihi cognomen, Andreas eſt mihi nomen.*

This *Horn* lived about *Edw. II.* his certain age I yet know not. The verſes I tranſcribed out of an antient copy of him, extant in *Bennet college library in Cambridge.* and written, as it ſeems, by the hand, about *Edw. III.* or *Rich. II's* time.

3. *Proprio ore nullus regum Angliae.*] Yet certainly the kings themſelves often ſate in court, in the king's bench; And in the rolls of charters under king *John*, and the time near him, often occur grants, that ſuch or ſuch *English* ſhould not be impleaded, or put to answer, *nifi coram nobis vel capitali juſtitia noſtra*, and to Normans, *nifi coram nobis vel capitali ſeneſcallo noſtro.* For example, in *rot chart. i. reg. Joh. chart. 171. memb. 28.* the king gives to one *Jacob*, a Jew of *London*, and a prieſt of the Jews, *preſbyteratum omnium Judaeorum totius Angliae* for life, and the patent hath in it, *prohibemus etiam ne de aliquo ad ſe pertinente ponatur in placitum, niſi coram nobis aut coram capitali juſtitia noſtra, ſicut charta regis Richardi fratris mei teſtatur.* Here *coram capitali juſtitia*, is divided from *coram rege*; the laſt ſignifying before the king's perſon; although now pleas held in the king's bench, before the ſucceſſor of the *capitalis juſtitia*, are entered *coram rege.* And ſome rolls, as of 44 *Hen. III.* have *placita coram domino rege de tempore Hugonis Bigod juſtitiarii Angliae*; and alſo in the ſame bundle, *placita coram Hugone le Bigod juſtitiario Angliae.* And *Bracton, lib. 3. tract. de actionibus, cap. 5.* *Si actiones criminales ſint, in curia domini regis debent terminari, & hoc coram ipſo rege ſi tangerent perſonam ſuam.* And in 2 *Ed. IV.* the king ſate in perſon.

Ad C A P. XIII.

4. **S**cotiam, quae ei quondam ut ducatus.] Of that matter ſee *Guil. Malmesburienſ. de geſt. reg. lib. 2. cap. 6.* *Roger de Hoveden, fol. 311. b. & 577. a & b. & 461. Matth. Paris ſub anno 1072. & 1175. & 244. pag. 208. 872. & 1124 ſub anno 1252. Matth. Weſtmonaſterienſ. ſub anno 1054.* and what he hath with *Thomas of Walsingham, ſub anno 1290. & ſeqq.* and *Edward Hall, in his Hen. VIII.* out of old monuments, alſo *Walsingham, pag. 85. 133. & 171. edit. Francofurt. and Florence of Worceſter, and Henry of Huntingdon*, where they ſpeak of king *Athelſtan*, and authority enough will appear againſt what *Buchanan* writes in *lib. 6. & 8. rerum Scotticarum*, touch-

ing the *English* empire. For authorities in law of the same thing, see 11 *Edw. III. tit. briefe* 473. 39 *Edw. III. fol. 35. 42 Edw. III. fol. 2. b.* 173. Hen. IV. *Brook tit. appeal* 153. 6 *Rich. II. tit. protection* 46. 8 *Rich. II. tit. continuall claime*, 13. 13. *Eliz. Dyer, fol. 304. a. rot. parliamenti*, 21 *Ed. I. in arce London, fol. 51. & seqq.* besides divers originals of matters of that nation yet remaining in the treasuries of records Neither is that of *Godfrey of Malmesbury* unnecessary to be here remembered. He relates, that when *William II.* was offended with *Malcolm III.* of Scotland, that he would not *secundum iudicium baronum suorum in curia sua reformationem regibus Anglorum facere*, the Scottish king, *id agere nisi in regnorum suorum confiniis, ubi reges Scottorum erant soliti reformationem facere regibus Anglorum, & secundum iudicium primatum utriusque regni, nullo modo voluit, & sic impacati ab invicem discesserunt.* He places this in 7 *Willielmi II.* When this *Godfrey* lived, I know not. His annals begin with the Saxons, and end in 29 *Hen. I.* He hath much of northern matters, and the same that is in *Roger of Hoveden*, often, and this very page also is in *Hoveden*, pag. 265.

Ad C A P. XVII.

5. *Aliqui regum.*] But questionless the Saxons made a mixture of the *British* customs with their own; the Danes with old *British*, the Saxon and their own; and the Normans the like. The old laws of the Saxons mention the *Danish* law, *Danelage*; the *Mercian* law, *Herttenlage*; and the *Westaxon* law, *Westaroulage*; of which also some counties were governed by one, some by another. All these being considered by *William I.* comparing them with the laws of *Norway* (which he most of all affected, mainly, as I think, because by them a bastard of a concubine, as himself was, had equal inheritance with the most legitimate son; You may see for it, *Roger of Hoveden, fol. 347. & 425.*) he *quasdam reproboavit* (as the words of *Gervase of Tilbury*, in his dialogue *de scaccario* are) *quasdam autem approbans illis transmarinas Neultriae leges, quae ad regni pacem tuendam efficacissime videbantur, adiecit*; but so indeed, that such laws as he in writing allowed, are, by a denomination from the greater part, called *bonae & adprobatae antiquae regni leges*, by *Matthew Paris*, in his manuscript life of *Frederick*, abbot of *St. Albans*, and, *leges Edwardi regis quae prius inventae sunt & constitutae in tempore AEdgari avi sui*, by *Roger of Hoveden*, and *leges aequissimi regis Edwardi*, by *Ingulphus*, abbot of *Crowland*, who lived under the conqueror, and brought a copy of them from London to his abbey, as he remembers in his printed story. And in a manuscript copy, communicated to me, amongst divers other, by that living treasure of antiquity, and most exquisite monuments, my noble and much deserving friend Sir *Robert Cotton*, and continued by *Peter of Blois*, after that which is in the print, succeed those laws of *William I.* there spoken of with this title in broken *French*. Ces sont leis & les custumes

qui li reys William grantast a tut le puple de Engleterre apres la conquest de la terre ice les meismes que le reys Edward sun cousin tint devant lui. Ceo est a savor, pais a saint Egglise, &c. the context of them throughout being much corrupted. They were, you see, called *St. Edward's* laws, and to this day are. But clearly, divers *Norman* customs were in practice first mixed with them, and to these times continue. As succeeding ages, so new nations (coming in by a conquest, although mixed with a title, as of the *Norman* conqueror, is to be affirmed) bring always some alteration. By this well considered, that of the laws of this realm being never changed, will be better understood.

6. *Et maxime Romani*] Understand not this neither otherwise, but that the *Romans* had their laws in such parts of this land, as they had their most civil government in. I mean in colonies hither deduced. For every colony was but an image of the mother city, with like holy rites, like courts, laws, temples, places of publick commerce, and for the most part with *duumviri*, instead of consuls, and *aediles* and *decuriones* in lieu of a senate. And it is clear, that divers colonies from Rome were in *Britain*, as at *Camalodunum*, now *Maldon* in *Essex*, that was deduced to be *subsidiu adversus rebelles*, as *Tacitus* says, & *imbuendis sociis ad officia legum*. And an old inscription remembers one *Aurelius Bassus*, to be *censor civium Romanorum coloniae victricensis, quae est in Britanniae Camalodunum*. At *York* was also a colony; an old piece of money of *Severus*, thus,

COL. EBORACVM. LEG. VI. VICTRIX.

Another inscription is justifying the same in *Camden*, pag. 572. although *Aurelius Victor* calls it *municipium*, in his life of *Severus*. Likewise one was at *Chester*, antiently called *Devana*, *Deva*, or *Dewvana*, as we see in *Ptolomey* and *Antoninus*, from the river *Dee*; witness an old coin of *Septimius Geta*, thus inscribed.

COL. DIVANA LEG. XX. VICTRIX.

And a fragment of a stone in *Bath's* walls hath, DEC. COLONIAE GLEV. VIXIT ANN. LXXXVI.

Glev. is *Glocester*, as the most learned *Clarendieux Camden* teaches. Some think *Colchester* had a colony too. But here are enough to shew, that the laws of Rome were used in *Britain*, as in other places where the *Romans* conquered. *Seneca ad Albinam cap. 7.* *Hic denique populus colonias in omnes provincias misit. Ubique vicit, Romanus habitat*: and *Gildas* of this land, *non Britannia sed Romania censetur*. So one antiently speaking to *Mars, Romulus, and Claudius*, under whom the first colonies were deduced hither, in *catalect. vet. poet. lib. 1. tit. 7.*

Cernitis ignotos Latia sub lege Britannos.

After *Claudius*, the *Britons* began to learn the arts, to exceed the *Gauls* in wit and learning and they that at first did *linguam Romanam abnuere*, as *Tacitus* speaks in the life of *Agricola*, did at length *eloquentiam concupiscere. Inde etiam*

etiam, says he, *habitus nostri honor & frequens toga; paullatimque discessum ad delinimenta vitiorum, porticus & balnea, & conviviorum elegantiam; idque apud imperitis humanitas vocabatur, cum pars servitutis esset*; and this is spoken of natural Britons, not colonies. They affected, we see, Roman language, rhetoric, Roman habit, Roman pleasures, diet, and the like. Neither needed Tacitus to have mentioned their affecting the laws of Rome, when they were subject to them as a conquered people. And no doubt is, but they that imitated their conquerors, and neighbour colonies in the rest, were not backward in affecting those laws, for which the languages and rhetoric were most useful. Juvenal speaking of Gaul, (which he calls in *satyr. 7.* — *nutricula caudicorum*) says in *satyr. 15.*

*Gallia caudidos docuit facunda Britannos,
De conducendo loquitur jam rhetore Thule.*

The easier might the use and study of the laws of Rome be received here, after this Claudius his conquest; in regard that those which before, and in ancient time, had the determining of controversies, and the learning of that kind in their hands, were by him forbidden to use any longer their religion, for which they were most of all revered and regarded. I mean, the *Druids*. And when their holy rites were prohibited by the emperor, it is likely enough that the nations governed by them in point of law, as the *Gauls* and *Britons* were, grew regardless, at least remained nothing so respectful of them as before, and so became prone to receive the laws of Rome, which had both conquered them, and also taken away the reverence before given to the *Druids*. That the *Druids* before Claudius were the lawyers, and determined controversies, Julius Caesar is witness, *lib. 5.* and *6. de bello Gallico*, compared with the catholick opinion in antiquity of an identity, at least in their office, actions, and learning, in Gaul and Britain. That Claudius took away their religion, Sueton is author in his life, *cap. 25.* *Druidarum religionem apud Gallos dirae immanitatis, & tantum civibus sub Augusto interdictam, penitus abolevit*. With him agrees Seneca in his *Apocolocyntosis*. It may well enough be imagined, that the taking it away in Gaul extended to Britain, which was both the nursery of it, and mother too, as Julius Caesar writes. If only to Gaul, yet it is probable enough that the *Druids* in Britain could not but suffer by it, at least in reputation. For that of Pliny, *nat. hist. lib. 30. cap. 1.* *Tiberii Caesaris principatus sustulit Druidas Gallorum*; it is to be referred only to Rome, as Lipsius well takes it in *comment. ad Tacit. annal. 12. num. 98.* and in such a sense as Sueton speaks of Augustus's forbidding them *tantum civibus*. And indeed although after Claudius, mention be in Tacitus, Lampridius, and Vopiscus, of them, yet shall you not find any sign of their legal power extant, either in thiose, or in Ammianus Marcellinus that specially remembers them, but only attributes a study of the mysteries of nature, and a Pythagorical

learning to them, under Constantius and Julian, as you see in his fifteenth book. For the matter of colonies before spoken of; he that desires accurate instruction of their nature and particular rights, may see, besides what such as writing of the Roman state universally have of it, Lipsius *de magnitud. Romana, lib. 1. cap. 6.* and Marc. Velsper. *lib. 2. antiquit. Augustae Vindelicorum*.

7. *Leges civiles in quantum Romanorum inveteratae sunt.*] The antiquity which he means of our laws before the civil of Rome, is only upon these conditions. First, that the story of Brute be to be credited, and then that the same kind of law and policy hath ever since continued in Britain. That story supposes him here ccc. years and more before Rome built. But, with no disparagement to our common laws, we have no testimony touching the inhabitants of the isle, before Julius Caesar, nor any of the name of it, till Polybius in Greek, nor till Lucretius in Latin. Polybius, *lib. 3.* speaks of the British isles, and Lucretius, *lib. 6.* hath *coelum Britannum*. Neither is the book *de mundo*, attributed to Aristotle, of like age with the falsely supposed author. In that, Albion is spoken of, but Polybius was before that was spoken, if I deceive not myself. All testimony of later time, made of that which long since must be, if at all it were, is much to be suspected. And though the Bards knew divers things by tradition, which they only sung, and so a specious argument is made usually for that common story, because they sung it, yet I see not why any, but one that is too prodigal of his faith, should believe it more than poetical story, which is all one, for the most part, with a fiction. For what were Bards but such as sung the praises of old supposed heroes at their pleasure? As Athenaeus and Marcellinus, of them, and, for later authority, you may see in leg. Howell's Dba, *cap. 25.* That the chiefest dignity amongst them was the Penkert of the country, whose place was of great eminence before others in the Welsh court, and his office, when the king was pleased to hear any songs, was *duo carmina, scilicet unum de Deo, alterum de regibus, in interiore parte aulae decantare*. Nor he nor the rest were bound to truth of story, but free to use invention, which they did in making a founder of the British name out of a community of sound. 'Twas as easy to fetch Brute out of Brutain, as it is often called, as it hath been to make Francio out of Francia, or Franci, Hispanus, or Hispalus, out of Hispania, Scotia out of Scotia, Angela for a queen, out of Anglia, Bato, out of Batavia, Italus out of Italia, and divers such, which are all mere fictions or impostures. Scarce indeed is there a nation in Europe, whose deduction from a like name of the first author, is of sufficient credit. All testimonies, any thing near the supposed time of those first authors, being lost. This writer stands on Brute's arrival, and speaks of it, *cap. XIII.* Yet if that would make so much for this side of antiquity of our laws, much more is to be had from the antienter and true origination of the Britons, which

which is from *Japhet* and his posterity. See *Camden*. And in the *Greek Scaligeran* chronicle of *Eusebius*, the *British* isles, with all the west, are given by *Noah's* last will and testament to *Japhet*; but so is *Italy* too, and the rest of *Europe*. This way, might an equally strong argument be for the like antiquity of both laws, of those of *Italy* and *Britain*. And it would be such a one as this author uses from *Brute*. For questionless, if *Japhet* and his posterity possessed these parts of *Europe*, as they did, their government was not without laws. But in truth, and to speak without perverse affectation, all laws in general are originally equally antient. All were grounded upon nature, and no nation was, that out of it took not their grounds; and nature being the same in all, the beginning of all laws must be the same. As soon as *Italy* was peopled, this beginning of laws was there, and upon it were grounded the *Roman* laws, which could not have that distinct name indeed till *Rome* was built, yet remained always that they were at first, saving that additions and interpretations, in succeeding ages increased, and somewhat altered them, by making a *determinatio juris naturalis*, which is nothing but the civil law of any nation. For although the law of nature be truly said immutable, yet it is as true, that it is limitable, and limited law of nature is the law now used in every state. All the same may be affirmed of our *British* laws, or *English*, or other whatsoever. But the divers opinions of interpreters proceeding from the weakness of man's reason, and the several conveniencies of divers states, have made those limitations, which the law of nature hath suffered, very different. And hence is it, that those customs which have come all out of one fountain, *nature*, thus vary from and cross one another in several common-wealths. Had the *Britons* received the ten or twelve tables from *Greece* (which in *Rome* was, as *Livy* says, in *immenso aliarum super alias acervatarum legum cumulo, fons omnis publici privatique juris*) clearly the interpretations, and additions which by this time would have been put to them here, must not be thought on as if they would have fell out like the body of the *Roman* civil law. Divers nations, as divers men, have their divers collections and inferences; and so make their divers laws to grow to what they are, out of one and the same root. Infinite laws we have now that were not thought on 20. years since. Then were many that 20. years before had no being, and less time forward always produced divers new; the beginning of all here being in the first peopling of the land, when men, by nature being civil creatures, grew to plant a common society. This rationally considered, might end that obvious question of those, which would say something against the laws of *England* if they could. 'Tis their trivial demand, *When and how began your common laws?* Questionless it is fittest answered by affirming, when and in like kind as the laws of all other states, that is, *When there was first a state in that land, which the common law now governs:* Then were

natural laws limited for the conveniency of civil society here; and those limitations have been from thence, increased, altered, interpreted, and brought to what now they are; although perhaps, saving the merely immutable part of nature, now, in regard of their first being, they are not otherwise than the ship, that by often mending had no piece of the first materials, or as the house that's so often repaired, *ut nihil ex pristina materia supersit*, which yet, by the civil law, is to be accounted the same still, as we see in *π. tit. de legat. 1. l. 65. si ita §. 2.* Little then follows in point of honour or excellency specially to be attributed to the laws of a nation in general, by an argument thus drawn from difference of antiquity, which in substance is alike in all. Neither are laws thus to be compared. Those which best fit the state wherein they are, clearly deserve the name of the best laws. And none are best or worst but *secundum quid*. But upon this ground more to the purpose might have been said for the *English* common laws, compared with the civil of *Rome*. For it appears that the emperors from *Justinian*, who died in D. LXXV. of *Christ*, until *Lothar* the II. in the year CIO. CXXV. so neglected the body of the civil law (which now, against an express constitution of *Justinian*, commanding that it should not be read nor taught in any place saving *Rome*, *Berytus*, and *Constantinople*, is professed in every university) that all that time none ever professed it. But when *Lothar* took *Amalfi*, he there found an old copy of the *pan-dects*, or *digests*, which, as a precious monument, he gave the *Pisans* (by reason whereof it was called *Litera Pisana*) from whom it hath been since translated to *Florence*, where in the duke's palace it is never brought forth but with torch-light, and other reverence. Under that *Lothar*, began the civil law to be professed at *Bologna*, and *Irner*, or *Werner*, as some call him, first made glosses on it about the beginning of *Frederick Barbarossa* in CIO. C.L. of *Christ*, and *Bologna* was 'by *Lothar* constituted to be *legum & juris schola una & sola*. And this was the first time and place of profession of it in the western empire. You may see *Odofredum apud Sigonium de regno Italiae lib. 11. §. 7. & Paul. Merul. cosinogr. part 2. lib. 4. cap. 23.* Why were they so neglected near 200. years in the empire, if their excellency were so beyond others, as is usually said by many, that, to the purpose, know nothing of either them or ours? This part of story of them I have noted elsewhere in the preface to the *titles of honour*. And clearly you see the profession of them is not so antient in the western empire, as the latest of time, to which some most ignorantly refer the beginning of the common law; I mean, as the *Norman William*, who arrived in the year CIO. LXVI. I think not, that good discretion can, out of any of this or the like, add much honour to, or detract from either *common* or *civil* law; yet it is fit to be remembered in answer of such as ignorantly fetch a reason out of the antiquity of the profession of the one. As if the profession begun under *Lothar*, and since thus

continued,

continued, were not merely new, and not a continuance of what was in use under *Justinian*. But hereof too much.

Ad C A P. XXI.

8. **T**estes.] But some trials by our law have also witnesses without a jury: as of the life and death of the husband in *dower*, and in *cui in vita*. Examples thereof are in *Bracton lib. 4. tract. 6. cap. 7. 2 Ed. 2. tit. triall* 46. 8 *Ed. 2. cod. tit. 95. 9 Ed. 2. tit. judgment* 231. 2 *Elizab. Dyer fol. 185. a.* and in 13 *Eliz. Dy. fol. 301. a.* In error by an infant to reverse a fine, both inspection and the testimony of four witnesses concur to prove his infancy, and in 26 *Ed. III. fol. 16. pl. 6.* a death in *Bretagne*, is said, shall be tried by proofs. But all this is of issues, which properly have no issue whence a jury may be. The course of declarations also at this day shew, that witnesses were respected in the beginning of every action. The conclusion is always *Et inde producit sectam*. Which *secta* or *suit* in law-language, is nothing but witnesses to prove his action, as in the counts of *writs of right* they were wont to declare, *Et hoc paratus sum probare per hunc liberum hominem meum A. B. Et si quid, &c.* Which was a tender of *battel*, as the other is of *suit* or witnesses. See *Glanvil. lib. 2. cap. 3.* And those proofs of the death of the husband in *dower*, are called *secta* by *Bracton, fol. 302. a.* and in *Nov. narrat. fuit et arraign bon*, is only *secta* & *disfratationio bona*, i. e. good proof to maintain the count. In ancient time this *suit*, or witnesses, were examined before any other issue, as in 18 *Hen. III. coram rege apud Windfore rot. 13. in dorso. in turr. Lond.* In a *recordare loquelam* that was in the bishop of *Salisbury's* court at *Sunnings*, the action being for a mare, by *Walkelin de Stok*, against *William de la Guilhalle*, the entry is; *Et Willielmus producit sectam suam, Et ipsi quos produxit per se discordantes sunt in multis, Et in tempore, Et in aliis circumstantiis, quia quidam dicunt quod quaedam equa mater ipsius pullani empti fuit, &c. Et quidam dicunt, &c. Et Walkelinus producit sectam, qui concordati sunt in omnibus Et per omnia, Et dicunt omnes quos ipsi producit per se, &c.* The proofs of both sides are called *secta*. It was either this, or some like case; that *Shard* intended in 17 *Ed. III. fol. 48. b.* in *John Warrein's* case, speaking of a justice that examined the *suit*; and it appears there, that under *Ed. III.* the tendering of *suit* or proofs was become only formal, as at this day, like the *plegi* of *prosequendo*. But in *Hill. 44 Hen. III. coram Rogero de Thurbelby Et sociis suis justitiariis de Banco rot. 16. in dorso*, one *Gilbert Chyteine*, brought a *replevin* against *William le Foul*, and the defendant pleads *non cepit, &c. Et hoc offert defendere contra ipsum Et sectam suam sicut curia consideraverit. Et quia praedictus Gilbertus nullam sectam producit versus praedictum Willielmum, consideratum est quod praedictus Willielmus eat inde sine*

die, Et Gilbertus in misericordia. See *ad cap. 32.* I omit, that in *Englesbery* anciently, in a *nativo habendo*, in proving a deed denied, and such like, witnesses by the common law are required as the special trial.

Ad C A P. XXIV.

9. **W**Apentagia.] In *Ethelred's* laws, which the abbot *John Brompton* hath in a *ms. story, cap. 4. Habeantur placita in singulis wapentakis, ut exeant seniores XII thayni Et praepositus cum eis, Et jurent super sanctuarium quod eis dabitur in manus, quod neminem innocentem velint accusare vel noxium concellare.* And the laws called the *Confessor's, cap. 33.* say that *Yorkshire, Lincoln, Nottingham, Leicester, and Northampton*, call that *wapentachium, quod Angli vocant hundredum, Et non sine causa.* For he that was *praefectus wapentachii*, or high constable of the wapentake, came amongst them at the hundred or wapentake court, and with regardful entertainment, they all *cum lanceis suis ipsius hastam tangebant, Et ita se confirmabant per contactum armorum, pace palam concessa. Anglice n.* (so say those laws) *arma vocantur wapen, Et taccap, confirmare, quasi armorum confirmatio, vel ut magis expresse secundum linguam Anglicam dicamus, wapentac armorum tactus est. wapen n. arma sonat, tac, tactus est.* Doubtless this deduction of the name favours of the truth. For amongst the old *Germans*, whence our *Anglo-Saxons* came, that used to meet armed in their courts, when any one had spoken, if he were disliked, *fremitu aspernabantur*, if liked, *frameas concutiebant*, as *Tacitus* witnesses; which well includes this touching or striking together of weapons. *Honoratissimum*, says he, *assensus genus est, armis laudare.* The wapentakcs, hundreds, and counties, were first instituted by king *Alfred*, about the year *800. lxxx.* Of him, *Ingulpus, pag. 495. b. Totius Angliae pagos Et provincias in comitatus primus omnium commutavit, comitatus in centurias, id est, hundredas, Et in decimas, id est, tythingas divisit.* See also *Malmesburiens. de gest. reg. lib. 2. cap. 4.*

10. **Villas.**] *Villa* & *villata* de *Norwich, de Wallingford*, and the like are in old rolls, which also sometimes call like places, and the same, *burgi* or *civitates*. And the city of *Chichester* is *villata* de *Cicestria* in *itin. Suffex. 47. Henric. III. rot. 25. in dorso.* And there *rot. 44. Burgus de Horeham venit per XII. Villa de Brembre venit per XII. Villa de Shoreham venit per XII.* Yet *Bramber* and *Shoreham*, are boroughs as well as *Horeham*; parliamentary boroughs. But also *rot. 38.* is *burgus de Seford venit per XII.* which is no parliamentary borough. The rest all which now send burgeses to parliament in *Suffex*, as *Lewes, Midhurst, Steyning, Grenstede* and *Arundel*, are in that eire called boroughs.

11. **Hamletis.**] *Hameau* or *hamel*, is a member, or part of some vill or town, as you may see in 14 *assif. pl. 8. Et 3. Et 4. Ph. & Mar. Dyer fol.*

fol. 142. b. It came first from *ham* or *heim* in old Saxon, signifying a circuit or territory, *circulum vel septum quo pagi sive territorii cuiuspiam limites includuntur*, as the most noble Hans Douze notes out of the records of Holland, in *annal. Holland. lib. 2. § 7. fol. 388.*

12. *Annale est.*] But before the statute of 14 Ed. III. cap. 7. sheriffs continued usually in their offices longer.

13. *Nec duobus.*] It should be *nec tribus*, by *stat. 1 Rich. II. cap. 11.*

Ad C A P. XXV.

14. **D**E *hundredo.*] For the number of the hundredors at this day, see the statutes of 35 Hen. VIII. cap. 6. & 27 Eliz. cap. 6.

Ad C A P. XXVI.

15. **F**alsum fecerunt sacramentum.] The ancient punishment in *attaint*, was as it is here described, and the like in conspiracy for perjury. See *Glanvil. lib. 2. cap. 19. 4 Hen. V. tit. judgment 220. 27. assis. pl. 59. & 46. assis. pl. 11.* The judgment is called the villanous judgment in 24 Ed. III. fol. 34. b. See *Brañton alio lib. 4. tract. 5. cap. 5. & Flet. lib. 5. cap. 21. & Stamford fol. 175.* And the case in *temp. Ed. I. tit. attaint 70.* is more large in my ms. report of 21 Ed. I. fol. 58. It is brought against the abbot of *Westminster*, as there it is shewed, but the judgment by *Weyland* is in these words, *pur ceo agarde cest court que ceur de l' enquest perdent franche ley de ceo jour en avant a tous jours, e lour terres e leur chateus a la volonte le roy, e lour coys a la prison, e John seit assous de cele rent e seit restore de ses damages.* But see now *stat. 23 Hen. VIII. cap. 3.* another judgment in *attaint.*

16. *Nec alicubi recipiuntur in testimonium veritatis.*] Our books expresse that, by *que mise ne soit en testimoniance de veritye* 24 Ed. III. fol. 34. b. 33 Hen. VI. fol. 55. a. It is titled the loss of frank law, *franch ley* in 27 assis. pl. 59. & 46 assis. pl. 11. that is; he which is thus convicted of perjury, shall be no more *otheswurdh*, as *Brañton* calls it *lib. 4. tract. 1. cap. 19. § 2.* where his words are of such a one, *Legem amittit, & ideo dicitur, quod non est ulterius dignus lege, quod Anglice dicitur, he ne is othes worthe* that is enes gilty of oth broken. Which agrees with king *Knout* his law, cap. 33. that one so convicted, ne beo he ðanon forþ a ðer rýpðe. The self-same words almost, being in *leg. Edwardi senioris* cap. 3. & *leg. Athelstan* cap. 25. That which is *legem amittere*, in this sense in *Brañton*, is *liberam legem amittere* (answering to the loss of frank law) in the entries of judgment against them, and *legem terrae amittere* in *Glanvil*, and sometimes in *Brañton*. & *Fleta*. See also *regiam majestatem lib. 1. cap. 14. § 5.* Hence may be truly understood that of the grand charter cap. 29.—*Nec super eum ibimus nec super eum mittemus, nisi per legale iudicium parium suorum, vel per legem terrae.* I would English it thus: Neither will we

enter on his possession nor commit him (for in that of the charter of 17. of king *John*, by which this was made, it is *nec eum in carcere mittemus*, perhaps it should be *carcerem*, as the language requires) but by legal judgment of his peers, or men of his condition (that is, by jury) or by trial of him by oath, or wager, and doing his law. *Lex terrae* here is only as it signifies in *amittere legem terrae*. And *ley gager*, and a jury are the two trials, as I suppose, there thought on. And indeed in old rolls nothing is more usual than in criminal actions, not capital, and civil, of any kind, to admit *ley gager*, as in attachments upon prohibitions, *quare impeditis* and the like, which is against all knowledge and practice of law in later ages. Every one knows that at this day *vadiare legem*, is to offer the oath upon trial that way, and *facere legem* is to make the oath. All which shew that *lex* and *lex terrae*, signify in this notion only the oath of a man not disabled by law: And, in that statute, it is merely the oath upon *ley gager*.

17. *Calumniare potest 35 homines.*] Peremptory challenge is now reduced to xx. by *stat. of 22 Hen. VIII. cap. 14.*

Ad C A P. XXXII.

18. **S**i quae supra altum mare, &c. coram *admirallo.*] As then, so now, the admiralty hath jurisdiction of things done upon the main sea; and what that court might or may do is shewed and limited by the statutes of 13 Rich. II. cap. 5. & 15. Rich. II. cap. 3. & 2 Hen. V. cap. 6. The first case in our law extant touching marine jurisdiction, is in *temp. Ed. I. tit. avowry 192.* in a *replevin* brought of a ship upon the coast of *Scarborough*, where no mention is of the admiral's authority, as the print is in the abridgment, but consians of it is allowed to the common law. Yet in my ms. report of 25 Ed. I. fol. 82. b. the case is thus more at large, and expressly speaks of the admiral. *William Crake de Holtbam* fuit sommon a respondre a *Robert de Beuso* de play, pur que il avoit pris une lune neef pris de xl. l. en la mer juste la costere de *Scardburn*, & de pleke le amena a *Holtbam* en le county de *Norff. Mutford*. Del hore qu'il abute conte de une prise fete en la mer que est hors del conte, issi que si pais le joynt fist, il ne sabereint a quel viscont mander pur fere venger paps, e demand judgment si ceys pussont de ceo conuser. Ed' autre part, il ly sont assigne admirail de par le roy sur la mer a oyer e terminer les pleynts de chose fait in mer, e nentendons point que vous volys a eur tolpr jurisdiction, &c. *Bery*. Nous avons poer general per my tut Engleterre, mes del poer des admirals dont vous parles ne savons rien, ne rien de nostre poer a eur volomus assigner, si ceo ne seit per commandement le roy de quey vous ne monstres rien, &c. *Mutf.* Sire, le luy on ils dient la neef este pris n'est in nul visne, de que, &c. *Harward*. Il est issint visne, que si une home occist un autre la, il ferra pris e amein al terre, e pende ausi ben come pur fet fet sur la terre. *Metingham*. Nous vous

dions que nous avons aussi ben poer de comensans de set set en mer come sur terre, dont agard que vous respondes ouster. Unless they meant there, that the visne might be out of the adjoining county, as in old trials of issues in *Wales*, I conceive not their disallowance of the exception against the place, whence properly no visne could be. For such trials of issues arising in *Wales*, or in counties palatine by the adjoining counties, see especially 18 *Ed. II. tit. assize* 382. 24 *Ed. III. fol. 33. 30 Hen. VI. fol. 6. b. 35. Hen. VI. fol. 30. a. 45 Ed. III. tit. visne* 50. I have transcribed the case according to the very letters of my copy. It seems by this, that in those times the common law had consians of things done upon the *British* sea, however it afterward kept its limits *infra corpus comitatus*, leaving the sea to the admiralty. Some cases in old records justify it also. In *placit. 37. & 38. Hen. III. rot. 10. Devon*. One *Galfredus de Leyfina* brings *trespass* against *Ralf de Valle torta*, and others, *quare asportaverunt bona quae fuerunt in navi quae fuit Clementis de Bolan, quae nuper periclitabatur in costera de Brikelham, quae bona dominus rex dedit predicto Galfredo tanquam wreccum maris, &c.* The defendants plead, in effect, the general issue, & *sic ad patriam*, although, through want of form in the declaration, it appears not whether the goods were taken being in or out of the sea, yet it seems they held that matter indifferent. So in *itin. Suffex apud Cicestriam* 47 *Hen. III. rot. 10.* A fragment of a torn roll left in the bundle, hath this sign of a declaration remaining. *Rogerus de Louere, & Radulphus de Louere queruntur de Ricardo de Hatfeuld ibidem* *fregerunt navem suam super quandam locum navis & socii sui circiter quinque submerserunt.* These words are only left upon the ninth roll, the rest being by some wicked hand, purposely, it seems, torn off. But it is easily conjectured that this was an action on the case, brought by one that had committed himself or his goods to the defendant's care for his passage, with his company, over sea, and that the offence was, that the defendant had by negligence made shipwreck on the sea, or some such like; and though the *assumpsit* at land might make such an action at this day, maintainable at common law, according to the learning in *Dowdale's case, rep. 6. fol. 47. b.* yet in those times so antient, I cannot imagine the difference of a contract at land, from one at sea, was thought on. Likewise in *Trin. 50 Hen. III. apud Westm. in banco rot. 22.* the entry is, *Suff. Abbas Westmonasterii per atturnatum suum obtulit se quarto die versus Petrum filium Johannis, Richardum fratrem ejus, Walterum Cheyney, Augustinum filium Jocci, Johannem fratrem ejus, Richardum Andred, Anthonium Clunch, & Richardum Silkento, de placito cum homines ipsius abbatis nuper duci fecissent quandam navem suam per costeram maris prope Dunwicum, bonis & catallis ipsius abbatis & hominum suorum cariatum, iidem Petrus & alii, simul cum*

Augustino filio Johannis, navem praedictam cum bonis & catallis praedictis ab hominibus suis praedictis abstulerunt, & navem & bona & catalla sic ablata detinent, ad damnum ipsius abbatis & hominum suorum sexaginta librarum, & contra pacem, &c. Unless here the ship was taken upon the sea, *super costeram maris*, I understand it not. But touching their trials in the admiralty, in some hands is extant a manuscript *de l'office del admiralty*, translated into Latin by one Thomas Roweghton, calling it *de officio admiralitatis* (the use of two copies of it, with the roll of Oleron, written all about *Hen. VI.* was communicated to me by that learned and truly sufficient Sir *Walter Raleigh*, knight) where indictments and trials are supposed to be by a jury of twelve, as at common law. But the book itself is rather a monument of antiquity, yet not above about *Hen. VI.* than of authority, and rather as a purpose of what was in some failing project, then ever in use and judgment held authenticall. Most of it is against both the now received and former practice. Yet these things hath it worth observation, that is, constitutions often mentioned touching the admiralty of *Henry I. Richard I. king John*, and *Edward I.* which are elsewhere hardly found. In *rot. pat. 23 Ed. I. William Leyburn* is admiral, and often mention is after that of the admirals of the north and south seas, the distinction being the *Thames* mouth, as *Trent* was wont to be for the general escheatorship, and is for the justiceship of the forests. The first mention of the admiral in our printed law, is in 8 *Edw. II. itin. Canc. tit. corone* 399. with that, see 48 *Ed. III. fol. 3. 40. ass. pl. 25. Stamford cap. des coroners*. Sir *Henry Constable's case* in *rep. 5. fol. 107. & Hil. 2 Jacob. Philipp's case* in *com. banco, & 19 Hen. VI. fol. 7. a.* and note that in 7 *Rich. II. Statum tit. trespass* 54. a justification is in trespass in these words, *Nous les prisonous en le haut mere ovesque les Normans, queux sont enemies le roy, judgment si action*, and held good. If this issue offered, rising wholly on the main sea, might not be tried at the common law, how could it be good? Either a traverse must have been to the taking in the count, or else the replication must have made the issue upon two affirmatives (which is against the course of our law) or else questionless they took it in those times triable, as it was pleaded, by a jury of the visne, either adjoining to the coast (which is fittest) or of the place where the action was laid. See also 46 *Edw. III. Statum tit. trespass* 38.

19. *Curiae constabularii.*] That court and the great officer, chief justice of it, hath been long discontinued. Neither was any continuing high constable of *England* since 12 *Hen. VIII.* when *Edward* duke of *Buckingham* was beheaded. He was the last high constable, and by inheritance of tenure from the *Bobuns*, as you see in 6 *Hen. VIII. Keh. fol. 170. b. & seq. 11 Eliz. Dy. 285. b. & vide rot. fin. 3 Ed. I. memb. 14.* The court is that, which was titled the court of chivalry, wherein all matters of arms, treason committed beyond sea, war, and the

the like, which could not be tried at the common law, were determinable *summariè & de plano, sine strepitu & figura judicii*, as the words are in *part. 1. patent. 7 Ed. IV. memb. 9*. Where it appears the office had been given to *John, earl of Worcester*, to hold plea of such things, *quae in curia constabularii ab antiquo, videlicet tempore domini Willielmi conquestoris quondam Angliae, progenitoris nostri, seu aliquo tempore citra, tractari audiri examinari & decideri consueverunt, aut de jure debuerunt*, who surrendering his patent, in the same terms with particulars of the office, it is granted to *Richard Widevill, earl of Rivers*, the king's father-in-law, for life, and after his death to *Anthony Widevill*. By the 1 statute of 13 *Rich. II. cap. 2. & 1 Hen. IV. cap. 14* the office and jurisdiction of the court is best described; you may see 37 *Hen. VI. fol. 3, & 20. 39 Hen. VI. fol. 6. 6 Hen. VIII. Kelw. fol. 171. b. Brook tit. prerogative 31*. Some records are extant of the whole formal proceeding by the law of arms in this court, as specially that of 17 *Rich. II.* in the tower, concerning the castle of *Brest*, between *Hanley* and *Roches*. Their trials were by battle or witnesses. Special commissioners have now good part of this jurisdiction. In 2 *part, rot. patent. 23 Hen. VI. memb. 20. Thomas Kent*, doctor of law, is made *subconstabularius Angliae* for life.

20. *Legem mercatoriam*.] That is such as the law of the staple in *stat. 2. 27 Ed. III. cap. 2*. Mention is of it in *regist. orig. in computo, fol. 135. a. & Fitzh. nat. br. fol. 117. d*. Indeed the nature of this law is well expressed by *Bartol. in π. tit. mandati vel contra l. 29. §. quaedam 4*. speaking of the merchants court (which name may well be given to the court of *pee poudrous*.) *Nota, scilicet he, quod in curia mercatorum debet judicari de bono & aequo, omisso juris solennitatibus. Hoc non dico quod debeat intelligi non habito respectu ad jura civilia, quod esset contra, 1. bona fides tit. depositi, sed debet intelligi non inspectis solennitatibus juris, hoc est non inspectis apicibus qui veritatem negotii non tangunt, ut si esset intentata actio directa cum competeat utilis, vel non erat contestata lis, & similia*. For in common society of merchants, and mutual contracts, equity and good conscience rather than strict law is required. *Tryphonius π tit. depositi vel contra l. 31. Bona fides quae in contractibus exigitur, aequitatem summam desiderat*. A special case of this law merchant, is in *itin. Derb. 2 Edw. II. ms.* where *John Compton* brings debt *secundum legem mercatoriam* upon a tally, against another merchant, and tenders suit by two witnesses; the defendant wages his law, but the judgment is thus by *Ormesby* pronounced: *John de Compton marchand port un brief ciens vers un Rauf marchand, & demande vij. marks par un justicies forme selon la ley marchand (it had been commenced by justicies, and came out of the common place into the eire) & ad mis abant un taille la quelle il tender a prober per deux s. per Richard & par Geoffrey, que essent al. blee mesurer (the debt was due for*

corn) & al liberer, mes vous per besite ley vous vouldes coverer la quele cest tort en ces cas ne voet my resceiver, & refuses la probe que il vous tend selon ley marchand & selon la nature de sun besite, per que agard cest court que John rescevere la debt vers vous come vers non defendu, & les damnnages de cent sous. See for this matter of suit, *ad cap. XXI*.

Ad C A P. XXXIII.

21. *S* Atagentes proinde leges civiles ad Angliae regimen producere.] I confess I here understand him not. What kings of England ever desired the civil laws of Rome? I have read of a protestation against them in parliament by the king and lords, which you may see in *rot. process. & jud. of the appeal of Thomas duke of Gloucester*, and others, against *Alexander archbishop of York, Robert de Vere, duke of Ireland, Michael de la Pole, earl of Suffolk, and Robert Tresilian*, chief justice, in *parlamento Westm. 3 Febr. anno 11 Rich. II.* where, upon default of the appellees, the appellants desire that the court would proceed to judgment. *Sur quoy les dits roy nostre seignior & seigniors du parlement pristrent deliberation tanque lendemain le mercedy prochain ensuiant, a quel temps les justices & sergents & autres sages du ley de roialme, & aurint les sages de la ley civille seurent charges de par le roy nostre dit seignior, de doner loiall counseill as seigniors du parlement de duement proceder en la cause de l'appel susdit, les queux justices sergents & sages de la ley du roialme, & aurint les ditz sages de la ley civille pristrent ent deliberation, & responderont, as dits seigniors du parlement, que sis avoient veue & bien entendue le tenor du dit appell, & disoient que mesme l'appelle ne fust pas fait ne afferme solongue l'ordre que l'une ley ou l'autre requierit. Sur quoy les dits seigniors du parlement pristrent ent deliberation & aviserent, & per assent du roy nostre dit seignior, & de leur commun accord estoit declare que en ci haut crime come est pretendu, en cest appelle, que touch le person du roy nostre dit seignior, & le state de tout son roialme, perpetre per persons que sont peers du roialme ou vellez autres, la cause ne sera aloiz deduc que en parlement, ne par autre ley que ley & cours du parlement, & q'il appertient as seigniors du parlement, & a leur franchise, & liberte d'ancien custume du parlement, desirer juges en tieux cas, & de tieux cas ajugger per assent du roi, & que ensi sera fait en cest cas per agard du parlement, pur ce que le roialme d'Engleterre n'estoit devant ces heures, ne al'entent du roy nostre dit seignior, & seigniors du parlement, unques ne sera rule ne gouverne per la ley civille, & aurint leur entent nest pas de reuler ou gouverner cy haute cause come cest appell est, que ne sera aloiz trie ne termine que en parlement come dit est, per cours processe & ordre vse en aucun court ou place plus bas deins mesme le roialme, queux courts & places ne sont que executoires d'anciens leys & custumes du roialme & ordonnances & establishments du parlements. Et feust avise au meismes les seigniors du parlement per assent du roy nostre dit seignior, que cest appel fust fait & afferme bien & assés duement, & le processe d'ycelle bone*

bone & ferme solonc les leys & cours du parlement, & pur tiel l'agarveroit & auggeroit. I remember also king *Stephen's* publick edict against the laws of *Italy*, but remember not any story or authority teaching that any of our kings would have had them here used. That of *Stephen* is related by that noble and most learned friar *Roger Bacon* in his *compendium theologiae*, or his *opus minus* (both those names are of one ms. book) where speaking of the civil laws of *Italy*, and that they are abused, and too much affected by clergymen, leaving their profession to study those laws, he thus adds; *Præterea omne regnum habet sua jura quibus laici reguntur; ut jura Angliae & Franciae; & ita fit justitia in aliis regnis per constitutiones quas habent, sicut in Italia per suas. Qua propter cum jura Angliae non competant statui clericorum, nec Franciae, nec Hispaniae, nec Almanniae, similiter nec jura Italiae ullo modo. Quod si debeant clerici uti legibus patriae, tunc est minus inconveniens ut clerici Angliae utantur legibus Angliae, & clerici Franciae utantur legibus Franciae, quia propter maxima confusio clericorum est quod hujusmodi constitutionibus laicalibus subdantur colla. Rex quidam Angliae Stephanus allatis legibus Italiae in Angliam publico edicto prohibuit, ne ab aliquo retinerentur. Si igitur laicus princeps laici principis alterius leges respueret, multo magis omnis clericus deberet respuere leges laicorum. Adde etiam, quod magis concordant jura Franciae cum Angliae, & e converso, propter vicinitatem regnorum, & communicationem majorem gentium istarum quam Italiae & illarum. Quare deberent magis clerici Angliae subicere se legibus Franciae & e converso, quam legibus Lombardiae.* This was a kind of invective against the receiving of the civil law amongst the clergy in any other nation, saving that wherein it was first bred, that is, the *Italian*. Our stories have no mention of this edict of *Stephen*. But it is in an author of better authority (in regard of his time) than friar *Bacon*; I mean *John* of *Salisbury* living under *Hen. II.* He in his *de nugis curialium*, lib. 8. cap. 22. speaking of such as too prophanely meddled with what the clergy had to do, goes on with, *Alios vidi qui legis libros deputant igni nec scindere verentur, si in manus eorum pervenirent jura vel canones. Tempore regis Stephani a regno jussae sunt leges Romanae, quas in Britanniam domus venerabilis patris Theobaldi Britanniarum primatis assererat. Ne quis etiam libros retineret edicto regio prohibitum est, & vicario nostro indictum silentium. Sed, Deo faciente, eo magis virtus legis invaluit, quo eam amplius nitebatur impietas infirmare.* Whereas friar *Bacon* takes it clear, that he prohibited the civil laws, this *John* of *Salisbury* (a man of great place and authority both with the king and pope) seems to affirm it only of the canon law: for he remembers it as an offence to the church. Indeed in archbishop *Theobald's* time, both the canons and civil law began to be published, and it is like enough that he might bring in *Ivo's* or *Gratian's* decree. *Ivo's* was written in time of *H. I.*

and *Gratian's* under king *Stephen*. That *Theobald* was before abbot of *Bec* in *Normandy*, and went to *Rome* for his pall, and so, it seems, brought those laws home with him in 3 *Stephani regis*. It is marvel that our stories are so silent of this of king *Stephen*. But see the monks *sub anno 1139*, and especially *Guil. Malmesb. hist. novell. 2. fol. 103. b.* touching the council of *Winchester*, where the ground of his prohibition perhaps shews itself.

Ad C A P. XXXIV.

22. **Q**uod principi placuit.] That is *Ulpian* in *tit. de constit. princip. l. 1.* *Quod principi placuit legis habet vigorem, utpote cum lege regia, quae de imperio ejus lata est, populus ei & in eum omne suum imperium & potestatem conferat.* The same is in *instit. tit. de jure nat. §. sed & quod.* And thence have the Greek lawyers their *ἐπεὶ ἀπ' αὐτοῦ τῷ βασιλεὶ νόμος ἐστίν*, as *Harmonopolus*, a judge of *Theſſalonica*, expresses it, *procheir. lib. a. tit. a.* And the emperor is in *near. diatax. 105. cap. 2.* titled *νόμος ἐμὲν υἱοῦ*, a living law. The two codes of *Theodosius* and *Justinian*, the *Gregorian* and *Hermogenian* codes, the *nearae diataxeis*, or *authenticks*, and the rest of the *novellae*, are nothing but constitutions by the emperors, to whom the state of *Rome* permitted all by the *lex regia* that was before in the people of *Rome*.

Ad C A P. XXXIX.

23. **P**rolem ante matrimonium.] This point of civil law, is text in *C. tit. de naturalibus lib. l. 10. cum quis.* *Quo modo* (says *Justinian*) *non est iniquissimum ipsam stirpem secundae posteritatis priorem quasi injustam excludere, cum gratias agere fratribus suis posteriores debeant, quorum beneficio ipsi sunt iusti filii, & nomen & ordinem consecuti.* For the birth of the first is often cause of the marriage following. But it is limited by some doctors, that the woman be before in *concubinato*, in *familia retenta*, that there be *indubitatus affectus sicut in uxore*, &c. as you may see in *Bartol. ad finem τ. de concubin. Mynſinger. ad instit. de nuptiis §. aliquando. Gothofred. ad novell. 89. cap. 15.* The canon law agrees with the civil in this matter, as is shewn in an epistle of pope *Alexander III.* to the bishop of *Exeter* in *Ext. tit. qui filii sint legit. c. 6. tanta est vis.*

Ad C A P. XL.

24. **S**i bonus est bastardus.] Yet see *Tiraquell. de nobilitate, cap. 15.* & *Pontus Heuterus's* collection touching bastards at the end of his *De veteri Belgio*, and you shall find, that most of the brave spirits and able, of the former times, are in the catalogue of famous bastards. Remember *Euripides* in his *Andromache*:

Νόθοι τε (says he) πολλοὶ γινώσκον ἀμείνους.

Many bastards are better than legitimates.

Ad C A P. XLII.

25. **P**artus semper sequitur ventrem.] That is in respect of being free or bond. In liberali causa, matris non patris inspicitur conditio C. tit. de lib. causa l. 28. avi. & l. 42. placuit. & de rei vendic. l. 7. partum. where the DD. dispute this point. But in matter of honour, or, as it were, hereditary office, their law is otherwise, as you may see in C. tit. de decurionibus, l. 22. eds. l. 36. exemplo. l. 44. nullus & tit. de murilegulis l. 15. qui aut. But the true reason was upon this; that where marriage or jura connubii could not be, there always partus sequebatur ventrem, in regard no legal father was of such a birth; and the jura connubii extended, before christianity received, only to freemen. Ulpian in his tituli, tit. de his qui in potestate sunt, hath these words, which are more worth than all the barbarous doctors comments. Connubio interveniente, liberi semper patrem sequuntur; non interveniente connubio, matris conditioni accedunt; excepto eo, qui ex peregrino & cive Romana, peregrinus nascitur; quoniam lex Mensia (from whom that law is so called I remember not) ex alterutro peregrino natum deterioris parentis conditionem sequi jubet. Ex cive Romano & Latina, Latinus nascitur, & ex libero & ancilla, servus, quoniam cum his casibus connubia non sint, partus sequitur matrem. For his speech of a Roman's marrying with an Italian woman, not a Roman, believe it not without examination of such story as you may find collected in Carol. Sigon. de antiq. jure civ. Rom. lib. 1. cap. 9. and others dealing with that subject. But clearly it is true generally, that where jura connubii were not, there the Roman law makes the issue follow the mother, as the law of nature requires, which the same Ulpian saith also in π. tit. de statu hominum l. 24. lex. in which title l. 19. Celsus agrees with what we have transcribed from Ulpian. And the marriages with bond persons, were always accounted but contubernia, and not connubia, and they were stiled, contubernales, not conjuges, as appears in π. tit. de legatis 3. l. 41. uxorem §. 2. codicillis, & C. tit. de incest. nuptiis l. 3. cum ancillis.

25. Mulieres honore maritorum.] The text is not vouched out of the true place, it is in C. tit. de incolis l. 9. and also in C. tit. de dignit. l. 13.

Ad C A P. XLIV.

27. **P**roximis de eorum sanguine.] The civil law first gave the wardship (of males till xiv. of females till xii.) to the agnati, or those qui per masculos conjunguntur, and this was by the laws of the XII tables, as appeareth, π. tit. 4. de legitimis tutoribus, l. 1. Instit. tit. de legit. tutela. But the difference betwixt agnati and cognati both in inheritance, as also in wardships, Justinian took away in

Authent. 118. cap. 5. and this is that which is here spoken of, and so is that law at this day.

28. Ex parte matris.] This matter of socage wardship is grounded upon that ancient ground, held to this day regularly. Nunquam custodia alicujus de jure alicui remanet de quo habeatur suspicio, quod possit vel velit aliquod jus in ipsa hereditate clamare. Glanvil hath it lib. 7. c. 11. & Bracton lib. 2. c. 37. §. 6. which is the same in substance in Littleton §. 123. and Breton cap. 66.

29. In actibus bellicis.] For, the ground and cause of knight-service wardships, was in this, that the lords of whom the infants held, might bring them up till full age, and instruct them in military performances, that so they might be better able to do their services by which they held; which because they could not do in their infancy, the profits of the land was, as at this day, taken by the lords to supply the defect of service. Neither is this custom of wardship so new, as Randolph Higden in his Polychronicon, or rather some others not understanding him, ignorantly make it, by supposing the beginning of it here under Hen. III. Clearly wardships were before and from the Normans, at least. See the grand customier, and Glanvil, lib. 7. cap. 9. Neither, if Higden himself had understood those words in his chronicle, which he took out of a former, written by another monk of Chester, which I have seen, had any authority there been for Henry III's beginning them. His words are these, Sub anno 1224. & 6 Hen. III. magnates Angliæ concesserunt regi Henrico wardas haeredum & terrarum suarum, quod fuit initium malorum malorum in Angliæ. An old chronicle in that inestimable library of Sir Robert Cotton, written by another of Higden's convent, under the same year; Magnates Anglice reddiderunt wardas suas regi, quod fuit initium malorum. This monk knew what he said, and used the word wardas chiefly for forts, castles, honours, and the like, by which the possessors preserved their safety in those troublesome times. For at Northampton all such were rendered to the king by the nobility, upon the exaction of Hubert de Burgo, chief justice, as both Matthew Paris and Florentinus express in these words; Reddiderunt singuli castella, municipia, honores & custodias regi quæ ad coronam suam spectare videbantur. Perhaps custodias might here comprehend the wardship too of some heirs: But if so, yet they were such as some great men possessed by reason of ancient tenures, and the king would them have with the castles, and fortresses by others held, that he might enjoy them with their inheritances, as part of security against the barons. No such intent is any of the elder monks, as some would extract out of Polychronicon. Neither was that giving of wardships to the king, other than as if the nobility should now give all their wards to the king; supposing that the story were chiefly of giving wardships of body and land in the common sense of wardae, as Higden misreports it. But for the true understanding of that in story, take

Rot.

Rot. Fin. 6 Hen. III. memb. 4. where a recital is, *Provisum est de consilio archiepiscopi Cant. Episcoporum Angliae & H. de Burgo justitiarum nostri & comitum & baronum nostrorum quod a die sancti Barnabae apostoli proximo praeterito caperentur in manum nostram omnia dominica nostra, &c.* and hereupon writs go into all shires, to seize into the kings hands all such lands, castles, forts, manors, &c. But for the antiquity of wardships in Britain, both England and Scotland, see also *Hect. Boet.* l. 11. *Buchanan rer. Scot.* l. 6. & 10. & *leges Malcolmi* 2.

Ad C A P. XLVI.

30. **D** Vodecim denariorum valorem excedat.] So is it understood in the statute of *West.* 1. cap. 15. that speaks of indictments of *petit larceny* que n' amount ouster le *value de xii. deniers.* And therewith agrees *itin. Canc.* 8 *Edw.* II. tit. *corone* 404. 406. & 415. But by *Breton, cap.* 15. value of *xii d.* without more, makes it capital felony. So are also opinions in 18 *Affis. pl.* 14. 22. *Affis. pl.* 39. See *Stamford lib.* 1. cap. 15.

Ad C A P. XLVII.

31. **I** N universitatibus.] Indeed the study of the common law hath not place in our universities of *Oxford* or *Cambridge*, because another university (the inns of court) is appointed for it. Yet the statutes of the university of *Cambridge*, *earum legum* (says doctor *Cowel* in his epistle before his *institutions*, as he calls it, of the laws of *England*) *quas habet patria nostra, imperitos nos esse prohibent, ut differentias exteri patriique juris sic cognoscamus.*

Ad C A P. XLVIII.

32. **G** ALlica.] Touching this, *Ingulphus*, abbot of *Crowland*, at the conquest

thus: *Ipsam etiam idioma (Normanni) tantum abhorrebant, quod leges terrae, statutaque Anglicorum regum lingua Gallica tractarentur: & pueris etiam in scholis principia literarum grammatica Gallice, ac non Anglice traderentur; modus etiam scribendi Anglicus ommitteretur, & modus Gallicus in chartis & in libris omnibus admitteretur.* And *Robert Holkot*, a learned dominican friar in *lect. xi. super sapientiam. Narrant historiae quod cum Willicelmus dux Normannorum regnum Angliae conquiroisset, deliberavit quomodo linguam Saxoniam posset destruiere & Angliam & Normaniam in idiomate concordare, & ideo ordinavit quod nullus in curia regis placitaret nisi in Gallico, & iterum quod puer quilibet ponendus ad literas addiceret, Gallicam, & per Gallicam Latinam, quae duo usque hodie observantur.* He says the *French* continued till his time, for he died in the great plague 24 *Edw.* III. but by statute of 36 *Edw.* III. cap. 15. it was altered, which is the statute this author speaks of.

Ad C A P. LI.

33. **A** D pervisum.] This, *Chaucer* remembers in his serjeant,

A Serjeant at law ware and wisse,
That often had been at the pervise.

It signifies an afternoon's exercise or moot, to the instruction of young students, bearing the same name originally (I guess) with the *parvisiae* in *Oxford*, as they call their sitting *generals* in the schools in the afternoon; which ingeniously, I confess, I first learned out of Mr. *Wake* his *musae regnantes*, pag. 195. where he divides the *quodlibets* or *disputationes magnae*, which are their exercises of regent masters in the forenoon, from *parvae*, that is, scholar's exercise in the afternoon *Has* (are his words) *quia iis inferiores, parvas, jam etiam corrupto nomine, parvifias dicere consuevimus.*



N O T E S

O N

Sir Ralph de Hengham's

S U M M A E.

NOTES

Sir Ralph de Hengham's

21 M A E

A D

LECTOREM.

HAUT importunum est, ut de *scriptore* isthoc jam nunc publici juris facto, de opere ipso, de *sermone* denique *Aristarchis* satis in viso, & instar portentii (ut reliquus fere, quo jus *Anglicanum* conscribitur) habito, paucula praelibentur. Ex iis erat *Radulphus de Hengham* iustitiiis qui, quod lites suas fecissent postulati, & repetundarum damnati, non modo gravissime anno 16 *Edwardi* primi, cum in *Angliam* ex *Aquitania* remearet, multabantur, sed etiam ordinem amittebant. Privatis, sive centum viralibus, iudiciis, hac tempestate, praeerat iudex primarius (quem capitalem iustitiarum de communi banco phrasi dicimus forensi) *Thomas de Weyland*, publicis, *Radulphus*; capitalis *Angliae* iustitarius vulgo nuncupatus. Uterque ordine sum-motus. *Radulphus* VII. CLO. libris luebat; verum *Thomas* ille bonis omnibus exutus exulabat, quod veteri etiam jure *Romanorum* erat nonnunquam repetundarum poena, uti ad *legem Juliam* docet *Julus Paulus*. Hic autem, postquam in principis redierat gratiam, summus iudiciorum privatorum suffectus est praefectus. Et hunc & illum ita memorat vetustus annalium scriptor,

*Thomas de Weyland en banc pimes nome
Per agard de court, le reign ad foizure.
Sir Raufe de Hengham ad tant dispute.
Que du banc le roy perdu ad le see.*

Plura de iis, caeterisque, sub id tempus, iustitiiis poena obnoxiiis, habes apud re-rum *Anglicarum* consarcinatores vernaculos. Ex eadem ortus esse videtur familia, ex qua *Willielmus* filius *Adae* de *Hengham* & *Richardus* de *Hengham*; qui in pago *Norfolciensi*, plerunque *Thetfordiae*, iustitii ad *assisas* capiendas & ad gaolam deliberandam, sub initiis *Henrici* tertii, in * archivis saepius memorantur. Obiit anno salutis reparatae CLO. CCC. IX. hoc est anno *Edwardi* secundi secundo; quod ex actis publicis transactionum, quas *fines* appellamus, cognoscitur. Marmore ejus sepulchrali, in *D. Pauli* aedibus, restant inscripti, literis fugientibus, versiculi hi miseri.

*Per versus patet hos, Anglorum quod jacet hic flos;
Legum qui tuta dictavit vera statuta,
Ex Hengham dictus Radulphus vir benedictus.*

Summas hasce, magnam *Hengham*, & parvam *Hengham* vocant. Utraque in jus vocandi seu vadiandi, excusationum, & exceptionum, in actionibus maxime de *reſto*, de *dote*, & de *assisa*, formulae & verba solennia continentur; quae tamen aevo nostro vix sint in usu, praxi nimirum juris alio plerunque vergente, inde tamen colligas licet quanta fuerint apud *priscos* juris *Anglicani* peritos autoritate, quod in optima notae codd. vet. stant. mss. ambae velut agendi normulae olim a pragmaticis circumferebantur. Accedit etiam, quod quisquis ille fuerit qui magnam *chartam* & quae sequuntur *Latine* & *Francice* conscripta in notissimo illo juris enchiridio, primum *Anglico* donaverit idiomate, has etiam *Radulphi*, ut lectore ante alia dignas, transtulerit, alteramque *michele Hengham*, alteram *luttie Hengham* inscripserit. Manuscriptum exemplar illius versionis aetatem *Edwardi* sive II. sive III. redolentis, penes est virum cl. multijugae item eruditionis, & vetustatis peritissimum *Franciscum Tate* I C^{um}. Stylus scriptoris, vel potius ipsa styli vocabula, satis sunt a *Latinitate* aliena, uti & veteres fere qui restant autores, constitutiones, atque acta publica juris

* Rot. pat. 10 Hen. III. mem. 11. & alibi eodem rot. & clauf. 11. Hen. III. memb. 8.

Anglicani. Caeterum, cum ante *Normannos*, *Anglice*, tempestate vero citeriori, *Francie*, actiones heic intenderentur, & solennes pro tribunali disputationes haberentur, sermo autem *Latinus* casu accederet; id fere necessum est eveniret eis, qui, sive publicis actis sive privatim conscriptis libris, jus *Anglicanum* Latio donare sermone sunt adgressi, quod olim *Theophilo*, *Antecessori*, *Constantino Harmenopulo*, autori *Basilicon*, *Athaliatae*, *Blastari*, *Photio*, *Theodoro Balsamoni* atque ejusdem farinae aliis accidit, qui jura *Romanorum* & civilia & pontificia *Graece*, in orientalis imperii usum, verterunt; ut nimirum quamplurima vocabula mere *Latina*, *Graeco* in contextu, mutatis tantum modo elementis, retinerent. Cujusmodi sunt, *Ἰντέρδικτον δεκορέμ βονορέμ*, *Ἀδελίτζια ἀγωγὴ*, *βονορέμ ραπτορέμ*, *δεδόλω μάλω*, *δεινοφροκιοσσο*, *ἠρέμ*, *ἰψοίρε*, *ἐμ μαγικαῖσιν*, *ὑπερσιτάς*, *φιδεκομισέμ* pro *interdictum de quorum bonorum*, *AEdilis actio*, *bonorum raptorum*, *de dolo malo*, *de inofficioso*, *in rem*, *ipso jure*, *emancipare*, *universitas*, *fidei commissum*, atque id genus sexcenta alia passim occurrentia. Minime enim ignari erant, non tam *Atticizmos* in oratione, nec *Graecas* voces in nominum versione sectari se debere, quam juris peritorum, quorum responsa, atque imperatorum, quorum sanctiones interpretarentur, mentem servare. Ridiculum est, pharmacum a poculi materie aestimare. Infanum, *Decembri* eo repudiare lacernam, quod non ex lana sit sive *Apula*, sive *Attica*, sive *Lemsteriana*; id quod faciunt ferme ii, qui ob orationis barbariem res ipsas rejiciunt; quod optime olim notavit magnus *Plutarchus* etiam longe charissimus *Musarum* alumnus, in eos, qui rebus seu docendis, seu dicendis sermonis puritatem fastidiosi anteferunt. Inter ea autem scripta forsitan haec *Radulphi* fuerint censenda, quae in antiquariorum oculis servata, non tam reconditum quid aut inauditum doceant, quam ideo maxime desiderantur, ut quae, quanta, & cujusmodi doceant, cum nimirum magna prae se ferant nomina, studiosorum votis innotescat. Nec tamen desunt *Radulpho*, quae valorem ei concilient. Absque illo esset & *Henrico* de *Bractona* (qui etiam plurima, nec tamen quae scitu digna omnia heic habentur, nec tam certo formularum ordine, tradidit) haut pauca de excusationibus praesertim & vadimoniis desertis (*essoins* & *defaults* in foro vocant) prorsus forent incognita. Caeterum his frui quisquis es lector, & vale. Ex aedibus *Interioris Templi*. *Prid. Cal. Augusti*. CIO. DC. XVI.



NOTES

ON

Sir Ralph de Hengham.

PAG. 1. *Primicerius*.] He means *protho-notaries*. The word is often in constitutions of the time of the declining empire; as *primicerius sacri cubiculi, lampadariorum, officiorum palatinorum*, and the like. Amongst them was *primicerius notariorum*; that is, the emperor's chief notary. *Alciat. ad cod. 12. tit. 7. Primicerius, notarius principis dicitur, & honore inter notarios primus, sicut sequens dicitur secundicerius. Kiers. n. ceram significat, κέραμα, tabulam signatam, in qua antiqui scribebant; ab hujusmodi igitur tabulis dicti sunt primicerii.* Those *primicerii notariorum* in Rome, although discharged from their office, yet remained in equal degree of honour with the proconsuls, as appears in a constit. of *Gratian, Theodosius*, and *Valentinian* in *cod. Theodos. lib. 6. tit. 10.*

Pag. 2. *Modus cyrograffandi*.] It seems by this, that either we have not all his first copy, or else he never finished what he here promises, for we have no more of it.

Pag. 5. *J. filio Alani comiti de Arundel*.] By marriage of a *Fitz-Alan* with the heir female of the *d' Aubignies* earls of *Arundel*, came that surname, which is here, as a word literally signifying, turned into *Latin* by *Filius Alani*. It was usual in those elder times to do so. As to express *Champernoun*, by *de Campo Arnulphi* 7 *Ed. III. fol. 35. a. & 49. b.* and the rolls have commonly *Filius Petri, Filius Herberti, de Bello monte, de Bello fago, de S. Leodegario, de Monte Canisso, de Monte forti, Mortuo Mari*, for *Fitz-Peter, Fitz-Herbert, Beaumont, Beaufrage, St. Leiger, Mount-Chenys, Mount-fort, Mortimer*, and such more. So in 29 *Ed. III. fol. 30. b.* Colle beside *Somerham* and *Colle juxta Somersham*, although Colle indeed appeared in the record to be in *Somersham*, are held all one in expressing the name of that place. In 30 *Ed. III. fol. 2. b. villa de Pontefracto* is *Pontret* in a *praecepe*, and in 38 *Ed. III. fol. 28.* Newark is taken in the name of the prioress of *Newark*, as a name signifying a new work. But in 25 *Ed. III. fol. 38. a. apud villam Sancti Petri* is disallowed for *apud Petreston*, though one interpret the other; and the case of *P. 11 Ed. III. tit. quid juris clamat 2.* in the *ms.* is, that *John de Brayford* brought the writ against *Isabel Peverel*, grounded upon the note of a fine, whereby *Gilbertus filius Stephani* had granted the reversion of the manor of *Wolward* which

Isabel held for life, to *John* in fee; and *Parn-ing* took exception to the note and writ, because this *Gilbert's* father's name was *Richard Fitz-Esleven* which *Richard* gave the manor in tail to *Isabel*, &c. All that is stood on, in the argument, is that of the name; and in the *ms.* occurs also, *icy fust dit que tout fust il utlaghe per tiel nome que il ne lereit pas per tant atteint, &c. & auri fil fust endite per tiel nome que home ne irreit pas de ly arreiner, &c.* and so *Stonar* (as in the print) gives judgment against the consuee. This case is remembered in 11 *Affis. pl. 4.* And by 11 *Ed. III. tit. estoppel 228.* *Filius Thomae* in *Latin* cannot be a surname; but, that it is a good plea, to shew that the party so desigued had a father of another name, it is held 40 *Edw. III. fol. 22. a. 44 Ed. III. fol. 12. b.* and the law hath been lately so taken, as you see in *Osborne's* case, *Rep. 10. fol. 132. b.* For other authority, how *filius* may be understood either as part of a name, as for a legitimate son, or as a note of only natural relation, see 38 *Ed. III. fol. 22. Edw. III. fol. 11. a. & 25. a. 3 Hen. IV. fol. 14. a. 30. Affis. pl. 51. per Seton. 14 Ed. III. tit. estoppel 173. 13 Rich. II. tit. breife 645. 10 Edw. IV. fol. 12. a. Curson's* case.

Ib. Eadem gratia Lincolnensi episcopo.] Nothing is more usual of that time, than to find bishops, abbots, priors and the like, to have *Dei gratia* in their titles: But later ages hath appropriated it to kings. *Lewis XI.* of France would not endure, that *Francis* then duke of *Bretagne* should use it. See *Bodin. de republica, lib. 1. cap. 10.* and others noted in the titles of honour, pag. 116.

Pag. 6. *In liberum burgagium*.] As free socage in the country, of lands, so free burgage in boroughs, and cities, in the tenure of houses, regularly; and they are the two base tenures in regard of knight's service. *Burgagium, socagium, & feodum militare*, make usually *Bracton's* tripartite division. See him *lib. 4. tract. de Affis. mort. antecessoris cap. 14. & in cap. praecedent. §. 3.* of burgage: *Revera terminatum est quod potest legari, ut cattallum, tam haereditas quam perquisitum per barones Londoniae & burghenses Oxoniae, & ideo verum est quod in burgis non jacet assisa mortis antecessoris*; that must be understood only of such boroughs as had by custom their lands devisable. See *burgages devisables* in

stat. 11 Ed. I. *Acton Burnell*, *Bract.* fol. 272. a. and *Thorpe* 21 Ed. III. fol. 21. b. Tradesmen that held these burgages are the *burgenses* intended in stat. *Merton* cap. 7. where an heir of a gentleman (a tenant by knight's service) is disparaged, if married to *burgensis* or *villanus*; i. e. either *tradesman*, or *husbandman*.

Ib. Vel maritagium.] Although *Hengham* lived and wrote after *Westm.* 2. yet this, as other examples of his writs of right are, is of elder time than the statute. *Bracton*, fol. 329. a. hath this very writ in substance, as of his time; and thither must *liberum maritagium* be referred. For clearly since the statute of *Westm.* 2. a writ of right would not lie for lands held in frank marriage.

Ib. Nec pro omni servitio.] But *Bracton's* writ with that tenure hath expressly, *pro omni servitio*.

Ib. Portandi brevia.] Now *brevia* is appropriated to the signification of the king's writs. Understand it in this tenure, which is mentioned also in *Bracton*, fol. 328. b. and *Regist.* orig. fol. 2. b. for letters of message, and the like. For, because the king's writ was a short letter of command, therefore had it the name of *breve*. So *Bracton*, lib. 5. de except. cap. 17. §. 2. and, in the civil law, both *breve* and *brevis* are in like sense. You may see *C. tit. de conveniendis fisci debet. l. 5. de apochis public. l. 1. & tit. 42. lib. 1.* restored by *Gothofred*. Very often also for letters, *brevēs* and *brevia* occur in *Theodosius's* code, *Cassiodore's* precedents, *Symmachus's* epistles, other of that time. The later *Grecians* called it *βρεβιον* & *βρεβιον*; yet those are as ancient as *Julian* and *Eusebius*, who use them, and those, which wrote them, they called *βρεβιατορες*, or *breviatores*, which I read in *Justinian's auth.* 105. and an old glossary of the law interprets *βρεβιον*, by *ἡ ἐπιτομή*. Letters of presentation given by an earl in 45 Ed. III. tit. exchange 10. are titled, *brief de presentation*.

Pag. 7. Quando xl. solidi cap. de scuto.] So in *Bracton* also is the service expressed. But the *Register*, fol. 2. a. hath a note that makes this form obsolete. Now it should be, *per servitium quartae partis unius feodi militis, &c.* Escuage is here apparently meant. Neither had the antients any more particulars in denoting it, neither by them was it restrained to war against the *Scots* or *Welsh* only, as by later authority it seems to be, where only *Scotland* and *Wales* are spoken of, as in *Littleton*, *Fitzh. nat. br.* fol. 83. *C. Regist.* fol. 88. a. 19 *Rich. II. tit. gard.* 165. *Plowd. com. c. Rice Thomas* fol. 129. b. and elsewhere. In the red book of the exchequer, *Alexander* arch-deacon of *Sbrowsbury* under *Hen. III.* relates an escuage of two marks out of every knight's fee, in 7 *Hen. II.* for the enterprize against *Tbolouse*, in 8 *Hen. II.* one mark for the same purpose; in 18 *Hen. II.* xx s. *pro exercitu Hiberniae*, and others he hath for war in *Normandy*, *Poictiers*, elsewhere, under *Rich. I.* and king *John*. And that they were such as are now understood in our tenure by escuage, will more openly appear

in *rot. claus.* 16. *Johannis memb.* 24. in dorso, where the *scutagia Pictaviae* are at large in a catalogue; as *Will. de Canteburgia*, quia habuit milites suos cum domino rege in *Pictavia*, habet *scutagium*. And there is also, *Mandatum est domino Petro Wintoniensi episcopo*, he was then chief justice of *England*, quod habere faciat *Willielmo comiti Arundell* *scutagium de xvi. feodis militum quae Robertus de Tate-shale, qui est in custodia sua de domino rege tenet in capite s. de scuto 111 marcas*, which passage I sufficiently understand not. If *Tate-shale* were in ward to the earl, as so it must be taken, either by the king's grant or otherwise, why should he pay escuage? If his land held in *capite* were to him by descent, how came the earl to the wardship? except by grant. Admit he had it by purchase, why should the earl have the escuage? except by way of liberate from the king's bounty. Very many other escuages are there, as *Henricus de Tayden* habet *scutagium de feodo vi. militum ad opus filii sui qui est in Pictavia*. *Robertus de Cardman de LX. & xiv. feodis militum pro filio suo qui fuit in Pictavia*. *Thomas Pannell* habet *auxilium l. librarum Turonensium de libere tenentibus suis & aliis de insula de Geseley*. But, for the default of tenants not coming to the army, a place in the leiger book of *Abingdon*, in the hands of my noble and much deserving friend, that best furnished antiquary *Sir Robert Cotton*, is worth observation. *Est juxta Abbedune burgum* (are the words) *unius militis mansio, quae Lea vocatur*. *Hanc Willielmus regis camerarius de Lundonia tenebat*. This *William* held it of the abbey, and by knight's service. In 2 *Hen. I.* forces were levied to encounter *Robert* duke of *Normandy*, when *Farritius*, abbot of *Abingdon*, required of *William* his tenant to find him a man for the army, as his tenure bound him to do; but *William* denied it, whereby the abbot was driven by other means to supply the number of his part. The abbot afterward, *tandiu* (as the book saith) *in praesentia sapientum, hanc rem ventilari fecit, ut ille neutrum negaret, imo fateri sic esse veritatem cogeretur, unde cum lege patriae decretum processisset ipsum exortem terrae merito deberi fieri, interpellatione bonorum qui intererant virorum, reddidit terram illam illi*; and so the tenant under fair conditions had his land again. This *Lea* is now called *Befiles-Lee*, and is of the possessions of the *Fettiplaces*.

Ib. Unde decem carucatae, &c.] This form also is disallowed by the register; but, when it was in use, no particular quantity of the service was expressed, because the land by reference to a knight's fee shewed it's own services. *Bracton lib. 5. tract. 1. cap. 2. Ubi quantitas feodi exprimitur in quantitate terrae petita, non ponitur aliquod servitium, quia in quantitate feodi ostenditur quantitas servitii*; it being all one in substance to say, that one holds iii. carves, whereof viii. make a knight's fee, and that he holds so many acres or carves *per servitium dimidii feodi militis*. Carves and hides are uncertain quantities, yet

by that name, division was antiently made in levying *hidage* and *carucage*. See what is noted in *titles of honour*, pag. 270. & *seq.* and in *codice Abingdoniae*, pag. 42. *Geoffredus de Ver Albricifilius* gives to the abbey some possessions *cum duarum hiderum duodecies xx. acrarum terra disferminata*. & *Hen. I.* gives to *Maurice* bishop of *London*, *duas bidas de duodecim xx. acris*, so that there *ccxl.* acres is taken for a hide. In the monks ever with one consent almost, it is always a plough-land; and *St. Dunstan* in the year *cccc.lxiii.* gives *terrae partem septem aratorum, quod Anglice dicitur septem bidas*: It is in *cod. chart. arch. Cant.* Thus should *bida* and *carucata* be all one, for *carucata* speaks the plough, *charon* in *French* so signifying, as *Littleton* also notes. But by antienter authority, *caruca* is not a plough, but a *chariot*, or such like, as *caruca cum junctura legata*, *mulae quoque legatae*, which is found in *Jul. Paul. recept. sentent. lib. 3. tit. 6.* where the old interpreter hath *carpentum*, for *caruca*. In like sense is *caruca* in *Martial*, *Pliny*, and others. It seems when *hidage* or *carucage* was granted, the commissioners for levying it, with aid of jurors, used in every shire to assess how much should be in certain reckoned for a hide or carve. As in *9 Rich. I.* when an aid of five shillings, of every caruc in the land, was to be levied, *Qui electi fuerant & constituti ad hoc negotium regis faciendum, staverunt per aestimationem legalium hominum, ad uniuscujusque carucae wainagium centum acras terrae*. Here c. acres were for that purpose a hide. See *Roger de Hoveden*, fol. 442, & 443. Neither is any difference betwixt *carucata* and *carucae wainagium*; for *wainagium* is *tith*, as it is *Englished* in the antient *English* of *magna charta*, or *gainage*, as it is called, *Westm. 1. cap. 17.* See *Bracton*, fol. 73. a. 4 *Ed. II. tit. avowry* 200. and especially *Lawe's case* in *rep. 9. fol. 123. b. & seq.*

[Pag. 8. *Seditione personae domini regis*.] *Bracton*, fol. 118. b. *Si aliquid egerit vel agi procuraverit ad seditionem domini regis vel exercitus sui, &c.* so *Glanvil. l. 1. cap. 2.*

[*lb. Vitae & membrorum*.] Judgment of *vie & de membre* is used for judgment of death, or punishment capital, in *Stat. Westm. 2. cap. 38.* 3 *Ed. III. fol. 19. a. pl. 34.* in 18 *Ed. III. fol. 32. a. pl. 5.* 13 *Ed. III. tit. utlarie* 49. and elsewhere often. But antiently also part of it is taken for judgment of *loss of life*, and part for *loss of member* only, as in *West. 1. cap. 15*—*Pour le quel un ne doit perdre vie ne membre.* And *Bracton* speaking of punishments, *lib. 3. tit. de actionibus cap. 6.* saith, *Sunt quaedam quae adimunt vitam, vel membrum*, and the like hath he in *tract. de corona cap. 36.* *Majora crimina aliquando ultimum inducunt supplicium, aliquando membrorum truncationem.* One flying to a sanctuary by the laws of *William I.* had *pais de vie & de membre*, as the words of it are in the book of *Crowland*. And *amissio membrorum* was a special punishment of rape before *Westm. 2.* as you see in *Bracton lib. 3. tract. de corona cap. 28.* He that was con-

demned lost his eyes and his stones; but by *Glanvil*, before *Bracton*, it appears it was death, *lib. 14. cap. 6.* But, that the judgment of *vie & de membre* in *Westm. 2. cap. 38.* was only judgment to be hanged, and meant about that time, to be so, is plain by the book attributed to *Breton*, cap. 14. where the author hath reference to the statute of *Westm. 2.* made in 13 *Ed. I.* which observe also for another purpose. It is commonly affirmed, with one consent, that *John le Breton*, bishop of *Hereford*, under *Hen. III.* and *Ed. I.* wrote that book. But it is clear that this *John* the bishop was dead ten years before the stat. of *Westm. 2.* here cited; for he died in 3 *Ed. I.* which the story of *Florilegus* the monk of *Westminster* enough justifies; yet, that no scruple in that may remain, it is to be proved also by infallible record. In *rot. pat. 3 Ed. I. memb. 203.* the *cogne desire*, for choice of a new bishop there, relates *quod cum ecclesiae vestra Herefordensis pastoris solatio per mortem bonae memoriae Johannis nuper Herefordensis episcopi sit destituta, alium vobis eligendi in episcopum, &c.* this was 23 *Maii*; and in *memb. 19.* of the same roll, the royal assent is given unto the choice of *Thomas de Cantilupo*, successor to *John le Breton* being dead. All this is most certain; and it is as certain, that, about that time, was a judge of this name; for in *rot. claus. 51 Hen. III. memb. 12.* *Mandatum est* *Richardo de Ewell & Hungoni de Turri emptori garderobae domini regis quod habere faciat dilectis & fidelibus suis Johanni le Breton & Henrico de Monteforti justitiariis suis robas suas integras, prout caeteris justitiariis domini regis invenire consuevit, quamdiu steterint in officio domini regis*; and the *dors. rot. pat.* of that year hath most frequent mention of *John le Breton*, and *Henry de Bracton* for judges of special assizes. He is sometime called *Bretun*, then *Briton*, and also *Breton*, and *Florilegus* sub anno 1275. *Obiit hoc anno Johannes Bretoun episcopus Herefordensis, qui admodum peritus in iuribus Anglicanis, librum de eis conscripsit, qui vocatur le Bretaun.* That there was a judge of that name, and that about that time one of that name was bishop of *Hereford*, here appears plainly, and that a book of common law called *le Bretoun* was written, and by the bishop, if you believe the monk and the consent of late writers which speak of it. But what book ever the bishop wrote, it cannot be this we have now left under that name, unless you will allow that one dying in 3 *Edw. I.* could cite a statute of 13 *Edward I.* as our *Breton* doth in this of rape, or the statute of 6 *Ed. I.* of *cessavit* at *Glocester*, as he doth in his chapter *de purchase conditionel*, or the statute of *Winchester* of 13 *Ed. I.* as he does touching highways, in his chapter *de pluribus foris*. Some other author then, than the bishop of *Hereford*, must be sought for that volume. This, by the way. For judgment of *membre*, antiently it was in appeals of *maihem*; to this day the count is *felonice*, but nothing but damages are now recoverable, nor was the law otherwise

otherwise under *Ed. III.* as appears by 22. *assif. pl. 82. 41. assif. pl. 16.* and other books. But before that time, the party attainted lost membre pur membre, as it is said 18 *Ed. III. fol. 20. a. pl. 31.* with which agrees *Breton, cap. 25.* where is added, *Si la pleint soit faite de femme que avera tolle a home les membres, en tel case perdra le femme la une mein per judgment, come le membre dont el avera trespasse;* and if a knight were struck by a ribaud per felonie sans desert de chevalier, the ribaud (saith the book) was to lose his hand; and it appears in *Glanvil, lib. 14. cap. 1.* and *Bract. lib. 3. tract. de corona cap. 24.* that the trials of maihem were by duel or ordels, as of capital offences. See *infra, pag. 87.* where, if the husband had been by judgment, *demembratus*, the wife lost her dower; and for particulars, see there more, and the notes. By king *Knout's* laws, *cap. 50.* adultery in the woman was punished by loss of nose and ears, to which, it seems, reference is in that of *William I.* his laws in the *ms. Ingulphus, si femme est judgee a mort u a defaciun des membres ki seit enceinte*, that justice should not be executed till she be delivered, which in judgment of death is law at this day. And in *Fleta, lib. 1. cap. 38.* for petit larcenies, or cutting of purses with nothing in them, the pillory and loss of ears was the punishment. See 10 *Hen. III. tit. corone 434.* And, in *Fleta, lib. 2. cap. 5.* of every common whore following the court, the marshal, at the first apprehension, was to exact 4d. at the second, to bring her before the steward, who was to take her name and forbid her the court; at the third, *considerabitur quod amputetur ei trespatorium, & quod tondeatur;* at the fourth, *amputentur ei superlabia, ne de caetero concupiscantur ad libidinem.* At this day, saving for striking in the presence of the king or his courts, no loss of member is in use by course of common law. Ancient and late examples are of punishment of such striking by loss of the right hand, in 22 *Ed. III. fol. 13. a. 19 Ed. III. tit. judgment 174. 39. assif. pl. 1. 33 Hen. IV. Br. tit. paine 16. Stamford fol. 38. a. & 2. & 3 Elizab. Dy. fol. 188. b.* By late statutes, for some offences the hand, or ears are to be cut off.

Ib. Curiam regis majorem.] He calls that curia major here, which hath consians of all capital offences; and in his following chapters the same name he uses for the court, whither by *pone*, a suit in a writ of right is to be removed, that is clearly the common pleas; and *Bracton fol. 105.* hath *loquela a comitatu transferri potest ad magnam curiam*, where often to him *magna curia* is the common pleas plainly; so doth he use the same title in *fol. 332, §. 14.* and often elsewhere. But it seems, that to *Hengham*, *major curia* is no singular name for any one court: But for any of those of the king's highest courts, which have that name in regard of all inferior, and the subject which he speaks of with it, may design what court he means; as here, that he means the king's bench, or *aula regia* (as *Bracton* calls it, *fol. 105. b. §. 2.*) ap-

pears by the crimes recited afterwards; when he talks of a *pone* to remove the suit of a writ of right into *major curia*, there it must be the common pleas. And it seems in *pag. 16.* he takes the name expressly, as well for the court of justices in *eire*, as for the common pleas. Note the words: *Quamvis essonum de malo lecti in majori curia domini regis, utpote ad bancum vel in itinere iustitiariorum jaci debeat tertio die, &c.*

Ib. Placita vero de furtis.] How the law hath been since taken touching pleas of the crown to be *viscontiel*, is taught in *Stamford, lib. 1. cap. ult. & lib. 2. cap. 14.* No capital offence was, by this opinion, to be heard and determined in the county. For though he name *furta* here, it seems, he means not that theft which is capital, but as *furtum* is in the civil law, so he understands it; that is, only for wrongful taking away goods, as the word *roberie* is used in *Westm. 1. cap. 37.* And all other kind of felonious taking, our author comprehends before, in *roberia*; which in those times expressed also all felonious taking, or *furtum* in that sense, as it is now used; witness *Bracton* cited by *Stamford fol. 27. b.* Yet in *Glanvil, lib. 1. cap. 2. furtum* is excepted to the sheriffs court, as out of such offences, *quae ultimo puniuntur supplicio aut membrorum truncatione.* It is no doubt but *Hengham*, in writing this, had regard to *Glanvil*, as it may appear by the same words in both; so had *Bracton*, speaking of this matter, *lib. 3. tract. de corona, fol. 154. b. Ad vicecomitem pertinent hujusmodi placita in comitatu. Cognoscere quidem potest de medietis, plagis, verberibus, & consimilibus, nisi quaerens adjiciat de pace domini regis infracta, vel feloniam apponat. Extunc n. se vicecomes non debet intromittere, cum hoc tangat personam ipsius domini regis & coronam suam.* But, he says the coroners were to inroll appeals of capital offences, and present them in the *eire*. So that in those times, by *Bracton's* opinion, if one had sued criminally in the county, and concluded *contra pacem domini regis, &c.* the court had not jurisdiction; but if *contra pacem vicecomitis*, then it had, so is his difference there, and *pag. 145. b.* For in the one case, judgment *de vie ou de membre*, or imprisonment, was to follow, in the other, only *amercement*, or *poena pecuniaria*, as he calls it. But see this author, *pag. 21.* where he speaks of appeals *sine brevi*. Appeals then might be taken or commenced, but not determined in the county, if they were *de pace regis fracta*, so it seems. See *stat. magna charta, cap. 17.* which belongs hither. Neither is it amiss to remember a judgment given in the time of *Hengham*, and before him in 30 *Ed. I.* not from the matter here spoken of. It is in *P. 30. Ed. I. ms. fol. 280. a.* where the sheriff of *Yorkshire* is commanded, *Que il feist venir le appel Jon de Morton ensemblement ove Jon de Thouthorp attache per sun appel ove tote les choses meme le appel touchans devant justices en bank per breve de la chancelerie. Le quel retogna son breve que il aveit maunde au meyre* &c.

et a bailliffes de la ville de Everwike, &c. Les queux responnent que Jon de Morton appella Jon de Thouthorp que il ly assely a tant purpense le demaine prochain devant la feste de saint Nicholas en la ville de Everwike en Steyngate et illeke ly robba de un tabbard pris de treis sous e de dussie deniers d'argent contra la pees, &c. Demand fut au meye la manere del attachment, e s'il y fut meinoure, et par queu garrant ils tenent tcu maner de play, il dist que Jon de Moreton leva la mene sur Jon de Thouthorp, e trouva pleges de suer son appel au coroners de la ville par queu eus le attacharent e le passent e tinoient le play en lur gylde hale de cest appelle par usage de la cytie usee de tens d'ont il ne ad memoire a tencer sans brebe e sans meynoure ou pulfre, &c. *Et quia secundum legem & consuetudinem regni, major & coronatores aliquis civitatis hujusmodi appella coram eis audire non possunt, & terminare, nisi eorum cognitio per cartam domini regis vel progenitorum ejus, vel per breve domini regis de hujusmodi appello coram eis audiendo & terminando specialiter sit concessa, cum ea ad dominum regem ratione juris sui regii & non ad alium, in regno regis, pertineant; Consideratum est quod appellum praedictum coram ipsis majori & coronatoribus habitum, tanquam coram eis qui nullum in hujusmodi casu habent jurisdictionem, adnulletur & pro nullo habeatur. Et quia praedicti major & coronatores nullum in curia hic manuopus vel pelfrum proferunt, nec idem Johannes de Morton solempniter vocatus appellum praedictum in curia hic prosequitur, visum est curiae quod ad sectam domini regis versus praedictum Johannem de Thouthorp in curia hic non est procedendum. Et ideo praedictus Johannes de Thouthorp inde sine die. Et ad judicium de praedictis majore & coronatoribus qui appellum illud tenuerunt sine warranto.* These are the words of my report very antiently written. I transcribed it all, because divers things are in it specially observable.

Ib. Melletis.] Glanvil and Bracton have de medletis, for sudden affrays or dislikes. The word is so used too in *regiam majest. l. 1. cap. 3.* and hence is our chance medley, corrupted from *chaud melle*, which signifies hot, or sudden debate; whence, in Scotland, *chaud melle* is opposed against forethought felony, as *manslaughter* with us against murder. See Skene ad *cit. loc. & de verb. signific.* But, chance medley is in Stamford otherwise. Skene interprets *chaud melle* by *rixa* in the civil law.

Ib. Hutesio.] Although *clamor* and *butesium*, or *buesum*, is for hue and cry in our law, yet it seems here it is a word made from *butin*, i. e. *scolding, brawling, contention*, whereby the peace of the county was disturbed. For all the rest here spoken of are offences, amongst which you cannot well reckon *hue and cry*; although of that the sheriff had power to determine, if it grew in question betwixt the appellant and appellee, *utrum appellans butesum levaverit. Bract. lib. 3. fol. 145. b. §. 2.*

Ib. Ubi non agitur de pace domini regis fracta.] He means, when the plaintiff or appel-

lant did not complain of the king's peace broken, but only of the peace of the sheriff; so Bracton teaches the law of that time, that if, for the like, suits were in inferior lords courts, the conclusion was *contra pacem domini*; if in the court of a corporation, *contra pacem ballivorum*, if in the sheriff's, *contra pacem vicecomitis*. Neither means Hengham that those offences were not in themselves *contra pacem regis*, but that in the suit commenced in the sheriff's court, the king's peace broken might not be complained of; which well agrees with, and explains the law now, that without writ, the sheriff cannot hold plea de *transgressionibus contra pacem domini regis*, as it appears in *Fitzh. nat. br. fol. 47. A.*

Pag. 9. Hanc assisam.] Supposing the mise be but on the grand assize.

Ib. falsat.] That is, by oath prove that the lord's court hath failed him of right; the two following chapters have more of it, and see Bracton, lib. 5. fol. 329, & 330. where the falsifying (as it was called) of the lord's court, is by oath taken by the demandant, with two others, in the lord's court, or at his manor house; but Hengham allows it by the oath only of the party; this Bracton styles *defalta probata*. Touching this obsolete usage, a case of 11 Hen. II. is worth observation. It is related in Roger de Hoveden, pag. 283. when Thomas Becket desired the king, he might, with his leave, go visit pope Alexander, then commorant in France, the king answered him, *Tu prius respondebis mihi de injuria quam fecisti Johanni Marilchallo meo in curia tua. Conquestus n. erat regi idem Johannes quod, cum calumniatus esset in curia archiepiscopi terram quandam de illo tenendam jure haereditario, & diu inde placitasset, nullam inde potuit assequi justitiam, & quod ipse curiam archiepiscopi falsificaverit secundum consuetudinem regni, cui archiepiscopus respondit, nulla justitia defuit Johanni in curia mea, sed ipse (nescio cujus consilio an propriae voluntatis motu) attulit in curia mea quandam topet, & juravit super illum, quod ipse pro defectu justitiae a curia mea recessit, & videbatur justitiam curiae meae, quod ipse injuriam mihi fecit, quia sic a curia mea recessit, cum statum sit in regno vestro, Quod qui curiam alterius falsificare voluerit, oportet eum jurare super sacrosancta evangelia. Rex quidem, non respiciens ad verba haec, juravit, quod ipse haberet de eo justitiam & judicium. Et barones curiae regis judicaverunt eum esse in misericordia regis, & quamvis archiepiscopus niteretur judicium illud falsificare, tamen prece & consilio baronum posuit se in misericordia regis de D. libris & invenit ei fidejussores.* That toper was a church book of the time, and it is what in a constitution of Robert Winchelsea, is called *troperium*, in Lindv. *Provinc. constit. tit. de eccles. aedific. c. ut parochiani*. Of this falsifying, more in Breton, fol. 275. according to Bracton; and the *serviens domini regis* in Bracton, appears to be *bailiff of the hundred*, or some such minister.

Pag. 10. Vel per duos, &c.] If you read &, then agrees he with Bracton and Breton.

Pag. 11. *Non debet attornatus aliquis.*] Examine it by Breton, cap. 126. fol. 286. a. stat. Merton, cap. 10. regist. orig. fol. 26. § 27. temps Ed. I. tit. attorney 106.

Pag. 12. *Breve de pace.*] Mention is of this course, temp. Ed. I. tit. droit. 45. and precedents are of the writ in Glanvil, lib. 2. cap. 8. and Bracton, fol. 331. §. 5. See also Breton, fol. 277. b. § regist. orig. fol. 7. b.

Ib. *Iustitarius ad omnia placita.*] Justices in eire; which were in some like nature to the now justices of assize, but had not their circuits so often. The beginning of them was in 22 Hen. II. which was by example after followed. See Hoveden, pag. 313. & 337. & Geruvas. Tilburienf. in dialogo de scaccario. But it seems great delay of justice might so have been. For the eires were not very frequent, and by some, the distance of them was seven years. So says Scrope, in temps Ed. III. fol. 143. a. and see fol. 149. a. Aldenham. Glanvil speaks not of them in this case, it being not in use in the infancy of eires, to have the *prohibemus* referred to them; succeeding time brought in that; and about Ed. III. the eires were left.

Ib. *Ad corporale sacramentum ponere, &c.*] Bracton, fol. 106. a. *Non potest aliquis baro, vicecomes vel alius de liberis tenementis cognoscere, nec tenens tenetur respondere sine praecepto vel warranto domini regis, nec possunt aliquem de hujusmodi ad sacramentum sine warranto compellere.* See stat. Marl. cap. 23. 44 Ed. III. fol. 19. b. & 39. Ed. III. fol. 35. b. Touching being compelled to oath without warrant of the king. See the case, T. 35 Ed. I. recited in titles of honour, pag. 263.

Pag. 14. * *Congerere.*] it may be, *contra-here* was the word of the author.

Pag. 16. *Non plus, quamvis.*] Read *non plus. Quamvis, &c.*

Ib. *Alibi videtur n.*] Whatsoever *alibi* should be (some copies having *tales*, some *talas*) continue it with *videtur quod cal. &c.* the reason is plain.

Pag. 17. *Turrim London.*] Refer hither Bracton, fol. 345. § 359. a. and 3 Hen. III. tit. *essoine* 186. and the reason of day given at the Tower, see in Hengham, pag. 45.

Ib. *Anno bissextili.*] The four excrement quadrants of a day in the Julian year were, and are at the end of every four years space, put into one day, which added to the 365 of the common year, makes 366 for the *leap*, or *bissextile* year; the addition was not to the end of the year, but the day is so intercalated in February, that it falls to be joined with the six *calends* of March, which being every fourth year so made of two days joined, denominated their year with *bissextus*, because *eo anno bis diceretur sexto cal. Martias*. That ordinance of the *leap* year, after spoken of, is dated *apud Winesbore, 10. die Maii anno regni nostri* 54. by Hen. III. in the old statutes. See for this matter, Bracton, fol. 344. b. and 359. b. In the Roman civil law, the like account was of the intercalated day, and it, with that wherewith it was joined, was as one day. Ulpian in π. tit. de minoribus l. 3. denique §. 3. Proinde & si in bissexto natus est, sive priori sive post-

riore die, Celsus scripsit nihil referre. Nam id biduum pro uno die habetur, & posterior dies kalendarum intercalatur.

Pag. 27. *Reddenti esson.*] More largely of that in Bracton, fol. 351. §. 352.

Ib. *Affidatis in manibus.*] Read *affidati*. The affidavits here are taken in *manibus, vel super virgam clamatoris*. For that in *manibus* see Bracton, speaking of falsifying the lord's court, fol. 329. b. *Vadiata probatione defaultae in manum servientis domini regis.*

Pag. 28. *Duo dies per annum.*] But see stat. of *dies communes in banco*, and 8 Ed. IV. fol. 4. b. where that is affirmed for a good statute law.

Pag. 29. lin. 18. *vel compareat.*] Read & *comp.*

Pag. 33. lin. 4. *Delictio alterius. Ex, &c.*] Read *delictio alterius, ex, &c.* What he means by this, appears not clear enough. Of pleas determinable *per legem* now, none is, whereupon imprisonment should follow. In elder times indeed *ley gager* (if you take *legem* here for that) was a trial in many actions which now admit it not, as in *attachment* upon a *prohibition*, 24 Ed. III. fol. 39. a. and see 28 Ed. III. fol. 100. a. 18 Ed. III. fol. 4. a. 2 Ed. III. fol. 8. b. 48. Ed. III. fol. 6. a. and in *placit. assis.* apud Northampton. 31 Hen. III. coram Rogero de Thurkelby & sociis suis rot. 11. in dorso. Geruvas. de Bernake brings a writ of *mesne* against Peter de Bernake, and the tenant confesses cause of acquittal, but says the demandant was not distrained through his default, which plea is tried by his law. And in a roll in the Tower indorsed circa 34 Hen. III. rot. 7. in a writ de *fine facto* by Matthew de Stratton against Ralph Mantanner about a common, in the count the defendant was charged with using the common otherwise than the fine would; he pleads he did not use it otherwise, *Et offert se defendere contra ipsum & sectam suam sicut curia consideraverit. Ideo consideratum est quod vadiet ei legem fe xii. manu, & veniat cum lege sua a die sancti Hillarii in xv. dies & ple-gu de lege* Willielmus Branche & Willielmus filius Roberti. Postea a die Paschae in iiii. septimanas venit praedictus Radulphus & fecit legem suam; ideo consideratum est quod praedictus Radulphus inde sine die, & Mattheus in misericordia. Thus different were ancient times from the present. But what had this *ley gager* to do with imprisonment spoken of in this author? *Quaere.* Or doth he mean by *legem*, the arraignment on criminal offences, which being not capital, are punished by imprisonment? *Poni ad legem* is a usual phrase in old rolls, especially in that of 31 Hen. III. now cited, for one to be arraigned, or put to answer to criminal offences.

Pag. 34. *Non plevin.*] This is remedied by the stat. of 9 Ed. III. cap. 4.

Pag. 37. *Secundum Henricum de Barbonia.*] A justice of Hen. III.'s time, is obvious in the rolls of that name. But this point of *ley gager*, against the testimony of the summoners, is in Henry de Bracton, fol. 334. b. He cites him again pag. 38, 47, & 60.

Pag. 48. *Velint surgere.*] i. e. have *licentiam surgendi*, whereof more special matter is in

in *Bracton fol. 355. 3 Henry III. tit. effoine* 186. 14 *Hen. III. effoin* 190. & *vide regist. orig. fol. 8 & 9.* He that was effoined *de malo leſti*, might not riſe before his being ſeen by the four knights, which if he did, and were not found in his bed when they came to make their view, his effoin was turned into a default; of which alſo is a notable caſe of 16 *Rich. I.* in the book of *Crowland*, where *Henry de longo Campo*, abbot, though being in poſſeſſion, yet ſued the prior of *Spalding* for entering upon his marſh *contra pacem regiam*; the prior pleads he entered as into his own fee ſimple, and offers xl. marks for the grand aſſiſe, and the miſe is joined ſo. The abbot is effoined *de malo leſti*. The writ goes out to the four knights to make the view; while one is coming to view him, he riſes, and comes towards the court, the knight certified he could not find him in his bed; whereupon judgment was given after long conſideration, *quod abbas Crowlandiae, qui ſe effoinavit contra priorem de Spalding, de malo leſti apud Crowland, & illic non eſt inventus in leſto, quando viſus deberet de eo fieri, amitteret ad tempus ſeiſinam.* Note, ſeiſin was upon his default given to the defendant in the ſuit. The whole plea and ſtory of it is long, but moſt worthy the reading, to inſtruct in the courts, courſes of that time, and ſpecially in proceſſes ſent out by the lord chief juſtice of *England*, in his own name, ſitting with the juſtices in *banco*. Divers whole writs from the king beyond ſea, and from the chief juſtice at home, are in it, and the whole is very underſtandingly related.

Pag. 52. Ad horam nonam.] See 16 *Ed. II. tit. action ſur le caſe* 47. where ſo much of the day as is from nine of clock is taken for half a day. *Quære.*

Pag. 58. Cepit homagium & ſervitium vocantis.] That homage and other ſervices, was cauſe of warranty antiently, authorities are frequent, *temp. Edw. I. tit. garranty* 90. 47 *Hen. III. itin. Cornub. eod. tit.* 99. & *voucher* 270. *temp. Ed. I. tit. age* 129. 13 *Ed. I. tit. per quae ſervicia* 23. *Breton cap. 70, & 68. Bract. lib. 4. tract. de mort. anteaſſoris cap. 1. & de warrant. lib. 5. cap. 2. §. 4. ſtat. de bigamis cap. 6.* and this author *cap. 13.* although now only homage auncſtreſ be cauſe of warranty.

Ib. Et hoc pro ſacramento ſuo.] See *Glanvil. lib. 2. cap. 3.* and *Westm. 1. cap. 41.*

Pag. 59. Ad warrantiam.] The *Latin* of that time is rather *ad warrantum*, and ſo afterward it is often printed, the copies being indifferent.

Ib. Quod permittat.] But, in *Hen. III.* his time, voucher was allowed in a *quod permittat*, as appears 12 *Hen. III. itin. Norff. voucher* 282. & 33 *Ed. I. tit. voucher* 272.

Pag. 69. Duellum in omni eventu.] That is, *combat a tout oultrance*, i. e. *battle to the utmoſt*, according as the law requires; ſo *pag. 12. ſupra*, he hath *proſequi in omni eventu*, to follow the ſuit to the utmoſt. Is not *tout at-trenche* in the defences corrupted from *tout oultrance*? See *nov. narrat. fol. 3. a. 2 Ed. III. fol. 64. a. Baſſet.*

Pag. 71. Cartam de feoffamento.] Of the anceſtor of the infant, whole heir he is. For otherwiſe the tenant fails in the voucher of an infant. See *Bracton lib. 5. tract. de warrantia cap. 2. §. 2. 43 Ed. III. fol. 3. &c.*

Ib. Minor non habet legem.] For, in the warranting the effoin, oath is to be taken. See *Bracton fol. 337, & 338.* and *Breton cap. 125. fol. 284. b. Habere legem*, is here to be able to take a legal oath, and *facere legem* (as at this day) to take it. See in the notes to *Fortefcue*, of *legem terrae*. By *Bracton alſo fol. 340. b.* an infant cannot have theſe effoins, *quia jurare non poteſt nec eſſonium warrantizare*. See 38 *Ed. III. fol. 8. b. 32 Ed. III. tit. per quae ſervitia* 9. 26 *Ed. III. fol. 63, & 64.*

Pag. 72. Tenetur donator & ejus haeredes.] So muſt you read. So was the law in feoffments before the ſtatute of *Quia emptores, &c.* when a tenure was reſerved to the feoffors. See *ſtat. de bigamis cap. 6. 13 Ed. I. apud West. tit. garranty* 92. & 13 *Ed. I. tit. voucher* 290.

Pag. 73. Reſiduas duas C. vel D.] It is ſuppoſed by this, that the other land, of which the feoffor is ſeiſed at the feoffment, might be bound by the warranty comprehended in the deed. So alſo was the law taken in 16 *Hen. III.* in the caſe of *Alice de Ware*, reported by *Bracton, fol. 382. a.* being (it ſeems) the ſame with 17 *Hen. III. tit. recovery en value* 25. And ſee 32 *Ed. I. tit. voucher* 292. But it is plain now, no land is bound but what the feoffor or his heir, hath at the time of the voucher, or warranty *de chartres* brought.

Pag. 79. Tempore regis Henrici.] But that in the margin (as ſome copies are) agrees with the law of *West. 1. cap. 39.* wherein, the writ of right was limited to *Richard I.* his time, which limitation continued till 32 *Hen. VIII. cap. 2.*

Pag. 83. In quo non jacet duellum, &c.] See 18 *Hen. III. tit. droit* 62, & 13 *Ed. I. eod. tit. 51. ſtat. de mag. aſſiſ. eligenda, & Hengham pag. 115.*

Pag. 85. Si non excedit tertiam.] For, by the antient opinions, only a third part might be assigned *ad oſtium eccleſiae*, ſo *Glanvil. lib. 6. cap. 1. Bracton lib. 2. de acq. rer. dom. cap. 39. & tract. de act. dotis. fol. 315. a. Breton cap. 113.* But ſee 9 *Hen. III. tit. dower* 190. & *Fitzh. nat. br. fol. 150. P.*

Pag. 87. infaliſtatus.] It appears, that ſeveral cuſtoms of places, made in thoſe days, capital puniſhments ſeveral. But what is *infaliſtatus*? In regard it is of a cuſtom uſed in a port town, I ſuppoſe it was made out of the French word *ſaſaize*, which is, *fine ſand by the water ſide*; or, *a bank of the ſea*; in this ſand, or bank, it ſeems their execution, at *Dover* was. In this place, the copies vary, no one having all the puniſhments, but for the rarity of the remembrance, I took out of divers copies all theſe. The old *English* tranſlation here helped not.

Ib. Vel apud Winton demembratus.] That is, of his eyes and ſtones, for ſuch was antiently the puniſhment of felons in *Wincheſter*; as alſo in *Wallingford*. One authority juſtifies both; In 45 *Hen. III. Berk. coram Gilberto de Preſton* & ſo.

Et sociis suis in oct. purif. b. Mariæ rot. 29. the jurors of the borough of Wallingford give in, *Quod nullus de natione istius burgi pro quocunque facto quod fecerit, debet suspendi, imo secundum consuetudinem istius burgi debet oculis & testiculis privari, & tali libertate usi sunt a tempore quo non extat memoria*; and so they there say one Benedict Hervey was lately so punished. Et, quæsi juratores, si tali libertate usi sunt; dicunt quod a tempore Henrici avi domini regis nunc usi fuerunt eadem libertate per cartam ejusdem d. regis quam eis fecit, per quam eis concessit omnes libertates quas civitas Winton habet. &c. They challenged this liberty from a charter of Hen. II. who gave them all such liberties as Winchester had.

Ib. Decapitatus.] See *regist. orig. fol. 165. a. & Fitzh. nat. br. fol. 144 H.* of beheading for felony.

Ib. Ubi quis movet guerram, &c.] See 8 Ed. III. fol. 388. a. 7 Hen. IV. fol. 32. b. & 47. a. 15 Ed. III. tit. petition 2. *Plowd. com. fol. 263. a.* the sadlers case in *rep. 4. fol. 57. b. Stamford fol. 189.* and *Perk §. 391.*

Pag. 88. Item si minor, &c.] By this and what Glanvil hath, lib. 7 c. 12. it appears that in those times, greater prejudice was often to the heirs of both sexes, by marriage without their lord's consent, than the law since burdens them with.

Ib. Dotem deservire.] That is, *demereri*. By such uncertainty, without limitation of years, those old authors judged of a woman's dower; so *Bracton. l. 2. c. 39. Breton c. 109.* And by the Roman law, *non potest videri nupta quæ virum pati non potest*; inasmuch that if a legacy be given to a young girl, to be paid quando nupserit, if she take a husband before she be viri potens, the legacy is not yet due, by express text in *τ. tit. quando dies legat. vel fidei commiss. cedat l. 30. quod pupilla.* So in the *reg. majest. of Scotland lib. 2. cap. 17.* a woman loses her dower, *si sit ita juvenis, quod non potest habere rem, hoc est, coire cum viro suo.* But in our year books, divers cases are of later time touching a certainty of years, and now it is taken usually (as Littleton says) she must be above nine. Besides the common authorities, see *Fleta lib. 5. cap. 22.* and for the two cases of this matter, in 7 Ed II. tit. dower 147. and 12 Edw. II. tit. eod. 159 they are worth more observation in the report at large, which is extant in our Inner Temple library; The first is between Symond and Benster fol. 107. a. the second is fol. 163. b. where Berry says expressly, that it lies in the discretion of the judges, whether the deserve dower or no.

Ib. Requiritur longa seisinæ & pacifica.] For in those times, the law was taken, both that long seisin for added a title to a disseisin, that the disseisee might not enter; and also, by some, that short seisin of one that had right to enter, gave him not so much freehold that he might have his assise against a disseisor; so it appears in 12 Hen. III. itin. Staff. tit. assise, 428, & 429. 30 Edw. I. itin. Cornub. tit. attainr, 76. *Bracton fol. 160, & 161. Hengham pag. 98.* But see *Breton. chap. 42.* to which (that we may observe the opinions of that time) add a case, ad-

judged before our author, upon this point of *longa* or *brevis seisinæ*, and reversed in the king's bench. In 33 Ed. I. *mf. fol. 59. b. John le fitz Aveline*, brought a *mort d'ancestor* before Sir Ralph de Hengham and his companions, of the death of John le Clark, his uncle, against Edmund of London, gardein of the house of St. Thomas of Acres; the tenant pleads *puis darrain seisin in Aveline* mother to the demandant, who was seised after the death of the uncle. Issue upon this is joined, and the assise taken; they find, *Que apres la mort mesme celluy Jon le Clerk meme cestuy Aveline tant come le corps fust en la bere entra & l'eins fust reclamant come heir Jon & per un demy hour de jour ydemura, tanque fust l'empotter du corps, ou ele se voleit estre l'eins tenuis, vient le dit Emon & la ossa*; (so are the words in my copy, very antiently written;) and to Sir Ralph and his companions, says the book, it seemed that *cele petite seisin & en ten temps ne fust nul*, and so they adjudged that the demandant should recover. But by writ of error, and upon the very point, that judgment was reversed, *quia sola*, as the report is, *pedis positio vero hæc edidit seisinam contulit, & agato la court que Edmond recit la seisin, &c. & ses damages, & eit Jon son tescouverir per autre voie sil voile.* And this reversal agrees well with what our author hath in the beginning of this chapter. See 3 Ed. III. in *vet. nat. br. fol. 126. b. in dum fuit infra ætatem.* But now it is plain law, that the least time is enough for seisin to him that hath right to enter, as in 8. *assif. pl. 25. 26. assif. pl. 42.* and elsewhere. The true meaning of *transfertur liberum tenementum in feoffatum* &c. in *stat. Westm. 2. cap. 29.* may be had out of this old opinion; see *infra*, pag. 99.

Pag. 103. Extra astrum] All this passage, in the same words, is in *Fleta, lib. 4. cap. 2.* whereby, *astrum* must be taken for the lord's dwelling-house, or such like. See the customs of Kent; in partition, there, *le aître demora al pune*, &c. pag. 574. The elder times had also *homo astrarius* for a householder, as I guess, or in such like signification. *Bracton, lib. 2. cap. 36. §. 7.* speaking of payment of reliefs; *Esso quod haeres sit astrarius, vel quod aliquis antecessor restituat hæredi in vita sua hæreditatem & se dimiserit, videtur quod nullo tempore jacebit hæreditas*; as if he had said, *Suppose the heir be householder, or as tenant to the lord in life of his ancestor, &c.* and in *Fleta, lib. 1. cap. 47.* *Frithborgh, est laudabilis homo astrarius*; and *extra astrum* in them, is to *Bracton, extra potestatem dominorum*, fol. 165, & 166.

Pag. 104. Sokemannus.] This also is in *Fleta, lib. 4. cap. 2.* and agrees with that which is called *tractatus de antiquo dominico*; and in a very old English translation of the statutes is titled a statute, being indeed only some lawyer's answer or in the nature of civilians *consilia*, or such like) to questions proposed touching *auncien demesne*. But the law in the year books is clear, that to any real actions or favouring of the realty, *auncien demesne* is a good plea. See *Bracton, fol. 272. & Breton, cap. 66. de gardes.*

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*In the impeachment against the duke of Buckingham, 1626, May 8.
upon the fourth and fifth articles, Selden said,*

THAT by nature of his office, the duke, as admiral, ought to have guarded the seas; By his patent he is made *magnus admirallus Angliae, Hyberniae, & Walliae, Normaniae, Aquitaniae, villae Caesarii & marchiarum ejusdem, & praefectus generalis classium marium dictorum regnorum*. The seas of England and Ireland are committed to the admiral, as a part of the demesne and possessions of the crown of England; not as if he should thereby have jurisdiction only, as in case of the admirals in France or Spain. The state of Genoa, Catalonia, and other maritime parts of Spain, the sea towns of *Almain, Zealand, Holland, Friesland, Denmark, Norway*, and divers other parts of the empire, shew, that the kings of England, by reason that their said realm hath used, time out of mind, to be in peaceable possession, are lords of the seas of England, and of the islands belonging to them. And although *Grotius*, that *Hollander*, wrote of purpose to destroy all dominion in the east ocean, yet he speaks nothing against the dominion of our English seas, howsoever he hath been misapprehended, but expressly elsewhere saith, *Meta Britannicis litora sunt oris*; the utmost limits of the demesne of the crown of England, are the shores of the neighbouring countries, the whole sea, or the *territorium maximum* that intervenes, being parcel of the possession of the crown; the keeping and safeguard of these committed to the lord admiral by the name of the *praefectus marium & admirallus*, being but the same antiently. Before the use of the word *admiral* came in, which was under *Ed. I.* the admirals had the titles of *custodes maris*.

And this *praefectura*, or *custodia*, or office of safe-guarding the seas, binds him to all care and perpetual observance of whatsoever con-

duceth to that safeguard, as in *custos sigilli, custos marchiarum, custos portuum, & custos comitatum*, agreeable to the practice of former times.

1. In certifying yearly to the king, and his council, the many forces both of the king's ships, and ships of merchants, the names of the owners, the number of mariners, &c. that the king and his council may always know his forces by sea.

2. In shewing wants of ships, &c. for the safe-guarding of the seas, with the estimates of the supply, that so they might be procured. In personal attendance upon the service of guarding the seas upon all occasions of weight. In 7 Hen. IV. *Nicholas Blackborne* and *Richard Cliderowe*, one of the knights of Kent, were made admiral for keeping the seas, upon consideration had of it in parliament, and the other knight being *Robert Clifford*, it was agreed in parliament, that he should have the voices of both, because the other must of necessity be absent; and they both, amongst other things, petitioned the council, that if the king in his person should come on the sea, they might have such a liberty to wait upon him, as they might make their lieutenant during the time for the service of their places; but the council that allowed the rest, or most of their demands, answered to that, *Le council ne peut faire*.

Then he estimated the nature of the offence by the consequences which follow the not guarding of the seas, viz. 1. The losses already shewed. 2. The prevention of trade, which gives life to the wealth of the kingdom. 3. The weakening of the naval strength, the merchants being thereby discouraged from building ships which they cannot use. In 1 Rich. II. the commons opened the two chief and almost whole causes of the weakening the kingdom at that time;

time ; the neglect of chivalry and eminent virtue not regarded nor rewarded ; the decay of trade since the navy was grown weak ; besides all the loss of quiet possession of so large a territory as the seas of *England* and *Ireland*, by the free use of which, the ancient glory and greatness of the crown of *England* hath so constantly subsisted.

Then he instanced in *Michael de la Pole*, lord chancellor, who in 9 *Rich. II.* mispent subsidies given *pro salva custodia maris*, as appears in the roll, and was adjudged in parliament, (though for other offences, because some other lords of the council had been trusted with him, and it was not fit to impeach him *sans les compagnons*) they taking it for a crime without question fit to be complained of.

Secondly, in *William* duke of *Suffolk*, who for the same fault, being admiral only in the right of *Henry* earl of *Exeter*, his ward, was by the king extraordinarily commanded into banishment.

Then he brought examples of such, who had been put to death, and confiscated for not safe-guarding towns and castles, and forts, which are of like nature with not safe-guarding the seas, and with losing the possession of the crown.

To the fifth, he said, The staying of the ship, called the *Peter* of *New-haven*, and detaining part of the goods, was against the marine laws of *England*, against the common laws, against the laws of merchants, and consequently the law of nations.

By the marine laws, agreeable to the civil laws, sentence given by any subject or other against the king, may, upon new proof, be revoked, but not without new proof. He was made by his patent, a judge of all maritime causes, as well as keeper of the seas ; his jurisdiction was to be exercised, *juxta leges nostras civiles & maritimas*, and accordingly to hear all causes, and generally to proceed *ex officio mero mixto & promoto secundum leges nostras civiles & maritimas*.

Against the common laws.

All justices, and all other deputed to do law or right, are commanded by act of parliament to permit the course of ordinary justice ; and although they be commanded to do the contrary, that they do execution aright, and according to justice as far as in them lies ; and so for any letters of commandment which may come unto them from us, or from any other, or by any other cause.

Against the law of nations.

Against what is agreed by the leagues between us and foreign nations, That the subjects of nations in amity with us, shall be well used, and permitted without molestation for what cause or occasion soever, according to the laws and customs of the places where they shall be.

Lastly, against the laws of merchants, which is, to have *celerem justitiam*.

The consequences of this offence are,

1. Great damage to our *English* merchants, that have suffered by reason of it in foreign parts, as they alledge. 2. It is a discouragement to those that are subjects to the marine jurisdiction. 3. An example that may serve hereafter to justify all absolute authority in the admiral, without law or legal course, over the ships and goods of all merchants whatsoever, and so no security to merchants. Lastly, He instanceth in the duke of *Suffolk*, who was adjudged in parliament for treason ; and among other offences, it was laid to his charge, that he took to his own use goods piratically taken, and expressly against the order determined by the lord protector, and the whole council, whereunto his hand had been for the restitution of them.

Argument at the King's bench-bar upon the Habeas Corpus. Novemb. 22. 1627.

MY lords, I am of council with Sir *Edmund Hampden* ; his case is the same with the other two gentlemen ; I cannot hope to say much after that that hath been said ; yet if it shall please your lordship, I shall remember you of so much as is befallen my lot. Sir *Edmund Hampden* is brought hither by a writ of *habeas corpus*, and the keeper of the *Gatehouse* hath returned upon the writ, that Sir *Edmund Hampden* is detained in prison *per speciale mandatum domini regis, mihi significatum per warrantum duorum privati concilii dicti domini regis* ; and then he recites the warrants of the lords of the council ; which is, that they do will and require him to detain this gentleman still in prison, letting him know that his first imprisonment, &c.

May it please your lordship, I shall humbly move you, that this gentleman may also be bailed. For under favour, my lord, there is no cause in the return, why he should be any farther imprisoned, and restrained of his liberty.

My lord, I shall say something to the form of the writ, and of the return, but very little to them both, because there is a very little left for me to say.

My lord, to the form, I say it expresseth nothing of the first caption, and therefore it is insufficient. I will add one reason as hath been said ; The *habeas corpus* hath only these words, *quod habeas corpus ejus una cum causa detentionis, & non captionis* : But, my lord, because in all imprisonment, there is a cause of caption and detention, the caption is to be answered as well as the detention.

I have seen many writs of this nature, and on them the caption is returned, that they might see the time of the caption, and thereby know whether the party should be delivered or no, and that in regard of the length of his imprisonment.

The next exception I take to the form, is, that there is much uncertainty in it, so that no man can tell when the writ came to the keeper
of

of the prison, whether before the return or after; for it appears not when the king's command was for the commitment, or the signification of the council came to him: It is true, that it appears that the warrant was dated the seventh of *November*; but when it came to the keeper of the prison, that appears not at all; and therefore as for want of mentioning the same time of the caption, so for not expressing the same time when this warrant came; I think the return is faulty in form and void.

And for apparent contradiction also, the return is insufficient; for in that part of the return which is before the warrant, it is said, *quod detentus est per speciale mandatum domini regis*, the warrant of the lords of the council; the very syllables of that warrant are, that the lords of the council do will and require him still to detain him, which is contrary to the first part of the return.

Besides, my lord, the lords themselves say in another place and passage of the warrant, that the king commanded them to commit him, and so it is their commitment. So that upon the whole matter, there appears to be a clear contradiction in the return; and there being a contradiction in the return, it is void.

Now, my lord, I will speak a word or two to the matter of the return, and that is touching the imprisonment, *per speciale mandatum domini regis*, by the lords of the council, without any cause expressed; And admitting of any or either of both of these to be the return, I think that by the constant and settled laws of this kingdom, without which we have nothing, no man can be justly imprisoned by either of them, without a cause of the commitment expressed in the return. My lord, in both the last arguments, the statutes have been mentioned and fully expressed, yet I will add a little to that which hath been said.

The statute of *magna charta*, cap. 29. That statute if it were fully executed, as it ought to be, every man would enjoy his liberty better than he doth.

The law saith expressly; No freeman shall be imprisoned without due process of the law; Out of the very body of this act of parliament, besides, the explanation of other statutes, it appears, *nullus liber homo capiatur vel imprisonatur nisi per legem terrae*. My lord, I know these words *legem terrae*, do leave the question where it was, if the interpretation of the statute were not. But I think, under your lordship's favour, there it must be intended by due course of law to be, either by presentment or by indictment.

My lords, if the meaning of these words *per legem terrae*, were but as we use to say, according to the laws, which leaves the matter very uncertain; and *per speciale mandatum*, &c. be within the meaning of these words, according to the law, then this act had done nothing. The act is, no freeman shall be imprisoned but by the law of the land; if you will understand these words, *per legem terrae*, in the first sense, this statute shall extend to villeins, as

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well as to freemen; for if I imprison another man, villein, the villein may have an action of false imprisonment. But the lords and the king (for then they both had villeins) might imprison them, and the villein could have no remedy; But these words in the statute *per legem terrae*, were to the freeman, which ought not to be imprisoned, but by due process of law; and unless the interpretation shall be this, the freeman shall have no privilege above the villein.

So that I conceive, my lord, these words *per legem terrae*, must be here so interpreted as in 42 *Eliz.* The bill is worth the observing; it reciteth, that divers persons without any writ, or presentment, were cast into prison, &c. That it might be enacted, that it should not be so done hereafter; The answer there is, that this is an article of the great charter, this should be granted. So that it seems the statute is not taken to be an explanation of that of *magna charta*, but the very words of the statute of *magna charta*.

I will conclude with a little observation upon these words, *nec super eum mittemus*, which words of themselves, signify not so much; a man cannot find any fit sense for them.

But, my lord, in the seventh year of king *John*, there was a great charter, by which this statute in the 9th of *Henry III.* whereby we are now regulated, was framed; and there the words are, *nec eum in carcerem mittemus*, we will not commit him to prison; that is, the king himself will not; and to justify this, there is a story of that time in *Matthew Paris*, and in that book, this charter of king *John* is set down at large, which book is very authentick, and there it is entered; and in the 9th of *Henry III.* he saith, that the statute was renewed in the same words with the charter of king *John*; and, my lord, he might know it better than others, for he was the king's chronologer in those times. And, therefore my lord, since there be so many reasons, and so many precedents, and so many statutes, which declare that no freeman whatsoever ought to be imprisoned, but according to the laws of the land; and that the liberty of the subject, is the highest inheritance that he hath; my humble request is, that according to the ancient laws and privileges of this realm, this gentleman, my client, may be bailed.

An argument concerning the Habeas Corpus,
5 Car. I.

UPON the writ of *habeas corpus*, ad *subjiciendum* & *recipiendum*, directed out of the King's bench to the lieutenant of the Tower, he returns, that the prisoner was first committed to his custody by a warrant of the lords of the privy council, dated 4th *Martii* 5th *Caroli regis*, and recites the warrant wherein in the king's pleasure for the commitment is also signified. And farther, he returns, that the prisoner is detained by him, by virtue of another warrant, afterward directed to him, under the king's own hand, dated the 7th of *May* following; wherein it is signified, that he was to take knowledge, that the commitment was for

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notable

notable contempts committed against our self and our government, and for stirring up of sedition against us, with a command to detain him until his majesty's pleasure were farther known, &c. And so certifies the court, that these are the causes of taking and detaining him, and brings in his body according to the writ. And, whether upon this return, the prisoner ought to be delivered by the court, upon sufficient bail; or, remanded to the *Tower*, is the question? That is, supposing the return to be every way true (as in all cases it must be supposed, when the question arises upon a return) whether there be sufficient cause expressed in it, for which the prisoner ought to be remanded? Or, that the cause of the commitment be such (as it is expressed in the return) that he ought to be bailed? If there were no more in the case, but the lords, or the king's command, only; without farther cause shewed of the commitment; then it were clear, by the declaration of both houses of parliament, and the answer of his majesty to that declaration, in the late *petition of right*; that the prisoner were to be remanded. And the objections that some have made, out of the statute of *Westminster*, the first, cap. 15. That persons committed by command of the king, are not *replevisable*, and out of *Stamford*, fol. 73. as if he interpreted *bailable* (which indeed he doth not, if he be observed) to be understood in that statute by *replevisable*, and the like, are directly against the very body of the *petition of right*, and were so fully cleared in the debates, out of which the *petition of right* was framed, that to dispute them again, were but to question what the whole parliament had already resolved on, as the certain and established law of the kingdom. Nor is it timely to dispute here again the general power of commitment, by the lords or by the king himself. There is a commitment, in the case, and there is a cause shewed of that commitment, and of the detainer in prison; and the quality of that cause only is truly the sole question; to the stating of which, the nature and course of bails upon offences, either returned generally upon *habeas corpus*, or appearing more specially upon indictments, is shortly to be first opened. All offences, by the laws of the realm, being of two kinds: The first, punishable by loss of life or limb; the second, by fine, or some pecuniary mulct, or damage and imprisonment, or by one of them; and those of the first kind being treason, murder, felonies of less nature, and some more; and of the second kind, bloodsheds, affrays, and other trespasses. If any prisoner stand committed (though before conviction) for treason or murder; the judges, who ought appears in the books, have not often used to let him to bail, unless it have appeared to them, that there hath been either want of prosecution, or of evidence to proceed, or that the proceeding through disability of the appellant (in case of appeals) as when he is excommunicate, is de-

layed; or that the evidence is slight; or some such like cause. So that in the bailing upon such offences of the highest nature, a kind of discretion, rather than a constant law hath been exercised, when it stands wholly indifferent in the eye of the court, whether the prisoner be guilty or not. And according to that, they often let to bail, detain in prison, or remand the prisoner. Also in felonies of less nature; which being all, as those of the greatest nature capital, and so the punishment of the same above imprisonment, the imprisonment of the offenders without bail, is only used *ad salvam custodiam*, and cannot be used *ad paenam*. But if a prisoner before conviction, or somewhat that supplies a conviction, (so therefore also fit enough before conviction) stand committed for trespasses only, as all offences of the second kind are, and are punishable only by fine and imprisonment, or by one of them (in which case imprisonment is to be the highest part of his punishment, after conviction) there, by the constant course (unless some special act of parliament be to the contrary in some particular case) upon offer of good bail to the court, he is to be bailed; which agrees also with all justice and exactness of reason, that so both the court may, by his sureties and bail (to whose care he is a new committed) be assured to have him ready at the day given him upon the bail, to answer all proceeding against him; and he himself, having sureties that so undertake for his appearance, may not be compelled, before conviction, to endure that continually, *ad custodiam* only, which is the highest part of what he is to suffer, after conviction, *ad paenam*. So that in cases of imprisonment for offences of the first kind, divers circumstances might be, for which sufficient bail offered, might according to the use, be refused by the court. But in cases of imprisonment for offences of the second kind, sufficient bail, offered before conviction, ought of common right, to be accepted; saving still, where a special act of parliament alters the law in some particular case; but there is no colour or pretence of any such act, concerning the case in question; so that we are to examine it, (for the point of bailing,) only at the common law.

The state then of the question is but this. Whether that expression, *for notable contempts against our self, and our government, and for stirring up of sedition against us*, do denote any offence of the first kind? Which, if it do not, or so do not, as that the court may by the words of it be sufficiently informed that it is some offence, at least, of the first kind; the bail, in this case, ought to be accepted. The offences in the return, being two; first, *notable contempts*, and then *stirring up of sedition*, and both *against the king*.

There, can be no question made of it, but that all *contempts*, of what kind soever, that are punishable by the laws of the realm, are *against the king and his government*, immediate-

^a Vide 2. assif. pl. 3; 3. assif. pl. 12. 43. assif. pl. 40. 26. assif. pl. 47. 41. assif. pl. 14. 21 Edw. IV. fol. 25. & 71. Brook. tit. mainprise 60. & 63. 2 Eliz. Dyer, fol. 179. a.

ly or mediately. And although the latitude of them be such, as that some may vastly exceed others; Yet they are all, as *contempts*, only trespasses, &c. punishable only by fine or imprisonment, or by both, but not until conviction of the parties (as neither are other like offences) unless the contempt be in the face of some court, against which it is committed, which supplies a conviction. Now in this case, the contempts are only expressed in a generality, and no conviction appears of them. So that for that part of the return, there can be no colour why the bail ought not to be accepted. But all the doubt of the case depends upon the second offence; that is, *the stirring up of sedition against the king*. Which if it be an offence only of the same kind as *contempts* are, or a meer trespass only to the king, or, if by the words of the return, it appears not to the court to be an offence of the first kind, that is, either treason, or felony at least, (there being no conviction in the case) the prisoner ought to be bailed. For, unless the court be assured, out of the words of the return, that the prisoner stands committed for some such cause, for which he might not, of right, demand his bail; it is clear they ought to bail him. It rests therefore to examine the nature of the offence comprehended in those words, *stirring up sedition against us*. If it be any thing above what is trespass only, plainly it must be either treason or felony. For felony, no man pretends that by those words, any kind of felony is to be understood. The question then must be, whether the *stirring up sedition against the king*, be treason or no? that is, high treason, as all treason is that toucheth the king, as treason. For petit-treason, by the common law, is felony, in regard of the king; and treason only with respect to the persons slain, against the faith and obedience due from the offender; and therefore the indictments of it say, *felonice & proditorie*.

In the consideration of the question thus stated, first, the use of the word *sedition*, and the sense of it in our language, and in our laws, that received it out of that language, is to be examined; and then, what those words, *against us*, import. Out of both which, it will be easily concluded, that the offence, as it is expressed in the return, although it be a great one, yet is only a trespass, and punishable by fine only or imprisonment, or both of them. For *sedition*, and the general notion of it; we have not either in the division, or explication of offences that occur in our books, an express definition, description, or declaration of it, though it occurs sometimes, as mingled with some other offences, and the adjective of it oftener than the substantive: Nor hath there been yet found any indictment or proceeding upon the crime of *sedition*, by that name singly, as an offence in law, clearly enough known by itself. *Unlawful assemblies, routs, riots, commotions*, are the nearest, if not the very things that, by other names do, for the most part, express what *sedition* is in our laws. *Vid. 3 Hen. VII. fol. 1. & Brook. riots 4 & 5.*

But our language, rather than our laws, hath received the word from *Latin*, and thence hath in preambles of statutes, and of indictments, sometimes inserted it; So that missing an express exposition of the word in our law, we have reason to seek for it first in the language whence we received it, and then in the use of it in our own.

In *Latin*, that which is mutiny, raising of tumult, assembling of any armed power, or conventicles, or the like, is *sedition*. Whence it is, that in the civil law, *seditio & tumultus* are frequently joined; and *conciatores seditionis*, and *affores seditionis*, occur in the text of that law,^b for such as stir up *sedition*. And thence also *seditio militaris* is used for a mutiny of the soldiers in the army, in *Tacitus* and others, and that for no more than the professing themselves against any command whatsoever given by the general. In this sense it is used also by a lawyer of *Ephesus*, in the holy text, where *Demetrius* the silver-smith assembled the rest of his company against St. Paul, for preaching against *Diana*. *For we are* (saith he, speaking to appease the assembly) *even in jeopardy to be accused of this day's sedition, for as much as there is no cause whereby we may give a reason of this concourse of people.* Acts xix. 40. In the same sense *Tertullus*, an orator and lawyer, pleading against St. Paul at *Caesarea*, before *Felix* the governor there, *We have found this man a mover of sedition amongst all the Jews throughout the world, and a chief maintainer of the sect of the Nazarens,* Acts xxiv. 5. And such like testimonies are very obvious. In the self same sense the word was received into our language, as we may see in that act of parliament against the *Lollards*, under *Henry IV.* 2 Hen. IV. c. 15. The words there are, *That they taught openly and privily divers new doctrines, contrary to the faith and determinations of the holy church, and of such sect and wicked doctrine and opinions they make unlawful conventicles and confederacies, they hold and exercise schools, they make and write books, they do wickedly instruct and inform people.* Et ad *seditionem* seu insurrectionem excitant quantum possunt, & magnas dissentiones & divisiones in populo faciunt. Rot. parl. 2 H. IV. n. 48. And, as much as they may, incite and stir them to sedition and insurrection, and maketh great strife and division among the people, &c. And about the beginning of queen *Mary*, an act of parliament was made against *seditions words and rumours*; in the preamble whereof, *seditions and slanderous news* is mentioned, and *seditions and slanderous writings, and persons intending and practising to move and stir seditions*, (so it is in *Rastall*, and the roll of parliament, not *seditions*, as in the statutes at large) *discord, dissension, and rebellion within this realm.* 1 & 2 Phil. & Mar. 3. And to the same purpose, an act of explanation of the said act of queen *Mary*, was made in the beginning of queen *Elizabeth* 1 Eliz. cap. 6. wherein mention also is of *false, seditions, and*

^b ff. ad l. Juliam majestatis, lib. 1. & tit. ad leg. Jul. de vi publ. l. 3, &c. C. tit. de seditionis, l. 1. & 2.

slanderous news, or tales, against the queen. As also in her 13th year, *cap. 1.* a provision is made against *contentious and seditious spreading abroad of titles to the succession of the crown*. And in another act of the same year, *c. 2.* also the bringing bulls from *Rome*, to raise and stir *sedition*, is mentioned in the preamble. And in the 23^d year another act 23 *Eliz. cap. 2.* was made with this title, *Against seditious words and rumours uttered against the queen's most excellent majesty*. And in indictments upon that statute of the 1st and 2^d of *Philip and Mary*, as it was continued in the act of the 23^d of queen *Elizabeth*; the party indicted for slanderous words, in defamation of the queen, is said to have been *machinans & intendens seditionem & rebellionem infra hoc regnum Anglie movere & suscitare*, and that *advise, & cum malitiosa intentione, contra dictam dominam reginam, & felonice ut felo dicte domine regine nunc, devisavit & scripsit quasdam falsas seditiosas, & scandalosas materias*, &c. 34 *Eliz. Coke, lib. intrat. tit. indictment, fol. 352. col. 3. & 353* where the title is misreferred to the act of 1 *Eliz. cap. 2.*

In the lord *Cromwell's* case also, 20 *Eliz. Coke 4. in act. de scandalis, seditio* is mentioned against the queen's proceedings; and *seditio domini regis, vel exercitus sui*, in *Bracton*, fol. 118. and *seditio regni, vel exercitus*, in *Glarville*, l. 14. c. 1. and *seditio personae domini regis vel exercitus*, in *Hengham*, c. 2.

Now, for the sense of the words *sedition* and *seditious*, it will be most plain, that in all these places, (except those old books of *Bracton*, *Glarville*, and *Hengham*, the interpretation of whom hath fittest place after the examination of the objections made to prove *sedition* to be *treason*) they denoted in our language, and in the use of our laws, that received them thence, such an offence as was not punishable (without some special provision by act of parliament) otherwise than by fine and imprisonment, at the utmost; and were reputed singly, but as words or names designing *tumults, unlawful assemblies, routs, factious or rebellions* against any part of the established laws, or publick commands. Therefore in that act of 2 *Hen. IV.* concerning the *Lollards*, the punishment of them that offended against the act, and *were such stirrers of sedition and insurrection*, was, that they should be imprisoned only by virtue of that act, until purgation, if they purged themselves; and imprisoned and fined after conviction, and detained in prison till abjuration; and upon refusal to abjure, or upon relapse, to be burnt for hereticks: But that act is repealed by the 25 *Hen. VIII. cap. 14.* So, by the act of the 1st and 2^d of *Philip and Mary*, the first offence of *speaking seditious and slanderous words*, or rumours of the king or queen, was, after conviction, standing on the pillory, and loss of ears, (unless he redeemed them by the fine of 100 *l.*) and three months imprisonment. And if any, from another's report, shall speak any seditious and slanderous news of the king and queen, he should, after conviction,

lose one ear (or redeem it by 100 marks) and have one month's imprisonment: And that if any should maliciously devise, or write any book or writing, containing any false matter, clause or sentence, of slander, reproach, and dishonour of the king or queen, to alienate the minds of the subjects from their dutiful obedience, or to the encouraging, stirring, or moving of any insurrection or rebellion within this realm; or, if any procure any such thing to be done (the said offence being not punishable by the statute of 25 of *Edw. III. of treason*) he should lose his right hand. And that the second offence of them that were punishable by loss of ear, or ears, should be imprisonment during life, and loss of all their goods and chattels. This act of queen *Mary* expired at her death, and agreeable to it was that provision of the act of 1 *Eliz. c. 6.* which extended the same to queen *Elizabeth*, during her life; but there is no such law at this day in being. So, in that of the 13 of *Eliz. cap. 1.* the first offence of *contentious and seditious spreading abroad of titles to the succession of the crown*, is punished by the imprisonment of one whole year, and the loss of half the offender's goods, and the second offence by the pains of a *praemunire*. The bringing in of bulls also from *Rome*, to alienate the minds of the subjects from their dutiful obedience, and to raise and stir *sedition and rebellion*, is made high treason by that other act of the same year. By which it appears, that *stirring to sedition* alone is in that very act clearly supposed of far less nature. But that act is also expired. In that also of the 23 of *Eliz. cap. 2.* the reporters of *seditious news, or rumours*, against the queen, was made loss of ears (as before) or, that to be redeemed at 200 *l.* besides imprisonment of six months: and the reporters from another's mouth, to be punished according to that of 1 and 2 of *Philip and Mary*; saving, that the imprisonment, by this act, is three months, and the second offence is made felony, and writing of any seditious matter, to the purposes in that act of queen *Mary*, is made felony, upon which act the indictments of felony, before-mentioned, are grounded; but that act also expired by the death of queen *Elizabeth*. And in that case of the lord *Cromwell*, who brought a *scandalum magnatum* against the parson of *Northeltenham* in *Norfolk*, for saying, *That you like not of me, but you like of them that maintain sedition against the queen's proceedings*. Although, in the report of the case, *sedition* generally be called an open and heinous crime, and described to be as in the nature of some great factious assembly, or riot; yet the defendant justifies the words, by this, that the plaintiff and he had discourse of one that preached against the book of common prayer, and that in their discourse, the plaintiff said to the defendant, *I like not of thee*: To which he replied, *It is no marvel, for you like of them that maintain sedition*, (*praedict. seditiosam doctrinam innuendo*) against the queen's proceedings; and the justification allowed good. Whence it appears clearly,

clearly, that *maintaining sedition* generally may be, such preaching of seditious doctrine which is punishable only by the statute of 1 Eliz. c. 1. by fine and imprisonment. Out of all which examples it appears, that *sedition*, and acts *seditiously* done, are of themselves singly, no capital crimes, or otherwise punishable than by fine or imprisonment, or both; unless by some special act of parliament it be ordained otherwise. And to confirm this also, we may observe divers other statutes; where, *routs, riots, rebellions, and insurrections* (all which, of themselves, if no traiterous intent appear, by some overt act, are punishable but by fine and imprisonment, unless some act of parliament especially ordain a greater punishment) have special punishments appointed for them; being, at the common law, but in the nature of trespasses. As in the 17 Rich. II. c. 8. it appears, that in the 5th year of the same king (which is 5 Rich. II. c. 6. stat. 1.) *outrageous assemblies* of the people *against the king's dignity, and his crown, and the laws of the land* (as every great riot is) were made *treason*; which act is long since repealed. Whence it is also very observable to this purpose, that in two acts of parliament, the one of the 2 Hen. V. c. 9. stat. 1. and the other of the 8 Hen. VI. c. 14. the simple word *riots* (which is most known in the law, to this day, for *seditious assemblies*) is taken plainly as an expression sufficiently comprehending assemblies of people, in great number, in manner of insurrection, and also rebellions, as will appear plainly, by comparing the preambles with the bodies of the same acts. And in 11 Hen. VII. c. 7. for the punishment of *unlawful raising and leading of people, riots, routs, and other unlawful assemblies*, a form of proceeding is appointed; wherein appears most plainly and expressly, that the punishment was only by fine and imprisonment, and the act was to continue but till the next parliament, when it expired. Therefore also by the act of 3 & 4 Edw. VI. c. 5. entitled, *An act for the punishment of unlawful assemblies, and rising of the king's subjects*, it was ordained, *That if any persons, to the number of twelve, or above, being assembled together, shall intend, with force of arms, unlawfully and of their own authority, to kill or imprison any of the king's privy council, or to alter, or change any laws established by parliament, and shall not depart and retire to their own habitations, within one hour after command made by the sheriff, some justice of the peace, or other such officer, in that behalf; the offence should be high treason. And if such persons assembled, to the pulling down of ditches, or laying open inclosures, or to the committing of some such more offences, retire not within that space, that it shall be felony in them. And if any should incite such persons to any such act, by speaking, ringing a bell, sounding a trumpet, firing of beacons, or the like; inasmuch that they remain together after any such command, as aforesaid, by the space of an hour, and commit any such act, as aforesaid, it should be felony also. And the persons so assembled, and remaining toge-*

*ther, to the number of forty, by the space of two hours, are by the same made traitors. And that if the number be above two, and under twelve, that with force of arms, unlawfully, and of their own authority, assembled for the casting down of ditches, inclosures, and divers such other things, their staying together after such command by the space of an hour, should be punished by a year's imprisonment, and fine and ransom at the king's pleasure. And it is also in the same act ordained, That if any person shall procure, move, or stir any other person, or persons, to arise, or make any traiterous or rebellious assembly to the intent to do any of the things before-mentioned, it should be felony. And further, that if any person were spoken to, moved, or stirred to make any commotion, insurrection, or unlawful assembly for any of the intents before mentioned, and did not tell it within twenty four hours afterward, unless he have sufficient excuse, to some head officer where such speaking were had, should suffer imprisonment, until he were discharged by three justices of the peace, whereof one to be of the quorum. This act was to endure till the end of the next parliament only, which was in 7 Edw. VI. and then, cap. 11. it was continued till the end of the next, which was in 1 Mar. sess. 2. wherein, c. 12. it is repealed, and another of the same nature made. Both which shew most evidently, that those unlawful assemblies, insurrections, commotions, and the like, which are plainly *seditions*, provided for by those acts, were before but trespasses, punishable only by fine and imprisonment. That of the 1 Mar. sess. 2. c. 12. is entitled, *An act against unlawful and rebellious assemblies*, where the clause of the privy counsellors (that was in the 3 & 4 Edw. VI.) is omitted; and the rest of the offence touching the altering of laws, is expressed, as in that of Ed. VI. saving, that the crime is made felony, whereas it was treason by that of Ed. VI. The rest of that act of 1 Mar. is, for the most part, agreeable with that of Ed. VI. saving, that none of the offences are treason by this act, but felony at the most. And for the being *spoken to, or stirred to make any commotion, and not discovering it*; here, in this of queen Mary, the offender is to suffer imprisonment only for three months, unless he be discharged by three justices of peace, as in that of Ed. VI. This of queen Mary, was kept on by continuance only, from one parliament to another, during her time; and in 1 Eliz. c. 16. it was made to continue during the life of queen Elizabeth, and at her death expired. To this purpose also the act of 14 Eliz. c. 1. is observable; where, *unlawful practices, secret conspiracies and devices, to take or surprize any of the queen's fortified castles, and the malicious and rebellious intent of surprizing, or taking them, being expressed by overt act, or word, are made felony; and the not giving them up within six days after command from her, is made treason; which act also expired with her life. Here the offences made treason and felony by the act, were both seditions of a high nature; and yet**

but trespasses before the act made, nor are they other now the act is expired. For the surprising or detaining of a castle, without levying of war, or some other act of treason (as in *Sherley's case* in *Dyer*) was not treason, but by that act. To these we may justly add that case of the earl of *Northumberland* in 5 H. IV. 5 Hen. IV. rot. parl. n. 11. 12. &c. He acknowledged by writing, in parliament, that he was guilty of not keeping the laws as ligeance asketh, and of gathering power, and giving of liveries, (which are the words of the parliament roll) and upon special consideration had, by the lords and judges in parliament, of the nature of the offence thus set forth; they adjudged it was neither felony nor treason, but only trespass; and so are the express words of the roll. Yet the gathering of power, and giving liveries, and breaking of allegiance, are large expressions of that, which in itself, was truly sedition, and that of a high nature. And thus, both by the use of the word, and the punishments provided, in some cases in parliament, for remedy of the offence (without which special provision it is never found capital) it appears clearly that *sedition*, or the stirring of sedition, alone, at the common law, (and no statute, now in force, hath ordained otherwise) is but trespass, and punishable only by fine and imprisonment.

Now for the words *against us*; that is, against the king. There is no doubt at all, but that all offences are against the king. Every slight trespass, by the law, is *contra pacem domini regis*, and whatsoever is against his peace, is against him; as also divers indictments of meer trespasses, conclude with *in contemptum domini regis*; and *contra coronam & dignitatem suas*. As in an indictment for hearing of mass, is *contra pacem, dignitatem & coronam domini regis*. All which import against the king. And that act of 23 Eliz. is made against *seditionous words against the queen's most excellent majesty*; which, even after the act, remained not capital, being before but trespass. And in the preamble of that of 14 Eliz. it appears, the act was made against *unlawful practices, secret conspiracies and devices, stirred and moved against our sovereign lady the queen, in seeking unlawfully to take her castles, fortresses, and the like*. And in *Braeton*, fol. 119. b. §. 3. & 120. b. §. 6. the concealing of treasure, which is punishable by fine and imprisonment, is expressly said to be, *gravis praesumptio contra regem, & dignitatem, & coronam suam*; as also the not keeping the assises of bread and ale, and the like. Neither is there any doubt of this, but that the words, *against the king*, may be applicable to any kind, and as well to the least as the greatest kind of offences, and imply nothing that increases the offence above trespass.

It follows then, for the last part of the consideration, that (*sedition* being but that which we otherwise call *unlawful assemblies, riot, mutiny, rebellion*, or the like; and every offence, punishable, being against the king) the stirring

up of sedition against the king, which is, or may be, the stirring up of a rout, unlawful assembly, mutiny, rebellion, or the like, against some ordinary, or extraordinary command, process, writ, or execution of some established law, is no other offence, by the expression in the return; nor can thereby be understood to be other (without some special act of parliament have altered the law) than trespass, and punishable only by fine and imprisonment, and so, by consequence, no treason. As for a special act of parliament, that maketh *sedition against the king*, to be higher than *trespass*, there is none such extant. Among all the acts of parliament that are in force, there is none gives any colour here, but that of 25 Ed. III. wherein treason is declared: And in that act, only these words: *If any one levy war against our lord the king, in his realm, or be adhering to the enemies of our lord the king in his realm, giving to them aid or comfort in his realm, or elsewhere, and hereof be attainted of overt fact, it is high treason*. The other words concerning other and higher treasons, in that act, have nothing that can so much as of themselves suppose a *sedition against the king*. But it is true, that in these before recited, there may be a *sedition against the king*; that is, the levying of war against the king may be by *sedition*, or the adhering to the king's enemies, or the levying of war against him, may be, by a low expression, perhaps stiled *sedition against the king*; as in every greater crime, as in theft, *trespass* may be included, or understood. Now, unless on the other side, in that which is *sedition against the king*, treason must necessarily be understood, these words of the 25 Ed. III. make no more to prove that *sedition* is treason, than any act against theft, can prove that *trespass* is felony. Therefore also in that very act of 25 Ed. III. the riding openly or secretly with armed men to kill or rob another man, or to take him, and keep him till he make fine and ransom for his deliverance (though it be plainly *sedition against the king*, it being against his peace, his laws, and his crown and dignity) is but felony, if robbery be committed with it, and trespass only if imprisonment till fine and ransom. And so is it declared expressly in that act. And though there have been divers acts of parliament since that of the 25 Ed. III. that have made divers other facts treason, yet there is none of them that remain unrepealed, or not expired, that make any such fact treason, as is of the nature of *sedition against the king*: And except only the treasons made by those special acts of parliament that remain in force (as those concerning bulls from Rome, jesuits, clipping of coin, and some few more) there is nothing at this day treason, saving what is comprised in that act of 25 Ed. III. to which some special laws † have, in the ages since Ed. III. now and then reduced all treason, by abrogating all intervenient laws of treason. And by that act, if there be a doubt that happens before the judges, by reason of any new case that comes before them; they ought not to judge it treason, until it be enacted by parlia-

† Vide 11 Rich. II. c. 3. pet. 3. 1 Hen. IV. c. 10. 1 Ed. VI. c. 12. 1 Mar. parl. 1. c. 6.

ment to be so. And it doth, in the same act, appear, that before that time, there was a greater latitude of treason, than at any time since. Now, even in that time, there is an express judgment of the very point in question; though not in the same terms with this case, yet in the self same sense, as if this case had then been before the judges. It was the case of one *Russel*; he was imprisoned by the justice of north *Wales*, in 9 *Ed. III.* and returned to be so, *eo quod A. B. imposuit ei fecisse debuisset diversas seditiones, &c. dominum regem tangentes.* Upon this return, the court adjudged, that the offences contained in the return, and as they could thereby be understood, were such for which he ought to be bailed; and they gave their reason with the judgment, *because it did not appear what kind of seditions against the king were meant by it. Eo quod non specificatur quales seditiones, &c. Ideo dimittendus*, by mainprise or bail, which to this purpose are all one. For if the sedition had been with traiterous intents, and so expressed, then it had been treason, for which they would not have let him to mainprise. But because sedition against the king, might be of divers other natures, and meer trespasses, therefore they said, *ideo dimittendus est*, expressing therein the right of the prisoner, that he might justly claim to be bailed, and by law, ought to be bailed, and not only that he was bailable. But three objections may, perhaps, be made to this judgment, to make it differ in substance from the case in question. The first, that *A. B. imposuit ei fecisse debuisset diversas seditiones, &c.* which being as an accusation in so general terms, was not certain enough to make him answer to it, and that thence might be the cause of the judgment. The second, that it is not *contra dominum regem*, or *against the king*, as the case here is, but *tangentes*, or *touching the king*. And the third, that here is the king's warrant witnessing the offence, and command for imprisonment, and in that of 9 *Ed. III.* only the charge of a subject and the commitment of a subject. To all three, the reply is easy. For the first, it is plain, that the justice of north *Wales*, shews the reason of the imprisonment to be, because *Russel* was charged by *A. B.* to have committed *sedition touching the king*, as every one that is returned to stand committed for any offence, is supposed to stand so committed, because somebody charged him, or accused him, or can testify against him; and that is here more particularly expressed, which in every return is supposed to be understood in the general words. As, suppose the return were, that such a one stands committed for treason, or murder, upon the accusation, testimony, or examination of *A. B.* taken thus, or thus; would the court bail him the sooner for that addition? And in returns, it was never expected that there should be such certainty as that the prisoner might plead and be tried: Which can never be done from returns, but only by appeals or indictments, wherein the offence is in special set forth by time, place, and all circum-

stances. Or, if they had, in this case of *Russel*, expected or considered such a certainty, they ought not to have let him into mainprise, or bailed him; but clearly dismissed him. For, if an appeal, which is an accusation, were brought against a man, or an indictment put in *de diversis murdris*, or *de murdro*, generally; or, *de proditione* generally; clearly, upon such an appeal or indictment, the court would not put the party neither to answer, nor so much as to the trouble of bail or mainprise, because such a charge that way, were merely void. For in appeals and indictments, the particular circumstance, and the special offence must always be set forth, or else they are void; but, in returns, the general expression is sufficient for the court to judge, whether the offence be such, as that the prisoner ought to be bailed or no, as the common and most known practice is. So that the first objection is of no force. For the second, it is certain, that the words *tangentes regem*, and *contra regem*, in matter of offences, occurring in our laws, are taken as synonymous. As in the 25 *Ed. III. stat. de clero cap. 4.* we have *Treasons or felonies*, touchants auters persons que le roy mesme ou son royal majestie; *touching others than the king*; which is the same with, *being against others than the king*, or *besides the king*; that is, *petit treasons*, (which are both treasons and felonies) as it appears in *Stamford*, l. 2. c. 43. fol. 124. b. High treason being *touching the king*, or *against the king*, or *extending to the king*; which is the same in 25 *Ed. III. de proditionibus*. Where the sense of the words appear by a law made but few years after this very case of *Russel*. So in *Westmin.* 1. ch. 15. *treason que touche le roy mesme*, is expressly for *treason against the king*; that is, high treason. And *Braeton*, fol. 119. b. §. 2. calls the counterfeiting the great seal, which is high treason to this day, *Crimen laesae majestatis quod tangit coronam regis*, or, *treason against the king*. And in this latter age, we see in the statute of 14 *Eliz. cap. 2.* that *treason touching the person of the queen*, and *treason concerning the person of the queen*, are both as the same, and both for *treasons against the queen's person*. So that *tangentes regem*, and *contra regem*, denote the self-same thing in the law; and for that matter, *Russel's* case, and this return are of the self-same nature. Now for the third objection concerning the king's warrant and command in this present case, which is not in that of *Russel's*, but only the accusation, or charge, and command of a subject. For the command singly considered, it is clearly against the petition of right: But if it be considered here (as it ought) joined with the cause of commitment, then the cause is only considerable by itself, as expressed by the warrant. But there is no book-case, act of parliament, or other testimony of law with us, that in this kind of consideration makes any difference between the expression of an offence, in a return of the king's warrant, and the expression of it in a return of a subject. For all returns of this kind, in judgment of law, are supposed true;

true; and the sole point examinable, for matter of bail, is the nature of the offence; unless the commitment were by one that might not commit, or that some other circumstance, not concerning these matters, were in the case. And besides, in 22 *Hen. VIII. rot.* 38. *Parker's case*, & 1 *Hen. VIII. rot.* the king's command for commitment for murder, and other offences of high nature, hath been in the return, where the prisoner was bailed. Nor will there remain any colour of testimony to maintain this last objection.

And as against this case of *Russel* (which is so fully in the point) these objections may be made; so against the main, the conclusion, it may be objected out of those old authors, *Bracton*, *Glanville* and *Hengham*. That *Bracton* in express words, makes *sedition domini regis* to be treason. *Si quis aliquid egerit* (saith he, fol. 118. b.) *ad seditionem domini regis, vel exercitus sui, vel procurantibus auxilium & consilium praeberit vel consensum*, it is *crimen laesae majestatis*, to be punished with death, and so supposes it high treason. So *Glanville*, *Si quis machinatus fuerit, vel aliquid fecerit, in mortem regis, vel seditionem regni, vel exercitus*; he saith it is likewise treason. And *Hengham* bringing examples of the *placita de crimine laesae majestatis*, adds, *ut de nece vel seditione personae domini regis, vel regni, vel exercitus*. Where we see, *sedition regis*, or *regni*, or *exercitus*, is supposed treason. But the answers to the authority of these old authors is various. First. However they were all three (if at least that of *Glanville* be the work of Sir *Randal Glanville*, chief justice of England under *Henry II.*) learned and famous judges in their ages, yet they lived so long since, and the rest of the particulars of which they write, are so different (whether we observe the pleas of the crown in them, or the pleas between party and party) from the practice and established laws of the ensuing ages, that their authority is of slight, or no moment for direction in judgment of the law at this day, though it be very considerable in examination what the law was in their times; and that way it sometimes is used as an ornament in argument only, as it is said in the commentaries of them. The first of them died about 400 years since; the second, about 350; and *Hengham* about 300 years past. Secondly. The words of *sedition regis*, or *regni*, are an obscure expression, and hardly so intelligible as that we may know what they meant. For what can *sedition of the king* mean, in *English*, or in *Latin*, as they express it? And if it be taken for *sedition against the king* (as indeed the like words are interpreted in *Scottish*, out of the *regiam majestatem*, by Mr. *Skene*) it must be so taken against all grammar, and usual context of words, for no more than *tumultus regis*, *rebellio regis*, *insurrectio regis*, is *tumult against the king*, or *rebellion against the king*, or *insurrection against the king*, is *sedition regis*, in force of language, *sedition against the king*. Thirdly. Admit it be rightly taken for *sedition against the king*, in those old authors, yet the statute of 25 *Edw. III. de proditionibus*, so

settles the law for treason, that whatsoever was treason before that act, and is not comprised within that act, is no treason at this day, unless some special act of parliament have ordained it. Fourthly. The constant course of testimonies, as they are before shewed, since the 25 of *Ed. III.* prove expressly, that only *sedition against the king* is taken for a less offence, and mere trespass. Fifthly. In particular offences, we see *Bracton*, (whose authority is the chief of the three, whether we regard the expression, or the quality of the writer) differs much from the common law of the later ages; and so much, that he is directly, in some things of great moment, contrary to the clear known law, both of the present and of ancient times. As, he allows no killing of a man to be murder, but what is done so secretly, that it is not known who doth it. *Bracton*, l. 3. de corona, fol. 134. b. & 135. And that if the offender be taken, or, if the party hurt, live long enough to discover him that hurt him, though he die afterward, it is (saith he) no murder. Which is directly contrary to the law, yet altered by no special act of parliament. So, *Si quis alterius virilia absciderit, & libidinis causa, vel commercii castraverit, sequitur* (saith he, p. 144. b. §. 3.) *poena aliquando capitalis, aliquando perpetuum exilium, cum omnium bonorum ademptione*; whereas there is no such thing in the laws of England. But indeed, by the civil law, *Qui hominem libidinis, vel promercii causa castraverit, poena legis Corneliae de sicariis punitur*; that is, is punishable capitally. ff. ad leg. Cornel. de sicariis. l. 3. §. 4. & l. 4. §. ult. Whence doubtless *Bracton* (who cites often, to other purposes, the very texts and words, and quotes the places of the *digests*, and the *code*) had that punishment for such as gelded men. And thence also had, by all likelihood, that touching *sedition*. For, by the civil law, all *sedition*, publick raising of tumults, gathering armed men, without publick authority; and whatsoever is but with us as a commotion or riot, is treason (*crimen laesae majestatis*) and capital. To which purpose there be divers texts in that law ff. ad leg. Juliam majest. l. 1. & de poenis. l. 38. §. 2. de appellationibus, l. 16. C. de seditionibus, l. 1. & 2. &c. which doubtless he both read, and often followed; and by *concitatores seditionis*, or *stirrers up of sedition*, by that very name were condemned as capital traitors. But this was never, for ought appears, law in England; but the contrary appears plain enough by what is already said. Sixthly. For answer to the objections out of *Bracton* and *Glanville*, if their authority shall be taken sufficient to maintain *sedition* to be treason; then will it be as reasonable to prove, that in such a case bail also should be taken. For *Bracton* saith expressly of that and other treasons that he joins with it, that the prisoner ought to be bailed, unless an accuser be present. *Si quis*, saith he, *de hoc crimine diffamatus fuerit, tunc videndum erit utrum appareat accusator, vel non; si autem nullus appareat, nisi sola fama quae tantum apud bonos & graves oriatur, hic salvo* attachi-

attachiabitur per salvos & securos plegios; vel si plegios non habuerit, per carceris inclusionem, donec de crimine sibi imposito veritas inquiratur. And Glanville saith expressly, that although an accuser be present, yet he is to be bailed. *Etiamsi accusator fuerit* (saith he) *accusatus dimittitur per plegios, aut si non fuerit, in carcerem dimittitur.* So that either the authority of these old authors is of no moment, for the reasons before shewed; or if it be valuable, and that advantage must be taken from them; it is as reasonable that their other opinion, for the bail, be as well accepted and allowed of in this case. But there remains, perhaps, one objection, out of the opinions of Tresilian and Belknap, the two chief justices; and of Holt, Fulthorp and Burgh, justices of the common pleas, and Lokton, one of the king's serjeants in 11 Rich. II. (*Vide* 21 Rich. II. c. 11. see the roll.) Who being, among other things, demanded at Nottingham by the king, and charged to answer, upon their faith and liegeance to the king, how they ought to be punished that did interrupt the king, so that he might not exercise those things that pertaineth to his regality and prerogative; (in which words perhaps, may be included all kind of sedition against any proceeding, process, or ordinary command of the king) with one assent they answered, that they ought to be punished as traitors. And if that were law, it were hard to find a sedition against the king, but that it were treason. For all his proceedings, process, and ordinary commands, belong to his regality and prerogative, and every sedition against him, is a kind of interruption of the exercise, at least, of those proceedings, process, and ordinary commands.

It is true, that in the 11th of Rich. II. such an answer, among divers others of like nature, were given by those judges, and that serjeant; and they put their seals also to them. But it is as true, that for these very answers they were accused by the commons in parliament, the self same year, where they answered upon the accusation: First. That the answers were written in the original to which their seals were put, otherwise than their meaning was, in some part. Secondly. That they had been threatened to make no other answer than what might agree with the king's liking. Thirdly. That their answers proceeded not of their free will, but for fear of death; and that some of them had revealed as much to the earl of Kent, desiring him to witness as much hereafter, if time served. *Rot. parl.* 11 Rich. II. n. 14. & *vide stat.* 11 Rich. II. c. 3. 5. &c. Notwithstanding all which, at the instance of the commons, they were adjudged all, by declaration in parliament, made by the king and commons (which was according to the act of 25 Edw. III. and so by act of parliament) to be traitors, and to suffer as in case of treason; good part of which proceeding is remembered in the statutes of that year, but much more in the rolls of that parliament. And although in the parliament of 21 of Rich. II. that parliament, and in parti-

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cular, this proceeding against the judges, were wholly annulled, and their answers adjudged good; as appears in the printed statutes of that year, 21 Rich. II. c. 12. Yet in the 1st of Hen. IV. it was declared by parliament, 1 H. IV. c. 3. that this proceeding of parliament of 21 of Rich. II. being caused by a certain number only, of the members of parliament, and that the *statutes, judgments, ordinances, and establishments, were made, ordained, and given erroneously and deceitfully in great dissension and final destruction, and undoing of the liege people of the realm.* Where also it was further declared and adjudged, in the same parliament, that all the parliament of 21 Rich. II. and all circumstances and dependents thereupon to be of no force or value, but annulled. And besides, that the parliament of the 11th of Rich. II. wherein those judges were condemned as traitors, for that answer, and all the rest of that kind, should be firmly holden and kept, after the purport and effect of the same, as a thing made for the great honour and common profit of the realm. So that that answer of the judges, in the 11 of Rich. II. so highly condemned as false and erroneous, by two parliaments, both which have to this day continued in firm strength, is of no weight to prove that *sedition against the king is treason.* Nor doth any thing else prove it, but the contrary is manifested by the arguments before urged. And by consequence, it is only trespass against the king, and punishable by fine and imprisonment, and therefore the prisoner returned to stand committed for stirring it up against the king, ought to be bailed.

Of the liberty of the subject. 1628. Mar. 27.

I WAS sent hither, and trusted with the lives and liberties of them that sent me. Since I came, I took here an oath to defend the king's prerogatives and rights. I profess, tho' once I was of counsel, and then I spoke for my fee, for the gentlemen in their *habeas corpus*; yet now I speak according to my knowledge and conscience.

The question is, whether any subject or free-man, that is committed to prison, and the cause not shewn in the warrant, he ought to be bailed, or delivered? I think, confidently, it belongs to every subject, that is not a villein, that he ought to be bailed, or delivered.

I shall speak in this course. 1. I will shew the reasons. 2. Acts of parliament. 3. Precedents. 4. Answer objections.

I. Reasons drawn from three heads;

1. From remedies provided by the common law against imprisonment. For that precious thing of liberty there are divers remedies, by which it appears, if no known cause be of further detainment, he is to be delivered. I will not mention the action of false imprisonment, but the writ *de odio & atia*, which is not taken away, for that it is in *magna charta*. That writ was sent to know, if the party imprisoned were committed for any cause of malice and

11 Y

hatred,

hatred, and this was to be enquired of in jury. For the writ *de homine replegiando*, if one be imprisoned under the sheriff, he must be delivered, if he be not detained for a cause for which he is not replevifable. For the *habeas corpus*, the keeper is to bring the body *ad subjiciendum & recipiendum*. If there be no cause, how can the court consider of the cause? For appeal, by the old law in the time of *Hen. I.* one imprisoned might have his appeal, as appears by *Brañton, c. 25. lib. de corona. Fleta, c. 42.*

2. The second reason is from the consideration of freemen and villeins. All admit we are *liberi homines*; but do but consider the difference of villeins and freemen, and I know no difference in their persons, but only the one cannot be imprisoned, as the other may. Whoever can say I can imprison him, I will say he is my villein. It is the body and sole distinction of freemen, that they cannot be imprisoned at pleasure.

In old time none but *Jews* and villeins could be imprisoned, and confined. The *Jews* were as demefne villeins of the king; he could fend to them to lend money, and if they did not, he imprisoned them.

3. From matter of punishment. When any thing is declared by any new statute to be an offence, it goes, that he shall be fined and imprisoned. To what end were this in any act of parliament, if imprisonment was at the king's will.

II. For acts of parliament, *magna charta, c. 19.* In that act, when it was first made, it was *nec eum in carcere mittemus*, 17 *Joh.* that statute was made, and then it had those words. The course then was to fend down all acts of parliament and charters to the abbies to be enrolled. *Matth. Paris. 345. & 342.* recites that charter of 17 *Joh.*

They object in *magna charta*, there is *lex terrae*, and by the law one may be imprisoned.

Lex terrae is the process of law, for the law imprisons no man at all, but it is meant the process of law. 5 *Edw. III.* Upon some occasion it was enacted, That none be attached contrary to the great charter and the law of the land, 25 *Edw. III.* divers were committed to the *Tower*, and no man knew wherefore, whereupon was 25 *Edw. III.* made. 28 *Ed. III. c. 3.* 36 *Edw. III. n. 9.* is against imprisonment, *per speciale mandatum.*

III. For precedents, 18 *Edw. III. rot. 33 H. I. Hen. VIII. rot. 9.* 12 *Jac. rot. 153.*

IV. Objections against it. *First*, Against the reason; A man may be committed for a point of state that may not be known; I understand not matters of state; I expected not the objection in a court of justice; and it may be a word for any king to try the courages of his judges, and to suppose there is a cause of state, when perhaps there is no cause appears to them. It is as if they sent him back to prison, they knew not wherefore, which cannot be in a court of justice, where they are sworn to do justice.

Secondly, As to the acts of parliament, the

judges gave no answer, but only commended them; but the attorney answered them with one blow to strike them all: That they are to be considered for common and ordinary causes, that happen in *Westminster-hall* only. But do but consider *magna charta*, which reflects upon the king; *nec super eum ibimus*. By the law, if I bring an appeal of murder against a nobleman, which is my suit, he shall not be tried by his peers; but if he be indicted for that murder, which is the king's suit, he shall; which shews, that that which is in *magna charta* is meant of the king, though it be not in the third person.

Third objection is against the statute of *Westminster, 1. c. 15.* But the king's command, is the command of the king by his justices; and also the word *replevifable*, never signifies bailable; bailable, is in a court of record, by the king's justices; but replevifable, is by the sheriff. The statute is to the sheriff, and it shews the particular causes, and concludes that the sheriff shall lose his bailiwick. The sheriff could never replevy one for murder, or matters of the forest; but in the king's bench for murder or matters of the forest they may, 3. *assif. 19. 21 Edw. IV. 25. 22 Hen. VI. 48. Newton.* If any man be taken by our command, or by the command of the king, if the sheriff take the party, he must come to us, we will grant a *superfedeas*.

Fourthly, They object against the precedents cited; they are all of this kind, they were imprisoned *per mandatum domini regis*, or *concilii* without cause, or the cause is expressed. When the cause is expressed, and is within the cognizance of the court, there they bailed him; but when it is for felony or treason, it may be done beyond the seas, and then the court has no cognizance of them. When no cause is set, yet bailment is alledged; then they answer, divers were so bailed, but the cause appears by paper books; but I never saw these books to be records, and judges of record made their judgment in records, and the cause only appears by record.

For the resolution cited 34 *Eliz.* all precedents were read, acts of parliament indeed were passed over, and yet that was not read. As we have that liberty here, so I dare say, no prince in christendom doth assume this power to imprison any without any cause. I find no steps or *vestigium* of any such power.

About the employment of the subject in foreign services. April 3. 1628.

THE question consists of two parts: It is one thing for every subject to receive press-money as a soldier, and another thing to go upon any other service as ambassador, or otherwise.

First, Whether every subject shall receive press-money if it be offered? I hold it clearly he is not. I shall express the old course for soldiers. Three courses were used for levying of forces

forces for wars. 1. By calling them together who were bound to serve by tenure. 2. By sending to those, who by covenant were engaged to serve the king. 3. By this new way of pressing. For the first, the tenure doth yet continue. Before the conquest, there was no man but was some way subject to the wars, and to arm men; and nothing is more frequent in *domesday*. They were to send soldiers to the wars according to the quantity of lands they had. And all land was liable to the conqueror, having gained a great part of his land into his hands by forfeiture. He gave so much land as he was able to have 6000 knights, and armed men by their tenure. And in all succeeding times, the frequent course was, that men by their tenure were to serve the king. Nothing is more frequent in the rolls and records. Now reckon when the conqueror gave 6000 knights fees, which must be at the least 20 *l. per ann.* to a knight's fee; he would not have given so much, if he could have compelled men by his prerogative.

Ordericus Vitalis, p. 523. printed at Paris, writes of William the Conqueror accordingly; *Braetton* 36. speaking of *regale servitium*, saith, *Quod fuit in conquestu adinventum*; and speaking of *servitia forinseca*, saith, *illa persolvuntur ratione tenementorum non ratione personarum*. In *Ed. III*'s time, there was a great question between the king and the subject upon this point. The king being willing to go into *Flanders*, some great men opposed it; and the commons being called together, all were summoned that had the value of 20 *l. per ann.* to come to *London*, *transfretare in Flandriam*. Sundry men came, and a parliament ensued, and the parliament made a declaration by way of petition; and the commons and lords joined together, and declared, That it was against right to be summoned to come to *London*, and they knew not to what place they should go. *Flanders* was too large a place, and they said, they ought not to go to service there. *Quia nec ipsi nec predecessores sui unquam fecerunt servitia in terra illa*. Amongst them that were summoned, those only were tied, who held by tenure, but others were not at all, and the title is here, *For employment in foreign forces*. This appears both by history and by ancient *msl.* which I have seen, and can shew to any. 1 *Edward III*. No man is to go out of his country but for defence of the realm: when enemies come into the realm. 2. For the point of covenant with the king, to serve him in his wars. From the time of *Ed. II.* till *Hen. VIII.* that was the frequent way. The barons and great men, could raise a thousand men at any time. 3. For pressing; none may guess from whence it came. When those covenants were in use with great men; when their greatness ended, then great officers began to press men. Some object a statute in the time of *Hen. VII.* 11 *Hen. VII. c. 1.* But that statute is only for defence within the realm. 2 *Ed. VI. c. 2.* There it recites, that some men covenanted to serve the king. 11 *Hen. VII. c. 1.* The recital is, Whereas

every subject is bound to serve the king in his wars within the realm. 18 *Ed. III. c. 7.* 18 *Hen. VI. c. 18.* 19. speak of soldiers that were retained and departed. In 7 *Hen. VII. c. 1.* there is a statute for those that are retained in the king's service and departed. 3 *Hen. VIII. c. 5.* If any be retained to serve the king, &c. But in all these statutes, there is not a word of any soldiers pressed, or sent away by compulsion; and so then the law knew no pressing.

The argument, which by the command of the house of commons was made at their first conference with the lords, touching the personal liberty of the person of every freeman, out of precedents of record, and resolutions of judges in former times. April 7. 1628.

MY LORDS;

YOUR lordships have heard from the gentleman that last spake, a great part of the grounds upon which the house of commons upon mature deliberation proceeded to that clear resolution touching the right of the liberty of their persons. The many acts of parliament, which are the written laws of the land, and are expressly in the point, have been read and opened, and such objections as have been by some made to them, and some objections also made out of another act of parliament, have been cleared and answered. It may seem now perhaps (my lords) that little remains needful to be further added, for the enforcement and maintenance of so fundamental and established a right and liberty belonging to every freeman of the kingdom. But in the examination of questions of law of right, besides the laws or acts of parliament, that ought chiefly to direct and regulate every man's judgment, whatsoever hath been put in practice to the contrary, there are commonly used also former judgments or precedents, and indeed have been so used sometimes, that the weight of reason, of law, and of acts of parliament, hath been laid by, and resolutions have been made, and that in this very point, only upon the interpretation and apprehension of precedents. Precedents, my lords, are good *media* or proofs of illustration or confirmation, where they agree with the express law, but they can never be proof enough to overthrow any one law, much less seven several acts of parliament, as the number of them is for the point. The house of commons therefore taking into consideration, that in this question, being of so high a nature, that never any exceeding it in any court of justice whatsoever, all the several ways of just examination of the truth should be used, have also most carefully informed themselves of all former judgments or precedents, concerning this great point either way; and have been no less careful of the due preservation of his majesty's just prerogative than of their own rights. The precedents here are of two kinds

kinds, either merely matter of record, or else the former resolutions of the judges after solemn debate in the point.

This point that concerns precedents, the house of commons have commanded me to present to your lordships, which I shall as briefly as I may, so I do it faithfully and perspicuously. To that end, my lords, before I come to the particulars of any of those precedents, I shall first remember to your lordships, that which will seem as a general key for the opening and true apprehension of all them of record; without which key, no man, unless he be versed in the entries and course of the king's bench, can possibly understand them.

In all cases, my lords, where any right or liberty belongs to the subjects by any positive law written or unwritten, if there were not also a remedy by law for the enjoying or regaining this right or liberty when it is violated or taken from him, the positive law were most vain, and to no purpose; and it were to no purpose, for any man to have any right in any land or other inheritance, if there were not a known remedy, that is, an action or writ, by which in some court of ordinary justice, he might recover it. And in this case of right of liberty of person, if there were not a remedy in the law for regaining it when it is restrained, it were of no purpose to speak of laws that ordain, it should not be restrained. Therefore in this case also, I shall first shew you the remedy that every freeman is to use for the regaining of his liberty, when he is against law imprisoned, that is upon the legal course and form to be held in using that remedy; the precedents or judgments upon it, for all judgments of record rise out of this remedy, may be easily understood. There are in law divers remedies for enlarging of a freeman imprisoned, as the writs of *odio & atia*, and of *homine replegiando*, besides the common or most known writs of *habeas corpus*, or *corpus cum causa*, as it is called also.

The first two writs are to be directed to the sheriff of the county, and lie in some particular cases, with which it would be untimely for me to trouble your lordships, because they concern not that which is committed to my charge. But that writ of *habeas corpus*, or *corpus cum causa*, is the highest remedy in law for any man that is imprisoned, and the only remedy for him that is imprisoned by the special command of the king, or the lords of the privy council, without shewing cause of the commitment; neither is there in the law any such thing, nor was there ever mention of any such thing in the laws of this land, as a petition of right to be used in such cases for liberty of the person; nor is there any legal course for enlargement to be taken in such cases, howsoever the contrary hath, upon no ground or colour of law, been pretended. Now, my lords, if any man be so imprisoned by any such command, or otherwise, in any prison whatsoever through *England*, and desire by himself, or any other in his behalf, this writ of *habeas corpus*, for the purpose, in the court of the king's bench, the writ

is to be granted to him, and ought not to be denied him, no otherwise than another ordinary original writ in the chancery, or other common process of law may be denied; which, amongst other things, the house resolved also, upon mature deliberation; and I was commanded to let your lordships know so much. This writ is directed to the keeper of the prison in whose custody the prisoner remains, commanding him, that after a certain day, he bring in the body of the prisoner, *ad subjiciendum. & recipiendum. juxta quod curia consideraverit, &c. una cum causa captionis, & detentionis*, and oftentimes, *una cum causa detentionis* only, *captionis* being omitted.

The keeper of the prison thereupon returns by what warrant he detains the prisoner; and with his return filed to his writ, brings the prisoner to the bar at the time appointed: When the return is thus made, the court judgeth of the sufficiency or insufficiency of it, only out of the body of it, without having respect to any other thing whatsoever; that is, they suppose the return to be true, whatsoever it be; if it be false, the prisoner may have his action on the case against the gaoler that brought him. Now, my lords, when the prisoner comes thus to the bar, if he desire to be bailed, and that the court upon the view of the return, think him in law to be bailable, then he is always first taken from the keeper of the prison that brings him, and committed to the marshal of the king's bench, and afterwards bailed, and the entry perpetually is, *committitur marescallo & postea traditur in ball*; for the court never bails any man, until he first become their own prisoner, and be in *custodia marescalli* of that court. But if upon the return of the *habeas corpus*, it appear to the court, that the prisoner ought not to be bailed, nor discharged from the prison whence he is brought, then he is remanded, or sent back again, there to continue, until by course of law he may be delivered; and the entry in this case, is *remittitur quousque secundum legem deliberatus fuerit*, or, *remittitur quousque, &c.* which is all one, and the highest award or judgment, that ever was, or can be given upon a *habeas corpus*. But if the judges doubt only whether in law they ought to take him from the prison whence he came, or give a day to the sheriff to amend his writ, as often they do, then they remand him only, during the time of their doubt, or until the sheriff hath amended his return, and the entry upon that is *remittitur* only, or *remittitur prisonae praed.* without any more. And so *remittitur* generally, is of far less moment in the award upon the *habeas corpus*, then *remittitur quousque, &c.* howsoever the vulgar opinions raised out of the late judgment be to the contrary. All these things are of most known and constant use in the court of king's bench, as it cannot be doubted but your lordships will easily know from the grave and learned my lords the judges.

These two courses, the one of the entry of *committitur marescall. & postea traditur in ballium,*

ballium, and the other *remittitur quousque*, &c. & *remittitur* generally, or *remittitur prisonae praed.* together with the nature of the *habeas corpus*, thus stated, it will be easier to me to open, and your lordships to observe; whatsoever shall occur to the purpose in the precedents of record, to which I shall come now in the particular. But before I am come to the precedents, I am to let you know the resolutions of the house of commons, touching the enlargement of a man committed by the command of the king, or the privy council, or any other, without cause shewed of such commitment: It is thus; that if a freeman be committed or detained in prison, or otherwise restrained by the command of the king, the privy council, or any other, and no cause of such commitment, detainer, or restraint, to be expressed, for which, by law, he ought to be committed, detained, or restrained, and the same be returned upon a *habeas corpus* granted for the party, then he ought to be delivered and bailed.

This resolution, as it is grounded upon the acts of parliament already shewn, and the reason of the law of the land, which is committed to the charge of another, and anon, also to be opened to you, is strengthened also by many precedents of record.

But the precedents of record that concern this point are of two kinds, for the house of commons hath informed it self of such as concern it either way. The first such as shew expressly that persons committed by the command of the king, or of the privy council, without other cause shewed, have been enlarged upon bail when they prayed it; whence it appeareth clearly, that by the law they are bailable, and so by *habeas corpus* to be set at liberty; for though they ought not to have been committed without a cause shewed of the commitment, yet it is true, that the reverend judges of this land did such respect to such commitments by the command of the king or of the lords of the council (as also to the commitment sometimes of inferior persons) that upon the *habeas corpus*, they rarely used absolutely to discharge the persons instantly, but only to enlarge them upon bail; which sufficiently secures and preserves the liberty of the subject according to the laws that your lordships have already heard; nor in any of the cases is there any difference made between such commitments by the lords of the council, that are incorporated with him. The second kind of precedents of record are such as have been pretended to prove the law to be contrary, and that persons so committed ought not to be set at liberty upon bail, and are in the nature of objections out of record.

I shall deliver them summarily to your lordships with all faith, and also true copies of them, out of which it shall appear clearly to your lordships, that of those of the first kind there are no less than twelve most full and directly in the point, to prove that persons so committed are to be delivered upon bail, and amongst those of the other kind, there is not so much as one, not one, that proves at all any thing to

the contrary. I shall first, my lords, go through them of the first kind, and so observe them to your lordships, that such scruples as have been made upon them, by some that have excepted against them, shall be cleared also, according as I shall open them severally.

The first of the first kind is of *Edw. III.*'s time. It is in *Pasch. 18 Edw. III. rot. 33.* the case was thus;

King *Edw. III.* had committed by writ, and that under his great seal (as most of the king's commands in those times were) one *John de Bildeston*, a clergyman, to the prison of the *Tower*, without any cause shewed of the commitment. The lieutenant of the *Tower* is commanded to bring him to the king's bench, where he is committed to the marshal; but the court asks of the lieutenant, if there were any cause to keep this *Bildeston* in prison, besides that commitment of the king? he answered no; whereupon the roll says, *Quia videtur cur. bre' praed' sufficient' non esse causam praed' Joh. de Bildeston in prisona dom' regis hic detinend' idem Johannes admittitur per manucap-tionem Willielmi de Wakefield*, and some others, where the judgment of the point is fully declared in the very point.

The second in the first kind of precedents of records is in the time of *Hen. VIII.* one *John Parker's* case, who was committed to the sheriffs of *London*, *pro securitate pacis*, at the suit of one *Brinton*, *ac pro suspitione feloniae* committed by him in *Glocestershire*, *ac per mandatum domini regis*, he is committed to the marshal of the king's bench, & *postea isto eodem termino traditur in ball'*. Here were other causes of the commitment, but plainly one was by the command of the king, signified to the sheriffs of *London*, of which they took notice. But some have interpreted this, as if the commitment had been for suspicion of felony by the command of the king; in which case it is agreed of all hands, that the prisoner is bailable. But no man can think of this precedent, that observes the context; and understands the grammar of it; wherein most plainly, *ac per mandatum domini regis* hath no reference to any other cause whatsoever; but is as a single cause enumerated in the return by itself, as the record clearly sheweth. It is in *22 Hen. VIII. rot. 37.*

The third is of the same king's time, it is *35 Hen. VIII. rot. 33.* *John Binck's* case; he was committed by the lords of the council *pro suspitione feloniae, ac pro aliis causis illos moventibus, qui committitur mariscallo, & immediate ex gratia curiae specialiter traditur in ball'*. They committed him for suspicion of felony and other causes them thereunto moving, where-in there might be matter of state, or whatsoever else can be supposed, and plainly the cause of their commitment is not expressed; yet the court bailed him without having regard to these unknown causes that moved the lords of the council. But it has indeed some difference from either of those other two that precede, and from the other nine also that follow; for it is

agreed, that if a cause be expressed in the return, inasmuch that the court can know why he is committed, that then he may be bailed, but not if they know not the cause; now a man is committed for a cause expressed, & *pro aliis causis dominos de concilio moventibus*, certainly the court can no more know in such a case, what the cause is, than any other.

The fourth of these is in the time of queen Mary, it is *Pasch. 2. & 3. P. & Mar. rot. 58.* Overton's case. Richard Overton was returned upon a *habeas corpus*, directed to the sheriffs of London, to have been committed to them, and detained *per mandatum prae nobilium dominorum honorabilis concilii dominorum regis & reginae, qui committitur marr' & immediate traditur in ball'*. In answer to this precedent, or by way of objection to the force of it, it hath been said, that this Overton at this time stood indicted of high treason. It is true, he was so indicted, but that appears in another roll, that hath no reference to the return, as the return hath no reference to that roll. Yet they that object this against the force of this precedent, say, that because he was indicted of treason, therefore though he were committed by the command of the lords of the council without cause shewed, yet he wasailable for the treason, and upon that was here bailed: Than which objection nothing is more contrary, either to law or common reason. It is most contrary to law, for that clearly every return is to be adjudged by the court out of the body of itself, and not by any other collateral or foreign record whatsoever; therefore the matter of indictment here, cannot in law be cause of bailing of the prisoner. And so it is averse to all common reason, that if the objection be admitted, it must of necessity follow, that whosoever shall be committed by the king, or the privy council, without cause shewed, and be not indicted of treason or some other offence, may not be enlarged, by reason of supposition of matter of state: But that whosoever is so committed, and withal stands so indicted, though in another record may be enlarged, whatsoever the matter of state be for which he was committed. The absurdity of which assertion needs not a word for farther confutation, as if any of the gentlemen in the last judgment, ought to have been the sooner delivered, if he had been also indicted of treason; if so, traitors and felons have the highest privilege in personal liberty, and that above all other subjects of the kingdom.

The fifth of this kind is of queen Mary's time also, it is *Pasch. 4 & 5 P. Mar. rot. 45.* the case of Edward Newport. He was brought into the king's bench by *habeas corpus* out of the Tower of London, *cum causa, viz. Quod commissus fuit per mandatum concilii dominae reginae qui committitur marr' & immediate traditur in ballium.*

To this the like answer hath been made. As to that other case of Overton's next before cited, they say that in another roll of another term of the same year, it appears he was in question for

suspicion of coining, and it is true he was so; but the return and his commitment mentioned in it have no reference to any such offence, nor hath the bailment of him relation to any thing but to the absolute commitment by the privy council; so that the answer to the like objection made against Overton's case satisfies this also.

The sixth of these is of queen Elizabeth's time, *Mich. 9. El. rot. 35.* the case of Thomas Lawrence; this Lawrence came in by *habeas corpus*, returned by the sheriffs of London to be detained in prison *per mandat' concilii dominae reginae qui committitur marr. & super hoc traditur in ballium.*

An objection hath been invented against this also; it hath been said that this man was pardoned; and indeed it appears so in the margin of the roll, where the word *pardonatur* is entered; but clearly his enlargement by bail was upon the body of the return only, unto which that note of pardon in the margin of the roll hath no relation at all. And can any man think, that a man pardoned (for what offence soever it be) might not as well be committed for some *arcanum*, or matter of state, as one that is not pardoned, or out of his innocence wants no pardon?

The seventh of these is in the same year, and of Easter term following, it is *P. 9. El. rot. 68. Ro. Constable's case.* He was brought by *habeas corpus* out of the Tower; and in the return it appeared he was committed there, *per mandatum privati concilii dictae dominae reginae qui committitur marr' & postea isto eodem ter' traditur in ball.* The like objection hath been made to this, as that before of Lawrence, but the self same answer clearly satisfies for them both.

The eighth is of the same queen's time, in *Pas. 20. El. rot. 72. John Browning's case.* This Browning came by *habeas corpus* out of the Tower, whither he had been committed, and was returned to have been committed, *per privat' concil' dominae reginae qui committitur marr' & postea isto eodem termino traditur in ball.* To this it hath been said, that it was done at the chief justice Wray's chamber, and not in the court; and thus the authority of the precedent hath been lessened or slighted. If it had been done at his chamber, it would have proved at least this much, that Sir Christopher Wray, then chief justice of the king's bench, being a grave, learned, and upright judge, knowing the law to be so, did bail this Browning, and enlarge him, and even so far the precedent were of value enough; but it is plain, that though the *habeas corpus* were returnable, as indeed it appears in the record itself, at his chamber in Serjeants-Inn, yet he only committed him to the king's bench presently, and referred the consideration of enlarging him to the court, who afterward did it: For the record says, *& postea isto eodem termino traditur in ball'* which cannot be of an enlargement at the chief justices chamber.

The ninth of this first kind is *Hill. 40. El. rot. 62. Edward Harecourt's* case. He was imprisoned in the *Gate-house*, and that *per dominos de privato concilio dominae reginae pro certis causis eos moventibus & ei ignotis*; and upon his *habeas corpus* was returned to be therefore only detained, *qui committitur marr;* & *postea isto eodem termino traditur in ball.* To this never any colour of answer hath been yet offered.

The tenth is *Catesbie's* case in the vacation after *Hill. term. 43. El. rot. Robert Catesbie* was committed to the *Fleet per warrantum diversorum praenobilium virorum de privato concilio dominae reginae*: He was brought before justice *Fenner*, one of the then justices of the king's-bench, by *habeas corpus* at *Winchester house, Southwark, & commiss. fuit marr per prefat' Edwardum Fenner & statim traditur in ball.*

The eleventh is *Richard Beckwith's* case, which was in *Hil. 12 of king James, rot. 153.* He was returned upon his *habeas corpus* to have been committed to the gate-house by divers lords of the privy council, *qui committitur marr & postea isto eodem termino traditur in ball.*

To this it hath been said by some, that *Beckwith* was bailed upon a letter written by the lords of the council to that purpose to the judges; but it appears not that there was ever any letter written to them to that purpose; which though it had been, would have proved nothing against the authority of the record; for it was never heard of that judges were to be directed in point of law by letters from the lords of the council; although it cannot be doubted, but that by such letters, sometimes they have been moved to bail, men that would or did not ask their enlargement without such letters, as in some examples I shall shew your lordships among the precedents of the second kind.

The twelfth and last of these, is that of Sir *Thomas Mounson's* case, it is *Mich. 14. Jac. rot. 147.* He was committed to the *Tower per warrantum a diversis dominis de privato concilio domini regis locum tenenti directum*, and he was returned by the lieutenant to be therefore detained in prison, *qui committitur marr & super hoc traditur in ball.*

To this it hath been answered, that every body knows by common fame, that this gentleman was committed for suspicion of the death of Sir *Thomas Overbury*, and that he was therefore bailable. A most strange interpretation. As if the body of the return, and the warrant of the privy council, should be understood, and adjudged out of fame only. Was there not as much a fame why the gentlemen that were remanded in the last judgment were committed, and might not the self same reason have served to enlarge them, their offence (if any were) being I think much less than that for which this gentleman was suspected?

And thus I have faithfully opened the number of twelve precedents most express in the

very point in question, and cleared the objections that have been made against them.

And of such precedents of record as are of the first kind, which prove plainly the practice of former ages, and judgment of the court of king's-bench, in the very point, on the behalf of the subject, my lords, hitherto.

I am come next to those of the second kind, or such as are pretended that persons so committed are not to be enlarged by the judges upon the *habeas corpus* brought; but to remain in prison still at the command of the king or the privy council.

These are of two natures; the first of these are, where some assent of the king or the privy council appears upon the enlargement of a prisoner so committed, as if that because such assent appears, the enlargement could not have been without such assent.

The second of this kind, are those which have been urged as express testimonies of the judges denying bail; and in such cases, I shall open these also to your lordships; which being done, it will most clearly appear, that there is nothing at all in any of these that makes any thing at all against the resolution of the house of commons touching this point; nay, it is so far from their making any thing against it, that some of them add good weight also to the proof of that resolution.

For those of the first nature of this second kind of precedents, they begun in the time of *Hen. VII. Thomas Brugge*, and divers others were imprisoned in the king's-bench *ad mandatum dom' regis*; they never sought remedy by *habeas corpus*, or otherwise, for ought appears; but the roll says, that *dominus rex relaxavit mandatum*, and so they were bailed. But can any man think that this is an argument either in law or common reason, that therefore they could not have been bailed without such assent? It is common in cases of common persons, that one being in prison for surety of the peace or the like, at the suit of another, is bailed upon the release of the party plaintiff. Can it follow, that therefore he could not have been bailed without such release? Nothing is more plain than the contrary. It were the same thing to say, that if it appear, that if a plaintiff be nonsuit, therefore unless he had been non-suit, he could not have been barred in the suit. The case last cited is, *Mich. 7 Hen. VII. rot. 6.*

The very like is in the same year, *Hill. 7. Hen. VII. rot. 13.* the case of *William Bartholomew, William Chase*, and divers others; and the self same answer that is given to the other clears this.

So in the same year, *Pas. 7 Hen. VII. rot. 18.* *John Beomond's* case is the same in substance with those other two, and the self same answer also satisfies, that clears them.

The next case is, *Mich. 12. Hen. VII. rot. 8.* *Thomas Tew's* case. He was committed *ac sec' pacis*, for the security of the peace, at the suit of one *Freeman*, and besides, *ad mandatum dom' regis*; and first, *Freeman relaxavit sec' pacis*,

pacis, and then Sir James Hubbard, the then king's attorney general *relaxavit mandatum dom' regis*, and hereupon he is bailed. The release of the king's attorney, no more proves that he could not have been enlarged without such release or assent, than that he could not have been bailed, without release of surety of the peace by *Freeman*.

The very like is in *Hill. 9 Hen. VII. rot. 14.* the case of *Humphrey Boch*; which proves no more here than the rest of this kind already cited.

Then for this point also *Broome's* case of queen *Elizabeth's* time, is *Trin. 39 El. rot. 128.* *Lawrence Broome* was committed to the *Gatehouse per mandatum dom' concilii dominae reginae*, and being returned so upon the *babeas corpus*, is first committed to the *Marshalsea* as the course is, and then bailed by the court. Which indeed is an express precedent, that might perhaps well have been added to the number of the first twelve, which so plainly shew the practice of enlarging prisoners in this case, by judgment of the court upon the *babeas corpus*. But it is true, that in the scrolls of that year, where the bails are entered, but not in the record of the *babeas corpus*, there was a note, that this *Broome* was bailed *per mandatum privati concilii*; but plainly this is not any kind of argument, that therefore in law he might not have been otherwise bailed.

The self same is to be said of another of this kind, in *Mich. 40 El. rot. 37.* *Wenden's* case. *Thomas Wenden* was committed to the *Gatehouse* by the queen and the lords of the council *pro certis causis* generally, he is brought by *babeas corpus* into the king's bench, and bailed by the court. But it is said, that in the scrolls of that year it appears, that his enlargement was *per consensum dom' privati concilii*; and it is true that the queen's attorney did tell the court, that the lords of the council did assent to it. Follows it therefore, that it could not have been without such assent?

Next is *Hill. 43 El. rot. 89.* when divers gentlemen of special quality were imprisoned by the command of the privy council; the queen being graciously pleased to enlarge them, sends a commandment to the judges of the king's bench, that they should take such a course, for the delivering of them upon bail, as they should think fit; and they did so, and enlarged them upon writs of *babeas corpus*. Follows it therefore, that this might not have been done by law, if the parties themselves had desired it?

So in *Trin. 1 Jac. rot. 30.* Sir *Jo. Brocket* being committed to the *Gatehouse*, is returned to stand committed *per mandatum privati concilii*, and he is enlarged *virtute warranti a concilio praediti*. But the same answer that satisfies for the rest before cited, serves for this also.

The last of these, is *Reynar's* case, in *Mich. 12 Jac. rot. 119.* He was committed to the *Gatehouse* by the lords of the council; and being brought into the king's bench by *babeas corpus*, is enlarged upon bail. But this they say

was upon a letter written from one of the lords of the council to the judges. It is true, that such a letter was written, but the answer to the former precedents of this nature, are sufficient to clear this also.

And in all these observe,

1. That it appears not, that the party ever desired to be enlarged by the court, or was denied it.

2. Letters either from the king or council, cannot alter the law in any case. So that hitherto, nothing hath been brought on the contrary part, that hath any force or colour of reason in it.

We come now my lords, to those precedents of the other nature, cited against the liberty of the subject; that is, such as have been used to mislike, that persons so committed may not be enlarged by the court.

They are in number eight; but there is not one of them that proves any such thing, as your lordships will plainly see upon opening them.

The first four of them, are exactly in the same words, saying that the names of the persons and the prisons differ; I shall therefore recite them all one after another, and then clear them together.

The first is *Richard Everard's* case, *Hill. 7 Hen. VII. rot. 18.* He and others were committed to the *Marshalsea* of the household *per mandatum dom' regis*, and so returned upon a *babeas corpus* into the king's bench; whereupon the entry is only *qui committitur marr' &c.*

The second is *Hill. 8 Hen. VII. Richard Cherry's* case. He was committed to the mayor of *Windfor*, *per mandatum dom' regis*, and so returned upon a *babeas corpus*, and the entry is only, *qui committitur marr' &c.*

The third is, *Hill. 9 Hen. VII. rot. 14.* *Christopher Burton's* case, who was committed to the *Marshalsea* of the household, *per mandatum dom' regis*, and so returned upon his *babeas corpus*, and the entry is likewise, *qui committitur marr' &c.*

The fourth is, *George Urswicks* case, *Pas. 19 Hen. VII. rot. 19.* He was committed to the sheriffs of *London* *per mandatum dom' regis*, and returned so upon his *babeas corpus*, *qui committitur marr' &c.*

These four have been used principally, as express precedents, to prove that a prisoner so committed, cannot be enlarged; and perhaps at the first sight, to men that know not, and observe not the course and entries of the court of king's bench, they may be apprehended to prove as much; but in truth they rather prove the contrary, at least there is no colour in them of any such matter as they have been used for. To which purpose I beseech your lordships to call to your memories, that which I first observed to you touching the course of that court. Where a prisoner is brought in by *babeas corpus*, he is (if he be not to be remanded) first committed to the marshal of the court, and then bailed as his case requires. This is so certain,

as it can never be otherwise. Now these men being thus committed by the express command of the king, are first you see taken from the prisons, whither they were first committed. Wherein you may observe, my lords, that if a general suspicion of matter of state were of force in such a case, it might be as needful in point of state, to have the prisoner remain in the prison where the king by such an absolute command committed him, as to have him at all committed. When they have taken them from the prisons where before they were, they commit them to the marshal of their own court, which is but the first step to bailing them. Now it appears not indeed that they were bailed, for then *traditur in ball'* had followed; but nothing at all appears that they were denied, perhaps they never asked it, perhaps they could not find such as were sufficient to bail them. And in truth, whensoever any man is but removed from any prison in *England* (though it be for debt or trespass only) into that court, the entry is but in the self same syllables as in these four cases.

And in truth, if these proceedings did prove that any of the prisoners named in them, were not bailable, or had been thought by the court not to have been bailable, it will necessarily follow, that no man living that is ordinarily removed from any prison into the king's-bench, or that is there upon any ordinary action of debt, or action of trespass, could be bailed. For every man that is brought thither, and not remanded, and every man that is arrested, but for a debt or trespass, and was returned into that court, is likewise committed to the marshal of that court, and by the self same entry, and not otherwise. Yet these four have been much stood on, and have strangely misled the judgment of some that did not, or would not seem to understand the course of that court.

The fifth of this nature is, *Edward Page's* case; it is *Tr. 7 Hen. VIII.* This might have been well reckoned with the former four, had not the mis-entry of the clerk only made it vary from them. *Ed. Page* was committed to the *Marshalsea* of the household, and that *per mandatum dom' regis*, and returned to be therefore detained, and the entry is, *qui committitur marr' hospitii dom' regis*. This word *marr'* is written in the margin of the roll. This hath been used to prove, that the judges remanded this prisoner; if they had done so, the remanding had been only while they advised, and not any such award which is given, when they adjudge him not bailable. But in truth, the word *committitur* shews, that there was not any remanding of him, nor doth that court ever commit any man to the *Marshalsea* of the household; and besides the word *marr'* for *marescallo* in the margin, shews plainly that he was committed to the marshal of the king's-bench, and not remanded to the *Marshalsea* of the household; For such entry of that word in the margin, is perpetually in cases of that nature, when they commit a man to their own prison, and so give him the first step to bailment, which he may have if he ask it, and can find bail; And doubt-

less these words of *hospitii praecl'* were added by the error of the clerk for want of distinction in his understanding, from the *marr'* of the king's-bench, to the marshal of the household.

The sixth of these is, *Tho. Caesar's* case, it is *8 Jac. rot. 99.* This *Caesar* was committed to the *Marshalsea* of the household *per mandatum dom' regis*, and returned to be therefore detained, and indeed a *remittitur* is in the roll, but not a *remittitur quousque*, but only that kind of *remittitur* which is only used, while the court advises. And in truth, this is so far from proving any thing against the resolution of the house of commons, that it appears that the opinion of the reverend judges of that time was, that the return was insufficient, and that if it were not amended, the prisoner should be discharged. For in the book of rules in the court of *Mich. term* (when *Caesar's* case was in question) they expressly ordered, that if the steward's marshal did not amend their return, the prisoner should be absolutely discharged. The words of the rule are, *Nisi seneschallus & marescal' hospitii dom. regis sufficienter returnaverint breve de habeas corpus Thomae Caesar die Mercur' prox. post. quindenam scilicet Martin. def. exonerabitur.* And this is also the force of that precedent. But yet there hath been an interpretation upon this rule. It hath been said, that the judges gave this rule, because the truth was, that the return was false, and that it was well known, that the prisoner was not committed by the immediate command of the king, but by the command of the lord chamberlain, and thence (as it was said) they made this rule. But this kind of interpretation is the first that ever was supposed, that judges should take notice of the truth or falsehood of the return otherwise than the body of the return could inform them. And the rule itself speaks plainly of the sufficiency only, and not of the truth or falsehood of it.

The seventh of these is, the case of *James Desmaitres*, *Edward Emerson*, and some others that were brewers, and were committed to the *Marshalsea* of the household *per mandatum dom. regis*, and so returned upon *habeas corpus*; and it is true, that the roll shews that they were remanded, but the remanding, was only upon advisement; and indeed the grave and upright judges of the time were so careful, least upon the entry of the remanding any such mistake might be, as might perhaps mislead posterity in so great a point, that they would expressly have this word (*immediate*) added to the *remittitur*, that so all men that should meet with the roll might see, that it was done for the present only, and not upon any debate of the question. And besides, that there is no *quousque* to it, which is usually added; when the highest award upon debate or resolution of this kind is given by them.

The eighth of these is the case of *Saltonstall*, it is *Hill. 12 Jac.* Sir *Samuel Saltonstall* was committed to the fleet, *per mandatum dom. regis*; and besides, by the court of chancery, for disobeying an order of that court, and is re-

returned upon his *habeas corpus*, to be therefore detained. And it is true that a *remittitur* is entered in the roll, but it is only a *remittitur prisonee praeditæ*. without *quousq; secundum legem deliberatus fuerit*; and in truth it appears on the record, that the court gave the warden of the *Fleet*, three several days at several times, to amend his return, and in the interim *remittitur prisonee praeditæ*. Certainly if the court had thought that the return had been good, they would not have given so many several days to have amended it. For if that *mandatum dom. regis* had been sufficient in the case, why need it to have been amended?

The ninth and last of these is, *Tr. 13. Jac. rot. 71.* the case of the same Sir Samuel Saltonstall; He is returned by the warden of the *Fleet*, as in the case before, and 'generally *remittitur* is in the roll, which proves nothing at all, that therefore the court thought he might not by law be enlarged; and besides in both cases he stood committed also for disobeying an order in the chancery.

These are all that have been pretended to the contrary in this great point; and upon the view of them thus opened to your lordships, it is plain, that there is not one, not so much as one at all, that proveth any such thing, as that persons committed by the command of the king, or the lords of the council without cause shewed, might not be enlarged, but indeed the most of them expressly prove rather the contrary.

Now, my lords, having thus gone through the precedents of record, that concern the point of either side, before I come to the other kind of precedents, which are the solemn resolutions of judges in former times, I shall (as I am commanded also by the house of commons) represent unto your lordships somewhat else, they have thought very considerable, with which they met, whilst they were in a most careful enquiry of whatsoever concerned them in this great question.

It is, my lords, a draught of an entry of a judgment in that great case lately adjudged in the court of king's bench, when divers gentlemen imprisoned *per speciale mandatum dom. regis*, where by the award and order of the court, after solemn debate, sent back to prison, because it was expressly said, they could not in justice deliver them, though they prayed to be bailed. The case is famous, and well known to your lordships, therefore I need not further to mention it. As yet indeed there is no judgment entered upon the roll, but there is room enough for any kind of judgment to be entered. But my lords, there is a form of a judgment, a most unusual one; such a one as never was in any such case before (for indeed there was never before any case so adjudged) and thus drawn up by a chief clerk of that court (by direction of Mr. attorney-general) as the house was informed by the clerk, in which the reason of the judgment, and remanding of those gentlemen is expressed in such sort, as if it should be declared upon record for ever, that the laws were, that no man could ever be enlarged from imprison-

ment that stood committed by such an absolute command.

The draught is only in Sir John Heveningham's case, being one of the gentlemen that was remanded, and it is made for a form for all the rest. The words of it are, after the usual entry of a *curia advisare vult* for a time, that, *Visis retur' predictæ necnon diversis antiquis recordis in curia hic remanent' consimiles casus continentibus, maturaq; deliberatione inde prius habita, eo quod nulla specialis causa captivonis sive detentionis pred' Johannis exprimitur, sed generaliter quod detentus est in prisona pred' per speciale mandatum dom. regis, ideo pred' Johannes remittitur prefat' custodi mari. hospitii pred' salvo custodiend. quousq; Sc. that is, quousq; secundum legem deliberatus fuerit.* And if that court, that is the highest for ordinary justice, cannot deliver him *secundum legem*; What law is there, I beseech you, my lords, that can be fought for in any other inferior court to deliver him? Now, my lords, because this draught, if it were entered in the roll, (as it was prepared for no other purpose) would be as great a declaration, contrary to the many acts of parliament already cited, contrary to all precedents of former times, and to all reason of law, to the utter subversion of the highest liberty and right belonging to every freeman of this kingdom; and for that especially also it supposes, that divers antient records had been looked into by the court in like cases, by which records their judgments were directed; whereas in truth, there is not any one record at all extant, that with any colour (not so much indeed as with any colour) warrants the judgment, therefore the house of commons thought fit also, that I should with the rest that hath been said, shew this draught also to your lordships.

I come now to the other kind of precedents; that is, solemn resolutions of judges, which being not of record, remain only in authentick copies; but of this kind there is but one in this case, that is, the resolution of all the judges in the time of queen Elizabeth. It was in the 34 of her reign, when divers persons had been committed by absolute command, and delivered by the justices of the one bench or the other; whereupon it was desired, that the judges would declare in what cases persons committed by such command were to be enlarged, hath been variously cited, and variously apprehended.

The house of commons therefore desiring with all care, to inform themselves as fully of the truth of it, as possibly they might, got into their hands from a member of their house, a book of selected cases, collected by a reverend and learned chief justice of the common pleas, that was one of them that gave the resolution, which is entered at large in that book; I mean the lord chief justice Anderson; it is written in the book with his own hand, as the rest of the book is; and howsoever it hath been cited, and was cited in that great judgment upon the *habeas corpus* in the king's bench, as if it had been, that

upon

upon such commitments the judges might not bail the prisoners, yet it is most plain, that in the resolution itself no such thing is contained, but rather expressed the contrary: I shall better represent it to your lordships by reading it, than by opening it.

Then it was read here.

If this resolution doth resolve any thing, it doth indeed upon the enquiry resolve fully the contrary to that which hath been pretended, and enough for the maintenance of the antient and fundamental point of liberty of the person, to be regained by *habeas corpus*, when any is imprisoned. And I the rather thought it fit now to read it to your lordships, that it might be at large heard, because in the great judgment in the king's-bench, though it were cited at the bar, as against this point of personal liberty, as also at the bench, yet though every thing else

of record that was used, were at large read openly, this was not read either at bar or bench; for indeed if it had, every hearer would easily have known the force of it, to have been indeed contrary to the judgment.

My lords, having thus gone through the charge committed to me by the house of commons, and having thus mentioned to your lordships, and opened the many precedents of records, and that draught of the judgment in this like case, as also this resolution, I shall now (as I had leave and direction given me, lest your lordships should be put to much trouble and expence of time in finding or getting copies at large of those things which I have cited) offer also to your lordships authentick copies of them all, and so leave them, and whatsoever else I have said, to your lordships further consideration.

The true COPY of the PRECEDENTS of RECORD.

Inter record. dom. regis Caroli in thesauro recept. scaccarii sui sub custodia dom' thesaurar' & camerar' ibidem remanen. viz. Placita coram domino rege apud Westmonasterium de ter' Paschae anno regis *Edwardi* 3. post conquest' Angliae 18. inter alia sic continetur ut sequitur.

Rot. 33. adhuc de termino Paschae.

Dominus rex mandavit dilecto & fideli suo Roberto de Dalton constabular' turris suae London vel ejus locum tenent' bre. suum in haec verba; *Edwardus Dei gratia rex Angliae, Franciae, & dominus Hiberniae dilecto & fideli suo Roberto de Dalton constabular' turris suae London vel ejus locum tenenti salutem. Mandamus quod Johannem Bildeston capellan' quem vic. nostr. London ad mandatum nostrum apud pred. turrim vobis liberavit, ab eisdem recipiatis & in prisona nostra turris London pred. salvo custodir. fac' quousque aliud super hoc duxerimus demandand. Teste meipso apud turrim nostram London 30. die Marcii anno regni nostri Angliae 16. regni vero nostri Francie 3. Et modo scilicet in crast. ascen. dom. anno regis nunc 18. coram domino rege apud Westminst. venit Johannes de Wynwicke locum tenens pred.' constabular' & adduxit coram justiciariis hic in cur. pred.' Johannem de Bildeston quem ille a prefat. vicecomit. viartute brevis pred.' recepit, &c. Et dicit quod ipse a domino rege habuit mandat. ducend. & liberand. corpus ipsius Johannis de Bildeston prefat. justiciariis hic. &c. Et questum est de pred. Johanne de Wynwicke si quam aliam detentionis prefat' Johannis de Bildeston habeat causam. Qui*

dicat quod non nisi bre. pred. tantum. Et quia videtur cur. bre. pred. sufficiens non esse pred. Johan. de Bildeston prison. marr' regis hic retinen. &c. Idem Johannes dimittitur per manus Willielm. de Wakefield rectoris eccles. de Willingham Johannis de Wynwicke in com. Kanc. Johannis de Norton in com. Norff. Nicolai de Blandefferd in com. Middl. & Rogeri de Bromley in com. Stafford, qui cum manuceperunt habend. eum coram domino rege in octabis Sancti Trin. ubicunque, &c. viz. corpus pro corpore, &c. Ad quas octab. Sancte Trin. coram domino rege apud Westm. ven. pred. per manus pred. Et super hoc mandavit justiciariis suis hic quoddam bre. suum claus. in haec verba; Edwardus Dei gratia rex Angliae, & Franciae, & dominus Hiberniae, dilectis & fidelibus suis Willielmo Scoti, & sociis suis justiciariis ad placita coram nobis tenend. assignat' saltem. Cum nuper mandaverim dilecto & fideli nostro Roberto de Dalton constabular' Turris nostre London vel ejus locum tenen. quod Johannem de Bildeston capellanum capt. & detent. in prisona turris pred. per preceptum nostrum pro suspitione contrafactionis magni sigilli nostri cum attachiat. & aliis causis caption. & detentionem pred. tangen. salvo & secur' duci fac' coram nobis in crast. ascen. dom. ubicunque tunc fuissimus in Anglia, prisonae marrescall. nostrae coram nobis liberand. in eadem quousque per quandam informatorem essemus plenius informat. custod. & tuta inde informatione pred. ulterius praed. super hoc fieri fecerimus quod fore viderimus faciend. secundum legem, & consuetudinem regni nostri Anglie, nos in casu quod dictus informator non ven. coram nobis ad informand. nos plenius super premiss. volentes eidem Johanni ea de causa justiciariis deferri in hac parte, vobis mandamus quod si pred' informator in quinden. Sancti Trin. prox. futur. vel

vel circa non venit super hoc plenius in formar. tunc advent. ejusdem informatoris minime expectat. eidem Johanni super hoc fieri fac. justic. complement. prout fore videritis faciend. secundum legem & consuetudinem regni nostri Anglie. Teste meipso apud Westminst. 12 Maii anno regni nostri Anglie 18. regni vero nostri Franc. 5^{to}. Quo quidem bre. respect. fact. est proclamacio quod si quis dictum regem super premiss. informare vel erga ipsum Johannem profequi voluerit, quod veniat. Et super hoc venit pred. W. de Wakefield, Nicholas de Wandsworth, Johannes Brynwyn, Johannes de Longham, Johannes de Norton, & Rogerus de Bromly omnes de com' Midd' & man' pred. Johannem de Bildeston habend. cum coram domino rege de die in diem usq; ad prefat' quinden. Sanct. Trin. ubicunq; &c. Ad quem diem anno 18. coram domino rege apud Westminst. venit pred. Johannes de Bildeston per manus pred. & iterata facta est proclam. in forma qua superius, &c. Et nullus venit ad dictum regem informand', &c. per quod concess. est quod pred. Johannes de Bildeston eat inde sine die salva semper actione dom. regis si qua, &c.

De term. sanct. Hill. anno 22 Hen. VIII. § per cont. rot. ejusdem rotul. 38.

Johannes Parker per Ricardum Choppin, & W. Daunsey vic' London virtute brevis dom. regis de *latitat* pro pace versus ipsum Johannem Parker ad fest. Johannis Bruton eis inde direct' & coram rege duct. cum causa, vizt. Quod idem Johannes Parker capt. fuit in civitate pred.' pro secu' pacis pred. & pro suspitione felonie per ipsum apud Croweall in com. Glocest. perpetrat' per nomen Johannis Parker de Thornbury in com. Glocest. *corfer* alias dict. Johannes Charbs de eodem com' *surgeon* ac per mandatum dom. regis nunciat. per Robertum Pecke gen' de Clifford's Inn qui committitur Marh' &c. Et postea iste eodem termino traditur in ballium Thomae Atkins de Thornebury pred. *weaver*, & Willi. Nole de eadem villa & com. usq; a die Pasche in unum men. *weaver* ubicunq; &c. Et quod idem Johannes Parker citra eundem diem personaliter comparuit coram justiciar' dom. regis ad prox. general. gaol. deliberation' in com. Glocest. prox. tenend. ad subiiciend. & recipiend. ea omnia, & singula quoad prefat. justiciar' de eo tunc ordinare contigerint, &c. vizt. corpus pro corpore, &c. Ad quem diem pred. Johannes Parker licet ipsi 4. placit. solemniter exact' ad comparend. non ven. ideo caperet eum pler' Trin. ad quem diem ex octab. Trin. postea Trin. 24 Hen. VIII. ex crast. quinden' Pasche. Ad quem diem bre. Et vic' return' quod ad Hust. tent. apud London die Lune prox' post fest. sancte Scholastice anno regis Hen. VIII. 25. Johannes Parker, & W. Nole utl' fuer. prout pater per bre. regis de ter' Pasche anno 25 reg. pred.

De term. sanct. Mich. anno 35 Hen. VIII. § per cont. ejusdem rot. 33.

Johannem Bincks per Ro. Baker ar. fenefchall. cur. marr' & Radum Hapton mar' ejusdem cur. virtute brevis dom. regis de habeas corpus ad subiiciend. & recipiend. &c. eis inde direct. coram domino rege duct' cum causa, vizt. Quod ante adventum brevis pred. Johannes Bincks captus fuit per mandatum privati consilii dom. regis pro suspitione felonie & pro aliis causis illos movent. & duc' ad gaol. marr' & ibidem detent' virtute gaol' pred. qui committitur marr' &c. Et immediate ex gra' cur. special' pred. Johannes Binckes de Magna Marlow in com. Buck. *weaver* traditur in ball. Thomae Bignam de London *gent.* & Johanni Woodward de Marlow pred. *taylor* usq; in crast. sanct. Martin. ubicunq; &c. utq; pleg. corpus pro corpore &c. Ad quem diem comparuit & Robertus Drury ar' & Johannes Bosse gen. domino justiciar. dom. regis ad pacem in com. Buck. virtute brevis dom. regis eis direct. domino regi certificaverunt quod nullum indictamentum de aliquibus felonis & transg. versus ipsum Johannem Byncks coram eis ad presens resident'. Et ulterius de fama & gestu ipsius Johannis Byncks per sacrum proborum & legalium hominum com. Buck. diligenter inquiri fecerunt, & nihil aliud praeter bonum de eo coram eis est compertum. Ideo concess. est quod pred. Jo. Byncks de premissis eat inde sine die deliberatur per proclamationem & jur. prout moris est.

De term. Pas. anno 2 § 3 Ph. & Mar. rot. 58.

Ricardus Overton nuper de London gen. per Tho. Leigh, & Johannem Machell vic' London virtute brevis regis & reginae de habeas corpus ad stand. rect. &c. eis inde direct. coram Willielmo Portman mil' capital. justiciar. &c. duct. cum causa, vizt. Quod pred. Ricardus Overton 9. die Octobr. ult. preter. commiss. fuit prison' de Newgate, & ibidem in eadem prisona sub custod. dict. vic. detent. ad mandatum prenobiliu duorum honorabilis consil. pred. regis & regine qui committit. marr' &c. Et immediate traditur in ball. Willielmo Overton de London gen. & Johanni Tayler de parochia Sanct. Martini apud Ludgate London merc. usq; octab. Trin. vizt. uterq; manucaptor pred. corpus pro corpore, & postea Tr. 2. El. regine, corpus Overton & pleg. suos octabis Michael. Ad quem diem ex mens. Pasch. Ad quem diem vic. ret. quod ad Hust. suum tent. Guild-hall civitatis London die Lune post festum Sanct. Gregor. epi. pred. W. Overton utl' est & per bre. Pas. anno suprad.

De term. Sanct. Mich. anno 2 § 3 Ph. § Mar. rot. 16. habet chart. allocat. Trin. 2 § 3 Phil. & Mar.

Ricardus Overton nuper de Lond. gen. capt. octab. Hill. pro quibusdam altis prodic. unde indictat' est, ad quem diem Pasch. ad quem diem ex cr. animarum.

De termino Pasche 4 & 5 P. & Mar. & per cont. ejusdem rot. 45.

Edwardus Newport gen. per Robertum Oxenbridg mil' constabular. turre pred. virtute bre. dominor. regis & regine de habeas corpus ad subjiend. &c. ei inde direct. ad barr. coram domino rege & regina duct. cum causa, viz. Quod ipse sibi commiss. fuit per mandat. concil. domine regine qui committitur marr. & immediate traditur in ball. prout. &c. Et postea sine die per proclamationem virtute brevis de gestu & fama prout, &c. rot. 17. ejusdem anni.

De term. Mich. an 4 & 5 P. & Mar. per cont. ejusdem rotul. 17.

Mem. quod 14 die Octob. anno 4 & 5 P. & M. Edwardus Newport de Hanley in com. Wigorn. ac capt. fuit per Uxbridge in com. pred. pro suspitione contrafactionis quarundam pec. auri vocat. *French crownes* per ipsum & alibi in com. Wigor. fieri supposit. & ea de causa per mandat. concil. dom. regis & regine commiss. ad barr. tunc duct. fuit qui comittitur marr. &c. Et super hoc idem Edwardus Newport traditur in ball. Thomae Charge de Lutton in com. Essex gener. Edwardo Hales de parochia sancti Olavi London. gen. Johanni Baker clerico ordinar. London, Johanni Gill de parochia sancti Tho. Apostoli London, clothworker, & Ricardo Parkes de Brownegrave in com. Wigorn. yeoman usq; octabis Hill. ubicunq; &c. viz. quilibet. pleg. proced. sub paena 100 l. & pred. Edwardus sub paena 200 l. quas, &c. Ad quem diem comparuit & committitur constabular. Turre London per mandatum concil. dom. regis & regine ibid. salvo custodiend' quousq; &c. Et postea Pas. 4 & 5 P. & M. traditur in ball. prout patet per scrivect. finium istius ter. & postea M. 5 & 6 P. & M. exonerat. per cur. eo quod tam per sacrament. 12. probor. & legalium hominum de pred. com. Midd. coram dom. rege, & domina regina hic in cur. in ea parte jurat. & onerat. quam per sacrament. 12. probor. legal. homin. de pred. com. Wigor. coram Edwardo Saunders, & Johanne Whid. mil. & aliis justiciar. dictor. dom. regis & regine ad pacem hac de diversis felonis transgress. & aliis malefact. in eodem com. perpetrat. audiend. & terminand. assignat. virtute brevis dictor. dominor. regis & regine eis inde direct. in ea parte jurat. & onerat. ad inquirendum de gestu & fama ipsius Edwardi compert' existit quod idem Edwardus est de bonis gestu & fama ideo proclamatio est inde facta prout moris est secund. legem & consuetudinem reg. Anglie, &c. concess. est quod pred. Edwardus eat inde sine die.

De term. Pas. 9 El. rot. 35.

Tho. Lawrence per Christopher. Drap. majorem civitatis London Ambrosium Nicholas & Ricu. Lambert vic. ejusdem civitatis virtute brevis dom. regine de habeas corpus, &c. ad subjiend. &c. eis inde direct. & coram dom. regina dict. cum causa, viz. Quod 7 die Novem. anno regni dom. El. nunc regine Anglie 8. pred.

V O L. III.

Thomas Lawrence in dicto brevi nominat. caput fuit in civitate pred. & in prisona dom. regine, sub custod. pred. coram vic. detent. per mandatum concil. dom. regine qui committitur marr. &c. & super hoc tradit. in ball. prout patet per scrivect. finium istius ter.

De term. Pasch. 9 El. rot. 63.

Robertus Constable ar. per Franciscum Jobson mil. locum tenent. turre London virtute brevis dom. regine de habeas corpus ei inde direct. & coram domina regina dict. cum causa viz. Quod idem Robertus Constable prefato Francisco Jobson commissus fuit per mandatum privat. concil. dom. regine salvo custodiend. Qui committitur marr. &c. Et postea isto eodem ter. traditur in ball. prout patet inter scrivect. finium istius ter.

Term. Pas. anno 20 El. & per cont. ejusdem rot. 72.

Johannes Browning per Owen Hopton mil. locum tenent. turre domine regine London virtute brevis habeas corpus ad subjiend. ei inde direct. & coram dilecto & fideli Ch'ro Wray mil. capt. justiciar. dom. regine ad placita coram nobis tenend. assignat. apud hospitium suum in Serjeant's Inn, Fleet street, London, die Lune viz. 12. die Maii duct. cum causa viz. Quod pred. Johannes Browning commissus fuit eidem locum tenent. per mandatum privati concil. regine salvo custodiend. &c. Qui com. mar. &c. & postea isto eodem ter. traditur in ball. prout pat. per scrivect. finium istius ter.

De term. sancti. Hill. anno 40 El. regine & per cont. ejusdem rot. 62.

Edwardus Harecort per Hugonem Parlour custod. prisona domine regine de Gate-house infra civitatem Westminst. in com. Middl. virtute brevis domine regine de habeas corpus ad subjiend. &c. ei inde direct. & coram domina regina apud Westminst. dicta cum causa, viz. Quod ante advent. brevis pred. fcil. 7. die Octo. an. regni dom. regine nunc 39. corpus Edwardi Harecort per duos privat. concil. dicte domine regine ei commiss. fuit salvo & secur. custodiend. certis de causis ipsos movent. & ei ignotis qui committitur marr. &c. Et postea isto eodem ter. traditur in ball. prout patet per scrivect. finium istius termini.

De vacatione Hillar. anno 43 El.

Robertus Catesbie per Johannem Phillips guardian. de le Fleete virtute brevis domine regine de habeas corpus ad subjiend. &c. ei inde direct. & coram Edwardo Fenner uno justiciar. domine regine ad placita coram ipsa regina tenend. assignat. apud Winchester-house in burgo de Southwarke in com. Surr. dict. cum causa, viz. Quod. pred. Robertus commissus fuit prisona pred. primo die Marcii anno 43 El. warr. diversorum prenobilium virorum de privato concilio domine regine in hec verba. *To the warden of*

the Fleet, or his deputy. These shall be to will and require you, to receive at the hands of the keeper of the Compter of Wood-street, the person of Robert Catesbie, Esq; and him to detain and keep safely in that prison under your charge, until you shall have other direction to the contrary, whereof this shall be your warrant. Et præfat. Robertus commissus fuit marr. per præfat. Edwardum Fenner, & statim traditur in ball. prout patet, &c.

Term. Hill. anno 43 Eliz. regine 12 Jac. regis.

Ricardus Beckwith gen. per Aquilam Wykes custod. prisone de Gate-house in com. Midd. virtute brevis dom. regis de habeas corpus ad subjiciend. ei inde direct. & coram domino rege duct. cum causa viz. Quod ante advent. brevis predict. scilicet 10 die Julii anno regni dom. Jac. regis Dei gracia Anglie Franc. & Hibernie fidei defensor. &c. 11. & Scot. 47. predict. Ricardus Beckwith sibi commissus fuit prisone predict. sub custod. sua virtute cujusdam warrant. sibi fact. & direct. per Georgium divina providentia Cant. archiepiscopum totius Anglie primat. & metropolitan. Henric. com. Northampton dominum guardianum 5. portuum & un. de privato concil. regis Tho. com. Suffolk dom. camerar. regie familie ac sac. consil. dom. regis Edwardum domin. Wooton gubernator. regis familie Johannem dom. Stanhoppe vice-camerar. regie familie cujus warrant. tenor. sequitur in hec verba. *To Aquila Wykes, keeper of the Gate-house in Westminster, or his deputy. Whereas it is thought meet that Miles Rayner, and Richard Beckwith, be restrained of their liberty, and committed to the prison of the Gate-house: These shall be to will and require you to receive the persons of the said Rayner and Beckwith into your charge and safe keeping in that prison, there to remain until you shall have further order from us in that behalf, for which this shall be your warrant. Dated at White-hall the 10th of July, 1613.* Et postea isto eodem termino.

De term. Mich. anno 14 Jac. per cont. ejusd. rot. 147.

Thomas Mounson miles per Georgium More locum tenent. turris dom. regis London virtute brevis dom. regis de habeas corpus ad subjiciend. &c. ei inde direct. coram domino rege apud Westm. duct. cum causa viz. Quod ante adventum brevis predict. predict. Thomas sibi commissus fuit per warrant. divers. domin. de privato concilio dom. regis sibi direct. &c. Qui committitur marr. &c. Et super hoc traditur in ball. prout patet per scripsit. fin. istius termin.

De term. Mich. 7 H. VII. 5 per cont. ejusdem rot. 6.

Tho. Brugg jun. nuper de Yanington in com. Hereford gen. Johannes Rauleus. nuper de Lemster in com. predict. yeoman, Robertus Sherman nuper de Lemster in com. predict. Walter Thomas nuper de eadem in com.

predict. hosier Tho. Ballard nuper de eadem in eodem com. finith Cadwallader ap John Duy nuper de Kerry in marchia Wallie com. Salop. adjacen. gen. Reignald ap Breighnam, alias Sherman, nuper de Lemster in com. Hereford shereman, & Thomas Turner nuper de King-land in com. Hereford courser, sunt in custod. marr. ad mandatum dom. regis, &c. ac pro aliis certis de causis prout patet alibi de record. &c. per record. istius ter. postea isto termin. dominus relaxavit mandatum suum & profecut. predict. comparuerint per attorn. &c. Et quod utlag. versus præfat. Thomam Brugg revocatur isto termino & predict. Johannes Rawleus pro felon. & murthero predict. traditur in ball. prout patet alibi, &c. ideo hic marr. de ejus corpore per cur. exoneratur, &c.

Term. Hillar. 7 Hen. VII. 5 per cont. ejusdem rot. 18.

W. Bartholomew Johannes Bartholomew Willielmus Chace Henr. Carr Tho. Rotfley Tho. Street Robertus Feldone & Henr. Bancks sunt in custod. marr. ad cust. mandat. dom. regis, &c. per record. istius termin. ac predict. Willielmus Chace pro pace Randulpho Josselen inveniend. &c. Pasche sequen. pet. postea termin. sequen. dictus dominus rex mandatum suum predict. quoad Willielm. Chace relaxavit per regis attornat. & pro pace & pro felon. & murthero traditur in ball.

De term. Pasch. 7 Hen. VII. 5 per cont. rot. ejusdem 18.

Johannes Beomond de Weddesbury in com. Staff. ar. est in custod. mar. ad mandatum dom. regis, &c. per record. istius ter. postea scilicet Trin' 7 Hen. VII. sequen. predict. Johannes Beomond de mandato predict. exoneratus existit ideo marr. de eo per eandem cur. exoneratus existit.

De term. Mich. anno 12 Hen. VII. rot. 8.

Thomas Yewe de villa de Staff. in com. Stafford yeoman, per Johannem Shawe & Ricardum Haddon vic. London virtute brevis dom. regis de habeas corpus, ad sect. ipsius regis eis inde direct. coram rege duct. cum causa quod idem Thomas Yewe attachiatus fuit per Ricardum Whittington serjeant apud Baynard's castle civitatis predict. & prisona dicti dom. regis infra eandem civitatem salvo custodiend. causa pro suspitione felonie apud Coventrie in com. Warr. perpetrat. ad suggestionem Willielmi King inholder. Ac insuper idem Tho. Yewe detinetur in prisona predict. virtute cujusdam alterius querel. versus ipsum ad sectam Johannis Freeman serjeant de eo quod inveniat. ei in sufficient. secur. pacis in dicta cur. coram Johanne Waiger nuper vic. Ac ulterius idem Tho. Yewe detent. est in dicta prisona pro 23 l. debit. & 2 s. 8 d. dampnis & custag. quos Robertus Corbet merçer, ex cognitione ipsius defend. versus eum recuperavit in eadem cur. coram eodem Johanne

Johanne. Waiger nuper vic. Ac etiam idem Tho. detinetur in dicta prifona ad mandatum domini regis per Johannem Shawe alderman civitatis London, qui committitur marr. &c. Poſtea ſcilicet ter. ſanct. Trin. anno 19 regis H. VII. predict. Johannes Freeman relaxavit ſecur. pacis verſus eundem Tho. Yewe dictuſq; Robertus Corbet cognovit ſe fore ſatisfact. de debito & dampnis predict. ac Jacobus Hubberd attornat. general. dom. regis relaxavit mandatum dom. regis ac pro ſuſpitione felonie predict. traditur in ball. Symon. Little de London taylor, & Johanni Aſh de London ſkinner uſq; octabis Mich. ubicunq; &c. Ad quem diem comparuit & Robertus Throgmorton miles unus cuſtod. pacis predict. com. Warr. return. quod null. indiſtament. de aliquibus felon. ſive transgreſſ. verſus praefat. Tho. Yewe coram eo & fociis ad preſens reſidet. Et ulter. virtute brevis dom. regis ſibi & fociis ſuis direct. per ſacrament. 12. probor. & legal. hominum de villa de Coventrie predict. de geſtu & fama predict. Thome diligenter inquisitionem fecerunt, & nihil de eo preter bonum coram eo & fociis ſuis eſt compertum ſed de bono geſtu, & fama. Ideo conceſſ. eſt quod predict. Tho. cat inde ſine die.

Term. Hillar. anno 9 Hen. VII. 3 per cont. ejusdem rot. 14.

Humfridus Broche nuper de Canterbrig in Cantabr. ſcholler per Robertum Willoughbie dom. Brooke mil. ſeneſcall. hoſpitii dom. regis ac Johannem Digbie mil. marr. cur. marr. hoſpitii predict. virtute cujuſdem brevis dom. regis de habeas corpus ad ſectam ipſius regis ad ſtand. rect. &c. ad ſect. partis utlag. eis inde direct. coram rege duct. cum cauſa viz. Quod idem Humfridus commiſſus fuit gaol. marr. hoſpitii dom. regis & hac de cauſa & non alia idem Humfridus in prifona pred. detinetur qui committitur marr. &c. poſtea Paſ. ſequen. rex relinquit mandatum ſuum capital. juſticiar. per Tho. Lovett mil. oſten. & pro utlag. pred. traditur in ball. prout patet alibi.

De term. ſancte Trinit. anno 39 El. 3 per cont. rot. ejusdem 113.

Lawrence Broome per Hugonem Parlour cuſtod. prifone domine regine de le Gate-houſe virtute brevis domine regine de habeas corpus ad ſubjiciend. &c. ei inde direct. & coram domina regina apud Weſtmiſt. duct. cum cauſa viz. Quod predict. Lawrence Broome in arcta cuſtod. ſua remanſit per mandatum duorum de concilio dicte domine regine pro certis cauſis eos moven. qui committitur mar. & poſtea iſto eodem termino traditur in ball. prout patet, &c.

Per ſcriveet. fin. term. ſanct. Trin. anno 39 El. regine.

Ex. ff.

Lawrencius Broome de Parva Baddow in com. pred. husband. traditur in ball' ad ſubjiciend. &c. ad mandat. privat. concil. domine regine ſuper habeas corpus.

Verſus Rando. Mayall de Hatfield Beverell in com. pred. gener.

Verſus Henric. Odall de eadem gent.

Verſus Will. Eekafden de Weſtmiſt. bricklayer.

Verſus Rica. Morgan de Weſtmiſt. labourer.

Uterq; ſub pena 40 l. & princeps ſub pena 100 marcarum.

Pro ſuſpitione prodicionis cum Johanne Smith mil.

De term. ſanct. Michaelis anno 4 El. 3 per cont. rot. ejusdem rot. 37.

Tho. Wenden per Hugonem Parlour gen. cuſtod. prifone domine regine de le Gate-houſe virtute brevis domine regine de habeas corpus ad ſubjiciend. &c. ei inde direct. & coram domina regina apud Weſtm. duct. cum cauſa viz. Quod 18 die Junii anno regni dom. El. nunc regine Anglie 38 corpus &c. infra nominat. Tho. Wenden extra cur. ejusdem domine regine coram ipſa domina regin. privati concilii dom. regis cujus tenor ſequitur in hec verba ſcilicet. *These are to will and require you to receive into your charge and custody, the person of John Brocket, knight, and him to retain in safe keeping under your charge, until you shall have farther order for his enlargement; whose commitment being for some special matter concerning the service of our sovereign lord the king, you may not fail to regard this warrant accordingly. From the king's palace at White-hall the last of March, 1605.* Ea; fuit cauſa detentionis pred. Johannis in prifona pred. qui committitur marr. &c. & poſtea traditur in ball. prout patet, &c.

Term. Mic. anno 12. Jac. regis rot. 119.

Milo Reyner per Aquilam Wykes cuſtod. prifone de le Gate-houſe, virtute brevis dom. regis de habeas corpus ad ſubjiciend. &c. coram domino rege duct. cum cauſa viz. Quod ante advent. brevis pred. ſcilt. 10 Julii, anno dom. 1613. pred. Milo Reyner comiſſus fuit prifon. pred. & huc uſq; detent. virtute warr. cujuſdam fact. & direct. per Georgium archiepiſcopum Cant. Henr. com. Northampton, Tho. com. Suffolke Willielm. dom. Knolles Edwardum dom. Wooton & Edwardum dom. Stanhope cujus warranti tenor ſequitur in hec verba. *To Aquila Wykes, keeper of the Gate-house in Westminster, or his deputy. Whereas it is thought meet, that Miles Reyner and Richard Beckwith be restrained of their liberty, and committed to the prison of the Gate-house. These shall be to will and require you, to receive the persons of Rayner and Beckwith into your charge and keeping, until you shall have farther order from us in that behalf, for which this shall be your sufficient warrant. Dated at White-hall the 10th of July, 1613.* Et haec eſt cauſa detentionis ſue in prifona pred. qui committitur marr' &c. Et poſtea iſto eodem ter' traditur in ball' prout patet, &c.

Ter.

Term. Hill. 5 H. VII. & per cont. ejusdem rot. 18.

Ricardus Everard nuper de Colchester in com. Essex clericus, & Robertus Wight nuper de Norwico smith, per Robertum Willoughbie mil. dom. de Brooke feneschall. hospicii dom. regis & Johannes Turberville mil. mar. hospicii pred. virtute brev. de habeas corpus ad sectam ipsius regis pro quibusdam prodicionibus, & felon. unde in dicto com. Essex indictat. sunt leis inde direct. coram domino rege duct. cum causa, viz. quod iidem Ricardus Everard & Robertus Wight commissi fuer. custod. marr. pred. per mandat. dom. regis qui committitur marr. &c.

Term. Hill. 8 Hen. VII. & per cont. ejusdem rot. 13.

Berks. ff.

Roger Cherrie nuper de Nova Windfor in com. pred. yeoman, alias dict. Rogerus Stearries nuper de eadem in eodem com. yeoman, per Johan. Baker majorem villae dom. regis de Nova Windfor in com. pred. virtute brevis dom. regis de habeas corpus ad sect. ipsius regis pro quibusdam felonis & transgr. unde in com. Midd. indictatus est sibi inde direct. coram domino rege duct. cum causa, viz. quod idem Roger. commissus fuit gaol. dom. regis infra vill. pred. per mandat. dom. regis qui committitur marr. &c.

Term. Hill. 9 H. VII. & per cont. ejusdem rot. 14.

Christophorus Burton nuper de Rochester in com. Cancii hackney-man, per Robertum Willoughbie dom. Brooke mil. feneschall. hospicii dom. regis, & Johannem Digbie mil. marr. cur. mar. hospicii pred. per mandat. dom. regis. Et haec est causa & non alia. Qui committitur marr. &c.

Term. Pas. anno 19 Hen. VII. & per cont. ejusdem rot. 23.

Georgius Urmeswicke de London, mercer, per Oliverum Wood locum tenen. prisonae dom. regis de le Fleet virtute brevis dom. regis de conservand. diem, &c. ei inde direct. coram rege duct. cum causa, viz. quod idem Georgius 13. Maii anno 19. regis commissus fuit prisonae del Fleet per mandat. ipsius dom. regis salvo custodiend. sub pena 40 l. qui committitur marr. &c.

Term. Trin. anno 8 H. VIII. per cont. ejusdem rot. 23.

Edwardus Page nuper de London gent. per Georgium com. Salopiae feneschall. hospicii dom. regis, & Henricum Shamburne, marr. cur. mar. hospicii pred. virtute brevis dom. regis de habeas corpus ad sect. ipsius regis ad conservand. diem, &c. eis inde direct. & coram rege duct. cum causa, viz. quod idem Edwardus captus & detentus in prisona regis marr. pred. per mandat. dom. regis ibidem salvo custodiend. &c. Qui committitur marr. hospicii dom. regis.

Term. Mich. anno 8 Jac. & per cont. ejusdem rot. 99.

Tho. Caesar per Tho. Vavifour mil. marr. hospitii dom. regis & marr. ejusdem hospitii dom. regis, virtute brevis domini regis de habeas corpus ad subjiciend. &c. ei inde direct. & coram rege apud Westminst. duct. cum causa, viz. Quod ante adventum brevis pred. scil. 18 Julii anno regni dicti dom. regis nunc Angliae, &c. 7. Tho. Caesar in brevi pred. nominat. captus fuit apud White-hall in com. Middl. per speciale mandat. dom. regis ac per eundem regem ad tunc & ibidem commissi fuit prison. marr. ibidem salvo custodiend. quousq; &c. Et ea fuit causa captionis & detentionis ejusdem Tho. Caesar qui comittitur prisonae marr. pred.

Term. sanct. Mich. 8 Jac. regis.

Nisi pred. feneschall. & marr. hospitii dom. regis sufficienter return. bre. de habeas corpus Tho. Caesar die Mercur. per quinden. sanct. Martini defendens exonerabitur.

Ter. Hill. 12 Jac. rot. 153.

Jacobus Demaistres Edwardus Emerson Georgius Brookehall & W. Stephens per Tho. Vavifour mil. marr. marr. hospitii regis virtute bre. dom. regis de habeas corpus ad subjiciend. &c. ei inde direct. coram domino rege apud Westminst. duct. cum causa, viz. Quod ante adventum brevis pred. scilicet. 22 Januar. anno regis Jacobi Angliae, &c. 12. & Scot. 48. pred. Jacobus Demaistres Edwardus Emerson Gregorius Brookehall & W. Stephens in brevi huic schedul. annex. nominat. commissi fuer. gaol. marr. hospitiij dom. regis pro causis ipsum regem & servic. suum tangen. & concernen. Et haec est causa captionis pred. Jacobi Edwardi Georgij & Willielmi, & postea immediate remittitur praefat. marr. hospitiij pred.

Term. Hill. 12 Jac. regis.

Samuel Saltonstall miles per Johannem Wilkinson ar. guard. de le Fleet virtute brevis dom. regis de habeas corpus ad subjiciend. &c. ei inde direct. & coram domino rege apud Westminst. duct. cum causa viz. Quod pred. Samuel commissi fuit prisonae pred. 11 Martii 1608. per warrant. a dominis de privato concilio dom. regis & quod derentus fuit etiam idem Samuel in prisona pred. virtute cujusdem ordinis in cur. canc. dom. regis fact. cujus ordinis tenor patet per rot. record. istius termini ad quem diem pred. Samuel remittitur prisonae pred. Et secundus dies prox. ter. datus est guardian. prisonae pred. ad emendand. return. suum sufficien. super pred. bre. de habeas corpus, & quod tunc intulerit hic in cur. corpus pred. Samuel Saltonstall mil. Ad quem quidem diem praefat. guardian. prisonae pred. super pred. bre. de habeas corpus return. quod pred. Samuel commissus fuit prisonae pred. 11 die Martii 1608. per warrant. a dom.

dom. de privat. concil. dicti dom. regis apud White-hall tunc feden. & quod postea 11 die Febr. 1610. commiss. fuit extra cur. canc. dom. regis apud Westminst. pro contemptu suo eidem cur. illat. Et quod detent. fuit etiam idem Samuel in prisona pred. per. mandat. dom. cancellar. Angliae. Super quo pred. Samuel iterum remittitur prisonae pred. & ulterius dies dat. est p̄f̄at. guardian ad emendand. return. suum super habeas corpus ver. defend. prout stare voluit usq; diem Jovis prox. mens. Pasch. & tunc ad habend. corpus, &c. Ad quem diem p̄f̄at. guardian. intulit corpus hic in cur. & return. super habeas corpus quod pred. Samuel commiss. fuit prisonae pred. 11 die Martii 1608. virtute cujusdem warranti a dominis de privato concil. dom. regis tunc feden. apud White hall, & quod etiam idem Sam. commiss. fuit prisonae 11 Febr. anno regis Jac. 18. per cur. canc. dom. regis apud Westminst. tunc existen. pro quodam contempt. per eundem Samuel eidem cur. illat. & perpetrat. proinde salvo custodiend. qui remittitur prisonae pred.

Term. Tr. anno 13 Jac. 8 per cont. ejusdem rot. 17.

Samuel Saltonstall miles per Johannem Wilkinton guardian. prisonae de le Fleet virtute brevis dom. regis de habeas corpus ad subjiaciend. & recipiend. &c. ei inde direct. & coram dom. rege apud Westminst. duct. cum causa viz. Quod pred. Samuel Saltonstall commissus fuit prisonae pred. 12 die Martii anno regis Jacob. Angliae &c. sexto, virtute cujusdam warrant. a dominis de privat. concilio dom. regis tunc feden. apud White-hall. Commissus fuit etiam idem Samuel Saltonstall miles prisonae pred. 12 die Febr. anno 1610. & anno reg. Jac. Angliae &c. 8. per considerat. cur. cancell. dicti dom. regis apud Westminst. pro contempt. eidem cur. adtunc per pred. Samuel illat. ibidem proinde salvo custodiendi. Et hae sunt causae captionis & detentionis pred. Sam. Saltonstall mil. in prisona, pred. cujus tamen corpus ad diem & locum infra content. parat. habeo prout mihi precipitur.

At the committee about the commission for martial law.

April 15. 1628.

THE question ariseth out of the commission read the other day. It was moved whether in former times this commission was used or no. Perhaps it was, but never was it used or executed in time of peace. We must be tender to question power. The power now spoken of is, that *suprema potestas vitae & mortis*, and without all question that power is in the king. But the question is of the way and manner of this power, which is debated every day in every court in *Westminster* When it is questioned, if the commissioners of *oyer and terminer* do pursue their commission, it is not thereby questioned whether power be in the king. So now in debating of this commission we touch not on the regal dignity of the crown.

We all admit it, and I shall humbly move that the soldiers hear, that here we speak, as a lawyer, against those commissions. Let them not condemn me or the law, the cause concerns them, and their lives and liberties, as much as ourselves. And to the whole house my suit is, though I shall tell you of former times, yet those demonstrate the present occasions better. First, Let us consider the general nature of martial law, and how this law is in *England*. If the question were, where the law of *England* is, we must say what is done in the courts of *Westminster*. Thus here, if we would know this law, see what is done in the marshal's court. In *England*, we have the common law, and martial law, all in due time and place. As the canon and civil law we have from *Rome*, and out of the empire, so is this martial law out of the law of the empire. In the titles of the civil law, they have titles *de re militari*. Those laws are at the pleasure of the emperor, or general of the army, and there are no certain *leges militares*. As in the empire they had *leges militares*, so have we our martial law, which is according to the pleasure of the kings of *England*. At divers times, divers laws. Some particular laws are by custom, and have been usually here before the marshal and constable, and that truly and properly is the martial law. Of late there were divers commissioners who had commission to exercise martial law that were no soldiers or lawyers. In antient time all martial law belonged to the constable and marshal's court, and what cannot be done there, cannot be done now by any commission for martial law. In antient time the constable and marshal held a court, in which all matters that belonged to war abroad and at home, were there determined; but they were such as could not be determined by the common law. They had a jurisdiction for war at home and abroad, and in time of peace they had a jurisdiction; but no person could be subject to their jurisdiction, but in time of war. As for the jurisdiction of the constable or marshal, or their court, it is plain for war abroad out of the land, and if any treason or murder, or other offence be done in the army abroad, the constable's court tried it here. 13 *Rich. II. cap. 2.* They have consueance of deeds of arms out of the realm in general, and for war at home within the realm, of such deeds as cannot be determined by the common law. In antient time, in the king's army, there was a marshal and a constable that ever went with them. Also for war at home in chasing rebels, they did execute men with the sword, but it was *flagrante crimine*, and that is the legal power of the lieutenants. Now if an army be to be led into *Scotland*, or other parts, martial law was never executed. If there be a deficiency in the law herein, let us proceed to make a law to help it. We have few records that testify any thing touching this martial law. 24 *Ed. I.* There be divers rolls touching the army that went into *Scotland*. It was then in *Northumberland*. After divers pleas were held at *Edinburgh*; but in all these pleas there is no

proceeding but according to the common law. The process is by attachment, and the trial by juries. In an army marching, no man can be executed, nor lose his life by martial law, but according to the common law. For time of peace, let us consider the nature of the things questionable. In the constable and marshal's court, without all question, they have power to hold confuance of all murders and offences done beyond sea. 1 *Hen. IV. cap. 14.* If murder be done beyond sea, there may be an appeal in the marshal's court, and so for treason. Since that statute there was an offer of an appeal for treason in the marshal's court. 7 *Hen. IV.* There was a charge against the earl of Northumberland for things done abroad: The parliament sent for the record, and heard the cause (for the parliament may proceed according to the proceedings of any court) and they adjudged him to death. As for things done at home in the kingdom, they may also in the marshal's court proceed against enemies, and not rebels. In former times, in *Hen. VII. Warbeck* was taken as an enemy, and he was tried by the marshal law, and a commission was granted to exercise the power of the marshal and constable, 15 *Hen. VII.* it is cited in *Calvin's case*. But whether may martial law be executed on any other persons? Without question it cannot. As for *tempus pacis*. The sitting of the courts in *Westminster-hall* is a badge of peace; tho' in other parts of *England* there be war, yet that is a great sign and character of peace. What place soever in *England* is free from the injuries of an army, if the sheriff in the county may execute the king's writs, there it is *tempus pacis*, though in other parts there be war. We often in our books find mention of *tempus pacis*, as esplees are laid *tempore pacis*. *Bracton, lib. 4. tract. de assis. ultim. present. c. 3. 240. b.* speaking of an assize *sur presentment*, says; *Item (tempore pacis) quod dicitur ad differentiam eorum quae sunt tempore belli, quod nihil differt a tempore injuriae.* But if the sheriff may execute writs, then it is *tempus pacis*. *Sed omne tempus potest esse tempus guerinum, & possit esse tempus pacificum: non autem simpliciter, sed ad quosdam & non ad omnes.* Thus that live, where war is not, to them it is *tempus pacis*; and to those where war is, it is *tempus belli*. 13 *Rich. II. cap. 2.* The marshal hath power of things which the common law cannot understand, as prisoners brought from beyond sea hither. 1 *H. IV. c. 14.* They have a jurisdiction by way of appeal, for things done beyond sea; but of other things, saving of one that is an enemy, they can do nothing. The nature of the marshal's court is exact according to the civil law: No other court doth the like. Can there be a commission to determine life and death according to the civil law? *Hen. IV.* being indulgent to the university of *Oxford*, gave them a charter to proceed according to the civil law, and accordingly they did proceed. 8 *Hen. IV. rot. 72. coram rege*; It was adjudged a void charter, and the judgment given by them

by that charter was reversed. 9 *H. IV. c. 1.* There is a confirmation of *magna charta*, and of all charters, except the charter made to *Oxford*. We have divers laws, as canon law, civil law, &c. and these are *leges terrae*, in our sense; that is, such as by the law of the land are in force; but in acts of parliament they are not meant, but only the common law. *Magna chart. c. 29. Nullus liber destruetur nisi per legem terrae & judicium parium suorum*; but by the commission for martial law, the trial of the law is taken away, 5 *Ed. III. c. 9.* None shall be adjudged of life and limb, but *per legem terrae*. 28 *Ed. III. c. 3. Nul home d'ascun condicion serra mise al mort sauns due proces del ley.* 8 *Rich. II.* A bill passed both houses (whatever petition is there on record, it must pass both houses, and it was all one with our bills now that pass both houses) that all pleas and quarrels ought to be determined according to the common law. 2 *Hen. IV. n. 79. rot. parl.* The constable and marshal began to enlarge their jurisdiction; the commons found themselves grieved, and a bill passed both houses, and recited the statutes of *Rich. II.* that whereas none of the king's lieges be put to answer for that that is done in the realm, but before the king's judges, and therefore nothing should be tried before the constable and the marshal, &c. 1 *Ed. III.* The earl of *Lancaster's* case is plain to this purpose. In 15 *Ed. II.* the earl of *Lancaster* was in rebellion, and was taken *flagrante crimine* in that rebellion, and brought before the king and divers great lords, and he was adjudged to death; and 1 *Ed. III.* his son earl of *Lancaster*, brought a writ of error, and assigned the error, because it was done *tempore pacis*, and the record saith, *Quicumque homo ligens felon' &c. captus per legem terrae arraignari debet & praedict' comes fuit homo ligens, & fuit tempus pacis, & per tempus praedict' cancellar' & cur' dom' regis apert' fuer' & justicia fieri potuit cuicumq' &c.* and also because not judged *per judicium parium suorum*, therefore it was reversed. *Pasch. 39 Edw. III. rot. 92.* it is there recited at large. 20 *Rich. II.* Sir *Thomas Haxey* exhibited a bill in parliament, and was called in question before the lords for it; the lords arraigned him, and adjudged him to die by martial law; and 1 *Hen. IV.* he exhibited a petition that his judgment was against the law; and the commons finding themselves grieved that any commoner should be questioned for life contrary to the law, they put up a bill; which passed both houses to reverse that judgment, 1 *Hen. IV. n. 91. & 105.* I shall tell you what I read in a story in Mr. *Camden's* annals of queen *Elizabeth*, it is 242, 243. In 13 *Eliz.* there was one *Burchet* had got up strange fantastical opinions, and that it was lawful for him to kill all that held not his opinions; and being in company with captain *Hawkins*, stabbed him because he was not of his opinion. The queen being much moved at it, commanded he should be hanged by martial law; and it was resolved he could not be executed by martial law, but in time of war; but she did not desist

desist, *donec a prudentibus fuisset edocta, jus illud non nisi in castris, aut temporibus turbulentis adhibendum.* Camden was a herald then, and knew well that passage. *Object.* There were commissions in *Hen. VII.* and other times, giving them power to proceed according to the martial law. *Ans.* In *12 Hen. VII.* and *15 Hen. VII.* such commissions were made, but never executed. And where it is said, that it was *secundum legem, & consuetudinem usitatam coram marescallis.* &c. such commissions were got, but no man put to death till they had heard from the king, and had better authority. As for soldiers. Admit other men are not subject, yet whether are soldiers in time of peace? They are not. The earl of *Lancaster* was a soldier, and upon him martial law could not be executed. In those times there were no gentlemen but what were soldiers. Admit there were a jurisdiction in those that have the commission, yet whether are soldiers under the jurisdiction of the common law? Many statutes were made against soldiers that departed the king's service, and they were put to death, and so it was adjudged *43 Eliz.* What needed that if it might be done by martial law? In the statute of *Ragland* (it was about *Rich. II.*) there is a clause for the power of justices of *oyer*, to take care of soldiers that observed not their covenants. The form of the protection was, *quia profectus in exercitu*; he is protected by this for a year, but after that year he is subject to the law. Consider the times when all gentlemen were soldiers, if they were then exempted from the common law, what justice could be done?

April 19. 1628.

SOME speak of necessity, some of discretion and convenience. Somewhat should be done. Let us determine and settle what the law is, wherein there is some difference amongst us. One civilian differed from us, not as a lawyer, but as a statesman; a soldier, said he, is subject to the common law, and to martial law for conveniency. By the civil law a soldier is to be ruled only by the martial law, and not by the civil or common law. We have a new law, the law of state. But sure, law of merchants, &c. is a law of the land, and they are all known laws, and allowed by custom or by act of parliament. Can any tell me what this martial law is, and how to punish them according to this commission only? It hath reference to instructions by the council; and it was never known in *England*, that any law was made, but by custom or by act of parliament. At *Rome*, and now in the *Low-Countries*, their martial instructions are made by them that have the same power with our parliaments. As for our definition of time of war, it was said by one, that it is from the preparation to war. Why then war is peace, because it is a preparation to peace, and peace to war. It was said, that in former times, all men of fashion were soldiers, and if they were subject to this martial law,

where was the common law? As for the martial law to be exercised upon the marching of an army, it may be done by a commission of *oyer* and *terminer*, and so it has been done in former times. In the time of *Ed. I.* there are *placita exercitus*: But as now the king about his court hath the knight marshal, there all pleas be tried according to the common law. An antient book was produced, in which it was ordained, that when there was a battle, then there must be a marshal and a constable, and they ought to hold court. As for the great case of *Thomas earl of Lancaster*, it doth appear by the record itself, that he was called to answer for himself, only he was not tried by the common law. *P. 15 Ed. II. rot. 69.* he was *ductus coram rege & recordat* of his rebellions, *quae quidem manifestae notorioe sunt.* In *1 Ed. III.* the error assigned was, that he was condemned, *sed non secundum legem terrae.*

April 22. 1628.

I Hoped we had been nearer an end than we are. We have heard much spoken with great judgment. It was said, that there be several laws, ecclesiastical law, mariners law, &c. and therefore martial law. It is true, but yet all that law you can name, clearly is ascertained by custom, or established by act of parliament. It is true, there is a martial law in *England*. If an army were gathered together against an enemy, martial law might be used, which is known to the common law, and it is incorporated in the common law. All persons of the army are bound to obey, and whoever are rebels or disobedient, were to be punished *per carcerationem corporis*; and that kind of commission is confirmed by act of parliament, *5 Hen. IV.*

April 25. 1628.

TouChing the commissions for martial law, search was made, and from the time of *Ed. I.* to *Ed. IV.* they were committed to my charge; and I find some commissions to raise and levy men. Some are for jurisdiction, and are of several natures; some are to hear and determine *secundum legem terrae*; some are *ad gubernandum* generally; some *ad gubernandum secundum discretionem vestram*; some to punish *per arrestationem corporis*. One distinction I must give: It is most certain at this day, when martial law is to be executed, it is done legally *per viam iudicii* in the marshal's court, or *per viam executionis*, which is only in an army in the chase of rebels or enemies. In fight they may be slain. And this jurisdiction is and must be in every army, and it is all the power of lieutenants now *ad debellandum & suppeditandum.* *27 Ed. I. pat. rot. mem. 41. in dors.* A commission to the lord *Clifford*, who was lieutenant; he had power to array and draw an army together to defend the realm against the *Scots*, and had power to punish all that did not obey; and if they were disobedient, or rebels *in exercitu*, to punish as if the king were present, and a command to all sheriffs

to assist him with power. Three years before that are the *placita exercitus*, which were according to the laws in the steward and marshal's court. Now the power given by that commission is as if the king were present, which refers to the marshal's court. 1 *Edw. II. rot. Scot. num. 24.* Gilbert earl of Clare was *capitaneus Scotiae*, and there was a command to all to obey him, and to the sheriff, &c. & *damus potestatem ad puniendum omnes inobedientes, & prout ei videretur faciendum*; which is all one with *secundum leges Angl.* as is resolved in the commission. 8 *Ed. II. rot. Scot. mem. 6.* Upon a rebellion in Scotland, *Ralf. . . . est capitaneus & custos castri, &c. & habet plenam potestatem ad puniend' qualitat' delict' prout ei videtur*; and a command to the sheriff to assist him. 18 *Edw. II. pat. par. 1. mem. 35.* A commission to *Daubney and Stapleton*. They were justices to hear and determine all offences within the army, *secundum leges & consuetudines Angl.* That commission was dated 11 July; and July, the same year, there is a commission in the same roll to the same parties, together with the bishop of *Exeter*, *ad audiend' terminand' & debite puniend'* and no more. In the time of *Ed. III. 1 Ed. III. rot. Scot. mem. 4.* A commission to Henry earl of Lancaster, *damus plenam potestatem querelas audiend' & iusticiam facere secundum consuetudines in exercitu usitat' faciend'* This army was to be in the marches of Scotland, which place ever had another law than the law of England. And in queen Elizabeth's time, when an army went thither they had like commission, and they were *secundum consuetudinem marchiarum*. 10 *Ed. III. mem. 4. rot. Scot.* Henry earl of Lancaster was *capitaneus Scotiae*, and had power, *omnes transgressi & felon' omnes per homines exercitus illius fact' debite puniend' secundum leges exercitus in partibus illis*. 11 *Ed. III. mem. 10. num. 25. rot. Scot.* Earl of Arundel, and W. earl of Salisbury had *plenam potestatem felon' hominum exercitus illius debite puniend' sicut nos present' fuissimus*. There that army was to go to march towards Scotland, and there is a command to all sheriffs to assist and minister justice. 12 *Ed. III. mem. 6. rot. Abn.* Commission *ad puniend' per arrestationem corporis*. 15 *Ed. 3. mem. 8. rot. Scot.* There is a commission *debite puniend' sicut nos fuissimus praesent*. 20 *Ed. III. rot. Franc. mem. 15.* Commission to array *ad debelland' omnes inobedientes & rebelles per corpora sua capti & in carcere & in prison' &c.* This was given to particular towns, and the officers there were to have the jurisdiction. 20 *Ed. III. mem. 25.* There were *custodes maritimi*, and armies allotted to them, & *habent potestatem omnes person' rebelles & inobedientes ad incarcerationand' & in prison' committend' & tu vicecomes totam posse ad faciend' &c. & omnes contrarios & inobedientes arrestari facias*. There the sheriff was commanded, together with the general of the army, to repress all infolencies, and if any did resist, he was to join with him. Though there be other commissions of those

times, yet none are of any other nature. In the time of *R. II. 9 R. II. mem. 1 rot. Scot.* A commission to *Clifford* and others, who are made wardens of the marches of Scotland, and have power for all felonies, rapes, &c. to judge *secundum leges marchiar'* which was a known law in those parts. In the reign of *Hen. IV. Rot. pat. Hen. IV. par. 2. mem. 10.* a commission to *Green*, *ad arraiand' & omnes contrarios & inobedientes ad incarcerationand'*; and the like commission went to every county, and to the sheriff to join and attend, and to imprison, &c. 5 *H. IV. rot. parl. mem. 24.* Divers commissions went in divers forms, but there came a commission *ad arraiandum*, and it was brought in question, and then a form was framed, and put in a bill of parliament, and shewed that no other commissions might go out. That commission is *ad arraiandum*, and to lead, &c. and for the disobedient to imprison them, and the sheriff is to assist, and to be in the commission; and there is a proviso, that the commissioners and their heirs are not to be questioned if they proceed according to that commission; it is full and reduceth us to a certainty. 5 *Hen. IV. rot. parl. n. 25.* Before that time commissions for martial law did vary; they desire that a constant form may be observed, to give power *ad arraiandum homines*, and the commissioners have power *ad compellendum homines exercitus, & contrarios arrestandum, & in carcere mittendum, donec aliud inde praecipimus*; and by the same commission there is a direction and command to the sheriff, that he shall be assisting to the commissioners. Note, that is no novelty, for 4 *Hen. IV. rot. pat. par. 1. mem. 29.* agrees. 6 *Hen. IV. par. 2. pat. in dors. mem. 15.* There was a rebellion in Wales, and a commission went out *ad arraiandum homines, &c.* and if any resisted, &c. *juxta sanam suam discretionem judicabuntur*, and a command to the sheriff to attend; but 7 *Hen. IV. mem. 34. par. 2. pat.* there is a commission in the same form that is prescribed, 5 *Hen. IV. 8 Hen. IV. mem. 16. par. 2. pat.* There is also the same form. 3 *Hen. V. mem. 36. par. 2.* There is a commission to proceed *juxta sanas discretionem vestras arraianare*; and the sheriff there is to aid; 6 *Henry V. mem. 18. Part 1. accords.* 13 *Henry VI. rot. pat. mem. 10.* *Tenere arraianationes*, without any jurisdiction. 14 *H. VI. par. 1. mem. 20.* There is power in *millenis or in centenis*, and a command to the sheriff to attend. 21 *Hen. VI. par. 2. mem. 40. accords.* 28 *Hen. VI. par. 2. mem. 13.* There is a clause and power to command men to watch, and if they perform it not, that *omnibus viis & modis compellere possunt*. 29 *H. VI. par. 2. mem. 6.* The commission is according to the 5 *Hen. IV. 32 Hen. VI. mem. 15. in dors.* A commission *quod arraianationes tenere fecerint*. 36 *Hen. VI. par. 1. mem. 2.* There is a clause *punire eos per incarcerationem*, who disobey the watches in the army. 37 *Hen. VI. mem. 6. par. 2. accords.* 39 *Hen. VI. rot. pat.* A commission directed to divers in Norfolk, with power to lead them, *ad debellandum inimicos*

micos regis; and if those who are leaders find any to carry arms to the enemy, that they imprison them, *quousq; secundum leges Angliae*, &c. and a command to the sheriff to assist them. 39 *Hen. VI. rot. par. no. 32.* The duke of York was made lieutenant to suppress the rebellions in *Wales*, and a command to the sheriff to attend him, and he shall judge and rule according to the *leges terrae* and customs of *Wales*. 1 *Ed. IV. par. 1 mem. 8. rot. pat.* A commission of lieutenancy was made to to lead an army against *Hen. VI.* and his complices, *dictos ligeos in the army ad regendum & gubernandum*, with a command to the sheriff to give attendance. 1 *Ed. IV. par. 4. mem. 18.* There was another commission in other counties to array an army, *& omnia facere juxta sanas discretiones vestras, & omnes qui conventiculos in exercitu illo faciunt*, to commit to prison, and a direction to the sheriff. 3 *Ed. IV. par. 1. mem. 6.* A commission to the lord *Scroop* and others, who were lieutenants in the north parts, and the sheriff is joyned with them. Power was given to them to array an army, *ad securitatem regni, & eos in conditione illa regnandum & gubernandum, & ad inimicos debellandum, & omnia alia facere juxta sanas discretiones vestras.* 8 *Ed. IV. mem. 12. par. 1. accords.* 39 *Ed. IV. mem. 1. accords.* 9 *Ed. IV. mem. 19. par. 2. accords.* 10 *Ed. IV. mem. 12. 11 Ed. IV. par. 1. mem. 25. accord.* In the 49 *Hen. VI.* the time of his recaption of the crown, a commission was to gather an army, and to keep them together, that they *sint semper parati ad ducendum ad personam nostram; ideo mandamus vos arraiianare & omnes subditos per proclamationem arraiianare juxta gradus suos & eos, &c.*

About the five propositions sent from the lords to the house of commons.

April 26. 1628.

OUR debate is now how we like of the propositions. Ours were resolutions of law, and no man can make question of them. And as we are constant, so I hope they of other places that have weighed them, are of the same mind with us. But now their lordships laying them by, propound what they would have to be law. As they may speak to what comes from us, so may we to what comes from them, and they did invite us thereto. I think there is not one of the five fit to be desired and asked. The first three are not fit, for there is no use of them in these great questions. The fourth we have already, and the fifth is not fit to be had at all. The first is, to declare that *magna charta* and the six statutes, conceived to be declarations and explanations of that law, do still stand in force to all intents and purposes. Consider what it is we ask. Who doubts whether they stand in force or no? Indeed some have published, that *magna charta* is but a charter, and no law. But it is an act of parliament; and let men speak what they will, that was the fashion of statutes till printing came in. The statutes were sent down in the king's name to be proclaimed, and he prefixed his name, and this was till about

V O L. III.

Hen. VI. Also the body of *magna charta* is, that it is consented to by all the earls, &c. and for the assent there was a fifteenth granted, and clearly that cannot be without an act of parliament: And so constant it is, that all else in it is to this day put in execution. In former parliaments, by thirty at least, it was confirmed, but it was not of necessity, and yet they are surer than this declaration you will now add. For the second, that his majesty will declare that every subject hath a propriety in his goods, and liberty of his person. They that drew this might mean somewhat more than I understand: I know not what we gain. Who doubts of our propriety? I never heard it denied, but in the pulpit, which is of no weight. For the third, that his majesty will confirm all just liberties; none can tell what this will produce. It is not fit we trouble his majesty with it. The fourth is not fit to be asked. That in all cases within the cognizance of the common law concerning the liberties of his subjects, his majesty would proceed according to the common law. I conceive his majesty never proceeded but according to law. It may be there were commitments, yet the courts of justice were open for the parties to seek justice. And if any thing be done against the law there, it is the fault of them that sit there. So we shall take it. But yet his majesty hath done nothing against the law. For the fifth, it is not fit to be had, and therefore not fit to be asked. If we ask it parliamentarily, we shall have a law to that sense, and so we shall destroy our fundamental liberties, which we have already resolved. Now a *convenient time* must be set down. In former times there was no need of such innovations; for such law of state, in a *convenient time* every man was to be delivered by law. If they were so wise then to hold it needless, why is it now necessary? And for *convenient time*. What is *convenient time*? Who shall judge of it, but the judges? And so they now shall have the power of the lords, and of the council. Also now we desire in some cases the prerogative, &c. I would fain see if any person may not be committed at pleasure by this clause, and no man is exempted. At this little gap every man's liberty may in time go out.

At the committee about the Bill for magna charta, and the liberties of the subject.

April 28. 1628.

I Would have the violation tenderly mentioned. Let us set down the statute of *magna charta.* 13 *Hen. IV.* It is adjudged in the parliament roll, that the statute of tallage is an act of parliament. It is not entered in the statute roll, and it was 34 *Ed. I. 19 Ed. II. rot. claus. mem. 15.* *Les comens prient lou divers fuer' prise & imprison per accusement de persons malevolent lou ne fuer' indict acc' al ley del terre, ils prient que ils que sont prise sans indictment veignent en chancery, & que droit serra fait. Et roy vult que nul serra prise.* But this is not in the parliament roll. 5 *Ed. III. c. 9 14 Ed. III. c. 1.* That there shall be no aid nor charge but

by parliament. 25 *Ed. III. c. 4.* None shall be attached by petition without presentment, or an original writ. 25 *Ed. III. no. 16.* *Item priont les comens que les loans soient releasé, & nul serra compell de faire arrere contre les franchises del terre. Le roy le pleist.* 28 *Ed. III. c. 3.* Nul serra ouste de terre ou tenements sans due proces del ley. 36 *Edw. III. no. 9.* *Soit grievé contre les articles avant dit veigne en chancery & droit serra fait.* 37 *Edw. III. no. 10.* *Ils la desire que le grand charter & especialment les articles darrein stat. soient execute.* 37 *Ed. III. c. 18.* *Il est contene en le grand charter que nul serra imprison, &c. ils que font tiel, &c.* 38 *Ed. III. no. 10.* *Les comens priont que le grand charter & les autres statuts soient execute & que breves serront grauntez al cestuy que sue pur ceo, & si aucun judgment soit, fait, il serra void.*

At the committee about the addition proposed by the lords to be made to the petition of right.

May 21. 1628.

LET us not go too hastily to the question. If there be any objections, let any propound them, and let others answer them as they think good. I will not touch the reasons already given. The sum of this addition is, that our right is not to be subject to loans or imprisonment without cause, or martial law, but by sovereign power. If it hath no reference to our petition, what doth it here? I am sure all others will say it hath reference, and so must we. How far it doth exceed all examples of former times, no man can shew me the like. I have made that search that fully satisfies me, and I find not another besides 28 *Ed. I.* We have a great many petitions and bills of parliament in all ages, in all which we are sure no such thing is added. That clause of the 28 *Ed. I.* it was not in the petition, but in the king's answer.

In *magna charta* there were no such clauses; the articles themselves are to be seen in a library at *Lambeth*, in a book of that time, upon which the law was made. There was none in the statutes in king *John's* time, for these I have seen, there is no saving. In the articles of *confirmatio chartarum*, is a saving, *les anciens aids*, that is, for *file mayer*, & *pur faire fitz chivalier*, and for ransom. And in the articles of king *John*, in the original charter, which I can shew, there those three aids were named therein, and they were all known. In the 25 *Ed. III.* there is a petition against loans, there is no saving, and so in others. As for that addition in the 28 *Ed. I.* do but observe the petitions after *magna charta*, as 5 *Ed. III.* they put up a petition, Whereas in *magna charta* it is contained, that none be imprisoned but by due process of law; those words are not in *magna charta*, and yet there is no saving; and so in

the 28 *Ed. III.* and 36, 37, and 42 of *Ed. III.* all which pass by petition, and yet there is no saving in them. And there are in them other words that are not in *magna charta*, and yet no saving. For that that Mr. speaker said to the king, it was our heart, and ever shall be; but we then spoke of the king's prerogative by it self, and we are bound to say so: But speaking of our rights, shall we say we are not to be imprisoned, saving but by the king's sovereign power? Say my lands, without any title, be seized in the king's hand, and I bring a petition of right, and I go to the king, and say, I do by no means seek your majesty's right and title; and after that, I bring a petition or *monfrance de droit*, setting forth my own right and title, and withal set down a saving, that I leave entire his majesty's right, it would be improper. It was objected that in the 28 of *Ed. I.* in the end of *articuli super chartas*, which was a confirmation of *magna charta*, and *charta de foresta*, in the end there is a clause, *savant le droit & signiory*; the words are extant in that roll that is now extant, but the original roll is not extant.

In the 25 *Ed. I.* there was a confirmation of the charter; in the 27 *Ed. I.* the parliament was called, and much stir there was about the charter, and renewing the articles, but then little was done. In 28 *Ed. I.* the commons by petition or bill, did obtain the liberties and articles at the end of the parliament, they were extracted out of the roll, and proclaimed abroad. The addition was added in the proclamation: In the bill there was no *savant*, but afterwards it was put in; and to prove this, it is true there is no parliament roll of that year, yet we have histories of that kind. In the library at *Oxford*, there is a journal of a parliament of that very year, which mentions so much; also in the public library at *Cambridge* there is a manuscript that belonged to an abby, it was of the same year 28 *Ed. I.* and it mentions the parliament and the petitions, and *articulos quos petierunt sic confirmaverat rex ut in fine adderet, Salvo jure coronae regis*; and they came by proclamation in *London*; when the people heard this clause added in the end, they fell into execration for that addition, and the great earls that went away satisfied from the parliament, hearing of this, went to the king, and after it was cleared at the next parliament. Now there is no parliament roll of this of that time, only in one roll in the end of *Ed. III.* there is a roll, that recites not the parliament bill, but the statute that was the effect of the roll, that was proclaimed.

About the patent for exchange.

June 23. 1628.

THERE was another patent, and the proclamation refers to that patent. As for the patent, it recites that it belongs to the king to have the sole exchange of all bullion, and so grants that office to the earl of *Holland*, and grants him power to buy bullion. And certainly the king may grant this to one, to have power to buy bullion, and he is no more *mercator regis*

regis. But this patent hath reference to an indenture, whereby it is covenanted, that none but he shall bring bullion to the mint, and it extendeth to bullion of gold and silver. Whether it be legal in every part or no, we will not meddle. This office is void in regard of the office of the mint, that had this office before. For part it is not against law, but for part it is. So much as concerns the sole exchange of money may be granted. The king hath power to make a sole exchanger of money; antiently there was such an officer. 1 *Job. charter roll.* 135. The exchange of all the money of England is granted. And it is frequent to grant such a grant. And this office is in the office of the mint. Mr. *Braeton*, tit. *de corona* 117. a. has one article of eyre, *Quis fecit monetam sive cambium sine domino rege.* And *Fleta* in the articles of eyre mentions one, *De illicitis cambiatoribus monetæ domini regis.* 6 *Joh. pat. rot. Si quis cambium domini regis, &c. puniuntur.* 25 *Ed. III. cap. 12.* None shall exchange money but the king's exchanger, and none shall keep the common exchange. Also by 3 *Hen. VII. c. 6. 5 Ed. VI. c. 19.* a subject cannot sell money. So then that part of the patent which toucheth the sole exchange of money is not contrary to law.

As for bullion, it was objected that there are two offices, an exchange for bullion and for money. But for bullion, all gold and foreign coin that is not current here, I hold clearly by the common law, may be sold to any, as well as any other commodity. In elder times payment might be made upon contracts, in so much bullion. In *domes-day* book a hundred times it is thus; he holds such and such lands by so much to be paid *in massa & penso*, that is, weighed, &c. And in the black book in the exchequer, the sheriff brought in rents, either in money, or in so much bullion. 29 *Ed. I. reported* 7 *Ed. VI. Dyer* 82. there was a coin cal-

led *pollards*, and when it was current a man was bound to pay 100 *l.* Afterwards the *pollards* were cried down, and the debtor tendered the 100 *l.* in *pollards*, which were refused, and an action of debt was brought, and the court adjudged that the payment should be in *pollards*, which were no more than bullion. 9 *Hen. VII. 16. per Brian.* One brings action upon an obligation to pay five pounds of pure gold, which proved that pure gold might be paid. By which it is apparent, that the subjects might by the common law pass bullion among themselves. *Articuli super chartas cap. ultimo.* If goldsmiths would, they might buy gold to sell it again. 9 *Ed. III. 2 stat. de moneta, c. 2.* The *French* differed from the *English*, and there it is said, that any might bring to the exchanges bullion and silver; so that doth not mention gold. 4 *Hen. VII. c. 2.* It is ordained, that the goldsmiths shall not sell silver in the mass; but there is a long preamble; and if it had been conceived that there had been such a prerogative in the king, there should not have been an act of parliament for it. 9 *Ed. III.* It is expressed, that any may bring bullion to the exchanges; but that doth not restrain all others, as if all bullion should be brought to the exchanger. No other is excluded to buy it; for if a man buy of him, he cannot be indicted. But by this grant here, it is forbidden that any should buy gold, or silver, but only the exchanger. It is agreed, that the king may grant this office, but the king cannot make a dispensation of a penal law. The king here grants that none shall buy gold, but the patentee and his deputies. This patent is contrary to the 21 *Jac.* for this is sole buying, and sole selling, which might before be sold by any other subject. And so this patent is contrary to the law for the bullion, and not for the silver and coin.



T A B L E
T A L K.

VOL. III.

12 E

TO

T. V. B. L. E.

T. V. B. L. E.

(2004)

To the Honourable

Mr. JUSTICE HALES,

One of the

JUDGES of the COMMON-PLEAS;

And to the much Honoured

EDWARD HEYWOOD, JOHN VAUGHAN, and
ROWLAND JEWKS, *Esquires.*

Most worthy gentlemen,

WERE you not executors to that person, who (while he lived) was the glory of the nation; yet I am confident any thing of his would find acceptance with you; and truly the sense and notion here is wholly his, and most of the words. I had the opportunity to hear his discourse twenty years together; and least all those excellent things that usually fell from him might be lost, some of them, from time to time, I faithfully committed to writing, which here digested into this method, I humbly present to your hands. You will quickly perceive them to be his, by the familiar illustrations wherewith they are set off, and in which way, you know, he was so happy, that (with a marvellous delight to those that heard him) he would presently convey the highest points of religion, and the most important affairs of state to an ordinary apprehension.

In reading, be pleased to distinguish *Times*, and in your fancy carry along with you, the *When* and the *Why*, many of these things were spoken; This will give them the more life, and the smarter relish. 'Tis possible the entertainment you find in them, may render you the more inclinable to pardon the presumption of

Your most obliged, and

most humble servant,

Ri. Milward.

THE

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T A B L E T A L K.

Abbies. Priors.

1. **T**HE unwillingness of the monks to part with their land, will fall out to be just nothing, because they were yielded up to the king by a supreme hand, *viz.* a parliament. If a king conquer another country, the people are loth to lose their lands; yet no divine will deny, but the king may give them to whom he please. If a parliament make a law concerning leather, or any other commodity, you and I, for example, are parliament-men; perhaps in respect to our own private interests, we are against it, yet the major part conclude it, we are then involved, and the law is good.

2. When the founders of abbies laid a curse upon those that should take away those lands, I would fain know what power they had to curse me. 'Tis not the curses that come from the poor, or from any body, that hurt me, because they come from them, but because I do something ill against them, that deserves God should curse me for it. On the other side, 'tis not a man's blessing me, that makes me blessed; he only declares me to be so, and if I do well, I shall be blessed, whether any bless me or not.

3. At the time of dissolution, they were tender in taking from the abbots and priors their lands and their houses, till they surrendered them, as most of them did. Indeed the prior of St. Johns, Sir Richard Weston, being a stout man, got into France, and stood out a whole year, at last submitted, and the king took in that priory also, to which the Temple belonged, and many other houses in England. They did not then cry no abbots, no priors, as we do now no bishops, no bishops.

4. Henry V. put away the friers aliens, and seized to himself 100000 *l.* a year, and therefore they were not the protestants only, that took away church lands.

5. In queen Elizabeth's time, when all the abbies were pulled down, all good works de-

faced, then the preachers must cry up justification by faith, not by good works.

Articles.

THE nine and thirty articles are much another thing in *Latin*, in which tongue they were made, than they are translated into *English*. They were made at three several convocations, and confirmed by act of parliament six or seven times after. There is a secret concerning them: Of late, ministers have subscribed to all of them; but by the act of parliament that confirmed them, they ought only to subscribe to those articles which contain matter of faith, and the doctrine of the sacraments, as appears by the first subscriptions. But bishop Bancroft (in the convocation held in king James's days) began it, that ministers should subscribe to three things, to the king's supremacy, to the common prayer, and to the thirty-nine articles: Many of them do not contain matter of faith. Is it matter of faith how the church should be governed? Whether infants should be baptized? Whether we have any property in our goods? &c.

Baptism.

1. It was a good way to persuade men to be christened, to tell them, that they had a foulness about them, *viz.* original sin, that could not be washed away but by baptism.

2. The baptizing of children with us, does only prepare a child against he comes to be a man, to understand what christianity means. In the church of Rome, it hath this effect, it frees children from hell. They say they go into *limbus infantum*. It succeeds circumcision, and we are sure the child understood nothing of that at eight days old: Why then may not we as reasonably baptize a child at that age? In England, of late years, I ever thought the parson baptized his own fingers, rather than the child.

3. In the primitive times, they had godfathers to see the children brought up in the christian religion, because many times, when the

father was a christian, the mother was not; and sometimes when the mother was a christian, the father was not; and therefore they made choice of two or more that were christians, to see their children brought up in that faith.

Bastard.

IT is said, the xxiiij of *Deut. 2. A bastard shall not enter into the congregation of the lord, even to the tenth generation. Non ingreditur in ecclesiam domini*, he shall not enter into the church. The meaning of the phrase is, he shall not marry a Jewish woman. But upon this, grossly mistaken, a bastard at this day in the church of *Rome*, without a dispensation, cannot take orders: The thing haply well enough, where 'tis so settled: But that it is upon a mistake (the place having no reference to the church) appears plainly by what follows at the third verse; *An Ammonite or Moabite shall not enter into the congregation of the lord, even to the tenth generation.* Now you know with the Jews an *Ammonite*, or a *Moabite*, could never be a priest, because their priests were born so, not made.

Bible, scripture.

1. IT is a great question how we know scripture to be scripture, whether by the church, or by man's private spirit. Let me ask you how I know any thing? How I know this carpet to be green? First, because somebody told me it was green: That you call the church in your way. Then after I have been told it is green, when I see that colour again, I know it to be green, my own eyes tell me it is green; That you call the private spirit.

2. The *English* translation of the bible, is the best translation in the world, and renders the sense of the original best, taking in for the *English* translation, the bishops bible, as well as king *James's*. The translators in king *James's* time took an excellent way. That part of the bible was given to him who was most excellent in such a tongue (as the *apocrypha* to *Andrew Downes*) and then they met together, and one read the translation, the rest holding in their hands some bible, either of the learned tongues, or *French*, *Spanish*, *Italian*, &c. If they found any fault they spoke, if not, he read on.

3. There is no book so translated as the bible for the purpose. If I translate a *French* book into *English*, I turn it into *English* phrase, not into *French English*. *Il fait froid*, I say, 'tis cold, not, it makes cold; but the bible is rather translated into *English* words, than into *English* phrase. The *Hebraisms* are kept, and the phrase of that language is kept: As for example, *he uncovered her shame*, which is well enough, so long as scholars have to do with it; but when it comes among the common people, lord, what jeer do they make of it!

4. *Scrutamini scripturas*. These two words have undone the world. Because *Christ* spoke

it to his disciples, therefore we must all, men, women and children, read and interpret the scripture.

5. *Henry VIII.* made a law, that all men might read the scripture, except servants, but no woman, except ladies and gentlewomen, who had leisure, and might ask somebody the meaning. The law was repealed in *Edward the sixth's* days.

6. Laymen have best interpreted the hard places in the bible, such as *Joannes Picus*, *Scaliger*, *Grotius*, *Salmasius*, *Heinsius*, &c.

7. If you ask which of *Erasmus*, *Beza*, or *Grotius*, did best upon the new testament? it is an idle question, for they all did well in their way. *Erasmus* broke down the first brick; *Beza* added many things, and *Grotius* added much to him, in whom we have either something new, or something heightened, that was said before, and so it was necessary to have them all three.

8. The text serves only to guess by, we must satisfy our selves fully out of the authors that lived about those times.

9. In interpreting the scripture, many do, as if a man should see one have ten pounds, which he reckoned by 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, meaning four was, but four units, and five, five units, &c. and that he had in all but ten pounds; the other that sees him, takes not the figures together as he doth, but picks here and there, and thereupon reports, that he hath five pounds in one bag, and six pounds in another bag, and nine pounds in another bag, &c. when, as in truth, he hath but ten pounds in all. So we pick out a text here, and there, to make it serve our turn; whereas, if we take it all together, and considered what went before, and what followed after, we should find it meant no such thing.

10. Make no more allegories in scripture than needs must. The fathers were too frequent in them: They indeed, before they fully understood the literal sense, looked out for an allegory. The folly whereof you may conceive thus; Here at the first sight appears to me in my window, a glass and a book, I take it for granted it is a glass and a book, thereupon I go about to tell you what they signify; afterwards, upon nearer view, they prove no such thing, one is a box made like a book, the other is a picture made like a glass. Where is now my allegory?

11. When men meddle with the literal text, the question is, where they should stop? In this case, a man must venture his discretion, and do his best to satisfy himself and others in those places where he doubts. For although we call the scripture the word of God, as it is, yet it was writ by a man, a mercenary man, whose copy, either might be false, or he might make it false: For example, here were a thousand bibles printed in *England* with the text thus, *Thou shalt commit adultery*, the word *not*, left out. Might not this text be mended?

12. The scripture may have more senses besides the literal, because God understands all things at once; but a man's writing has but one

one true sense, which is that, which the author meant when he writ it.

13. When you meet with several readings of the text, take heed you admit nothing against the tenets of your church, but do as if you were going over a bridge, be sure you hold fast by the rail, and then you may dance here and there as you please. Be sure you keep to what is settled, and then you may flourish upon your various lections.

14. The *apocrypha* is bound with the bibles of all churches that have been hitherto. Why should we leave it out? The church of Rome has her *apocrypha*, viz. *Susanna*, and *Bell and the Dragon*, which she does not esteem equally with the rest of those books that we call *apocrypha*.

Bishops before the parliament.

1. A BISHOP, as a bishop, had never any ecclesiastical jurisdiction: For as soon as he was *electus confirmatus*, that is, after the three proclamations in *Bow-church*, he might exercise jurisdiction, before he was consecrated; but till then, he was no bishop, neither could he give orders. Besides, *suffragans* were bishops, and they never claimed any jurisdiction.

2. Antiently, the noble men lay within the city for safety and security. The bishops houses were by the water-side, because they were held sacred persons, which no body would hurt.

3. There was some sense for *commendams* at first, when there was a living void, and never a clerk to serve it, the bishops were to keep it till they found a fit man; but now, 'tis a trick for the bishop to keep it for himself.

4. For a bishop to preach, is to do other folks office. As if the steward of the house should execute the porter's or the cook's place; it is his business to see that they and all other about the house perform their duties.

5. That which is thought to have done the bishops hurt, is their going about to bring men to a blind obedience, imposing things upon them, though perhaps small and well enough, without preparing them, and insinuating into their reasons and fancies. Every man loves to know his commander. I wear those gloves, but perhaps if an alderman should command me, I should think much to do it: What has he to do with me? Or if he has, peradventure I do not know it. This jumping upon things at first dash will destroy all. To keep up friendship, there must be little addresses and applications; whereas bluntness spoils it quickly: To keep up the hierarchy, there must be little applications made to men, they must be brought on by little and little; so in the primitive times the power was gained, and so it must be continued. *Scaliger* said of *Erasmus*: *Si minor esse voluit, major fuisse*; so we may say of the bishops, *Si minores esse voluerint, majores fuissent*.

6. The bishops were too hasty, else with a discreet slowness they might have had what they aimed at. The old story of the fellow, that told the gentleman, he might get to such a

place, if he did not ride too fast, would have fitted their turn.

7. For a bishop to cite an old canon to strengthen his new articles; is as if a lawyer should plead an old statute that has been repealed, God knows how long.

Bishops in the parliament.

1. BISHOPS have the same right to sit in parliament, as the best earls and barons; that is, those that were made by writ: If you ask one of them, *Arundel, Oxford, Northumberland*, why they sit in the house? They can only say, their father sat there before them, and their grand-father before him, &c. And so says the bishop: He that was a bishop of this place before me, sat in the house, and he that was a bishop before him, &c. Indeed your later earls and barons have it expressed in their patents, that they shall be called to the parliament.

Objection. But the lords sit there by blood, the bishops not.

Answer. It is true, they sit not there both the same way, yet that takes not away the bishop's right. If I am a parson of a parish, I have as much right to my glebe and tythe, as you have to your land, which your ancestors have had in that parish eight hundred years.

2. The bishops were not barons, because they had baronies annexed to their bishopricks (for few of them had so, unless the old ones *Canterbury, Winchester, Durham*, &c. the new erected we are sure had none, as *Glocester, Peterborough*, &c. besides, few of the temporal lords had any baronies.) But they are barons, because they are called by writ to the parliament, and bishops were in the parliament ever since there was any mention or sign of a parliament in *England*.

3. Bishops may be judged by the peers, though in time of popery it never happened, because they pretended they were not obnoxious to a secular court; but their way was to cry, *ego sum frater domini papae*, I am brother to my lord the pope, and therefore take not my self to be judged by you: In this case they impanelled a *Middlesex* jury; and dispatched the business.

4. Whether may bishops be present in cases of blood?

Answer. That they had a right to give votes; appears by this; always when they did go out, they left a proxy; and in the time of the abbots, one man had ten, twenty, or thirty voices. In *Richard* the 1st's time there was a protestation against the canons, by which they were forbidden to be present in case of blood. The statute of the 25th of *Hen. VIII.* may go a great way in this business. The clergy were forbidden to use or cite any canon, &c. but in the latter end of the statute, there was a clause, that such canons that were in use in this kingdom, should be in force till the thirty-two commissioners appointed, should make others, provided they were not contrary to the king's

king's supremacy. Now the question will be, whether these canons for blood were in use in this kingdom or no? The contrary whereof may appear by many precedents in *Rich.* III. and *Hen.* VII. and the beginning of *Hen.* VIII. in which time there were more attained than since, or scarce before. The canons of irregularity of blood were never received in *England*, but upon pleasure. If a lay lord was attained, the bishops assented to his condemning, and were always present at the passing of the bill of attainder: But if a spiritual lord, they went out, as if they cared not whose head was cut off, so none of their own. In those days the bishops, being of great houses, were often entangled with the lords in matters of treason; but when do you hear of a bishop a traitor now?

5. You would not have bishops meddle with temporal affairs. Think who you are that say it. If a papist, they do in your church; if an *English* protestant, they do among you; if a presbyterian, where you have no bishops, you mean your presbyterian lay elders should meddle with temporal affairs as well as spiritual. Besides, all jurisdiction is temporal, and in no church, but they have some jurisdiction or other. The question then will be reduced to *magis* and *minus*; they meddle more in one church than in another.

6. *Objection.* Bishops give not their votes by blood in parliament, but by an office annexed to them, which being taken away, they cease to vote; therefore there is not the same reason for them as for temporal lords.

Answer. We do not pretend they have that power the same way, but they have a right: He that has an office in *Westminster-hall* for his life, the office is as much his, as his land is his that hath land by inheritance.

7. Whether had the inferior clergy ever any thing to do in the parliament?

Answer. No, no otherwise than thus; there were certain of the clergy that used to assemble near the parliament, with whom the bishops, upon occasion might consult; but there were none of the convocation, as it was afterwards settled, *viz.* the dean, the arch-deacon, one for the chapter, and two for the diocese, but it happened by continuance of time, to save charges and trouble; their voices and the consent of the whole clergy were involved in the bishops, and at this day the bishops writs run, to bring all these to the parliament, but the bishops themselves stand for all.

8. Bishops were formerly one of these two conditions; either men bred canonists and civilians, sent up and down ambassadors to *Rome* and other parts, and so by their merit came to that greatness, or else great noble men's sons, brothers, and nephews, and so born to govern the state. Now they are of a low condition, their education nothing of that way; he gets a living, and then a greater living, and then a greater living than that, and so comes to govern.

9. Bishops are now unfit to govern, because of their learning: They are bred up in another law: They run to the text for something done

amongst the *Jews*, that nothing concerns *England*: It is just as if a man would have a kettle, and he would not go to our brazier to have it made, as they make kettles, but he would have it made, as *Hiram* made his brass-work, who wrought in *Solomon's* temple.

10. To take away bishop's votes, is but the beginning to take them away; for then they can be no longer useful to the king or state. 'Tis but like the little wimble, to let in the greater auger.

Objection. But they are but for their life, and that makes them always go for the king as he will have them.

Answer. This is against a double charity; for you must always suppose a bad king and bad bishops. Then again, whether will a man be sooner content, himself should be made a slave, or his son after him? When we talk of our children, we mean ourselves. Besides, they that have posterity are more obliged to the king, than they that are only for themselves, in all the reason in the world.

11. How shall the clergy be in the parliament, if the bishops are taken away?

Answer. By the laity; because the bishops, in whom the rest of the clergy are included, consent to the taking away their own votes, by being involved in the major part of the house. This follows naturally.

12. The bishops being put out of the house, whom will they lay the fault upon now? When the dog is beat out of the room, where will they lay the stink?

Bishops out of the parliament.

1. In the beginning, bishops and presbyters were alike; like the gentlemen in the country, whereof one is made deputy-lieutenant, another justice of peace; so one is made a bishop, another a dean: And that kind of government by arch-bishops, and bishops, no doubt came in, in imitation of the temporal government, not *jure divino*. In time of the *Roman* empire, where they had a *legatus*, there they placed an arch-bishop; where they had a *rector*, there a bishop; that every one might be instructed in christianity, which now they had received into the empire.

2. They that speak ingenuously of bishops and presbyters, say, that a bishop is a great presbyter, and during the time of his being bishop, above a presbyter: As your president of the college of physicians, is above the rest, yet he himself is no more than a doctor of physick.

3. The words, *bishop* and *presbyter*, are promiscuously used; that is confessed by all: And though the word, *bishop*, be in *Timothy* and *Titus*, yet that will not prove the bishops ought to have a jurisdiction over the presbyter, though *Timothy* or *Titus* had by the order that was given them. Some body must take care of the rest: And that jurisdiction was but to excommunicate, and that was but to tell them, they should come no more into their company: Or grant they did make canons

one for another, before they came to be in the state : Does it follow they must do so when the state has received them into it ? What if *Timothy* had power in *Ephesus*, and *Titus* in *Crete* over the presbyters ? Does it follow therefore the bishop must have the same in *England* ? Must we be governed like *Ephesus* and *Crete* ?

4. However some of the bishops pretend to be *jure divino*, yet the practice of the kingdom has ever been otherwise ; for whatever bishops do otherwise than the law permits, *Westminster-hall* can controul, or send them to absolve, &c.

5. He that goes about to prove bishops *jure divino*, does as a man, that having a sword, shall strike it against an anvil, if he strike it a while there, he may peradventure loosen it, though it be never so well riveted ; it will serve to strike another sword, or cut flesh, but not against an anvil.

6. If you should say, you hold your land by *Moses* or God's law, and would try it by that, you may perhaps lose, but by the law of the kingdom you are sure of it. So may the bishops by this plea of *jure divino* lose all. The pope had as good a title by the law of *England* as could be had, had he not left that, and claimed by power from God.

7. There is no government enjoined by example, but by precept : It does not follow we must have bishops still, because we have had them so long. They are equally mad who say bishops are so *jure divino*, that they must be continued, and they who say, they are so antichristian, that they must be put away. All is as the state pleases.

8. To have no ministers, but presbyters, is as if in the temporal state, they should have no officers but constables. Bishops do best stand with monarchy, that as amongst the laity, you have dukes, lords, lieutenants, judges, &c. to send down the king's pleasure to his subjects ; so you have bishops to govern the inferior clergy : These upon occasion may address themselves to the king, otherwise every parson of the parish must come, and run up to the court.

9. The protestants have no bishops in *France*, because they live in a catholick country, and they will not have catholick bishops ; therefore they must govern themselves as well as they may.

10. What is that to the purpose, to what end bishop's lands were given to them at first ? You must look to the law and custom of the place. What is that to any temporal lord's estate, how lands were first divided, or how in *William* the conqueror's days ? And if men at first were juggled out of their estates, yet they are rightly their successors. If my father cheat a man, and he consent to it, the inheritance is rightly mine.

11. If there be no bishops, there must be something else which has the power of bishops, though it be in many. And then had you not as good keep them ? If you will have no half crowns, but only single pence, yet thirty

single pence are a half crown : And then had you not as good keep both ? But the bishops have done ill. 'Twas the men, not the function : As if you should say, you would have no more half crowns, because they were stolen, when the truth is they were not stolen because they were half crowns, but because they were money, and light in a thief's hand.

12. They that would pull down the bishops, and erect a new way of government, do as he that pulls down an old house, and builds another, in another fashion. There is a great deal of do, and a great deal of trouble, the old rubbish must be carried away, and new materials must be brought, work-men must be provided ; and perhaps the old one would have served as well.

13. If the parliament and presbyterian party should dispute who should be judge ? Indeed in the beginning of queen *Elizabeth*, there was such a difference between the protestants and papists, and Sir *Nicholas Bacon*, lord chancellor, was appointed to be judge ; but the conclusion was, the stronger party carried it : For so religion was brought into kingdoms ; so it has been continued, and so it may be cast out, when the state pleases.

14. 'Twill be a great discouragement to scholars, that bishops should be put down : For now the father can say to his son, and the tutor to his pupil, *Study hard, and you shall have vocem & sedem in parlamento* ; then it must be, *Study hard, and you shall have a hundred a year if you please your parish*.

Object. But they that enter into the ministry for preferment, are like *Judas* that looked after the bag.

Ans. It may be so, if they turn scholars at *Judas's* age. But what arguments will they use to persuade them to follow their books, while they are young ?

Books. Authors.

1. THE giving a bookseller his price for his books, has this advantage ; He that will do so, shall have the refusal of whatsoever comes to his hand, and so by that means get many things, which otherwise he never should have seen. So it is in giving a bawd her price.

2. In buying books or other commodities, it is not always the best way to bid half so much as the seller asks : Witness the country fellow, that went to buy two groat shillings, they asked him three shillings, and he bid them eighteen-pence.

3. They counted the price of the books (*Acts* xix. 19.) and found fifty thousand pieces of silver, that is so many *Sestertii*, or so many three half-pence of our money ; about three hundred pound sterling.

4. Popish books teach and inform ; what we know, we know much out of them. The fathers, church story, school-men, all may pass for popish books ; And if you take away them, what learning will you leave ? Besides who must be judge ? The customer or the waiter ? If he

disallows a book, it must not be brought into the kingdom; then lord have mercy upon all scholars! These puritan preachers if they have any things good, they have it out of popish books, though they will not acknowledge it, for fear of displeasing the people. He is a poor divine that cannot sever the good from the bad.

5. 'Tis good to have translations, because they serve as a comment, so far as the judgment of the man goes.

6. In answering a book, 'tis best to be short, otherwise he that I write against will suspect I intend to weary him, not to satisfy him. Besides in being long, I shall give my adversary a huge advantage; somewhere or other he will pick a hole.

7. In quoting of books, quote such authors as are usually read, others you may read for your own satisfaction, but not name them.

8. Quoting of authors is most for matter of fact, and then I write them as I would produce a witness; sometimes for a free expression, and then I give the author his due, and gain myself praise by reading him.

9. To quote a modern *Dutch* man where I may use a classic author, is as if I were to justify my reputation, and I neglect all persons of note and quality that know me, and bring the testimonial of the scullion in the kitchen.

Canon-law.

IF I would study the canon-law, as it is used in *England*, I must study the heads here in use, then go to the practisers in those courts where that law is practised, and know their customs. So for all the study in the world.

Ceremony.

2. CEREMONY keeps up all things; 'tis like a penny-glass to a rich spirit, or some excellent water, without it the water were spilt, the spirit lost.

2. Of all people, ladies have no reason to cry down ceremony, for they take themselves slighted without it. And were they not used with ceremony, with complements and addresses, with legs, and kissing of hands, they were the pitifullest creatures in the world: But yet methinks, to kiss their hands after their lips, as some do, is like little boys, that after they eat the apple, fall to the paring, out of a love they have to the apple.

Chancellor.

1. THE bishop is not to sit with the chancellor in his court (as being a thing either beneath him, or beside him) no more than the king is to sit in the king's bench, when he has made a lord chief justice.

2. The chancellor governed in the church, who was a lay-man. And therefore 'tis false which they charge the bishops with, that they challenge sole jurisdiction. For the bishop can no more put out the chancellor, than the chancellor the bishop. They were many of them

made chancellors for their lives: And he is the fittest man to govern, because divinity so overwhelms the rest.

Changing sides.

1. 'TIS the trial of a man to see if he will change his side; and if he be so weak as to change once, he will change again. Your country fellows have a way to try if a man be weak in the hams, by coming behind him, and giving him a blow unawares; if he bend once, he will bend again.

2. The lords that fall from the king, after they have got estates by base flattery at court, and now pretend conscience, do as a vintner, that when he first sets up, you may bring your wench to his house, and do your things there; but when he grows rich, he turns conscientious, and will sell no wine upon the sabbath day.

3. Colonel *Goring* serving first the one side, and then the other, did like a good miller, that knows how to grind which way soever the wind sits.

4. After *Luther* had made a combustion in *Germany* about religion, he was sent to by the pope, to be taken off, and offered any preferment in the church, that he would make choice of: *Luther* answered, if he had offered half as much at first, he would have accepted it, but now he had gone so far, he could not come back. In truth he had made himself a greater thing than they could make him; the *German* princes courted him; he was become the author of a sect ever after to be called *Lutherans*. So have our preachers done that are against the bishops, they have made themselves greater with the people than they can be made the other way, and therefore there is the less charity probably in bringing them off. Charity to *strangers* is enjoined in the text. By *strangers* is there understood, those that are not of our own kin, strangers to your blood, not those you cannot tell whence they come; that is, be charitable to your neighbours whom you know to be honest poor people.

Christmas.

1. CHRISTMAS succeeds the *Saturnalia*, the same time, the same number of holy-days; then the master waited upon the servant like the lord of *mis-rule*.

2. Our meats and our sports (much of them) have relation to church-works. The coffin of our christmas pies, in shape long, is in imitation of the cratch; Our choosing kings and queens on twelfth-night, hath reference to the three kings. So likewise our eating of fritters, whipping of tops, roasting of herrings, jack of lents, &c. they were all in imitation of church-works, emblems of martyrdom. Our tansies at *Easter* have reference to the bitter herbs; though at the same time 'twas always the fashion, for a man to have a gammon of bacon, to shew himself to be no Jew.

Christians.

1. IN the high church of *Jerusalem*, the christians were but another sect of *Jews*, that did believe the *Messias* was come. To be called, was nothing else, but to become a *christian*, to have the name of a christian, it being their own language, for amongst the *Jews*, when they made a doctor of law, 'twas said *he was called*.

2. The *Turks* tell their people of a heaven where there is sensible pleasure, but of a hell where they shall suffer they do not know what. The christians quite invert this order, they tell us of a hell where we shall feel sensible pain, but of a heaven where we shall enjoy we cannot tell what.

3. Why did the heathens object to the christians, that they worshipped an ass's head? You must know, that to a heathen, a *few* and a christian were all one, that they regarded him not, so he was not one of them. Now that of the ass's head might proceed from such a mistake as this. By the *Jewish* law, all the firstlings of cattle were to be offered to God, except a young ass, which was to be redeemed; a heathen being present, and seeing young calves, and young lambs killed at their sacrifices, only young asses redeemed, might very well think they had that silly beast in some high estimation, and thence might imagine they worshipped it as a God.

Church.

1. HERETOFORE the kingdom let the church alone, let them do what they would, because they had something else to think of, *viz.* wars; but now in time of peace, we begin to examine all things, will have nothing but what we like, grow dainty and wanton; just as in a family, the heir uses to go a hunting, he never considers how his meal is dressed, takes a bit, and away; but when he stays within, then he grows curious, he does not like this, nor he does not like that, he will have his meat dressed his own way, or peradventure he will dress it himself.

2. It hath ever been the gain of the church, when the king will let the church have no power, to cry down the king, and cry up the church: But when the church can make use of the king's power, then to bring all under the king's prerogative. The catholicks of *England* go one way, and the court clergy another.

3. A glorious church is like a magnificent feast, there is all the variety that may be, but every one chooses out a dish or two that he likes, and lets the rest alone. How glorious soever the church is, every one chooses out of it his own religion, by which he governs himself, and lets the rest alone.

4. The laws of the church are most favourable to the church, because they were the church's own making; as the heralds are the

best gentlemen, because they make their own pedigree.

5. There is a question about that article, *concerning the power of the church*, whether these words, *of having power in controversies of faith*, were not stolen in; But 'tis most certain they were in the book of articles that was confirmed, though in some editions they have been left out: But the article before tells you, who the *church* is, not the *clergy*, but *coetus fidelium*.

Church of Rome.

1. BEFORE a juggler's tricks are discovered, we admire him, and give him money, but afterwards we care not for them: So 'twas before the discovery of the juggling of the church of *Rome*.

2. Catholicks say, we out of our charity, believe they of the church of *Rome* may be saved: But they do not believe so of us; Therefore their church is better according to ourselves. First, some of them no doubt believe as well of us, as we do of them; but they must not say so. Besides, is that an argument their church is better than ours, because it has less charity?

3. One of the church of *Rome* will not come to our prayers. Does that argue he doth not like them? I would fain see a catholick leave his dinner, because a nobleman's chaplain says grace. Nor haply would he leave the prayers of the church, if going to church were not made a mark of distinction between a protestant and a papist.

Churches.

THE way coming into our great churches was antiently at the west door, that men might see the altar, and all the church before them; the other doors were but posterns.

City.

1. WHAT makes a city? Whether a bishoprick or any of that nature?

Answer. 'Tis according to the first charter which made them a corporation. If they are incorporated by name of *civitas*, they are a city; if by the name of *burgum*, then they are a borough.

2. The lord mayor of *London* by their first charter was to be presented to the king, or in his absence to the lord chief justiciary of *England*, afterwards to the lord chancellor, now to the barons of the exchequer; but still there was a reservation, that for their honour, they should come once a year to the king, as they do still.

Clergy.

1. THOUGH a clergy-man have no faults of his own, yet the faults of the whole tribe shall be laid upon him, so that he shall be sure not to lack.

2. Though

2. The clergy would have us believe them against our own reason; as the woman would have had her husband against his own eyes: What! will you believe your own eyes before your own sweet wife?

3. The condition of the clergy towards their prince, and the condition of the physician is all one: The physicians tell the prince they have *agrick* and *rhubarb*, good for him, and good for his subjects bodies; upon this he gives them leave to use it; but if it prove naught, then away with it, they shall use it no more; So the clergy tell the prince they have physick good for his soul, and good for the souls of his people, upon that he admits them: But when he finds by experience they both trouble him and his people, he will have no more to do with them. What is that to them, or any body else, if a king will not go to heaven?

4. A clergy-man goes not a dram further than this: You ought to obey your prince in general. If he does he is lost: How to obey him, you must be informed by those, whose profession it is to tell you. The parson of the *Tower* (a good discreet man) told doctor *Moseley* (who was sent to me, and the rest of the gentlemen committed the 3 *Caroli*, to persuade us to submit to the king) that he found no such words, as *parliament*, *habeas corpus*, *return*, *tower*, &c. neither in the fathers, nor the school-men, nor in the text, and therefore, for his part, he believed he understood nothing of the business. A satire upon all those clergy-men that meddle with matters they do not understand.

5. All confess there never was a more learned clergy. No man taxes them with ignorance. But to talk of that, is like the fellow that was a great wench, he wished God would forgive him his leachery, and lay usury to his charge. The clergy have worse faults.

6. The clergy and laity together are never like to do well. 'Tis as if a man were to make an excellent feast, and should have his apothecary and physician come into the kitchen: The cooks, if they were let alone, would make excellent meat; but then comes the apothecary, and he puts *rhubarb* into one sauce, and *agrick* into another sauce. Chain up the clergy on both sides.

High commission.

MEN cry out upon the high commission, as if the clergy-men only had to do in it, when I believe there are more lay-men in commission there, than clergymen. If the laymen will not come, whose fault is that? So of the star-chamber, the people think the bishops only censured *Prynne*, *Burton*, and *Bastwick*, when there were but two there, and one spoke not in his own cause.

House of commons.

1. THERE be but two erroneous opinions in the house of commons; That the lords sit only for themselves; when the truth is, they

fit as well for the common-wealth. The knights and burgeses sit for themselves and others, some for more, some for fewer. And what is the reason? Because the room will not hold all; the lords being few, they all come; and imagine the room able to hold all the commons of *England*, then the lords and burgeses would fit no otherwise than the lords do. The second error is, that the house of commons are to begin to give subsidies; yet if the lords dissent, they can give no money.

2. The house of commons is called the lower house in twenty acts of parliament: But what are twenty acts of parliament amongst friends?

3. The form of a charge runs thus, *I accuse in the name of all the commons of England*. How then can any man be as a witness, when every man is made the accuser?

Confession.

1. IN time of parliament it used to be one of the first things the house did, to petition the king that his confessor might be removed, as fearing either his power with the king, or else, least he should reveal to the pope what the house was in doing, as no doubt he did, when the catholic cause was concerned.

2. The difference between us and the papists is, we both allow contrition, but the papists make confession a part of contrition; they say, a man is not sufficiently contrite, till he confess his sins to a priest.

3. Why should I think a priest will not reveal confession? I am sure he will do any thing that is forbidden him, haply not so often as I. The utmost punishment is deprivation. And how can it be proved, that ever any man revealed confession, when there is no witness? And no man can be witness in his own cause. A meer gullery. There was a time when it was publick in the church, and that is much against their auricular confession.

Competency.

THAT which is a competency for one man, is not enough for another; no more than that which will keep one man warm will keep another man warm: One man can go in doublet and hose, when another man cannot be without a cloak, and yet have no more cloaths than is necessary for him.

Great conjunction.

THE greatest conjunction of *Saturn* and *Jupiter*, happens but once in eight hundred years, and therefore astrologers can make no experiments of it, nor foretell what it means; Not but that the stars may mean something, but we cannot tell what because we cannot come at them. Suppose a planet were a simple, or an herb, how could a physician tell the virtue of that simple, unless he could come at it, to apply it?

Conscience.

1. HE that hath a scrupulous conscience, is like a horse that is not well way'd; he starts at every bird that flies out of the hedge.

2. A knowing man will do that, which a tender conscience man dares not do, by reason of his ignorance, the other knows there is no hurt: As a child is afraid to go into the dark, when a man is not, because he knows there is no danger.

3. If we once come to leave that out-loose, as to pretend conscience against law, who knows what inconvenience may follow? For thus, suppose an anabaptist comes and takes my horse, I sue him, he tells me he did according to his conscience, his conscience tells him all things are common amongst the saints, what is mine is his; therefore you do ill to make such a law: If any man takes another's horse he shall be hanged. What can I say to this man? He does according to his conscience. Why is not he as honest a man, as he that pretends a ceremony established by law, is against his conscience? Generally to pretend conscience against law is dangerous, in some cases haply we may.

4. Some men make it a case of conscience, whether a man may have a pigeon-house, because his pigeons eat other folks corn. But there is no such thing as conscience in the business: The matter is, whether he be a man of such quality, that the state allows him to have a dove-house; if so, there's an end of the business, his pigeons have a right to eat where they please themselves.

Consecrated places.

1. THE *Jews* had a peculiar way of consecrating things to God, which we have not.

2. Under the law, God, who was master of all, made choice of a temple to worship in, where he was more especially present: Just as the master of the house, who owns all the house, makes choice of one chamber to lie in, which is called the master's chamber; But under the gospel there was no such thing, temples and churches are set apart for the convenience of men to worship in; They cannot meet upon the point of a needle, but God himself makes no choice.

3. All things are God's already, we can give him no right by consecrating any, that he had not before, only we set it apart to his service. Just as a gardiner brings his lord and master a basket of abricots, and presents them; his lord thanks him, perhaps gives him something for his pains, and yet the abricots were as much his lords before as now.

4. What is consecrated, is given to some particular man, to do God service, not given to God, but given to man, to serve God: And there's not any thing, lands, or goods, but some men or other have it in their power to dispose of as they please. The saying things conse-

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crated cannot be taken away, makes men afraid of consecration.

5. Yet consecration has this power, when a man has consecrated any thing to God, he cannot of himself take it away.

Contracts.

1. IF our fathers had lost their liberty, why may not we labour to regain it?

Answer. We must look to the contract, if that be rightly made, we must stand to it. If we once grant we may recede from contracts, upon any inconvenience that may afterwards happen, we shall have no bargain kept. If I sell you a horse, and do not like my bargain, I will have my horse again.

2. Keep your contracts. So far a divine goes, but how to make our contracts is left to our selves; and as we agree upon the conveying of this house, or that land, so it must be. If you offer me a hundred pounds for my glove, I tell you what my glove is, a plain glove, pretend no virtue in it, the glove is my own, I profess not to sell gloves, and we agree for an hundred pounds; I do not know why I may not with a safe conscience take it. The want of that common obvious distinction of *jus praeceptivum*, and *jus permissivum*, does much trouble men.

3. Lady *Kent* articted with Sir *Edward Herbert*, that he should come to her when she sent for him, and stay with her as long as she would have him, to which he set his hand; then he articted with her, that he should go away when he pleased, and stay away as long as he pleased, to which she set her hand. This is the epitome of all the contracts in the world, betwixt man and man, betwixt prince and subject; they keep them as long as they like them, and no longer.

Council.

THEY talk (but blasphemously enough) that the holy ghost is president of their general councils; when the truth is, the odd man is still the holy ghost.

Convocation.

1. WHEN the king sends his writ for a parliament, he sends for two knights for a shire, and two burgessees for a corporation: But when he sends for two archbishops for a convocation, he commands them to assemble the whole clergy; but they out of custom amongst themselves, send to the bishops of their provinces, to will them to bring two clerks for a diocese, the dean, one for the chapter, and the arch-deacons, but to the king every clergy-man is there present.

2. We have nothing so nearly expresses the power of a convocation, in respect of a parliament, as a court-leet, where they have a power to make by-laws, as they call them; as that a man shall put so many cows or sheep in the common; but they can make nothing that is contrary to the laws of the kingdom.

12 H

Creed.

Creed.

ATHANASIUS's creed is the shortest, take away the preface, and the force, and the conclusion, which are not part of the creed. In the *Nicene* creed it is *εις εκκλησιαν*, *I believe in the church*; but now, as our common-prayer has it, *I believe one catholick and apostolick church*; They like not creeds, because they would have no forms of faith, as they have none of prayer, though there be more reason for the one than for the other.

Damnation.

1. IF the physician fees you eat any thing that is not good for your body, to keep you from it, he cries it is poison: If the divine fees you do any thing that is hurtful for your soul, to keep you from it, he cries you are damned.

2. To preach long, loud, and damnation, is the way to be cried up. We love a man that damns us, and we run after him again to save us. If a man had a fore leg, and he should go to an honest judicious surgeon, and he should only bid him keep it warm, and anoint with such an oil, (an oil well known) that would do the cure, haply he would not much regard him, because he knows the medicine before hand an ordinary medicine. But if he should go to a surgeon that should tell him, your leg will gangreen within three days, and it must be cut off, and you will die, unless you do something that I could tell you; What listening there would be to this man? Oh for the lord's sake, tell me what this is, I will give you any content for your pains.

Devils.

1. WHY have we none possessed with devils in *England*? The old answer is, the protestants the devil hath already, and the papists are so holy, he dares not meddle with them. Why then, beyond seas, where a nun is possessed, when a hugonot comes into the church, does not the devil hunt him out? The priest teaches him, you never saw the devil throw up a nun's coats; Mark that, the priest will not suffer it, for then the people will spit at him.

2. Casting out devils is mere juggling. They never cast out any but what they first cast in. They do it where, for reverence, no man shall dare to examine it. They do it in a corner, in a mortice-hole, not in the market-place. They do nothing but what may be done by art. They make the devil fly out of the window in the likeness of a bat, or a rat: Why do they not hold time? Why, in the likeness of a bat, or a rat, or some creature? That is, why not in some shape we paint him in, with claws and horns? By this trick they gain much, gain upon men's fancies, and so are revered. And certainly if the priest deliver me from him, that is my most deadly enemy, I have all the reason in the world to reverence him.

Objection. But if this be juggling, why do they punish impostures?

Answer. For great reason, because they do not play their part well, and for fear others should discover them, and so all of them ought to be of the same trade.

3. A person of quality came to my chamber in the *Temple*, and told me he had two devils in his head; I wondered what he meant, and just at that time, one of them bid him kill me, [with that I begun to be afraid, and thought he was mad] he said he knew I could cure him, and therefore intreated me to give him something, for he was resolved he would go to no body else. I perceiving what an opinion he had of me, and that it was only melancholly that troubled him, took him in hand, and warranted him, if he would follow my directions, to cure him in a short time. I desired him to let me be alone about an hour, and then to come again, which he was very willing to. In the mean time I got a card, and lapt it up handsome in a piece of taffata, and put strings to the taffata, and when he came, gave it to him, to hang about his neck, and withal charged him, that he should not disorder himself neither with eating, or drinking, but eat very little of supper, and say his prayers duly when he went to bed, and I made no question but he would be well in three or four days. Within that time I went to dinner to his house, and asked him how he did? He said he was much better, but not perfectly well, or in truth he had not dealt clearly with me, he had four devils in his head, and he perceived two of them were gone, with that which I had given him, but the other two troubled him still. Well said I, I am glad two of them are gone, I make no doubt but to get away the other two likewise. So I gave him another thing to hang about his neck. Three days after, he came to my chamber, and professed he was now as well as ever he was in his life, and did extremely thank me for the great care I had taken of him. I fearing least he might relapse into the like distemper, told him that there was none but my self, and one physician more, in the whole town, that could cure the devils in the head, and that was doctor *Harvey* (whom I had prepared) and wished him, if ever he found himself ill in my absence, to go to him, for he could cure his disease, as well as my self. The gentleman lived many years, and was never troubled here.

Self-denial.

'T IS much the doctrine of the times, that men should not please themselves, but deny themselves every thing they take delight in, not look upon beauty, wear no good clothes, eat no good meat, &c. which seems the greatest accusation that can be upon the maker of all good things. If they be not to be used, why did God make them? The truth is, they that preach against them, cannot make use of them their selves, and then again, they get esteem by seeming to condemn them. But mark it while you live, if they do not please themselves as much as they can; and we live more by example than precept.

Duel.

Duel.

1. A DUEL may still be granted in some cases by the law of *England*, and only there. That the church allowed it antiently, appears by this. In their publick liturgies, there were prayers appointed for the duellists to say; the judge used to bid them go to such a church and pray, &c. But whether is this lawful? If you grant any war lawful, I make no doubt but to convince it. War is lawful, because God is the only judge between two that are supream. Now if a difference happen between two subjects, and it cannot be decided by human testimony, why may they not put it to God, to judge between them, by the permission of the prince? Nay, what if we should bring it down, for arguments fake, to the sword-men. One gives me the lye, it is a great disgrace to take it, the law has made no provision to give remedy for the injury, (if you can suppose any thing an injury for which the law gives no remedy) why am not I in this case supream, and may therefore right myself?

2. A duke ought to fight with a gentleman. The reason is this; the gentleman will say to the duke, it is true, you hold a higher place in the state than I, there is a great distance between you and me, but your dignity does not privilege you to do me an injury; as soon as ever you do me an injury, you make your self my equal, and as you are my equal, I challenge you; and in fence the duke is bound to answer him. This will give you some light to understand the quarrel betwixt a prince and his subjects. Though there be a vast distance between him and them, and they are to obey him, according to their contract; yet he hath no power to do them an injury. Then, they think themselves as much bound to vindicate their right, as they are to obey his lawful commands. Nor is there any other measure of justice left upon earth, but arms.

Epitaph.

AN epitaph must be made fit for the person for whom it is made. For a man to say all the excellent things that can be said upon one, and call that his epitaph, is as if a painter should make the handsomest piece he can possibly make, and say it was my picture. It holds in a funeral sermon.

Equity.

1. EQUITY in law is the same that the spirit is in religion, what every one pleases to make it. Sometimes they go according to conscience, sometimes according to law, sometimes according to the rule of court.

2. Equity is a roughish thing. For law we have a measure, know what to trust to; equity is according to the conscience of him that is chancellor, and as that is larger or narrower, so is equity. 'Tis all one as if they should make the standard for the measure, a

chancellor's foot. What an uncertain measure would this be? One chancellor has a long foot, another a short foot, a third an indifferent foot: 'Tis the same thing in the chancellor's conscience.

3. That saying, *Do as you would be done to*, is often misunderstood; for it is not thus meant, that I, a private man, should do to you, a private man, as I would have you to me, but do, as we have agreed to do one to another by publick agreement. If the prisoner should ask the judge, whether he would be content to be hanged, were he in his case, he would answer, no. Then says the prisoner, do as you would be done to. Neither of them must do as private men, but the judge must do by him as they have publicly agreed; that is, both judge and prisoner have consented to a law, that if either of them steal, they shall be hanged.

Evil-speaking.

1. HE that speaks ill of another, commonly, before he is aware, makes himself such a one as he speaks against; for if he had civility or breeding, he would forbear such kind of language.

2. A gallant man is above ill words: An example we have in the old lord of *Salisbury*, who was a great wife man. *Stone* had called some lord about court, fool, the lord complains and has *Stone* whipped: *Stone* cries, I might have called my lord of *Salisbury* fool often enough, before he would have had me whipped.

3. Speak not ill of a great enemy, but rather give him good words, that he may use you the better, if you chance to fall into his hands. The *Spaniard* did this when he was dying; his confessor told him, to work him to repentance, how the devil tormented the wicked that went to hell: The *Spaniard* replying, called the devil, my lord, I hope my lord the devil is not so cruel: His confessor reproved him. Excuse me, said the *Don*, for calling him so, I know not into what hands I may fall, and if I happen into his, I hope he will use me the better for giving him good words.

Excommunication.

1. TH AT place they bring for excommunication, *put away from among yourselves that wicked person*, 1 Cor. v. 13. is corrupted in the Greek. For it should be, τὸ πονηρὸν, put away that evil from among you, not τὸν πονηρὸν, that evil person. Besides, ὁ πονηρὸς is the devil, in scripture, and it may be so taken there; and there is a new edition of *Theodoret* come out, that has it right τὸ πονηρὸν. It is true, the christians, before the civil state became christian, did by covenant and agreement set down how they should live; and he that did not observe what they agreed upon, should come no more amongst them; that is, be *excommunicated*. Such men are spoken of by the apostle, *Romans* j. 31. whom he calls ἀσυνδίδους καὶ ἀσπονδούς; the vulgar has it, *incompositos, & sine fœdere*; the last word is pretty well, but the first not at all. *Origen*, in
his

his book against *Celsus*, speaks of the christians *convēntus*, the translation renders it *conventus*, as it signifies a *meeting*, when it is plain it signifies a covenant, and the *English* bible turned the other word well, *covenant-breakers*. *Pliny* tells us, the christians took an oath amongst themselves to live thus, and thus.

2. The other place, *dic ecclesiae*, tell the church, is but a weak ground to raise excommunication upon, especially from the sacrament, the lesser excommunication; since when that was spoken, the sacrament was instituted. The Jews *ecclesia* was their *Sanhedrim*; their court: So that the meaning is, if after once or twice admonition this brother will not be reclaimed, bring him thither.

3. The first excommunication was 180 years after Christ, and that by *Victor*, bishop of *Rome*. But that was no more than this, that they should communicate and receive the sacrament amongst themselves, not with those of the other opinion: The controversy (as I take it) being about the feast of Easter. Men do not care for excommunication because they are shut out of the church, or delivered up to satan, but because the law of the kingdom takes hold of them. After so many days a man cannot sue, no, not for his wife, if you take her from him. And there may be as much reason to grant it for a small fault, if there be contumacy, as for a great one. In *Westminster-hall* you may outlaw a man for forty shillings, which is their excommunication, and you can do no more for forty thousand pounds.

4. When *Constantine* became christian, he so fell in love with the clergy, that he let them be judges of all things; but that continued not above three or four years, by reason they were to be judges of matters they understood not, and then they were allowed to meddle with nothing but religion. All jurisdiction belonged to him, and he scanted them out as much as he pleased, and so things have since continued. They excommunicate for three or four things, matters concerning adultery, tithes, wills, &c. which is the civil punishment the state allows for such faults. If a bishop excommunicate a man for what he ought not, the judge has power to absolve, and punish the bishop. If they had that jurisdiction from God, why does not the church excommunicate for murder, for theft? If the civil power might take away all but three things, why may they not take them away too? If this excommunication were taken away, the presbyters would be quiet; 'tis that they have a mind to, 'tis that they would fain be at. Like the wench that was to be married; she asked her mother when 'twas done, if she should go to bed presently? No, says her mother, you must dine first; and then to bed mother? No, you must dance after dinner; and then to bed mother? No, you must go to supper; and then to bed mother? &c.

Faith and Works.

'Twas an unhappy division that has been made between faith and works. Though in my

intellect I may divide them, just as in the candle, I know there is both light and heat. But yet put out the candle, and they are both gone. One remains not without the other. So 'tis betwixt faith and works. Nay, in a right conception, *fides est opus*. If I believe a thing, because I am commanded, that is *opus*.

Fasting-days.

1. WHAT the church debars us one day, she gives us leave to take out in another. First we fast, and then we feast: First there is a carnival, and then a lent.

2. Whether do human laws bind the conscience? If they do, 'tis a way to ensnare: If we say they do not, we open the door to disobedience.

Ans. In this case we must look to the justice of the law, and intention of the law-giver. If there be no justice in the law, 'tis not to be obeyed; if the intention of the law-giver be absolute, our obedience must be so too. If the intention of the law-giver enjoin a penalty as a compensation for the breach of the law, I sin not, if I submit to the penalty; if it enjoin a penalty, as a further enforcement of obedience to the law, then ought I to observe it; which may be known by the often repetition of the law. The way of fasting is enjoined unto them, who yet do not observe it. The law enjoins a penalty as an enforcement to obedience; which intention appears by the often calling upon us to keep that law, by the king, and the dispensation of the church to such as are not able to keep it, as young children, old folks, diseased men, &c.

Fathers and sons.

IT hath ever been the way for fathers to bind their sons. To strengthen this by the law of the land, every one, at twelve years of age, is to take the oath of allegiance in court-leets, whereby he swears obedience to the king.

Fines.

THE old law was, that when a man was fined, he was to be fined *salvo contentemento*, so as his countenance might be safe, taking countenance in the same sense as your country-man does, when he says, If you will come unto my house, I will shew you the best countenance I can, that is, not the best face, but the best entertainment. The meaning of the law was, that so much should be taken from a man, such a gobber sliced off, that yet notwithstanding he might live in the same rank and condition he lived in before: But now they fine men ten times more than they are worth.

Free-will.

THE *Puritans* who will allow no free-will at all, but God does all, yet will allow the subject his liberty to do, or not to do, notwithstanding the king, the god upon earth. The *Arminians*, who hold we have free will, yet say, when we come to the king, there must be all obedience, and no liberty to be stood for.

Fryers.

Fryers.

1. THE fryers say they possess nothing; Whose then are the lands they hold? Not their superiors, he hath vowed poverty as well as they. Whose then? To answer this, it was decreed; they should say, they were the pope's. And why must the fryers be more perfect than the pope himself?

2. If there had been no fryers, christendom might have continued quiet; and things remained at a stay.

3. If there had been no lecturers, who succeed the fryers in their way, the church of England might have stood, and flourished at this day.

Friends.

OLD friends are best. King James used to call for his old shoes; they were easiest for his feet.

Genealogy of Christ.

1. THEY that say, the reason why Joseph's pedigree is set down, and not Mary's, is, because the descent from the mother is lost, and swallowed up, say something; But yet if a Jewish woman, married with a Gentile, they only took notice of the mother, not of the father. But they that say they were both of a tribe, say nothing: For the tribes might marry one with another, and the law against it was only temporary, in the time while Joshua was dividing the land, lest the being so long about it, there might be a confusion.

2. That Christ was the son of Joseph is most exactly true. For though he was the son of God, yet with the Jews, if any man kept a child, and brought him up, and called him son, he was taken for his son; and his land (if he had any) was to descend upon him; and therefore the genealogy of Joseph is justly set down.

Gentlemen.

1. WHAT a gentleman is, is hard with us to define. In other countries he is known by his privileges; in Westminster-hall he is one that is reputed one; in the court of honour, he that hath arms. The king cannot make a gentleman of blood. What have you said? Nor God almighty; but he can make a gentleman by creation. If you ask which is the better of these two, civilly, the gentleman of blood, morally, the gentleman by creation may be the better; for the other may be a debauched man, this a person of worth.

2. Gentlemen have ever been more temperate in their religion; than the common people, as having more reason, the others running in a hurry. In the beginning of christianity, the fathers writ *contra gentes*, and *contra gentiles*, they were all one: But after all were christians, the better sort of people still retained the name of Gentiles, throughout the four provinces of the Roman empire; as *gentil-homme* in French, *gentil-huomo* in Italian, *gentil-huombre* in Spanish, and *gentil-man* in English: And they, no question, being persons of quality, kept up

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those feasts which we borrow from the Gentiles; as Christmas, Candlemas, May-day, &c. continuing what was not directly against christianity, which the common people would never have endured.

Gold.

THERE are two reasons why these words, *Jesus autem transiens per medium eorum ibat*; were about our old gold. The one is, because Ripley the alchymist, when he made gold in the Tower, the first time he found it, he spoke these words, *per medium eorum*, that is, *per medium ignis, & sulphuris*. The other, because these words were thought to be a charm, and that they did bind whatsoever they were written upon, so that a man could not take it away. To this reason I rather incline.

Hall.

THE hall was the place where the great lord used to eat; wherefore else were the halls made so big? where he saw all his servants and tenants about him. He eat not in private, except in time of sickness; when once he became a thing cooped up, all his greatness was spoiled. Nay the king himself used to eat in the hall, and his lords sat with him, and then he understood men.

Hell.

1. THERE are two texts for Christ's descending into hell; the one, *Psalm*. xvj. the other, *Acts* ij. where the bible, that was in use when the thirty-nine articles were made, has it *hell*. But the bible that was in queen Elizabeth's time, when the articles were confirmed, reads it *grave*, and so it continued till the new translation in king James's time, and then 'tis *hell* again. But by this we may gather the church of England declined, as much as they could, the descent, otherwise they never would have altered the bible.

2. *He descended into hell*. This may be the interpretation of it. He may be dead and buried, then his soul ascended into heaven. Afterwards he descended again into *hell*, that is, into the *grave*, to fetch his body, and to rise again. The ground of this interpretation is taken from the Platonick learning, who held a *metempsychosis*, and when a soul did descend from heaven to take another body, they called *κατάβασις εἰς αἴδη*, taking *αἴδη*, for the lower world, the state of mortality? Now the first Christians, many of them, were Platonick philosophers, and no question spoke such language as then was understood amongst them. To understand by *hell*, the *grave*, is no faultology, because the creed first tells what Christ suffered, *He was crucified, dead, and buried*; then it tells us what he did, *he descended into hell, the third day he rose again, he ascended, &c.*

Holy-days.

THEY say the church imposes holy-days. There's no such thing, though the number of holy-days is set down in some of our common

prayer books. Yet that has relation to an act of parliament, which forbids the keeping of any holy-days in time of popery. But those that are kept, are kept by the custom of the country, and I hope you will not say the church imposes that.

Humility.

1. HUMILITY is a virtue all preach, none practise, and yet every body is content to hear. The master thinks it good doctrine for his servant, the laity for the clergy, and the clergy for the laity.

2. There is *humilitas quaedam in vitio*. If a man does not take notice of that excellency and perfection that is in himself, how can he be thankful to God, who is the author of all excellency and perfection? Nay, if a man hath too mean an opinion of himself, it will render him unserviceable both to God and man.

3. Pride may be allowed to this or that degree, else a man cannot keep up his dignity. In gluttons there must be eating, in drunkenness there must be drinking; it is not the eating, nor it is not the drinking, that is to be blamed, but the excess. So in pride.

Idolatry.

IDOLATRY is in a man's own thought, not in the opinion of another. Put case I bow to the altar, why am I guilty of Idolatry? Because a stander-by thinks so? I am sure I do not believe the altar to be God, and the God I worship may be bowed to in all places, and at all times.

Jews.

1. GOD at the first gave laws to all mankind, but afterwards he gave peculiar laws to the *Jews*, which they were only to observe. Just as we have the common law for all *England*, and yet you have some corporations, that, besides that, have peculiar laws and privileges to themselves.

2. Talk what you will of the *Jews*, that they are cursed, they thrive where ever they come; they are able to oblige the prince of their country by lending him money; none of them beg; they keep together; and for their being hated; my life for yours, christians hate one another as much.

Invincible ignorance.

'TIS all one to me, if I am told of Christ, or some mystery of christianity, if I am not capable of understanding, as if I am not told at all, my ignorance is as invincible, and therefore it is vain to call their ignorance only invincible, who never were told of Christ. The trick of it is to advance the priest, whilst the church of *Rome* says a man must be told of Christ, by one thus and thus ordained.

Images.

1. THE papists taking away the second commandment, is not haply so horrid a thing, nor so unreasonable amongst christians as we make it. For the *Jews* could make no figure of God but they must commit idolatry, because he had taken no shape; but since the assumption of our flesh, we know what shape to picture God in. Nor do I know why we may not make his image, provided we be sure what it is: As we say St. *Luke* took the picture of the virgin *Mary*, and St. *Veronica* of our Saviour. Otherwise it would be no honour to the king, to make a picture, and call it the king's picture, when 'tis nothing like him.

2. Though the learned papists pray not to images, yet 'tis to be feared the ignorant do; as appears by that story of St. *Nicholas* in *Spain*. A country-man used to offer daily to St. *Nicholas*'s image, at length by mischance the image was broken, and a new one made of his own plumb-tree; after that the man forbore; Being complained of to his ordinary, he answered, 'tis true, he used to offer to the old image, but to the new he could not find in his heart, because he knew it was a piece of his own plumb-tree. You see what opinion this man had of the image, and to this tended the bowing of their images, the twinkling of their eyes, the virgin's milk, &c. Had they only meant representations, a picture would have done as well as these tricks. It may be with us in *England* they do not worship images, because living among protestants, they are either laughed out of it, or beaten out of it by shock of argument.

3. 'TIS a discreet way concerning pictures in churches, to set up no new, nor to pull down no old.

Imperial constitutions.

THEY say imperial constitutions did only confirm the canons of the church, but that is not so, for they inflicted punishment, when the canons never did. If a man converted a *Christian* to be a *Jew*, he was to forfeit his estate, and lose his life. In *Valentinian's* novels, 'tis said, *Constat episcopos forum legibus non habere, & judicant tantum de religione*.

Imprisonment.

SIR *Kenelm Digby* was several times taken and let go again, at last imprisoned in *Winchester-house*. I can compare him to nothing, but a great fish that we catch and let go again, but still he will come to the bait; at last therefore we put him into some great pond for store.

Incendiaries.

FANCY to yourself a man sets the city on fire at *Cripplegate*, and that fire continues by means of others, 'till it come to *White-Fryers*, and then he that began it would fain quench it, does

does not he deserve to be punished most that first set the city on fire? So 'tis with the incendiaries of the state. They that first set it on fire, by monopolizing, forest business, imprisoning parliament men, *tertio Caroli*, &c. are now become regenerate, and would fain quench the fire. Certainly they deserved most to be punished, for being the first cause of our distractions.

Independency.

1. INDEPENDENCY is in use at *Amsterdam*, where forty churches or congregations have nothing to do one with another. And 'tis, no question, agreeable to the primitive times, before the emperor became christian. For either we must say, every church governed itself, or else we must fall upon that old foolish rock, that *St. Peter* and his successors governed all. But when the civil state became christian, they appointed who should govern them; before they governed by agreement and consent; if you will do this, you shall come no more amongst us. But both the independent man, and the presbyterian man do equally exclude the civil power, though after a different manner.

2. The independents may as well plead, they should not be subject to temporal things, not come before a constable, or a justice of peace, as they plead they should not be subject in spiritual things, because *St. Paul* says, *Is it so, that there is not a wise man amongst you?*

3. The pope challenges all churches to be under him. The king and the two archbishops challenge all the church of *England* to be under them. The presbyterian man divides the kingdom into as many churches as there be presbyteries. And your independent would have every congregation a church by it self.

Things indifferent.

IN time of a parliament, when things are under debate, they are indifferent; but in a church or state settled, there is nothing left indifferent.

Publick interest.

ALL might go well in the common-wealth, if every one in the parliament would lay down his own interest, and aim at the general good. If a man were sick, and the whole college of physicians should come to him, and administer severally, haply so long as they observed the rules of art, he might recover; But if one of them had a great deal of scamony by him, he must put off that, therefore he prescribes scamony; another had a great deal of rhubarb, and he must put off that, and therefore he prescribes rhubarb, &c. they would certainly kill the man. We destroy the common-wealth, while we preserve our own private interests, and neglect the publick.

Human invention.

1. YOU say there must be no human invention in the church, nothing but the pure word.

Answer. If I give any exposition, but what is expressed in the text, that is my invention:

If you give another exposition, that is your invention, and both are human. For example, suppose the word *egg* were in the text, I say, 'tis meant an *hen-egg*, you say a *goose-egg*, neither of these are expressed, therefore they are human invention; And I am sure the newer the invention the worse; old inventions are best.

2. If we must admit nothing, but what we read in the bible, what will become of the parliament? For we do not read of that there.

Judgments.

WE cannot tell what is a judgment of God; 'tis presumption to take upon us to know. In time of plague, we know we want health, and therefore we pray to God to give us health; in time of war, we know we want peace, and therefore we pray to God to give us peace. Commonly we say a judgment falls upon a man for something in him we cannot abide. An example we have in king *James*, concerning the death of *Henry IV. of France*; one said he was killed for his wenching, another said he was killed for turning his religion. No, says king *James*, (who could not abide fighting) he was killed for permitting duels in his kingdom.

Judge.

1. WE see the pageants in *Cheapside*, the lions, and the elephants, but we do not see the men that carry them. We see the judges look big, look like lions, but we do not see who moves them.

2. Little things do great works, when great things will not. If I should take a pin from the ground, a little pair of tongues will do it, when a great pair will not. Go to a judge to do a business for you, by no means he will not hear of it; but go to some small servant about him, and he will dispatch it according to your heart's desire.

3. There could be no mischief done in the common-wealth without a judge. Though there be false dice brought in at the groom-porter's, and cheating offered, yet unless he allow the cheating, and judge the dice to be good, there may be hopes of fair play.

Juggling.

'TIS not juggling that is to be blamed, but much juggling, for the world cannot be governed without it. All your rhetoric, and all your elenchs in logick come within the compass of juggling.

Jurisdiction.

1. THERE'S no such thing as spiritual jurisdiction; all is civil, the church's is the same with the lord mayor's. Suppose a christian came into a pagan country, how can you fancy he shall have power there? He finds faults with the gods of the country. Well, they will put him to death for it. When he is a martyr, what follows? Does that argue he has any spiritual jurisdiction? If the clergy say the church ought

to be governed thus, and thus, by the word of God, that is doctrine all, that is not discipline.

2. The pope, he challenges jurisdiction over all, the bishops, they pretend to it as well as he, the presbyterians, they would have it to themselves; but over whom is all this? The poor lay-men.

Jus divinum.

1. ALL things are held by *jus divinum*, either immediately, or mediately.

2. Nothing has lost the pope so much in his supremacy, as not acknowledging what princes gave him. 'Tis a scorn upon the civil power, and an unthankfulness in the priest: But the church runs to *jus divinum*, lest if they should acknowledge what they have, they have by positive law, it might be as well taken from them, as given to them.

King.

1. A KING is a thing men have made for their own sakes, for quietness sake. Just as in a family one man is appointed to buy the meat: If every man should buy, or if there were many buyers, they would never agree; One would buy what the other liked not, or what the other had bought before, so there would be a confusion. But that charge being committed to one, he according to his discretion pleases all. If they have not what they would have, one day, they shall have it the next, or something as good.

2. The word king directs our eyes. Suppose it had been consul, or dictator. To think all kings alike, is the same folly, as if a consul of *Aleppo*, or *Smyrna*, should claim to himself the same power that a consul at *Rome*. What, am not I consul? Or a duke of *England* should think himself like the duke of *Florence*. Nor can it be imagined, that the word βασιλεύς did signify the same in *Greek*, as the *Hebrew* word כֶּלֶךְ did with the *Jews*. Besides, let the divines in their pulpits say what they will, they in their practice deny, that all is the kings. They sue him, and so does all the nation, whereof they are a part. What matter is it then, what they preach or teach in the schools?

3. Kings are all individual, this or that king; there is no species of kings.

4. A king that claims privileges in his own country, because they have them in another, is just as a cook, that claims fees in one lord's house, because they are allowed in another. If the master of the house will yield them, well and good.

5. The text, *Render unto Caesar the things that are Caesar's*, makes as much against kings, as for them; for it says plainly that some things are not *Caesar's*. But divines make choice of it, first in flattery, and then because of the other part adjoined to it, *render unto God the things that are Gods*, where they bring in the church.

6. A king outed of his country, that takes as much upon him as he did at home. in his own court, is as if a man on high, and I being upon the ground, used to lift up my voice to him, that he might hear me, at length should come down, and then expects I should speak as loud to him as I did before.

King of England.

1. THE king can do no wrong, that is, no process can be granted against him. What must be done then? Petition him, and the king writes upon the petition, *soit droit fait*, and sends it to the chancery, and then the business is heard. His confessor will not tell him he can do no wrong.

2. There's a great deal of difference between head of the church, and supreme governor, as our canons call the king. Conceive it thus; There is in the kingdom of *England* a college of physicians, the king is supreme governor of those, but not head of them, nor president of the college, nor the best physician.

3. After the dissolution of abbeys, they did not much advance the king's supremacy, for they only cared to exclude the pope: Hence have we had several translations of the bible put upon us. But now we must look to it, otherwise the king may put upon us what religion he pleases.

4. 'Twas the old way when the king of *England* had his house, there were canons to sing service in his chapel: So at *Westminster*, in *St. Stephen's* chapel, (where the house of commons sits) from which canons the street called *Canon-row* has its name, because they lived there; and he had also the abbot and his monks, and all these the king's house.

5. The three estates are the lords temporal, the bishops for the clergy, and the commons, as some would have it. Take heed of that; for then if two agree, the third is involved, but he is king of the three estates.

6. The king hath a seal in every court, and though the great seal be called *sigillum Angliae*, the great seal of *England*, yet 'tis not because 'tis the kingdom's seal, and not the king's, but to distinguish it from *sigillum Hiberniae*, *sigillum Scotiae*.

7. The court of *England* is much altered. At a solemn dancing, first you had the grave measures, then the corantoos and the galliards, and this is kept up with ceremony, at length to *French-more*, and the cushion dance, and then all the company dance, lord and groom, lady and kitchen-maid, no distinction. So in our court in queen *Elizabeth's* time, gravity and state were kept up; in king *James's* time things were pretty well; but in king *Charles's* time, there has been nothing but *French-more* and the cushion dance, *omnium gatherum*, tolly polly, *boite come toite*.

The king.

1. 'Tis hard to make an accommodation between the king and the parliament. If you and I fell out about money, you said I owed you twenty pounds, I said I owed you but ten pounds, it may be a third party allowing me twenty marks, might make us friends. But if I said, I owed you twenty pounds in silver, and you said I owed you twenty pounds of diamonds, which is a sum innumerable, 'tis impossible we should ever agree; this is the case.

2. The king using the house of commons, as he did in Mr. *Pym* and his company, that is, charging them with treason, because they charged my lord of *Canterbury* and Sir *George Ratcliffe*, it was just with as much logick as the boy, that would have lain with his grandmother, used to his father: You lay with my mother, why should not I lye with your's?

3. There is not the same reason for the king's accusing men of treason, and carrying them away, as there is for the houses themselves, because they accuse one of themselves. For every one that is accused, is either a peer or a commoner; and he that is accused hath his consent going along with him; but if the king accuses, there is nothing of this in it.

4. The king is equally abused now as before; then they flattered him, and made him do ill things, now they would force him against his conscience. If a physician should tell me every thing I had a mind to was good for me, tho' in truth 'twas poison, he abused me: And he abuses me as much, that would force me to take something whether I will or no.

5. The king, so long as he is our king, may do with his officers what he pleases; as the master of the house may turn away all his servants, and take whom he please.

6. The king's oath is not security enough for our property, for he swears to govern according to law; now the judges they interpret the law; and what judges can be made to do, we know.

7. The king and the parliament now falling out, are just as when there is foul play offered amongst gamesters, one snatches the other's stake, they seize what they can of one another's. 'Tis not to be asked, whether it belongs not to the king to do this or that: Before, when there was fair play, it did, but now they will do what is most convenient for their own safety. If two fall to scuffling, one tears the other's band, the other tears his; when they were friends they were quiet, and did no such thing; they let one another's bands alone.

8. The king calling his friends from the parliament, because he had use of them at *Oxford*, is as if a man should have use of a little piece of wood, and he runs down into the cellar, and takes the spigot, in the mean time all the beer runs about the house: When his friends are absent, the king will be lost.

Knight's service.

KNIGHT's service in earnest means nothing, for the lords are bound to wait upon the king when he goes to war with a foreign enemy, with, it may be, one man and one horse; and he that doth not, is to be rated so much as shall seem good to the next parliament. And what will that be? So 'tis for a private man, that holds of a gentleman.

Land.

1. WHEN men did let their land under foot, the tenants would fight for their landlords, by that way they had their retribution; but now they will do nothing for them, nay, be the first, if but a constable bid them, that shall lay the landlord by the heels; and therefore 'tis vanity and folly not to take the full value.

2. *Allodium* is a law-word contrary to *feudum*, and it signifies land that holds of no body. We have no such land in *England*. 'Tis a true proposition, all the land in *England* is held either immediately, or mediately of the king.

Language.

1. To a living tongue new words may be added, but not to a dead tongue, as *Latin*, *Greek*, *Hebrew*, &c.

2. *Latimer* is the corruption of *latiner*, it signifies he that interprets *Latin*, and though he interpreted *French*, *Spanish*, or *Italian*, he was called the king's *latiner*, that is, the king's interpreter.

3. If you look upon the language spoken in the *Saxon* time, and the language spoken now, you will find the difference to be just, as if a man had a cloke that he wore plain in queen *Elizabeth's* days, and since, here has put in a piece of red, and there a piece of blue, and here a piece of green, and there a piece of orange-tawny. We borrow words from the *French*, *Italian*, *Latin*, as every pedantick man pleases.

4. We have more words than notions, half a dozen words for the same thing. Sometimes we put a new signification to an old word, as when we call a *piece*, a *gun*. The word *gun* was in use in *England* for an engine to cast a thing from a man, long before there was any gun-powder found out.

5. Words must be fitted to a man's mouth. 'Twas well said of the fellow that was to make a speech for my lord mayor, he desired to take measure of his lordship's mouth.

Law.

1. A MAN may plead not guilty, and yet tell no lye; for by the law no man is bound to accuse himself: So that when I say, not guilty, the meaning is, as if I should say by way of paraphrase, I am not so guilty as to tell you; if you will bring me to a trial, and have me punished

punished for this you lay to my charge, prove it against me.

2. Ignorance of the law excuses no man, not that all men know the law, but because 'tis an excuse every man will plead, and no man can tell how to confute him.

3. The king of *Spain* was out-lawed in *Westminster-hall*, I being of council against him. A merchant had recovered costs against him in a suit, which because he could not get, we advised to have him out-lawed for not appearing, and so he was. As soon as *Gondomar* heard that, he presently sent the money, by reason, if his master had been out-law'd, he could not have the benefit of the law, which would have been very prejudicial, there being then many suits depending betwixt the king of *Spain* and our *English* merchants.

4. Every law is a contract between the king and the people, and therefore to be kept. An hundred men may owe me an hundred pounds, as well as any one man, and shall they not pay me because they are stronger than I?

Object. Oh but they lose all if they keep that law.

Answer. Let them look to the making of their bargain. If I sell my lands, and when I have done, one comes and tells me I have nothing else to keep me. I and my wife and children must starve, if I part with my land. Must I not therefore let them have my land that have bought it, and paid for it?

5. The parliament may declare law, as well as any other inferior court may, *viz.* the king's bench. In that or this particular case the king's bench will declare unto you what the law is, but that binds no body whom the case concerns: So the highest court, the parliament, may do, but not declare law, that is, make law that was never heard of before.

Law of nature.

I CANNOT fancy to myself what the law of nature means, but the law of God. How should I know I ought not to steal, I ought not to commit adultery, unless some body had told me so? Surely 'tis because I have been told so. 'Tis not because I think I ought not to do them, nor because you think I ought not; if so, our minds might change: Whence then comes the restraint? From a higher power, nothing else can bind. I cannot bind myself, for I may untie myself again; nor an equal cannot bind me, for we may untie one another. It must be a superior power, even God Almighty. If two of us make a bargain, why should either of us stand to it? What need you care what you say, or what need I care what I say? Certainly because there is something about me that tells me, *fides est servanda*, and if we after alter our minds, and make a new bargain, there is *fides servanda* there too.

Learning.

1. No man is the wiser for his learning; it may administer matter to work in, or objects

to work upon, but wit and wisdom are born with a man.

2. Most men's learning is nothing but history duly taken up. If I quote *Thomas Aquinas* for some tenet, and believe it, because the schoolmen say so, that is but history. Few men make themselves masters of the things they write or speak.

3. The Jesuites and the lawyers of *France*, and the *Low-country* men, have engrossed all learning. The rest of the world make nothing but homilies.

4. 'Tis observable, that in *Athens* where the arts flourished, they were governed by a democracy; learning made them think themselves as wise as any body, and they would govern as well as others; and they spoke, as it were by way of contempt, that in the east and in the north they had kings. And why? Because the most part of them followed their business; and if some one man had made himself wiser than the rest, he governed them, and they willingly submitted themselves to him. *Aristotle* makes the observation. And as in *Athens*, the philosophers made the people knowing, and therefore they thought themselves wise enough to govern, so does preaching with us, and that makes us affect a democracy; for upon these two grounds we all would be governors; either because we think our selves as wise as the best, or because we think our selves the elect, and have the spirit, and the rest a company of reprobates that belong to the devil.

Lecturers.

1. LECTURERS do in a parish church what the fryers did heretofore, get away not only the affections, but the bounty, that should be bestowed upon the minister.

2. Lecturers get a great deal of money, because they preach the people tame; as a man watches a hawk, and then they do what they list with them.

3. The lectures in *Black-fryers*, performed by officers of the army, trades-men, and ministers, is as if a great lord should make a feast, and he would have his cook dress one dish, and his coach-man another, his porter a third, &c.

Libels.

THO' some make flight of libels, yet you may see by them how the wind sits. As take a straw and throw it up into the air, you shall see by that which way the wind is, which you shall not do by casting up a stone. More solid things do not shew the complexion of the times so well as ballads and libels.

Liturgy.

1. THERE IS no church without a liturgy, nor indeed can there be conveniently, as there is no school without a grammar. One scholar may be taught otherwise upon the stock of his *acumen*, but not a whole school. One or two that

that are piously disposed, may serve themselves their own way, but hardly a whole nation.

2. To know what was generally believed in all ages, the way is to consult the liturgies, not any private man's writing. As if you would know how the church of *England* serves God. Go to the common prayer-book, consult not this, nor that man. Besides, liturgies never complement, nor use high expressions. The fathers oft-times speak oratoriously.

Lords in the parliament.

1. THE lords giving protections is a scorn upon them. A protection means nothing actively, but passively. He that is a servant to a parliament-man is thereby protected. What a scorn is it to a person of honour to put his hand to two lyes at once, that such a man is my servant, and employed by me, when haply he never saw the man in his life, nor before never heard of him?

2. The lords protesting is foolish. To protest is properly to save to a man's self some right. But to protest as the lords protest, when they themselves are involved; 'tis no more than if I should go into *Smithfield*, and sell my horse, and take the money; and yet when I have your money, and you my horse, I should protest this horse is mine, because I love the horse, or I do not know why. I do protest, because my opinion is contrary to the rest. Ridiculous, when they say the bishops did antiently protest, it was only dissenting, and that in the case of the pope.

Lords before the parliament.

1. GREAT lords, by reason of their flatterers, are the first that know their own virtues, and the last that know their own vices. Some of them are ashamed upwards, because their ancestors were too great. Others are ashamed downwards, because they were too little.

2. The prior of *St. John of Jerusalem* is said to be *primus baro Angliae*, the first baron of *England*, because being last of the spiritual barons, he chose to be first of the temporal. He was a kind of an otter, a knight half spiritual, and half temporal.

3. *Quest.* Whether is every baron a baron of some place?

Answer. 'Tis according to his patent. Of late years they have been made baron of some place, but antiently not, called only by their sur-name, or the sur-name of some family, into which they have been married.

4. The making of new lords lessens all the rest. 'Tis in the business of lords, as 'twas with *St. Nicholas's* image: the country-man, you know, could not find in his heart to adore the new image, made of his own plumb-tree, though he had formerly worshipped the old one. The lords that are antient, we honour, because we know not whence they come; but the new ones we slight, because we know their beginning.

5. For the *Irish* lords to take upon them here in *England*, is as if the cook in the fair should

come to my lady *Kent's* kitchen, and take upon him to roast the meat there, because he is a cook in another place.

Marriage.

1. OF all actions of a man's life, his marriage does least concern other people; yet of all actions of our life, 'tis most meddled with by other people.

2. Marriage is nothing but a civil contract. 'Tis true 'tis an ordinance of God; so is every other contract; God commands me to keep it, when I have made it.

3. Marriage is a desperate thing. The frogs in *Esop* were extream wise, they had a great mind to some water, but they would not leap into the well, because they could not get out again.

4. We single out particulars, and apply God's providence to them. Thus when two are married, and have undone one another, they cry it was God's providence we should come together, when God's providence does equally concur to every thing.

Marriage of cousin-germans.

SOME men forbear to marry cousin-germans out of this kind of scruple of conscience, because it was unlawful before the reformation, and is still in the church of *Rome*. And so by reason their grandfather, or their great grandfather did not do it, upon that old score they think they ought not to do it; as some men forbear flesh upon *Friday*, not reflecting upon the statute, which with us makes it unlawful, but out of an old score, because the church of *Rome* forbids it, and their fore-fathers always forbore flesh upon that day. Others forbear it out of a natural consideration, because it is observed (for example) in beasts, if two couple of a near kind, the breed proves not so good: The same observation they make in plants and trees, which degenerate, being grafted upon the same stock. And 'tis also farther observed, those matches between cousin-germans seldom prove fortunate. But for the lawfulness there is no colour, but cousin-germans in *England* may marry, both by the law of God and man: For with us we have reduced all the degrees of marriage to those in the *Levitical* law, and 'tis plain there is nothing against it. As for that that is said, cousin-germans once removed may not marry, and therefore, being a further degree may not, 'tis presumed a nearer should not, no man can tell what it means.

Measure of things.

1. WE measure from our selves, and as things are for our use and purpose, so we approve them. Bring a pear to the table that is rotten, we cry it down, 'tis naught; but bring a medlar that is rotten, and 'tis a fine thing; and yet I'll warrant you, the pear thinks as well of it self, as the medlar does.

2. We

2. We measure the excellency of other men, by some excellency we conceive to be in in our selves. *Nash*, a poet poor enough (as poets used to be) seeing an alderman with his gold chain, upon his great horse, by way of scorn said to one of his companions, *Do you see yon fellows, how goodly, how big he looks? why that fellow cannot make a blank verse.*

3. Nay, we measure the goodness of God from our selves. We measure his goodness, his justice, his wisdom, by something we call just, good, or wise in our selves; and in so doing, we judge proportionably to the country-fellow in the play, who said if he were a king, he would live like a lord, and have peace and bacon every day, and a whip that cried *flash*.

Difference of men.

THE difference of men is very great. You would scarce think them to be of the same species, and yet it consists more in the affection, than in the intellect. For as in the strength of body, two men shall be of an equal strength, yet one shall appear stronger than the other, because he exercises, and puts out his strength, the other will not stir nor strain himself. So 'tis in the strength of the brain; the one endeavours, and strains, and labours, and studies, the other sits still, and is idle, and takes no pains, and and therefore he appears so much the inferior.

Minister divine.

1. THE imposition of hands upon the minister, when all is done, will be nothing but a designation of a person to this or that office or employment in the church. 'Tis a ridiculous phrase that of the canonists, *conferre ordines*, 'tis *coaptare aliquem in ordinem*, to make a man one of us, one of our number, one of our order. So *Cicero* would understand what I said, it being a phrase borrowed from the *Latins*, and to be understood proportionably to what was amongst them.

2. Those words you now use in making a minister, *receive the holy Ghost*, were used among the *Jews* in making of a lawyer; from thence we have them, which is a villainous key to something; as if you would have some other kind of praefecture, than a mayoralty, and yet keep the same ceremony that was used in making the mayor.

3. A priest has no such thing as an indelible character. What difference do you find betwixt him and another man after ordination? Only he is made a priest (as I said) by designation; as a lawyer is called to the bar, then made a serjeant. All men that would get power over others, make themselves as unlike them as they can; upon the same ground the priests made themselves unlike the laity.

4. A minister when he is made, is *materia prima*, apt for any form the state will put upon him; but of himself he can do nothing. Like a doctor of law in the university, he hath a great deal of law in him, but cannot use it till

he be made some body's chancellor: Or like a physician, before he be received into a house, he can give no body physick; indeed after the master of the house hath given him charge of his servants, then he may. Or like a suffragan, that could do nothing but give orders, and yet he was no bishop.

5. A minister should preach according to the articles of religion established in the church where he is. To be a civil lawyer, let a man read *Justinian*, and the body of the law, to confirm his brain to that way; but when he comes to practise, he must make use of it so far as it concerns the law received in his own country. To be a physician, let a man read *Galen* and *Hippocrates*; but when he practises, he must apply his medicines according to the temper of those men's bodies with whom he lives, and have respect to the heat and cold of climes, otherwise that which in *Pergamus* (where *Galen* lived) was physick, in our cold climate may be poison. So to be a divine, let him read the whole body of divinity, the fathers and the school-men; but when he comes to practise, he must use it and apply it according to those grounds and articles of religion that are established in the church, and this with sense.

6. There be four things a minister should be at, the consistory part, ecclesiastical story, school divinity, and the casuists.

1. In the consistory part, he must read all the chief fathers, both *Latin* and *Greek*, wholly, *St. Austin*, *St. Ambrose*, *St. Chrysostom*, both the *Gregories*, &c. *Tertullian*, *Clemens Alexandrinus*, and *Epiphanius*, which last have more learning in them than all the rest, and wrote freely.

2. For ecclesiastical story, let him read *Baronius*, with the *Magdeburgenses*, and be his own judge; the one being extremely for the papists, the other extremely against them.

3. For school divinity, let him get *Javelinus*'s edition of *Scotus* or *Major*, where there be quotations that direct you to every school-man, where such and such questions are handled. Without school divinity, a divine knows nothing logically, nor will be able to satisfy a rational man out of the pulpit.

4. The study of the casuists must follow the study of the school-men, because the division of their cases is according to their divinity, otherwise he that begins with them will know little. As he that begins with the study of the reports and cases in the common law, will thereby know little of the law. Casuists may be of admirable use, if discreetly dealt with, tho' among them you shall have many leaves together very impertinent. A case well decided would stick by a man, they would remember it whether they will or no, whereas a quaint position dieth in the birth. The main thing is to know where to search, for talk what they will of vast memories, no man will presume upon his own memory for any thing he means to write or speak in publick.

7. *Go and teach all nations*. This was said to all christians that then were, before the distinction

inction of clergy and laity ; there have been since men designed to preach only by the state, as some men are designed to study the law, others to study physick. When the Lord's supper was instituted, there were none present but the disciples. Shall none then but ministers receive ?

8. There is all the reason you should believe your minister, unless you have studied divinity as well as he, or more than he.

9. 'Tis a foolish thing to say a minister must not meddle with secular matters, because his own profession will take up the whole man ; May he not eat, or drink, or walk, or learn to sing ? The meaning of that is, he must seriously attend his calling.

10. Ministers with the papists, that is, their priests, have much respect ; with the puritans they have much, and that upon the same ground they pretend both of them to come immediately from Christ ; but with the protestants they have very little ; the reason whereof is ; In the beginning of the reformation they were glad to get such to take livings as they could procure by any invitations, things of pitiful condition. The nobility and gentry would not suffer their sons or kindred to meddle with the church, and therefore at this day, when they see a parson, they think him to be such a thing still, and there they will keep him, and use him accordingly ; if he be a gentleman, that is singled out, and he is used the more respectfully.

11. That the protestant minister is least regarded, appears by the old story of the keeper of the *Chink*. He had priests of several forts sent unto him ; as they came in, he asked them who they were ; Who are you, to the first ? I am a priest of the church of *Rome*. You are welcome quoth the keeper, there are those will take care of you. And who are you ? A silenced minister. You are welcome too, I shall fare the better for you. And who are you ? A minister of the church of *England*. O God help me (quoth the keeper) I shall get nothing by you, I am sure you may lye and starve, and rot, before any body will look after you.

12. Methinks 'tis an ignorant thing for a church-man to call himself the minister of Christ, because *St. Paul*, or the apostles called themselves so. If one of them had a voice from heaven, as *St. Paul* had, I will grant he is a minister of Christ, I will call him so too. Must they take upon them as the apostles did ? Can they do as the apostles could ? The apostles had a mark to be known by, spoke tongues, cured diseases, trod upon serpents, &c. Can they do this ? If a gentleman tells me, he will send his man to me, and I did not know his man, but he gave me this mark to know him by, he should bring in his hand a rich jewel ; if a fellow came to me with a pebble-stone, had I any reason to believe he was the gentleman's man ?

Money.

1. MONEY makes a man laugh. A blind fiddler playing to a company, and playing but

fcurvily, the company laughed at him ; his boy that led him, perceiving it, cryed, *Father let us be gone, they do nothing but laugh at you. Hold thy peace, boy*, said the fiddler, *we shall have their money presently, and then we will laugh at them.*

2. *Euclid* was beaten in *Boccaline*, for teaching his scholars a mathematical figure in his school, whereby he shewed, that all the lives both of princes and private men tended to one centre, *con gentilezza*, handsomly to get money out of other men's pockets, and put it into their own.

3. The pope used heretofore to send the princes of *Christendom* to fight against the *Turk* ; but prince and pope finely juggled together, the moneys were raised, and some men went out to the holy war, but commonly after they had got the money, the *Turk* was pretty quiet, and the prince and the pope shared it between them.

4. In all times the princes in *England* have done something illegal, to get money. But then came a parliament, and all was well, the people and the prince kissed and were friends, and so things were quiet for a while : Afterwards there was another trick found out to get money, and after they had got it, another parliament was called to set all right, &c. But now they have so out-run the constable.—

Moral honesty.

THEY that cry down moral honesty, cry down that which is a great part of religion, my duty towards God, and my duty towards man. What care I to see a man run after a sermon, if he couzen and cheats as soon as he comes home ? On the other side, morality must not be without religion, for if so, it may change, as I see convenience. Religion must govern it. He that has not religion to govern his morality, is not a drachm better than my mastiff-dog ; so long as you stroke him and please him, and do not pinch him, he will play with you as finely as may be, he is a very good moral mastiff ; but if you hurt him, he will fly in your face, and tear out your throat.

Mortgage.

IN case I receive a thousand pounds, and mortgage as much land as is worth two thousand to you, if I do not pay the money at such a day, I fail. Whether you may take my land and keep it in point of conscience ?

Ans. If you had my land as security only for your money, then you are not to keep it ; but if we bargained so, that if I did not repay your 1000 *l.* my land should go for it, be it what it will, no doubt you may with a safe conscience keep it ; for in these things all the obligation is, *servare fidem*.

Number.

ALL those mysterious things they observe in numbers, come to nothing, upon this very ground,

ground, because number in it self is nothing, has not to do with nature, but is merely of human imposition, a meer sound. For example, when I cry one o'clock, two o'clock, three o'clock, that is but man's division of time, the time itself goes on, and it had been all one in nature, if those hours had been called nine, ten, and eleven. So when they say the seventh son is fortunate, it means nothing; for if you count from the seventh backwards, then the first is the seventh, why is not he likewise fortunate?

Oaths.

1. SWEARING was another thing with the *Jews* than with us, because they might not pronounce the name of the Lord *Jehovah*.

2. There is no oath scarcely, but we swear to things we are ignorant of: For example, the oath of supremacy: How many know how the king is king? what are his right and prerogative? So how many know what are the privileges of the parliament, and the liberty of the subject, when they take the protestation? But the meaning is, they will defend them when they know them. As if I should swear I would take part with all that wear red ribbands in their hats, it may be I do not know which colour is red, but when I do know, and see a red ribband in a man's hat, then will I take his part.

3. I cannot conceive how an oath is imposed, where there is a parity, *viz.* in the house of commons, they are all *pares inter se*, only one brings a paper, and shews it the rest, they look upon it, and in their own sense take it: Now they are not *pares* to me, who am none of the house, for I do not acknowledge my self their subject; if I did, then no question I was bound by an oath of their imposing. 'Tis to me but reading a paper in their own sense.

4. There is a great difference between an assertory oath and a promissary oath. An assertory oath is made to a man before God, and I must swear so, as man may know what I mean: But a promissary oath is made to God only, and I am sure he knows my meaning: So in the new oath it runs, *Whereas I believe in my conscience, &c. I will assist* thus and thus; that *whereas* gives me an outloose, for if I do not believe so, for ought I know, I swear not at all.

5. In a promissary oath, the mind I am in is a good interpretation, for if there be enough happened to change my mind, I do not know why I should not. If I promise to go to *Oxford* to-morrow, and mean it when I say it, and afterwards it appears to me, that 'twill be my undoing, will you say I have broke my promise if I stay at home? Certainly I must not go.

6. The *Jews* had this way with them concerning a promissary oath or vow; if one of them had vowed a vow, which afterwards appeared to him to be very prejudicial, by reason of something he either did not foresee, or did not think of, when he made his vow; if he made it known to three of his country-men, they had power to absolve him, though he could not absolve himself, and that they picked out of

some words in the text. Perjury hath only to do with an assertory oath, and no man was punished for perjury by man's law till queen *Elizabeth's* time; 'twas left to God, as a sin against him: The reason was, because 'twas so hard a thing to prove a man perjured; I might understand him, and he swears as he thought.

7. When men ask me whether they may take an oath in their own sense, 'tis to me, as if they should ask whether they may go to such a place upon their own legs. I would fain know how they can go otherwise.

8. If the ministers that are in sequestred livings will not take the engagement, threaten to turn them out and put in the old ones, and then I'll warrant you they will quietly take it. A gentleman having been rambling two or three days, at length came home, and being in bed with his wife, would fain have been at something, that she was unwilling to, and instead of complying, fell to chiding him for his being abroad so long: *Well*, says he, *if you will not, call up Sue*, his wife's chambermaid; upon that she yielded presently.

9. Now oaths are so frequent, they should be taken like pills, swallowed whole: If you chew them you will find them bitter: If you think what you swear, 'twill hardly go down.

Oracles.

ORACLES ceased presently after Christ, as soon as no body believed them. Just as we have no fortune-tellers, nor wise men, when no body cares for them. Sometimes you have a season for them, when people believe them, and neither of these, I conceive, wrought by the devil.

Opinion.

1. OPINION and affection extremely differ. I may affect a woman best, but it does not follow, I must think her the handsomest woman in the world. I love apples best of any fruit; but it does not follow, I must think apples to be the best fruit. Opinion is something wherein I go about to give reason why all the world should think as I think. Affection is a thing wherein I look after the pleasing of my self.

2. 'Twas a good fancy of an old *Platonick*: The gods which are above men, had something whereof man did partake, an intellect, knowledge, and the gods kept on their course quietly. The beasts, which are below men, had something whereof man did partake, sense, and growth, and the beasts lived quietly in their way; but man had something in him, whereof neither gods nor beasts did partake, which gave him all the trouble, and made all the confusion in the world, and that is opinion.

3. 'Tis a foolish thing for me to be brought off from an opinion in a thing neither of us know, but are led only by some cobweb-stuff; as in such a case as this, *Utrum angeli invicem colloquantur*? If I forsake my side in such a case, I shew my self wonderful light, or infinitely complying, or flattering the other party.

But

But if I be in a business of nature, and hold an opinion one way, and some man's experience has found out the contrary, I may with a safe reputation give up my side.

4. 'Tis a vain thing to talk of an heretick, for a man for his heart can think no otherwile than he does think. In the primitive times there were many opinions, nothing scarce but some or other held: One of these opinions being embraced by some prince, and received into his kingdom, the rest were condemned as heresies, and his religion, which was but one of the several opinions, first is said to be orthodox, and so to have continued ever since the apostles.

Parity.

THIS is the juggling trick of the parity, they would have no body above them, but they do not tell you they would have no body under them.

Parliament.

1. ALL are involved in a parliament. There was a time when all men had their voice in choosing knights. About *Henry* the VIth's time they found the inconvenience; so one parliament made a law, that only he that had forty shillings *per annum* should give his voice, they under should be excluded. They made the law who had the voice of all, as well under forty shillings as above; and thus it continues at this day. All consent civilly in a parliament, women are involved in the men, children in those of perfect age, those that are under forty shillings a year in those that have forty shillings a year, those of forty shillings in the knights.

2. All things are brought to the parliament, little to the courts of justice; just as in a room where there is a banquet presented, if there be persons of quality there, the people must expect, and stay till the great ones have done.

3. The parliament flying upon several men, and then letting them alone, does as a hawk that flies a covey of partridges, and when she has flown them a great way, grows weary and takes a tree; then the falconer lures her down, and takes her to his fist; on they go again, *beirrett*, up springs another covey, away goes the hawk, and as she did before, takes another tree, &c.

4. Dissenters in parliament may at length come to a good end, tho' first there be a great deal of do, and a great deal of noise, which mad wild folks make; just as in brewing of wroth-beer, there's a great deal of business in grinding the malt, and that spoils any man's cloaths that comes near it; then it must be mashed, then comes a fellow in and drinks of the wort, and he's drunk; then they keep a huge quarter when they carry it into the cellar, and a twelve-month after 'tis delicate fine beer.

5. It must necessarily be that our distempers are worse than they were in the beginning of the parliament. If a physician comes to a sick man he lets him blood, it may be scarifies him, cups him, puts him into a great disorder, before

he makes him well; and if he be sent for to cure an ague, and he finds his patient hath many diseases, a dropfy, and a palsy, he applies remedies to 'em all, which makes the cure the longer, and the dearer: This is the case.

6. The parliament-men are as great princes as any in the world, when whatsoever they please is privilege of parliament; no man must know the number of their privileges, and whatsoever they dislike is breach of privilege. The duke of *Venice* is no more than speaker of the house of commons; but the senate at *Venice*, are not so much as our parliament-men, nor have they that power over the people, who yet exercise the greatest tyranny that is any where. In plain truth, breach of privilege is only the actual taking away of a member of the house, the rest are offences against the house. For example, to take out process against a parliament-man, or the like.

7. The parliament-party, if the law be for them, they call for the law; if it be against them, they will go to a parliamentary way; if law be for them, then for law again: Like him that first called for sack to heat him, then small drink to cool his sack, then sack again to heat his small drink, &c.

8. The parliament-party do not play fair play, in sitting up till two o'clock in the morning, to vote something they have a mind to. 'Tis like a crafty gamester that makes the company drunk, then cheats them of their money. Young men and infirm men go away. Besides, a man is not there to persuade other men to be of his mind, but to speak his own heart, and if it be liked, so, if not, there's an end.

Parson.

1. THOUGH we write *parson* differently, yet 'tis but *person*; that is, the individual *person* set apart for the service of such a church, and 'tis in *Latin persona*, and *personatus* is a *parsonage*. Indeed with the canon lawyers, *personatus* is any dignity or preferment in the church.

2. There never was a merry world since the *fairies* left dancing, and the parson left conjuring. The opinion of the latter kept thieves in awe, and did as much good in a country as a justice of peace.

Patience.

PATIENCE is the chiefest fruit of study. A man that strives to make himself a different thing from other men by much reading, gains this chiefest good, that in all fortunes he hath something to entertain and comfort himself withal.

Peace.

1. KING *James* was pictured going easily down a pair of stairs, and upon every step there was written *peace, peace, peace*; The wisest way for men in these times is to say nothing.

2. When

2. When a country-wench cannot get her butter to come, she says the witch is in her churn. We have been churning for peace a great while, and 'twill not come, sure the witch is in it.

3. Though we had peace, yet 'twill be a great while e'er things be settled: Tho' the wind lye, yet after a storm the sea will work a great while.

Penance.

PENANCE is only the punishment inflicted, not penitence, which is the right word; a man comes not to do penance, because he repents him of his sin, but because he is compelled to it; he curses him, and could kill him that sends him thither. The old canons wisely enjoined three years penance, sometimes more, because in that time a man got a habit of virtue, and so committed that sin no more, for which he did penance.

People.

1. THERE is not any thing in the world more abused than this sentence, *Salus populi suprema lex esto*, for we apply it, as if we ought to forsake the known law, when it may be most for the advantage of the people, when it means no such thing. For first, 'tis not *salus populi suprema lex est*, but *esto*, it being one of the laws of the twelve tables, and after divers laws made, some for punishment, some for reward, then follows this, *salus populi suprema lex esto*; that is, in all the laws you make, have a special eye to the good of the people; And then what does this concern the way they now go?

2. *Objection.* He that makes one, is greater than he that is made; the people make the king, *ergo*, &c.

Answer. This does not hold. For if I have 1000 *l. per annum*, and give it you, and leave my self never a penny, I made you; but when you have my land, you are greater than I. The parish makes the constable, and when the constable is made, he governs the parish. The answer to all these doubts is, Have you agreed so? If you have, then it must remain till you have altered it.

Pleasure.

1. PLEASURE is nothing else but the intermission of pain, the enjoying of something I am in great trouble for 'till I have it.

2. 'Tis a wrong way to proportion other men's pleasures to ourselves. 'Tis like a child's using a little bird, *O poor bird, thou shalt sleep with me*, so lays it in his bosom, and stifles it with his hot breath; the bird had rather be in the cold air: And yet too 'tis the most pleasing flattery, to like what other men like.

3. 'Tis most undoubtedly true, that all men are equally given to their pleasure, only thus, one man's pleasure lies one way, and another's

another. Pleasures are all alike, simply considered in themselves. He that hunts, or he that governs the common-wealth, they both please themselves alike, only we commend that, whereby we our selves receive some benefit; as if a man place his delight in things that tend to the common good. He that takes pleasure to hear sermons, enjoys himself as much as he that hears plays; and could he that loves plays endeavour to love sermons, possibly he might bring himself to it as well as to any other pleasure. At first it may seem harsh and tedious, but afterwards it would be pleasing and delightful. So it falls out in that which is the great pleasure of some men, Tobacco, at first they could not abide it, and now they cannot be without it.

4. Whilst you are upon earth enjoy the good things that are here (to that end were they given) and be not melancholy, and wish yourself in heaven. If a king should give you the keeping of a castle, with all things belonging to it, orchards, gardens, &c. and bid you use them, withal promise you that after twenty years to remove you to the court, and to make you a privy counsellor; if you should neglect your castle, and refuse to eat of those fruits, and sit down, and whine, and wish you were a privy counsellor, do you think the king would be pleased with you?

5. Pleasures of meat, drink, cloaths, &c. are forbidden those that know not how to use them; just as nurses cry *pah!* when they see a knife in a child's hand; they will never say any thing to a man.

Philosophy.

WHEN men comfort themselves with philosophy, it is not because they have got two or three sentences, but because they have digested those sentences, and made them their own: So upon the matter, philosophy is nothing but discretion.

Poetry.

1. OVID was not only a fine poet, but, as a man may speak, a great canon lawyer, as appears in his *Fasts*, where we have more of the festivals of the old Romans than any where else: 'Tis pity the rest are lost.

2. There is no reason plays should be in verse, ether in blank or rhyme, only the poet has to say for himself, that he makes something like that, which some body made before him. The old poets had no other reason but this, their verse was sung to musick, otherwise it had been a senseless thing to have fettered up themselves.

3. I never converted but two, the one was Mr. *Craslow* from writing against plays, by telling him a way how to understand that place, *of putting on women's apparel*, which has nothing to do in the business; as neither has it, that the fathers speak against plays in their time, with reason enough, for they had real idolatries mixed with their plays, having three altars perpetually

petually upon the stage. The other was a doctor of divinity, from preaching against painting, which simply in itself is no more hurtful, than putting on my cloaths, or doing any thing to make my self like other folks, that I may not be odious or offensive to the company. Indeed if I do it with an ill intention, it alters the case. So, if I put on my gloves with an intention to do a mischief, I am a villain.

4. 'Tis a fine thing for children to learn to make verse, but when they come to be men they must speak like other men, or else they will be laughed at. 'Tis ridiculous to speak, or write, or preach in verse. As 'tis good to learn to dance, a man may learn his leg, learn to go handfomly, but 'tis ridiculous for him to dance when he should go.

5. 'Tis ridiculous for a lord to print verses, 'tis well enough to make them to please himself, but to make them publick, is foolish. If a man in a private chamber twirls his bandstrings, or plays with a rush to please himself, 'tis well enough; but if he should go into *Fleet-street*, and sit upon a stall, and twirl a bandstring, or play with a rush, then all the boys in the street would laugh at him.

6. Verse proves nothing but the quantity of syllables, they are not meant for logic.

Pope.

1. A POPE's bull and a pope's brief differ very much, as with us the great seal and the privy seal. The bull being the highest authority the pope can give, the brief is of less. The bull has a leaden seal upon silk, hanging upon the instrument, the brief has *sub annulo piscatoris* upon the side.

2. He was a wife pope, that when one that used to be merry with him, before he was advanced to the popedom, refrained afterwards to come at him, (presuming he was busy in governing the christian world) the pope sends for him, bids him come again, And (says he) *we will be merry as we were before, for thou little thinkest what a little foolery governs the whole world.*

3. The pope in sending relicks to princes, does as wenches do by their *Wassels* at *New-years-tide*; they present you with a cup, and you must drink off a slabby stuff; but the meaning is, you must give them money, ten times more than it is worth.

4. The pope is infallible, where he hath power to command, that is, where he must be obeyed; so is every supream power and prince. They that stretch his infallibility further, do they know not what.

5. When a protestant and a papist dispute, they talk like two madmen, because they do not agree upon their principles. The only way is to destroy the pope's power; for if he hath power to command me, 'tis not my alledging reasons for the contrary can keep me from obeying: For example, if a constable command me to wear a green suit to-morrow, and has power to make me, 'tis not my alledging a hundred

reasons of the folly of it, can excuse me from doing it.

6. There was a time when the pope had power here in *England*, and there was excellent use made of it, for 'twas only to serve turns, as might be manifested out of the records of the kingdom, which divines know little of. If the king did not like what the pope would have, he would forbid the pope's legate to land upon his ground. So that the power was truly then in the king, though suffered in the pope. But now the temporal and the spiritual power (spiritual so called because ordained to a spiritual end) spring both from one fountain, they are like to twist that.

7. The protestants in *France* bear office in the state, because though their religion be different, yet they acknowledge no other king but the king of *France*. The papists in *England* they must have a king of their own, a pope, that must do something in our kingdom, therefore there is no reason they should enjoy the same privileges.

8. *Amsterdam* admits of all religions but papists, and 'tis upon the same account. The papists where ever they live, have another king at *Rome*; all other religions are subject to the present state, and have no prince elsewhere.

9. The papists call our religion a parliamentary religion, but there was once, I am sure, a parliamentary pope. Pope *Urban* was made pope in *England* by act of parliament, against pope *Clement*: The act is not in the book of statutes, either because he that compiled the book, would not have the name of the pope there, or else he would not let it appear that they meddled with any such thing, but 'tis upon the rolls.

10. When our clergy preach against the pope, and the church of *Rome*, they preach against themselves, and crying down their pride, their power, and their riches, have made themselves poor and contemptible enough, they dedicate first to please their prince, not considering what would follow. Just as if a man were to go a journey, and seeing at his first setting out the way clean and fair, ventures forth in his slippers, not considering the dirt and the sloughs are a little further off, or how suddenly the weather may change.

Poper.

1. THE demanding a noble for a dead body passing through a town, came from hence in time of popery: They carried the dead body into the church, where the priest said dirgies, and twenty dirgies at four pence a piece comes to a noble; but now 'tis forbidden by an order from my lord marshal; the heralds carry his warrant about them.

2. We charge the prelatical clergy with popery to make them odious, though we know they are guilty of no such thing: Just as heretofore they called images *mammets*, and the adoration of images *mammetry*; that is, *Mahomet* and *Mahometry*. Odious names! when all the

world knows the *Turks* are forbidden images by their religion.

Power. State.

1. THERE is no stretching of power. 'Tis a good rule, eat within your stomach, act within your commission.

2. They that govern most, make least noise. You see when they row in a barge, they that do drudgery-work, slash, and puff, and sweat, but he that governs, sits quietly at the stern, and scarce is seen to stir.

3. Syllables govern the world.

4. *All power is of God*, means no more than, *fides est servanda*. When St. Paul said this, the people had made Nero emperor. They agree, he to command, they to obey. Then God comes in, and casts a hook upon them, *keep your faith*, then comes in, *all power is of God*. Never king dropped out of the clouds. God did not make a new emperor, as the king makes a justice of peace.

5. Christ himself was a great observer of the civil power, and did many things only justifiable, because the state required it, which were things merely temporary for the time that state stood; but divines make use of them to gain power to themselves; as for example, that of *dic ecclesiae*, tell the church; there was then a *sanhedrim*, a court to tell it to, and therefore they would have it so now.

6. Divines ought to do no more than what the state permits. Before the state became christian, they made their own laws, and those that did not observe them, they excommunicated, [*naughty men*] they suffered them to come no more amongst them. But if they would come among them, how could they hinder them? By what law? By what power? They were still subject to the state, which was heathen. Nothing better expresses the condition of christians in those times, than one of the meetings you have in London, of men of the same country, of *Sussex-men*, or *Bedfordshire-men*, they appoint their meeting, and they agree, and make laws amongst themselves, *he that is not there shall pay double*, &c. and if any one misbehave himself, they shut him out of their company; but can they recover a forfeiture made concerning their meeting by any law? Have they any power to compel one to pay? But afterwards when the state became christian, all the power was in them, and they gave the church as much, or as little as they pleased, and took away when they pleased, and added what they pleased.

7. The church is not only subject to the civil power with us that are protestants, but also in *Spain*, if the church does excommunicate a man for what it should not, the civil power will take him out of their hands. So in *France*, the bishop of *Angiers* altered something in the breviary, they complained to the parliament at *Paris*, that made him alter it again, with a *comme abuse*.

8. The parliament of *England* has no arbitrary power in point of judicature, but in point of making law only.

9. If the prince be *servus natura*, of a servile base spirit, and the subjects *liberi*, free and ingenuous, oft-times they depose their prince, and govern themselves. On the contrary, if the people be *servi natura*, and some one amongst them of a free and ingenuous spirit, he makes himself king of the rest, and this is the cause of all changes in state; common-wealths into monarchies, and monarchies into common-wealths.

10. In a troubled state we must do as in foul weather upon the *Thames*, not think to cut directly through; so the boat may be quickly full of water, but rise and fall as the waves do, give as much as conveniently we can.

Prayer.

1. IF I were a minister, I should think myself most in my office, reading of prayers, and dispensing the sacraments; and 'tis ill done to put one to officiate in the church, whose person is contemptible out of it. Should a great lady that was invited to be a gossip, in her place send her kitchen-maid, 'twould be ill taken, yet she is a woman as well as she; let her send her woman at least.

2. *You shall pray*, is the right way, because according as the church is settled, no man may make a prayer in publick of his own head.

3. 'Tis not the original common-prayer-book. Why? Shew me an original bible, or an original *magna charta*.

4. Admit the preacher prays by the spirit, yet that very prayer is common-prayer to the people; they are tied as much to his words, as in saying, *almighty and most merciful father*. Is it then unlawful in the minister, but not unlawful in the people?

5. There were some mathematicians, that could with one fetch of their pen make an exact circle, and with the next touch, point out the center; Is it therefore reasonable to banish all use of the compasses? Set forms are a pair of compasses.

6. *God hath given gifts unto men*. General texts prove nothing: Let him shew me *John*, *William*, or *Thomas* in the text, and then I will believe him. If a man hath a voluble tongue, we say, *he hath the gift of prayer*. His gift is to pray long, that I see; but does he pray better?

7. We take care what we speak to men, but to God we may say any thing.

8. The people must not think a thought towards God, but as their pastors will put it into their mouths. They will make right sheep of us.

9. The *English* priests would do that in *English*, which the *Romish* do in *Latin*, keep the people in ignorance; but some of the people out-do them at their own game.

10. Prayer should be short, without giving God almighty reasons why he should grant this, or that, he knows best what is good for us. If your boy should ask you a suit of cloaths, and give you reasons (otherwise he cannot wait upon you, he cannot go abroad but he shall discredit you) would you endure it? You know it better than he; let him ask a suit of cloaths.

11. If a servant that has been fed with good beef, goes into that part of *England* where salmon is plenty, at first he is pleased with his salmon, and despises his beef; but after he has been there a while, he grows weary of his salmon, and wishes for his good beef again. We have a while been much taken with this praying by the spirit, but in time we may grow weary of it, and wish for our common-prayer.

12. 'Tis hoped we may be cured of our extraordinary prayers, the same way the grocer's boy is cured of his eating plums, when we have had our belly full of them.

Preaching.

1. NOTHING is more mistaken than that speech, *preach the gospel*, for 'tis not to make long harangues, as they do now a-days, but to tell the news of Christ's coming into the world, and when that is done, or where it is known already, the preacher's work is done.

2. Preaching in the first sense of the word, ceased as soon as ever the gospels were written.

3. When the preacher says, *this is the meaning of the Holy Ghost in such a place*, in sense he can mean no more than this, that is, I by studying of the place, by comparing one place with another, by weighing what goes before, and what comes after, think this is the meaning of the Holy Ghost, and for shortness of expression I say, the Holy Ghost says thus, or this is the meaning of the spirit of God. So the judge speaks of the king's proclamation, this is the intention of the king, not that the king had declared his intention any other way to the judge, but the judge examining the contents of the proclamation, gathers by the purport of the words, the king's intention, and then for shortness of expression says, this is the king's intention.

4. Nothing is text but what was spoken of in the bible, and meant there for person and place, the rest is application, which a discreet man may do well; but 'tis his scripture, not the Holy Ghost.

5. Preaching by the spirit, as they call it, is most esteemed by the common people, because they cannot abide art or learning, which they have not been bred up in. Just as in the business of fencing; if one country fellow amongst the rest, has been at the school, the rest will under-value his skill, or tell him he wants valour: *You come with your school-tricks: There's Dick Butcher has ten times more mettle in him.* So they say to the preachers, *You come with your school-learning: There's such a one has the spirit.*

6. The tone in preaching does much in working upon the people's affections. If a man

should make love in an ordinary tone, his mistress would not regard him; and therefore he must whine. If a man should cry fire, or murder in an ordinary voice, no body would come out to help him.

7. Preachers will bring any thing into the text. The young masters of arts preached against non-residency in the university, whereupon the heads made an order, that no man should meddle with any thing but what was in the text. The next day one preached upon these words, *Abraham begat Isaac*; when he had gone a good way, at last he observed, that *Abraham* was resident, for if he had been non-resident, he could never have begot *Isaac*; and so fell foul upon the non-residents.

8. I could never tell what often preaching meant, after a church is settled, and we know what is to be done: 'Tis just as if a husbandman should once tell his servants what they are to do, when to sow, when to reap, and afterwards one should come and tell them twice or thrice a day what they know already; *You must sow your wheat in October, you must reap your wheat in August, &c.*

9. The main argument why they would have two sermons a day, is, because they have two meals a day; the soul must be fed as well as the body. But I may as well argue, I ought to have two noses, because I have two eyes, or two mouths, because I have two ears. What have meals and sermons to do one with another?

10. The things between God and man are but a few, and those, forsooth, we must be told often of; but things between man and man are many; those I hear not of above twice a year, at the assizes, or once a quarter at the sessions; but few come then; nor does the minister exhort the people to go at these times to learn their duty towards their neighbour. Often preaching is sure to keep the minister in countenance, that he may have something to do.

11. In preaching, they say more to raise men to love virtue than men can possibly perform, to make them do their best: As if you would teach a man to throw the bar; to make him put out his strength, you bid him throw further than it is possible for him, or any man else: *Throw over yonder house.*

12. In preaching, they do by men as writers of romances do by their chief knights, bring them into many dangers, but still fetch them off: So they put men in fear of hell, but at last they bring them to heaven.

13. Preachers say, *Do as I say, not as I do.* But if a physician had the same disease upon him that I have, and he should bid me do one thing, and he do quite another, could I believe him?

14. Preaching the same sermon to all sorts of people, is, as if a school-master should read the same lesson to his several forms: If he reads *amo, amas, amavi*, the highest forms laugh at him; the younger boys admire him. So it is in preaching to a mixed auditory.

Obj. But it cannot be otherwise; the parish cannot be divided into several forms: What must the preacher then do in discretion?

Ans. Why then let him use some expressions, by which this or that condition of people may know such doctrine does more especially concern them, it being so delivered that the wisest may be content to hear. For if he delivers it altogether, and leaves it to them to single out what belongs to themselves, which is the usual way, it is as if a man would bestow gifts upon children of several ages, two years old, four years old, ten years old, &c. and there he brings tops, pins, points, ribbands, and casts them all in a heap together upon a table before them; though the boy of ten years old knows how to chuse his top, yet the child of two years old, that should have a ribband, takes a pin, and the pin-e'er he be aware pricks his fingers, and then all is out of order, &c. Preaching, for the most part, is the glory of the preacher, to shew himself a fine man. Catechising would do much better.

15. Use the best arguments to persuade, though but few understand, for the ignorant will sooner believe the judicious of the parish, than the preacher himself, and they teach when they dissipate what he has said, and believe it the sooner, confirmed by men of their own side; for betwixt the laity and the clergy, there is, as it were, a continual driving of a bargain; something the clergy would still have us be at, and therefore many things are heard from the preacher with suspicion. They are afraid of some ends, which are easily assented to, when they have it from some of themselves. 'Tis with a sermon as 'tis with a play; many come to see it, which do not understand it, and yet hearing it cried up by one, whose judgment they cast themselves upon, and of power with them, they swear and will die in it, that it is a very good play, which they would not have done if the priest himself had told them so. As in a great school, 'tis the master that teaches all; the monitor does a great deal of work; it may be the boys are afraid to see the master: So in a parish it is not the minister does all; the greater neighbour teaches the lesser, the master of the house teaches his servant, &c.

16. First in your sermons use your logick, and then your rhetoric. Rhetoric without logick, is like a tree with leaves and blossoms, but no root; yet I confess more are taken with rhetoric than logick, because they are caught with a free expression, when they understand not reason. Logick must be natural, or it is worth nothing at all: Your rhetoric figures may be learned. That rhetoric is best which is most seasonable and most catching. An instance we have in that old blunt commander at Cadiz, who shewed himself a good orator, being to say something to his soldiers (which he was not used to do) he made them a speech to this purpose; *What a shame will it be, you Englishmen, that feed upon good beef and brewes, to let those rascally Spaniards beat you, that eat nothing but oranges and lemons?* And

so put more courage into his men than he could have done with a more learned oration. Rhetoric is very good, or stark naught: There is no medium in rhetoric. If I am not fully persuaded, I laugh at the orator.

17. It is good to preach the same thing again, for that's the way to have it learned. You see a bird by often whistling to learn a tune, and a month after record it to her self.

18. It is a hard case a minister should be turned out of his living for something they inform he should say in his pulpit. We can no more know what a minister said in his sermon by two or three words picked out of it, than we can tell what tune a musician played last upon the lute, by two or three single notes.

Predestination.

1. THEY that talk nothing but predestination, and will not proceed in the way of heaven till they be satisfied in that point, do, as a man that would not come to *London*, unless at his first step he might set his foot upon the top of *Paul's*.

2. For a young divine to begin in his pulpit with predestination, is as if a man were coming into *London*, and at his first step would think to set his foot, &c.

3. Predestination is a point inaccessible, out of our reach; we can make no notion of it, it is so full of intricacy, so full of contradiction; it is in good earnest, as we state it, half a dozen bulls one upon another.

4. Doctor *Prideaux* in his lectures, several days used arguments to prove predestination; at last tells his auditory they are damned that do not believe it; doing herein just like school-boys; when one of them has got an apple, or something the rest have a mind to, they use all the arguments they can to get some of it from them: *I gave you some the other day: You shall have some with me another time:* when they cannot prevail, they tell him he is a jackanapes, a rogue and a rascal.

Preferment.

1. WHEN you would have a child go to such a place, and you find him unwilling, you tell him he shall ride a cock-horse, and then he will go presently: So do those that govern the state, deal by men, to work them to their ends; they tell them they shall be advanced to such or such a place, and they will do any thing they would have them.

2. A great place strangely qualifies. *John Read*, groom of the chamber to my lord of *Kent*, was in the right. Attorney *Noy* being dead, some were saying, how will the king do for a fit man? Why, any man, says *John Read*, may execute the place. I warrant, says my lord, thou thinkest thou understandest enough to perform it. Yes, quoth *John*, let the king make me attorney, and I would fain see that man, that durst tell me, there's any thing I understand not.

3. When the pageants are a coming, there is a great thrusting and a riding upon one another's backs, to look out at the window; stay a little and they will come just to you; you may see them quietly. So it is when a new statesman or officer is to be chosen; there is a great expectation and listening who it should be; stay a while, and you may know quietly.

4. Missing preferment makes the presbyters fall foul upon the bishops. Men that are in hopes and in the way of rising, keep in the channel, but they that have none, seek new ways: 'Tis so among the lawyers; He that hath the judge's ear, will be very observant of the way of the court; but he that hath no regard, will be flying out.

5. My lord *Digby* having spoken something in the house of commons, for which they would have questioned him, was presently called to the upper house. He did by the parliament as an ape when he hath done some waggery; his master spies him, and he looks for his whip, but before he can come at him, whip says he to the top of the house.

6. Some of the parliament were discontented, that they wanted places at court, which others had got; but when they had them once, then they were quiet. Just as at a christening, some that get no fugar-plumbs, when the rest have, mutter and grumble; presently the wench comes again with her basket of fugar-plumbs, and then they catch and scramble, and when they have got them, you hear no more of them.

Praemunire.

THERE can be no *praemunire*. A *praemunire*, so called from the word *praemunire facias*, was when a man laid an action in an ecclesiastical court, for which he could have no remedy in any of the king's courts; that is, in the courts of common law; by reason the ecclesiastical courts before *Henry VIII.* were subordinate to the pope; and so it was *contra coronam & dignitatem regis*; but now the ecclesiastical courts are equally subordinate to the king. Therefore it cannot be *contra coronam & dignitatem regis*, and so no *praemunire*.

Prerogative.

1. PREROGATIVE is something that can be told what it is, not something that has no name. Just as you see the archbishop has his prerogative court, but we know what is done in that court. So the king's prerogative is not his will, or what divines make it; a power to do what he lists.

2. The king's prerogative, that is, the king's law. For example, if you ask whether a patron may present to a living after six months by law? I answer, no. If you ask whether the king may? I answer he may by his prerogative, that is, by the law that concerns him in that case.

Presbytery.

1. THEY that would bring in a new government, would very fain persuade us they meet it in antiquity; thus they interpret presbyters, when they meet the word in the fathers. Other professions likewise pretend to antiquity. The alchymist will find his art in *Virgil's aureus ramus*, and he that delights in opticks, will find them in *Tacitus*. When *Caesar* came into *England* they would persuade us they had perspective-glasses, by which he could discover what they were doing upon the land, because it is said, *positis speculis*: The meaning is, his watch, or his centinel discovered this, and this unto him.

2. Presbyters have the greatest power of any clergy in the world, and gull the laity most: For example, admit there be twelve lay-men to six presbyters, the six shall govern the rest as they please. First, because they are constant, and the others come in like church-wardens in their turns, which is an huge advantage. Men will give way to them who have been in place before them. Next the lay-men have other professions to follow; the presbyters make it their sole business; and besides too they learn and study the art of persuading; some of *Geneva* have confessed as much.

3. The presbyter, with his elders about him, is like a young tree fenced about with two, or three, or four stakes; the stakes defend it, and hold it up; but the tree only prospers and flourishes; it may be some willow-stake may bear a leaf or two, but it comes to nothing. Lay-elders are stakes, the presbyter the tree that flourishes.

4. When the queries were sent to the assembly concerning the *jus divinum* of presbytery, their asking time to answer them, was a satire upon themselves. For if it were to be seen in the text, they might quickly turn to the place, and shew us it. Their delaying to answer makes us think there is no such thing there. They do just as you have seen a fellow do at a tavern reckoning, when he should come to pay his reckoning he puts his hands into his pockets, and keeps a grabbling and a fumbling and shaking, at last tells you he has left his money at home; when all the company knew at first he had no money there, for every man can quickly find his own money.

Priests of Rome.

1. THE reason of the statute against priests, was this; in the beginning of queen *Elizabeth*, there was a statute made; that he that drew men from their civil obedience was a traitor. It happened this was done in privacies and confessions, when there could be no proof; therefore they made another act, that for a priest to be in *England*, was treason, because they presumed that was his business to fetch men off from their obedience.

2. When queen *Elizabeth* died, and king *James* came in, an *Irish* priest does thus express it; *Elizabetha in orcum detrusa, successit Jacobus, alter haereticus.*

You will ask why they did use such language in their church?

Ans. Why does the nurse tell the child of raw-head and bloody-bones? To keep it in awe.

3. The queen-mother and count *Rosset*, are to the priests and jesuites like the honey-pot to the flies.

4. The priests of *Rome* aim but at two things, to get power from the king, and money from the subject.

5. When the priests come into a family, they do as a man that would set fire on a house: He does not put fire to the brick-wall, but thrusts it into the thatch. They work upon the women, and let the men alone.

6. For a priest to turn a man when he lies a dying, is just like one that hath a long time solicited a woman, and cannot obtain his end; at length makes her drunk, and so lies with her.

Prophecies.

DREAMS and prophecies do thus much good; they make a man go on with boldness and courage, upon a danger or a mistress; if he obtains, he attributes much to them; if he miscarries, he thinks no more of them, or is no more thought of himself.

Proverbs.

THE proverbs of several nations were much studied by bishop *Andrews*, and the reason he gave, was, because by them he knew the minds of several nations, which is a brave thing: As we count him a wise man, that knows the minds and insides of men, which is done by knowing what is habitual to them. Proverbs are habitual to a nation, being transmitted from father to son.

Question.

WHEN a doubt is propounded, you must learn to distinguish, and shew wherein a thing holds, and wherein it does not hold. Ay, or no, never answered any question. The not distinguishing where things should be distinguished, and the not confounding, where things should be confounded, is the cause of all the mistakes in the world.

Reason.

1. IN giving reasons, men commonly do with us as the woman does with her child; when she goes to market about her business, she tells it she goes to buy it a fine thing, to buy it a cake, or some plumbs. They give us such reasons as they think we will be caught withal, but never let us know the truth.

2. When the school-men talk of *recta ratio* in morals, either they understand reason, as it

is governed by a command from above; or else they say no more than a woman, when she says a thing is so, because it is so; that is, her reason persuades her it is so. The other acceptance has sense in it. As take a law of the land, I must not depopulate, my reason tells me so. Why? because if I do, I incur the detriment.

3. The reason of a thing is not to be enquired after, till you are sure the thing itself be so. We commonly are at *what is the reason of it?* before we are sure of the thing. It was an excellent question of my lady *Cotton*, when Sir *Robert Cotton* was magnifying of a shoe, which was *Moses's* or *Noah's*, and wondering at the strange shape and fashion of it: *But Mr. Cotton*, says she, *are you sure it is a shoe.*

Retaliation.

An eye for an eye, and a tooth for a tooth. That does not mean, that if I put out another man's eye, therefore I must lose one of my own; (for what is he the better for that?) though this be commonly received; but it means, I shall give him what satisfaction an eye shall bejudged to be worth.

Reverence.

'T IS sometimes unreasonable to look after respect and reverence, either from a man's own servant, or other inferiors. A great lord and a gentleman talking together, there came a boy by, leading a calf with both his hands; says the lord to the gentleman, *You shall see me make the boy let go his calf;* with that he came towards him, thinking the boy would have put off his hat, but the boy took no notice of him. The lord seeing that, *Sirrah*, says he, *do you not know me, that you use no reverence?* *Yes*, says the boy, *if your lordship will hold my calf, I will pull off my hat.*

Non-residency.

1. THE people thought they had a great victory over the clergy, when in *Henry VIII's* time they got their bill passed, that a clergyman should have but two livings; before, a man might have twenty or thirty; it was but getting a dispensation from the pope's limiter, or gatherer of the *Peter-pence*, which was as easily got, as now you may have a licence to eat flesh.

2. As soon as a minister is made, he hath power to preach all over the world, but the civil power restrains him; he cannot preach in this parish, or in that; there is one already appointed. Now if the state allows him two livings, then he hath two places where he may exercise his function, and so has the more power to do his office, which he might do every where if he were not restrained.

Religion.

1. KING *James* said to the flye, *Have I three kingdoms, and thou must needs fly into my eye?* Is there not enough to meddle with upon the

the stage, or in love, or at the table, but religion ?

2. Religion amongst men, appears to me like the learning they got at school. Some men forget all they learned, others spend upon the stock, and some improve it. So some men forget all the religion that was taught them when they were young, others spend upon that stock, and some improve it.

3. Religion is like the fashion, one man wears his doublet slashed, another laced, another plain; but every man has a doublet: So every man has his religion. We differ about trimming.

4. Men say they are of the same religion for quietness sake; but if the matter were well examined, you would scarce find three any where of the same religion in all points.

5. Every religion is a getting religion; for though I my self get nothing, I am subordinate to those that do. So you may find a lawyer in the *Temple* that gets little for the present, but he is fitting himself to be in time one of those great ones that do get.

6. Alteration of religion is dangerous, because we know not where it will stay; it is like a millstone that lies upon the top of a pair of stairs; it is hard to remove it, but if once it be thrust off the first stair, it never stays till it comes to the bottom.

7. *Question.* Whether is the church or the scripture judge of religion ?

Answer. In truth neither, but the state. I am troubled with a boil; I call a company of chirurgeons about me; one prescribes one thing, another another; I single out something I like, and ask you that stand by, and are no chirurgeon; what you think of it: You like it too; you and I are judges of the plaister, and we bid them prepare it, and there is an end. Thus it is in religion; the protestants say they will be judged by the scripture; the papists say so too; but that cannot speak. A judge is no judge, except he can both speak and command execution: But the truth is, they never intend to agree. No doubt the pope, where he is supreme, is to be judge; if he say we in *England* ought to be subject to him, then he must draw his sword and make it good.

8. By the law was the *Manual* received into the church before the reformation, not by the civil law, that had nothing to do in it; nor by the canon law; for that *Manual* that was here, was not in *France*, nor in *Spain*; but by custom, which is the common law of *England*; and custom is but the elder brother to a parliament; and so it will fall out to be nothing that the papists say. Ours is a parliamentary religion, by reason the service-book was established by act of parliament, and never any service-book was so before. That will be nothing that the pope sent the *Manual*. 'Twas ours, because the state received it. The state still makes the religion, and receives into it, what will best agree with it. Why are the *Venetians* Roman catholicks? Because the state likes the religion. All the world knows they care not three pence for the pope. The council of *Trent* is not at this day admitted in *France*.

9. *Papist.* Where was your religion before *Luther*, an hundred years ago ?

Protestant. Where was *America* an hundred or six-score years ago? Our religion was where the rest of the christian church was.

Papist. Our religion continued ever since the apostles, and therefore it is better.

Protestant. So did ours. That there was an interruption of it, will fall out to be nothing; no more than if another earl should tell me of the earl of *Kent*, saying, he is a better earl than he, because there was one or two of the family of *Kent* did not take the title upon them; yet all that while they were really earls; and afterwards a great prince declared them to be earls of *Kent*, as he that made the other family an earl.

10. Disputes in religion will never be ended, because there wants a measure by which the business would be decided. The puritan would be judged by the word of God: If he would speak clearly, he means himself, but he is ashamed to say so; and he would have me believe him before a whole church, that has read the word of God as well as he. One says one thing, and another another; and there is, I say, no measure to end the controversy. 'Tis just as if two men were at bowls, and both judged by the eye: One says it is his cast, the other says it is my cast; and having no measure, the difference is eternal. *Ben Johnson* satyrically expressed the vain disputes of divines by *Inigo Lanthorne*, disputing with his puppet in a *Bartolomew* fair. It is so: It is not so: It is so: It is not so, crying thus one to another a quarter of an hour together.

11. In matters of religion, to be ruled by one that writes against his adversary, and throws all the dirt he can in his face, is, as if in point of good manners a man should be governed by one whom he sees at cuffs with another, and thereupon thinks himself bound to give the next man he meets a box on the ear.

12. It is to no purpose to labour to reconcile religions, when the interest of princes will not suffer it. It is well if they could be reconciled so far, that they should not cut one another's throats.

13. There is all the reason in the world divines should not be suffered to go a hair beyond their bounds, for fear of breeding confusion; since there now be so many religions on foot. The matter was not so narrowly to be looked after when there was but one religion in christendom; the rest would cry him down for an heretick, and there was no body to side with him.

14. We look after religion, as the butcher did after his knife, when he had it in his mouth.

15. Religion is made a juggler's paper; now it is a horse, now it is a lanthorn, now it is a boar, now it is a man. To serve ends, religion is turned into all shapes.

16. Pretending religion and the law of God, is to set all things loose. When a man has no mind to do something he ought to do by his contract

contract with man, then he gets a text, and interprets it as he pleases, and so thinks to get loose.

17. Some men's pretending religion, is like the roaring boys way of challenges, *Their reputation is dear, it does not stand with the honour of a gentleman*, when, God knows, they have neither honour nor reputation about them.

18. They talk much of settling religion. Religion is well enough settled already, if we would let it alone. Methinks we might look after, &c.

19. If men would say they took arms for any thing but religion, they might be beaten out of it by reason; out of that they never can, for they will not believe you whatever you say.

20. The very *arcanum* of pretending religion in all wars is, that something may be found out in which all men may have interest. In this the groom has as much interest as the lord. Were it for land, one has one thousand acres, and the other but one; he would not venture so far, as he that has a thousand. But religion is equal to both. Had all men land alike, by a *lex agraria*, then all men would say they fought for land.

Sabbath.

WHY should I think all the fourth commandment belongs to me, when all the fifth does not? What land will the lord give me for honouring my father? It was spoken to the *Jews* with reference to the land of *Canaan*; but the meaning is, if I honour my parents, God will also bless me. We read the commandments in the church-service, as we do *David's* psalms, not that all there concerns us, but a great deal of them does.

Sacrament.

1. CHRIST suffered *Judas* to take the communion. Those ministers that keep their parishioners from it, because they will not do as they will have them, revenge, rather than reform.

2. No man can tell whether I am fit to receive the sacrament; for though I were fit the day before, when he examined me; at least appeared so to him; yet how can he tell what sin I have committed that night, or the next morning, or what impious atheistical thoughts I may have about me, when I am approaching to the very table?

Salvation.

WE can best understand the meaning of *σωτηρια*, *salvation*, from the *Jews*, to whom the Saviour was promised. They held that themselves should have the chief place of happiness in the other world; but the *Gentiles* that were good men, should likewise have their portion of bliss there too. Now by Christ the partition-wall is broken down, and the *Gentiles*

that believe in him, are admitted to the same place of bliss with the *Jews*. And why then should not that portion of happiness still remain to them, who do not believe in *Christ*, so they be morally good? This is a charitable opinion.

State.

IN a troubled state save as much for your own as you can. A dog had been at market to buy a shoulder of mutton; coming home, he met two dogs by the way, that quarrelled with him; he laid down his shoulder of mutton, and fell to fighting with one of them; in the mean time the other dog fell to eating his mutton; he seeing that, left the dog he was fighting with, and fell upon him that was eating; then the other dog fell to eat; when he perceived there was no remedy, but which of them forever he fought withal, his mutton was in danger, he thought he would have as much of it as he could, and thereupon gave over fighting, and fell to eating himself.

Superstition.

1. THEY that are against superstition, oftentimes run into it of the wrong side. If I will wear all colours but black, then am I superstitious in not wearing black.

2. They pretend not to abide the cross, because it is superstitious; for my part I will believe them, when I see them throw their money out of their pockets, and not till then.

3. If there be any superstition truly and properly so called, it is their observing the sabbath after the *Jewish* manner.

Subsidies.

1. HERETOFORE the parliament was wary what subsidies they gave to the king, because they had no account; but now they care not how much they give of the subjects money, because they give it with one hand and receive it with the other; and so upon the matter give it themselves. In the mean time what a case the subjects of *England* are in? If the men they have sent to the parliament misbehave themselves, they cannot help it, because the parliament is eternal.

2. A subsidy was counted the fifth part of a man's estate, and so fifty subsidies is five and forty times more than a man is worth.

Simony.

THE name of simony was begot in the canon law: The first statute against it was in queen *Elizabeth's* time. Since the reformation simony has been frequent: One reason why it was not practised in time of popery, was the pope's provision: No man was sure to bestow his own benefice.

Ship-money.

1. MR. *Noy* brought in ship-money first for maritime towns; but that was like putting in a little augre, that afterwards you may put in a greater. He that pulls down the first brick, does the main work, afterwards it is easy to pull down the wall.

2. They that at first would not pay ship-money, till it was decided, did like brave men, though perhaps they did no good by the trial; but they that stand out since, and suffer them selves to be distrained, never questioning those that do it, do pitifully, for so they only pay twice as much as they should.

Synod. Assembly.

1. WE have had no national synod since the kingdom hath been settled, as now it is, only provincial; and there will be this inconvenience, to call so many divines together; it will be to put power in their hands, who are too apt to usurp it, as if the laity were bound by their determination. No, let the laity consult with divines on all sides, hear what they say, and make themselves masters of their reasons; as they do by any other profession; when they have a difference before them. For example, goldsmiths, they enquire of them, if such a jewel be of such a value, and such a stone of such a value, hear them, and then, being rational men, judge themselves.

2. Why should you have a synod, when you have a convocation already, which is a synod? Would you have a superfluous of another synod? The clergy of *England* when they cast off the pope, submitted themselves to the civil power, and so have continued; but these challenge to be *jure divino*, and so to be above the civil power: These challenge power to call before their presbyteries all persons for all sins directly against the law of God, as proved to be sins by necessary consequence. If you would buy gloves, send for a glover or two, not glovers-hall: Consult with some divines, not send for a body.

3. There must be some laymen in the synod, to over-look the clergy, lest they spoil the civil work. Just as when the good woman puts a cat into the milk-house to kill a mouse, she sends her maid to look after the cat, lest the cat should eat up the cream.

4. In the ordinance for the assembly, the lords and commons go under the names of learned, godly, and judicious divines; there is no difference put betwixt them and the ministers in the context.

5. It is not unusual in the assembly to revoke their votes, by reason they make so much haste, but it is *that* will make them scorned. You never heard of a council that revoked an act of its own making. They have been wary in that, to keep up their infallibility; if they did any thing, they took away the whole council, and yet we would be thought infallible as any body.

It is not enough to say, the house of commons revoke their votes, for theirs are but civil truths, which they by agreement create; and uncreate, as they please: But the truths the synod deals in are divine, and when they have voted a thing, if it be then true, it was true before, not true because they voted it, nor does it cease to be true, because they voted otherwise.

6. Subscribing in a synod, or to the articles of a synod, is no such terrible thing as they make it; because, if I am of a synod, it is agreed, either tacitly or expressly. That which the major part determines, the rest are involved in; and therefore I subscribe, though my own private opinion be otherwise; and upon the same ground, I may without scruple subscribe to what those have determined, whom I sent, though my private opinion be otherwise, having respect to that which is the ground of all assemblies, the major part carries it.

Thanksgiving.

AT first we gave thanks for every victory as soon as ever it was obtained; but since we have had many, now we can stay a good while. We are just like a child; give him a plumb, he makes his leg; give him a second plumb, he makes another leg: At last when his belly is full, he forgets what he ought to do; then his nurse, or some body else that stands by him, puts him in mind of his duty, *Where's your leg?*

Tythes.

1. TYTHES are more paid in kind in *England*, than in all *Italy* and *France*. In *France* they have had impropriations a long time; we had none in *England* till *Henry VIII*.

2. To make an impropriation, there was to be the consent of the incumbent, the patron, and the king; then it was confirmed by the pope: Without all this the pope could make no impropriation.

3. Or what if the pope gave the tythes to any man, must they therefore be taken away? If the pope gives me a jewel, will you therefore take it away from me?

4. *Abraham* paid tythes to *Melchisedeck*, what then? It was very well done of him: It does not follow therefore that I must pay tythes, no more than I am bound to imitate any other action of *Abraham's*.

5. It is ridiculous to say the tythes are God's part, and therefore the clergy must have them: Why, so they are if the layman has them. It is as if one of my lady *Kent's* maids should be sweeping this room, and another of them should come and take away the broom, and tell for a reason, why she should part with it; it is my lady's broom: As if it were not my lady's broom, which of them soever had it.

6. They consulted in *Oxford* where they might find the best arguments for their tythes, setting aside the *jus divinum*; they were advised to my *History of tythes*; a book so much

cry'd down by them formerly ; in which, I dare boldly say, there are more arguments for them than are extant together any where : Upon this, one writ me word, that my history of tythes was now become like *Pelias basta*, to wound and to heal. I told him in my answer, I thought I could fit him with a better instance. It was possible it might undergo the same fate that *Aristotle*, *Avicen* and *Averroes* did in *France*, some five hundred years ago, which were excommunicated by *Stephen* bishop of *Paris*, by that very name *excommunicated*, because that kind of learning puzzled and troubled their divinity : But finding themselves at a loss, some forty years after (which is much about the time since I writ my history) they were called in again, and so have continued ever since.

Trade.

1. THERE is no prince in christendom but is directly a tradesman, though in another way than an ordinary tradesman. For the purpose, I have a man, I bid him lay out twenty shillings in such commodities, but I tell him for every shilling he lays out I will have a penny : I trade as well as he. This every prince does in his customs.

2. That which a man is bred up in, he thinks no cheating ; as your tradesman thinks not so of his profession, but calls it a mystery. Whereas if you would teach a mercer to make his silks heavier than what he has been used to do, he would peradventure think that to be cheating.

3. Every tradesman professes to cheat me, that asks for his commodity twice as much as it is worth.

Tradition.

SAY what you will against tradition ; we know the signification of words by nothing but tradition. You will say the scripture was written by the holy spirit, but do you understand that language it was writ in ? No. Then for example, take these words, *In principio erat verbum*. How do you know those words signify, *In the beginning was the word*, but by tradition, because some body has told you so ?

Transubstantiation.

1. THE fathers using to speak rhetorically, brought up transubstantiation : As if because it is commonly said, *amicus est alter idem*, one should go about to prove a man and his friend are all one. That opinion is only rhetorick turned into logic.

2. There is no greater argument (though not used) against transubstantiation, than the apostles, at their first council, forbidding blood and suffocation. Would they forbid blood, and yet enjoin the eating of blood too ?

3. The best way for a pious man, is to address himself to the sacrament with that reve-

rence and devotion, as if Christ were really there present.

Traitor.

'TIS not seasonable to call a man traitor, that has an army at his heels. One with an army is a gallant man. My lady *Cotton* was in the right, when she laughed at the dutche's of *Richmond* for taking such state upon her, when she could command no forces. *She a dutche's ! there is in Flanders a dutche's indeed* ; meaning the arch-dutche's.

Trinity.

THE second person is made of a piece of bread by the papist, the third person is made of his own frenzy, malice, ignorance and folly, by the round head. To all these the spirit is intitled : One the baker makes, the other the cobbler ; and betwixt those two, I think the first person is sufficiently abused.

Truth.

1. THE *Aristotelians* say, all truth is contained in *Aristotle*, in one place or another. *Galilaeo* makes *Simplicius* say so, but shews the absurdity of that speech, by answering, all truth is contained in a lesser compass, viz. in the alphabet. *Aristotle* is not blamed for mistaking sometimes ; but *Aristotelians* for maintaining those mistakes. They should acknowledge the good they have from him, and leave him when he is in the wrong. There never breathed that person to whom mankind was more beholden.

2. The way to find out the truth is by others' mistakings : For if I was to go to such a place, and one had gone before me on the right hand, and he was out ; another had gone on the left hand, and he was out ; this would direct me to keep the middle way, that peradventure would bring me to the place I desired to go.

3. In troubled water you can scarce see your face ; or see it very little, till the water be quiet and stand still. So in troubled times you can see little truth. When times are quiet and settled, then truth appears.

Trial.

1. TRIALS are by one of these three ways ; by confession, or by demurrer) that is, confessing the fact, but denying it to be that wherewith a man is charged. For example, denying it to be treason, if a man be charged with treason) or by a jury.

2. *Ordalium* was a trial, and was either by going over nine red hot plough-shares, (as in the case of queen *Emma*, accused for lying with the bishop of *Winchester*, over which she being led blindfold, and having passed all her irons, asked when she should come to her trial ;) or it was by taking a red hot coulter in a man's hand, and carrying it so many steps, and then casting it from him. As soon as this was done, the

the hands or the feet were to be bound up, and certain charms to be said, and a day or two after to be opened; if the parts were whole, the party was judged to be innocent, and so on the contrary.

3. THE rack is used no where as in *England*. In other countries it is used in judicature, when there is a *sempilena probatio*, a half proof against a man; then to see if they can make it full, they rack him if he will not confess. But here in *England*, they take a man and rack him, I do not know why, nor when; not in time of judicature, but when somebody bids.

4. Some men before they come to their trial, are couzened to confess upon examination: Upon this trick, they are made to believe somebody has confessed before them; and then they think it a piece of honour to be clear and ingenious, and that destroys them.

University.

1. THE best argument why *Oxford* should have precedence of *Cambridge*, is the act of parliament, by which *Oxford* is made a body; made what it is; and *Cambridge* is made what it is; and in the act it takes place. Besides, *Oxford* has the best monuments to show.

2. It was well said of one, hearing of a *history lecture* to be founded in the university; *Would to God*, says he, *they would erect a lecture of discretion there, this would do more good there an hundred times.*

3. He that comes from the university to govern the state, before he is acquainted with the men and manners of the place, does just as if he should come into the presence-chamber all dirty, with his boots on, his riding-coat, and his head all daubed. They may serve him well enough in the way, but when he comes to court, he must conform to the place.

Vows.

SUPPOSE a man find by his own inclination he has no mind to marry, may he not then vow chastity?

Ans. If he does, what a fine thing hath he done? It is as if a man did not love cheese; and then he would vow to God almighty never to eat cheese. He that vows, can mean no more in sense, than this, to do his utmost endeavour to keep his vow.

Usury.

1. THE *Jews* were forbidden to take use one of another, but they were not forbidden to take it of other nations. That being so, I see no reason, why I may not as well take use for my money, as rent for my house. It is a vain thing to say, money begets not money; for that no doubt it does.

2. Would it not look oddly to a stranger, that should come into this land, and hear in our pulpits usury preached against; and yet the

law allow it? Many men use it, perhaps some churchmen themselves. No bishop nor ecclesiastical judge, that pretends power to punish other faults, dares punish, or at least does punish any man for doing it.

Pious uses.

THE ground of the ordinary's taking part of a man's estate, who died without a will, to pious uses, was this; to give it somebody to pray that his soul might be delivered out of purgatory. Now the pious uses come into his own pocket. 'Twas well expressed by *John & Powels* in the play, who acted the priest; one that was to be hanged, being brought to the ladder, would fain have given something to the poor; he feels for his purse, (which *John & Powels* had picked out of his pocket before) missing it, cries out, *He had lost his purse*; now he intended to have given something to the poor: *John & Powels* bid him be pacified, for *the poor had it already.*

War.

1. Do not undervalue an enemy by whom you have been worsted. When our countrymen came home from fighting with the *Saracens*, and were beaten by them, they pictured them with huge, big, terrible faces (as you still see the sign of the *Saracen's* head is) when in truth they were like other men. But this they did to save their own credits.

2. Martial law in general, means nothing but the martial law of this or that place; with us to be used in *fervere belli*, in the face of the enemy, not in time of peace; there they can take away neither limb nor life. The commanders need not complain for want of it, because our ancestors have done gallant things without it.

3. *Question.* Whether may subjects take up arms against their prince?

Answer. Conceive it thus; Here lies a shilling betwixt you and me; ten pence of the shilling is yours, two pence is mine: By agreement, I am as much king of my two pence, as you of your ten pence: If you therefore go about to take away my two pence, I will defend it; for there you and I are equal, both princes.

4. Or thus; Two supream powers meet; one says to the other, give me your land; if you will not, I will take it from you: The other, because he thinks himself too weak to resist him, tells him, of nine parts I will give you three, so I may quietly enjoy the rest, and I will become your tributary. Afterwards the prince comes to exact six parts, and leaves but three; the contract then is broken, and they are in parity again.

5. To know what obedience is due to the prince, you must look into the contract betwixt him and his people; as if you would know what rent is due from the tenant to the landlord, you must look into the lease. When the

the contract is broken, and there is no third person to judge, then the decision is by arms. And this is the case between the prince and the subject.

6. *Question.* What law is there to take up arms against the prince, in case he break his covenant?

Answer. Though there be no written law for it, yet there is custom; which is the best law of the kingdom; for in *England* they have always done it. There is nothing expressed between the king of *England* and the king of *France*; that if either invades the other's territory, the other shall take up arms against him, and yet they do it upon such an occasion.

7. 'Tis all one to be plundered by a troop of horse, or to have a man's goods taken from him by an order from the council-table. To him that dies, it is all one whether it be by a penny halter, or a silk garter; yet I confess the silk garter pleases more; and like trouts we love to be tickled to death.

8. The soldiers say they fight for honour; when the truth is they have their honour in their pocket. And they mean the same thing that pretend to fight for religion. Just as a parson goes to law with his parishioners; he says, for the good of his successors, that the church may not lose its right; when the meaning is to get the tithes into his own pocket.

9. We govern this war as an unskilful man does a casting-net; if he has not the right trick to cast the net off his shoulder, the leads will pull him into the river. I am afraid we shall pull our selves into destruction.

10. We look after the particulars of a battle, because we live in the very time of war. Whereas of battles past, we hear nothing but the number slain. Just as for the death of a man; when he is sick, we talk how he slept this night, and that night: what he eat, and what he drunk: But when he is dead, we only say, he died of a fever, or name his disease, and there's an end.

11. *Boccaline* has this passage of soldiers: They came to *Apollo* to have their profession made the eighth liberal science, which he granted. As soon as it was noised up and down, it came to the butchers, and they desired their profession might be made the ninth: For say they, the soldiers have this honour for the killing of men; now we kill as well as they; but we kill beasts for the preserving of men, and why should not we have honour likewise done to us? *Apollo* could not answer their reasons, so he reversed his sentence, and made the soldier's trade a mystery, as the butchers is.

Witches.

THE law against witches does not prove there be any; but it punishes the malice of those people that use such means, to take away men's lives. If one should profess that by turning his hat thrice, and crying buz, he could take away a man's life (though in truth he could

do no such thing) yet this were a just law made by the state, that whosoever should turn his hat thrice, and cry buz, with an intention to take away a man's life, shall be put to death.

Wife.

1. HE that hath a handsome wife, by other men is thought happy; it is a pleasure to look upon her, and be in her company; but the husband is cloyed with her. We are never content with what we have.

2. You shall see a monkey sometimes that has been playing up and down the garden, at length leap on the wall, but his clog hangs a great way below on this side: The bishop's wife is like that monkey's clog, himself is got up very high, takes place of the temporal barons, but his wife comes a great way behind.

3. 'Tis reason a man that will have a wife should be at the charge of her trinkets, and pay all the scores she sets on him. He that will keep a monkey, 'tis fit he should pay for the glasses he breaks.

Wisdom.

1. A WISE man should never resolve upon any thing, at least never let the world know his resolution, for if he cannot arrive at that, he is ashamed. How many things did the king resolve in his declaration concerning *Scotland*, never to do, and yet did them all? A man must do according to accidents and emergencies.

2. Never tell your resolution before hand; but when the cast is thrown, play it as well as you can to win the game you are at. 'Tis but folly to study how to play five-ace, when you know not whether you shall throw it or no.

3. Wife men say nothing in dangerous times. The lion you know called the sheep, to ask her if his breath smelt: She said, ay; he bit off her head for a fool. He called the wolf, and asked him: He said no; he tore him in pieces for a flatterer. At last he called the fox, and asked him: Truly he had got a cold, and could not smell. King *James* was pictured, &c.

Wit.

1. WIT and wisdom differ; Wit is upon the sudden turn, wisdom is in bringing about ends.

2. Nature must be the ground-work of wit and art; otherwise whatever is done will prove but jack-pudding's work.

3. Wit must grow like fingers; if it be taken from others, it is like plumbs stuck upon black thorns; there they are for a while, but they come to nothing.

4. He that will give himself to all manner of ways to get money may be rich; so he that lets fly all he knows or thinks, may by chance be satyrically witty. Honestly sometimes keeps a man from growing rich; and civility from being witty.

5. Women ought not to know their own wit, because they will still be shewing it, and so spoil it; like a child that will continually be shewing its fine new coat, till at length it all bedaubs it with his pah hands.

6. Fine wits destroy themselves with their own plots, in meddling with great affairs of state. They commonly do as the ape that saw the gunner put bullets in the cannon, and was pleased with it, and he would be doing so too; at last he puts himself into the piece, and so both ape and bullet were shot away together.

Women.

1. *LET the women have power on their heads, because of the angels.* The reason of the words, *because of the angels*, is this; the Greek church held an opinion that the angels fell in love with women. This fancy St. Paul discreetly catches, and uses it as an argument to persuade them to modesty.

2. The grant of a place, is not good by the canon law before a man be dead; upon this ground some mischief might be plotted against him in present possession, by poisoning, or some other way. Upon the same reason a contract made with a woman during her husband's life, was not valid.

3. Men are not troubled to hear a man dispraised, because they know, though he be naught, there is worth in others. But women are mightily troubled to hear any of them spoken against, as if the sex it self were guilty of some unworthiness.

4. Women and princes must both trust some body; and they are happy, or unhappy according to the desert of those under whose hands they fall. If a man knows how to manage the favour of a lady, her honour is safe, and so is a prince's.

5. An opinion grounded upon that, *Genes. vj. The sons of God saw the daughters of men that they were fair.*

Year.

1. It was the manner of the Jews (if the year did not fall out right, but that it was dirty for the people to come up to Jerusalem at the feast of the passover, or that their corn was not ripe for their first fruits) to intercalate a month, and so to have, as it were, two *Februaries*; thrusting up the year still higher, *March* into

April's place, *April* into *May's* place, &c. Whereupon it is impossible for us to know when our Saviour was born, or when he died.

2. The year is either the year of the moon, or the year of the sun; there is not above eleven days difference. Our movable feasts are according to the year of the moon; else they should be fixed.

3. Though they reckon ten days sooner beyond sea; yet it does not follow their spring is sooner than ours; we keep the same time in natural things, and their ten days sooner; and our ten days later in those things mean the self same time; just as twelve *sous* in *French*, are ten pence in *English*.

4. The lengthening of days is not suddenly perceived, till they are grown a pretty deal longer; because the sun, though it be in a circle, yet it seems for a while to go in a right line. For take a segment of a great circle especially, and you shall doubt whether it be straight or no. But when the sun is got past that line, then you presently perceive the days are lengthened. Thus it is in the winter and summer solstice; which is indeed the true reason of them.

5. The eclipse of the sun is, when it is new moon; the eclipse of the moon when it is full. They say *Dionysius* was converted by the eclipse that happened at our Saviour's death, because it was neither of these, and so could not be natural.

Zealots.

ONE would wonder Christ should whip the buyers and sellers out of the temple, and no body offer to resist him; considering what opinion they had of him: But the reason was, they had a law, that whosoever did profane *sanctitatem Dei, aut templi*, the holiness of God, or the temple, before ten persons, it was lawful for any of them to kill him, or to do any thing this side killing him, as whipping him, or the like. And hence it was, that when one struck our Saviour before the judge, where it was not lawful to strike (as it is not with us at this day) he only replies, *If I have spoken evil, bear witness of the evil; but if well, why smitest thou me?* He says nothing against their finiting him, in case he had been guilty of speaking evil; that is blasphemy; and they could have proved it against him. They that put this law in execution were called zealots; but afterwards they committed many villanies.

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